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PHILIPPINES

FROM

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MANILA
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 170734. May 14, 2008]

ARCO METAL PRODUCTS, CO., INC., and MRS. SALVADOR UY, *petitioners, vs.* **SAMAHAN NG MGA MANGGAGAWA SA ARCO METAL-NAFLU (SAMARM-NAFLU),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE SUPREME COURT; EXCEPTION.— As a general rule, in petitions for review under Rule 45, the Court, not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the Court of Appeals are conclusive and binding on the Court. The rule, however, admits of several exceptions, one of which is when the findings of the Court of Appeals are contrary to that of the lower tribunals. Such is the case here, as the factual conclusions of the Court of Appeals differ from that of the voluntary arbitrator.

2. LABOR AND SOCIAL LEGISLATION; PRINCIPLE OF NON-DIMINUTION OF BENEFITS; EXPLAINED.— Any benefit and supplement being enjoyed by employees cannot be reduced, diminished, discontinued or eliminated by the employer. The

principle of non-diminution of benefits is founded on the Constitutional mandate to "protect the rights of workers and promote their welfare," and "to afford labor full protection." Said mandate in turn is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations shall be rendered in favor of labor." Jurisprudence is replete with cases which recognize the right of employees to benefits which were voluntarily given by the employer and which ripened into company practice.

BRION, *J.*, *separate concurring opinion:*

CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; PRINCIPLE OF MUTUALITY OF CONTRACT; BASIS FOR THE PROHIBITION AGAINST DIMINUTION OF ESTABLISHED BENEFITS IN CASE AT BAR, NOT ARTICLE 100 OF THE LABOR CODE.— I concur separately *to clarify* that the basis for the prohibition against diminution of established benefits is not really Article 100 of the Labor Code *as the respondents claimed and as the cases cited in the ponencia mentioned*. Article 100 refers solely to the non-diminution of benefits enjoyed *at the time of the promulgation of the Labor Code*. Employer-employee relationship is contractual and is based on the *express terms* of the employment contract as well as on its *implied terms*, among them, those not expressly agreed upon but which the employer has freely, voluntarily and consistently extended to its employees. Under the principle of mutuality of contracts embodied in Article 1308 of the Civil Code, the terms of a contract — both express and implied — cannot be withdrawn except by mutual consent or agreement of the contracting parties. In the present case, the lack of consent or agreement was precisely the basis for the employees' complaint.

APPEARANCES OF COUNSEL

The Law Firm of Chan Robles & Associates for petitioners.

D E C I S I O N

TINGA, *J.*:

This treats of the Petition for Review[1] of the Resolution[2] and Decision[3] of the Court of Appeals dated 9 December 2005 and 29 September 2005, respectively in CA-G.R. SP No. 85089 entitled *Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU) v. Arco Metal Products Co., Inc. and/or Mr. Salvador Uy/Accredited Voluntary Arbitrator Apron M. Mangabat,*[4] which ruled that the 13th month pay, vacation leave and sick leave conversion to cash shall be paid in full to the employees of petitioner regardless of the actual service they rendered within a year.

Petitioner is a company engaged in the manufacture of metal products, whereas respondent is the labor union of petitioner's rank and file employees. Sometime in December 2003, petitioner paid the 13th month pay, bonus, and leave encashment of three union members in amounts proportional to the service they actually rendered in a year, which is less than a full twelve (12) months. The employees were:

1. Rante Lamadrid	Sickness	27 August 2003 to 27 February 2004
2. Alberto Gamban	Suspension	10 June 2003 to 1 July 2003
3. Rodelio Collantes	Sickness	August 2003 to February 2004

Respondent protested the prorated scheme, claiming that on several occasions petitioner did not prorate the payment of the same benefits to seven (7) employees who had not served for the full 12 months. The payments were made in 1992, 1993, 1994, 1996, 1999, 2003, and 2004. According to respondent, the prorated payment violates the rule against diminution of benefits under Article 100 of the Labor Code. Thus, they filed

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[1] *Rollo*, pp. 3-31.

[2] *Id*. at 36.

[3] *Id*. at 38-56.

[4] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Eugenio S. Labitoria and Eliezer R. De Los Santos, concurring.

a complaint before the National Conciliation and Mediation Board (NCMB). The parties submitted the case for voluntary arbitration.

The voluntary arbitrator, Apron M. Mangabat, ruled in favor of petitioner and found that the giving of the contested benefits in full, irrespective of the actual service rendered within one year has not ripened into a practice. He noted the affidavit of Joselito Baingan, manufacturing group head of petitioner, which states that the giving in full of the benefit was a mere error. He also interpreted the phrase "for each year of service" found in the pertinent CBA provisions to mean that an employee must have rendered one year of service in order to be entitled to the full benefits provided in the CBA.[5]

Unsatisfied, respondent filed a Petition for Review[6] under Rule 43 before the Court of Appeals, imputing serious error to Mangabat's conclusion. The Court of Appeals ruled that the CBA did not intend to foreclose the application of prorated payments of leave benefits to covered employees. The appellate court found that petitioner, however, had an existing voluntary practice of paying the aforesaid benefits in full to its employees, thereby rejecting the claim that petitioner erred in paying full benefits to its seven employees. The appellate court noted that aside from the affidavit of petitioner's officer, it has not presented any evidence in support of its position that it has no voluntary practice of granting the contested benefits in full and without regard to the service actually rendered within the year. It also questioned why it took petitioner eleven (11) years before it was able to discover the alleged error. The dispositive portion of the court's decision reads:

WHEREFORE, premises considered, the instant petition is hereby **GRANTED** and the Decision of Accredited Voluntary Arbiter Apron M. Mangabat in NCMB-NCR Case No. PM-12-345-03, dated June 18, 2004 is hereby **AFFIRMED WITH MODIFICATION** in that the 13th month pay, bonus, vacation leave and sick leave conversions

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[5] *Id*. at 175.

[6] *Id*. at 57-77.

to cash shall be paid to the employees in full, irrespective of the actual service rendered within a year.[7]

Petitioner moved for the reconsideration of the decision but its motion was denied, hence this petition.

Petitioner submits that the Court of Appeals erred when it ruled that the grant of 13th month pay, bonus, and leave encashment in full regardless of actual service rendered constitutes voluntary employer practice and, consequently, the prorated payment of the said benefits does not constitute diminution of benefits under Article 100 of the Labor Code.[8]

The petition ultimately fails.

First, we determine whether the intent of the CBA provisions is to grant full benefits regardless of service actually rendered by an employee to the company. According to petitioner, there is a one-year cutoff in the entitlement to the benefits provided in the CBA which is evident from the wording of its pertinent provisions as well as of the existing law.

We agree with petitioner on the first issue. The applicable CBA provisions read:

ARTICLE XIV-VACATION LEAVE

Section 1. Employees/workers covered by this agreement who have rendered at least one (1) year of service shall be entitled to sixteen (16) days vacation leave with pay for each year of service. Unused leaves shall not be cumulative but shall be converted into its cash equivalent and shall become due and payable every 1st Saturday of December of each year.

However, if the 1st Saturday of December falls in December 1, November 30 (Friday) being a holiday, the management will give the cash conversion of leaves in November 29.

Section 2. In case of resignation or retirement of an employee, his vacation leave shall be paid proportionately to his days of service rendered during the year.

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[7] *Id*. at 55.

[8] *Id*. at 17.

ARTICLE XV-SICK LEAVE

Section 1. Employees/workers covered by this agreement who have rendered at least one (1) year of service shall be entitled to sixteen (16) days of sick leave with pay for each year of service. Unused sick leave shall not be cumulative but shall be converted into its cash equivalent and shall become due and payable every 1st Saturday of December of each year.

Section 2. Sick Leave will only be granted to actual sickness duly certified by the Company physician or by a licensed physician.

Section 3. All commutable earned leaves will be paid proportionately upon retirement or separation.

ARTICLE XVI – EMERGENCY LEAVE, *ETC.*

Section 1. The Company shall grant six (6) days emergency leave to employees covered by this agreement and if unused shall be converted into cash and become due and payable on the 1st Saturday of December each year.

Section 2. Employees/workers covered by this agreement who have rendered at least one (1) year of service shall be entitled to seven (7) days of Paternity Leave with pay in case the married employee's legitimate spouse gave birth. Said benefit shall be non-cumulative and non-commutative and shall be deemed in compliance with the law on the same.

Section 3. Maternity leaves for married female employees shall be in accordance with the SSS Law plus a cash grant of ₱1,500.00 per month.

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ARTICLE XVIII- 13TH MONTH PAY & BONUS

Section 1. The Company shall grant 13th Month Pay to all employees covered by this agreement. The basis of computing such pay shall be the basic salary per day of the employee multiplied by 30 and shall become due and payable every 1st Saturday of December.

Section 2. The Company shall grant a bonus to all employees as practiced which shall be distributed on the 2nd Saturday of December.

Section 3. That the Company further grants the amount of Two Thousand Five Hundred Pesos (₱2,500.00) as signing bonus plus a free CBA Booklet.[9] (Underscoring ours)

There is no doubt that in order to be entitled to the full monetization of sixteen (16) days of vacation and sick leave, one must have rendered at least one year of service. The clear wording of the provisions does not allow any other interpretation. Anent the 13th month pay and bonus, we agree with the findings of Mangabat that the CBA provisions did not give any meaning different from that given by the law, thus it should be computed at 1/12 of the total compensation which an employee receives for the whole calendar year. The bonus is also equivalent to the amount of the 13th month pay given, or in proportion to the actual service rendered by an employee within the year.

On the second issue, however, petitioner founders.

As a general rule, in petitions for review under Rule 45, the Court, not being a trier of facts, does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the Court of Appeals are conclusive and binding on the Court.[10] The rule, however, admits of several exceptions, one of which is when the findings of the Court of Appeals are contrary to that of the lower tribunals. Such is the case here, as the factual conclusions of the Court of Appeals differ from that of the voluntary arbitrator.

Petitioner granted, in several instances, full benefits to employees who have not served a full year, thus:

Name	Reason	Duration
1. Percival Bernas	Sickness	July 1992 to November 1992
2. Cezar Montero	Sickness	21 Dec. 1992 to February 1993

[9] *Id*. at 110-111. These provisions were carried over from four (4) previous CBAs covering the following dates: 28 August 1990 to 27 August 1991, 1 August 1993 to 31 July 1996, 1 August 1996 to 31 July 1999, and 1 August 1999 to 31 July 2002.

[10] *New City Builders, Inc. v. National Labor Relations Commission*, G.R. No. 149281, 15 June 2005, 460 SCRA 220, 227.

3. Wilson Sayod	Sickness	May 1994 to July 1994
4. Nomer Becina	Suspension	1 Sept. 1996 to 5 Oct. 1996
5. Ronnie Licuan	Sickness	8 Nov. 1999 to 9 Dec. 1999
6. Guilbert Villaruel	Sickness	23 Aug. 2002 to 4 Feb. 2003
7. Melandro Moque	Sickness	29 Aug. 2003 to 30 Sept. 2003[11]

Petitioner claims that its full payment of benefits regardless of the length of service to the company does not constitute voluntary employer practice. It points out that the payments had been erroneously made and they occurred in isolated cases in the years 1992, 1993, 1994, 1999, 2002 and 2003. According to petitioner, it was only in 2003 that the accounting department discovered the error "when there were already three (3) employees involved with prolonged absences and the error was corrected by implementing the pro-rata payment of benefits pursuant to law and their existing CBA."[12] It adds that the seven earlier cases of full payment of benefits went unnoticed considering the proportion of one employee concerned (per year) *vis à vis* the 170 employees of the company. Petitioner describes the situation as a "clear oversight" which should not be taken against it.[13] To further bolster its case, petitioner argues that for a grant of a benefit to be considered a practice, it should have been practiced over a long period of time and must be shown to be consistent, deliberate and intentional, which is not what happened in this case. Petitioner tries to make a case out of the fact that the CBA has not been modified to incorporate the giving of full benefits regardless of the length of service, proof that the grant has not ripened into company practice.

We disagree.

Any benefit and supplement being enjoyed by employees cannot be reduced, diminished, discontinued or eliminated by the employer.[14] The principle of non-diminution of benefits is

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[11] *Rollo*, p. 22.

[12] *Id*.

[13] *Id*. at 23.

[14] *Tiangco, et al. v. Hon. Leogardo, Jr., etc., et al.*, 207 Phil. 2235 (1983).

founded on the Constitutional mandate to "protect the rights of workers and promote their welfare,"[15] and "to afford labor full protection."[16] Said mandate in turn is the basis of Article 4 of the Labor Code which states that "all doubts in the implementation and interpretation of this Code, including its implementing rules and regulations shall be rendered in favor of labor." Jurisprudence is replete with cases which recognize the right of employees to benefits which were voluntarily given by the employer and which ripened into company practice. Thus in *Davao Fruits Corporation v. Associated Labor Unions, et al.*[17] where an employer had freely and continuously included in the computation of the 13th month pay those items that were expressly excluded by the law, we held that the act which was favorable to the employees though not conforming to law had thus ripened into a practice and could not be withdrawn, reduced, diminished, discontinued or eliminated. In *Sevilla Trading Company v. Semana*,[18] we ruled that the employer's act of including non-basic benefits in the computation of the 13th month pay was a voluntary act and had ripened into a company practice which cannot be peremptorily withdrawn. Meanwhile in *Davao Integrated Port Stevedoring Services v. Abarquez*,[19] the Court ordered the payment of the cash equivalent of the unenjoyed sick leave benefits to its intermittent workers after finding that said workers had received these benefits for almost four years until the grant was stopped due to a different interpretation of the CBA provisions. We held that the employer cannot unilaterally withdraw the existing privilege of commutation or conversion to cash given to said workers, and as also noted that the employer had in fact granted and paid said cash equivalent of the unenjoyed portion of the sick leave benefits to some intermittent workers.

In the years 1992, 1993, 1994, 1999, 2002 and 2003, petitioner had adopted a policy of freely, voluntarily and consistently granting

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[15] Constitution, Article II, Section 18.

[16] Constitution, Article XIII, Section 3.

[17] G.R. No. 85073, 24 August 1993, 225 SCRA 562.

[18] G.R. No. 152456, 28 April 2004, 428 SCRA 239, 249.

[19] G.R. No. 102132, 19 March 1993, 220 SCRA 197.

full benefits to its employees regardless of the length of service rendered. True, there were only a total of seven employees who benefited from such a practice, but it was an established practice nonetheless. Jurisprudence has not laid down any rule specifying a minimum number of years within which a company practice must be exercised in order to constitute voluntary company practice.[20] Thus, it can be six (6) years,[21] three (3) years,[22] or even as short as two (2) years.[23] Petitioner cannot shirk away from its responsibility by merely claiming that it was a mistake or an error, supported only by an affidavit of its manufacturing group head portions of which read:

> 5. 13th month pay, bonus, and cash conversion of unused/earned vacation leave, sick leave and emergency leave are computed and paid in full to employees who rendered services to the company for the entire year and proportionately to those employees who rendered service to the company for a period less than one (1) year or twelve (12) months in accordance with the CBA provision relative thereto.
>
> 6. It was never the intention much less the policy of the management to grant the aforesaid benefits to the employees in full regardless of whether or not the employee has rendered services to the company for the entire year, otherwise, it would be unjust and inequitable not only to the company but to other employees as well.[24]

In cases involving money claims of employees, the employer has the burden of proving that the employees did receive the wages and benefits and that the same were paid in accordance with law.[25]

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[20] *Sevilla Trading Company v. Semana*, *supra* note 12.

[21] *Davao Fruits Corporation v. Associated Labor Unions*, *supra* note 11.

[22] *Tianco v. Leogardo, Jr.*, *supra* note 10.

[23] *Sevilla Trading Company v. Semana*, *supra*.

[24] *Rollo*, pp. 120-121.

[25] *Mark Roche International v. NLRC*, 372 Phil. 238, 247 (1999).

Indeed, if petitioner wants to prove that it merely erred in giving full benefits, it could have easily presented other proofs, such as the names of other employees who did not fully serve for one year and thus were given prorated benefits. Experientially, a perfect attendance in the workplace is always the goal but it is seldom achieved. There must have been other employees who had reported for work less than a full year and who, as a consequence received only prorated benefits. This could have easily bolstered petitioner's theory of mistake/error, but sadly, no evidence to that effect was presented.

IN VIEW HEREOF, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 85089 dated 29 September 2005 is and its Resolution dated 9 December 2005 are hereby AFFIRMED.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, and *Velasco, Jr., JJ.,* concur.

Brion, J., with separate concurring opinion.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I fully agree with the *ponencia* that the enhanced 13th month pay and bonus computations made by the company have ripened into an established benefit that can no longer be unilaterally withdrawn. The company claim — supported solely by the affidavit of a company officer that the computations were "clear oversights" that should not be taken against it — must fail as against the undisputed evidence of the number of times and years the enhanced computations have been in place. At most, the company claim raises a doubt about the real character of these computations but any such doubt we have to resolve in favor of labor (Article 4, Labor Code).

I concur separately *to clarify* that the basis for the prohibition against diminution of established benefits is not really Article 100 of the Labor Code *as the respondents claimed and as the cases cited in the ponencia mentioned*. Article 100 refers solely to the non-diminution of benefits enjoyed *at the time of the promulgation of the Labor Code*. Employer-employee relationship is contractual and is based on the *express terms* of the employment contract as well as on its *implied terms*, among them, those not expressly agreed upon but which the employer has freely, voluntarily and consistently extended to its employees. Under the principle of mutuality of contracts embodied in Article 1308 of the Civil Code, the terms of a contract — both express and implied — cannot be withdrawn except by mutual consent or agreement of the contracting parties. In the present case, the lack of consent or agreement was precisely the basis for the employees' complaint.

SECOND DIVISION

[G.R. No. 160993. May 20, 2008]

TEMIC SEMICONDUCTORS, INC. EMPLOYEES UNION (TSIEU)-FFW, ARNEL BADUA, NANCY BUSA, TERESITA PASCUA, ISABELIT PALMA, CHONA ACUESTA, TEODY CADIZ, ANITA TUMACA, MA. CRISTINA OLONAN, LOLITA RUILES, ADELAIDA CORPUZ, ARMANDO PEREZ, ELIZABETH RONARIO, MELBA DESALISA, PRIMA PASIA, ELEANOR RONARIO, ERLINDA MOLINA, MARIETTA DAGARAGA, ZENAIDA TIAÑO, GLENDA LINGAT, ERMELINDA DOMINGO, ELLEN ROZALAN, DANILO MADARA, FELORMA MACATDON, JOSEFINA PASIA, CORAZON

MARTINEZ, TERESITA SALVADOR, FAUSTINO PAAS, LEILANI LARA, EDGAR REYES, RUNUELA IBANA, JOSEPHINE MARQUEZ, JOCELYN BRIZUELA, ROSE VALLE, ROSELYN TAMBULI, ANTONIO ABANIO, JASMIN HIDALGO, BEVERLY MARCOS, EVA TENA, EDNA BUETA, LETICIA NIEDO, ROSEMARIE HISUS, FANNY ANGELITO, TERESITA GAMBOA, ROWENA VILLAPANDO, HUSNA MASTURA, REBECCA DEQUITO, SOLEDAD DE VERA, JOSIE VERCIDE, CRISTINA MANDOCDOC, CLARA VARGAS, GLORIA BUFETE, EMMA ANDRES, ANNABELLE SANTOS, JOSIELYN MAMPOLINO, MARIO ALCON, MA. VICTORIA FERANCO, ROBERTA TENEFRANCIA, ROSEMARIE CARAIG, BENJAMIN TENEFRANCIA, and ROMEO MANAYAO, *petitioners, vs.* **FEDERATION OF FREE WORKERS (FFW), JUAN TAN, RAMON JABAR, and FRANCISCO CRISTOBAL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; FAILURE TO RAISE THE ISSUE OF ANY MONETARY OR PROPERTY CLAIM ON APPEAL BEFORE THE BUREAU OF LABOR RELATIONS IS FATAL.— A scrutiny of the March 24, 1998 Order of the NCR RD clearly bears out that what had been granted thereat was the nullification of the receivership of TSIEU by FFW, no more and no less. The *fallo* of the March 24, 1998 Order unequivocally granted merely the nullification of the receivership. The disquisitive part, body, or *ratio decidendi* of the March 24, 1998 Order — as distinguished from the *fallo* or dispositive portion where the findings of fact and law, the reasons and evidence to support such findings including the discussions of the issues leading to their determination are drawn from, likewise obviously did not include the claim for properties and the remittance of any monetary claim. Verily, TSIEU-Dimaano never raised the issue of any monetary or property claims before the Office of the NCR RD and before

the proceedings with the Hearing Officer. And much less did they raise this issue on appeal before the BLR when such was not granted by the March 24, 1998 Order. TSIEU-Dimaano's failure to do so is fatal to its claims insofar as the enforcement of the March 24, 1998 Order is concerned. They cannot now assert such claims in the enforcement of said final and executory order.

2. REMEDIAL LAW; JUDGMENTS; FINAL AND EXECUTORY; IMMUTABLE AND UNALTERABLE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— It is axiomatic that "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." 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. The only exceptions to the rule on the immutability of a final judgment are: (1) the correction of clerical error; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. None of the exceptions obtain in this case. Much less do the *nunc pro tunc* entries apply to the instant case. Thus, we so hold that the enforcement of the final and executory March 24, 1998 Order declaring the nullity of receivership cannot extend to the grant of money and property claimed by TSIEU-Dimaano.

3. ID.; ID.; ID.; ID.; ID.; PROCEEDINGS CONDUCTED TO PROVE THE CLAIMS FOR PROPERTIES AND RECEIVABLES IN CASE AT BAR, DECLARED NULL AND VOID; REASON.— We also agree with the appellate court that the proceedings conducted by the NCR RD for TSIEU-Dimaano to prove its claims for properties and receivable are null and void as such proceedings do not partake of the nature of *nunc pro tunc* entries which cause no prejudice to private respondents. Even granting *arguendo* that the exception of

nunc pro tunc entries applies, which undoubtedly does not, still, we hold that the proceedings before the NCR RD do not prove the actual monetary and property claims. Without a full-blown hearing with testimonial evidence to prove and confirm such claims, the quasi-judicial body could not plausibly determine with certainty the claims as the documentary pieces of evidence presented by TSIEU-Dimaano were not substantially sufficient to prove such. As aptly pointed out by private respondents, the check referred to by TSIEU-Dimaano do not prove its entire monetary claim. Evidently, the claims have to be substantially proven given the fact that those belonging to the TSIEU-Dimaano faction did not heed the October 27, 1995 return to work Order of the DOLE Secretary and were allegedly out of work, and this faction could not have been entitled to receive the amounts claimed.

APPEARANCES OF COUNSEL

Lagman Lagman and Mones Law Firm for petitioners.
FFW Legal Center for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioners assail the October 30, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 62587, sustaining the September 18, 2000 and October 27, 2000 Resolutions of Bureau of Labor Relations (BLR) Assistant Secretary for Regional Operations Benedicto Ernesto R. Bitionio, Jr. These resolutions set aside the March 30, 1999 Order of BLR Regional Director Maximo B. Lim and lifted the September 23, 1998 Writ of Execution in BLR-A-5-12-98 (NCR-OD-9708-002-IRD) entitled *Temic Semiconductors, Inc. Employees Union (TSIEU)-FFW*

[1] *Rollo*, pp. 269-282. Penned by Associate Justice Ruben T. Reyes (Chairperson, now a member of this Court) and concurred in by Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam.

and Liza Dimaano, Union President v. Federation of Free Workers, Juan Tan, Ramon Jabar and Francisco Cristobal for *Declaration of Nullity of Receivership*. They also assail the October 22, 2003 CA Resolution,[2] denying their Motion for Reconsideration.

The Facts

Temic Semiconductors, Inc. Employees Union (TSIEU) is the accredited bargaining agent for the rank-and-file employees of Temic Telefunken Microelectronics (Phils.) Inc. (TTMPI), and is an affiliate of the Federation of Free Workers (FFW).

In June 1995, during the incumbency of Liza Dimaano as President of TSIEU, the collective bargaining negotiations between the union and TTMPI fell through, resulting in a bargaining deadlock. The Dimaano-led union staged a strike, prompting the Secretary of the Department of Labor and Employment (DOLE) to assume jurisdiction over the labor dispute and to issue a return to work Order on October 27, 1995. However, TSIEU members were split on the directive of the DOLE Secretary as some returned to work, while the others continued with the strike. Those who returned to work were led by Olivia Robles, while those who opted to continue with the strike were led by Dimaano.

Subsequently, on June 28, 1996, the two groups of TSIEU conducted separate elections of TSIEU officers. Those who continued striking elected Dimaano as President, while the second group elected Robles as President. Thus, the TSIEU was polarized into the TSIEU-Dimaano faction and the TSIEU-Robles faction.

The results of both elections were communicated to the National Capital Region (NCR) Regional Director (RD) of BLR by the respective Commission on Elections. However, the election results of TSIEU-Dimaano were the ones noted by the Vice-President for Political Affairs of FFW, respondent Francisco Cristobal. Consequently, the BLR issued a Certification to the effect that, based on public records, the duly elected officers

[2] *Id*. at 267.

of TSIEU as of July 9, 1996 were: Dimaano (President), Gideon Gallo (Vice-President), Josephine Dela Cruz (Secretary), Adela Liugatong (Treasurer), Nonita Ibarra (Auditor), Monaliza Lunot (Chief Shop Steward), and Danila Madara, Rickly Odon, Araceli Sorrola, Arthur Villareal, Ferdinand Tiongson, and Wilfredo Ponce (Board Members).

On July 15, 1996, on the basis of a board resolution issued by TSIEU-Dimaano, TSIEU withdrew eight of its pending labor cases from the legal representation of the FFW Legal Center.

On August 5, 1996, the governing board of FFW held an emergency meeting to discuss the two TSIEU elections. It must be noted at this juncture that Dimaano was a member of the governing board of FFW. Over the objections of Dimaano and on the ground that the two elections resulted in a crisis of leadership in TSIEU, the FFW governing board decided, among other things, to place TSIEU under its receivership. Forthwith, Dimaano resigned from all her positions in the FFW.

On August 6, 1997, TSIEU-FFW and Dimaano filed the instant case against FFW and the other private respondents before the NCR RD of BLR for *Declaration of Nullity of Receivership*, docketed as Case No. NCR-OD-M-9708-002.

Ruling of the Regional Director in Case No. NCR-OD-M-9708-002

The instant case was assigned to Hearing Officer Armina L. Magbitang-Gatdula who, on February 9, 1998, issued her findings and recommendations. On March 24, 1998, the NCR RD of BLR, concurring with the hearing officer's findings and recommendations, issued an Order[3] granting the petition of TSIEU-Dimaano, the *fallo* of which reads:

WHEREFORE, premises considered, the petition for the declaration of nullity of receivership filed by TEMIC SEMICONDUCTORS INC. EMPLOYEES UNION (TSIEU)-FFW & LIZA DIMAANO-Union President, is hereby granted.

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[3] *Id*. at 112-123, per NCR Regional Director Maximo B. Lim.

SO ORDERED.

The RD held that FFW had no authority to put TSIEU under its receivership, as the relationship between the local union and a federation or national union is that of a principal and agent. Definitely, the RD reasoned, placing the principal under receivership by the agent restricts the rights and personality of the principal (local union) to act for and on behalf of its members. Besides, the RD added, an agent cannot have superior authority over its principal from whom it owes its authority relative to the members of the local union.

On the issue of legal personality, the RD ruled that the requirement of the signatures of 30% of the union membership necessary to institute a complaint, as provided under Article 241 of the Labor Code, is not applicable since such requirement refers to a violation involving rights and conditions of membership in labor organizations. The RD held that what is applicable in the instant case is Art. 242 of the Labor Code on rights of legitimate labor organizations which does not require the signature of 30% of the membership of the union. The RD reasoned that the acts complained of violated the local union's rights under Art. 242 of the Labor Code, particularly paragraphs (a) and (f).

On the issue of confusion in leadership, the RD pointed out that FFW is estopped from questioning TSIEU-Dimaano. For as the RD aptly observed, no less than the Vice-President for Political Affairs of FFW, herein respondent Cristobal, indorsed the election of the officers of the TSIEU-Dimaano faction, for which reason the BLR NCR Office issued a certification attesting to the due election of Dimaano and others of TSIEU-Dimaano.

In fine, the RD held that if TSIEU were indeed guilty of untrustworthiness and disloyalty, as alleged by FFW, receivership is not the proper remedy but expulsion from the federation after due process of law.

Private respondents appealed before the BLR the above decision of the NCR RD.

Ruling of the BLR in BLR Case No. A-5-12-98 (NCR Case No. OD-9708-002)

On June 2, 1998, the BLR issued a Resolution,[4] affirming the March 24, 1998 Order of the NCR RD. The decretal portion of the Resolution reads:

> WHEREFORE, the order of the Regional Director, NCR, dated 09 February 1998 nullifying the receivership imposed by appellants on appellees is AFFIRMED. Accordingly, the appeal is DISMISSED for lack of merit.
>
> SO ORDERED.

The BLR agreed with the material and essential points covered by the assailed March 24, 1998 Order issued by the NCR RD. The bureau likewise pointed out that TSIEU-Robles became invisible during the proceedings before the RD and that FFW did not implead TSIEU-Robles to at least have the TSIEU-Robles' claim to leadership resolved or ventilated.

The BLR rejected the motion for reconsideration filed by private respondents in its June 29, 1998 Resolution.[5]

The September 23, 1998 Writ of Execution

Subsequently, the above Resolutions of the BLR affirming the March 24, 1998 Order of the RD became final and executory.

Consequently, upon motion by TSIEU-Dimaano, the RD issued on September 23, 1998 a Writ of Execution[6] to enforce the March 24, 1998 Order, directing the BLR sheriffs:

> x x x to proceed to the premises of FEDERATION OF FREE WORKERS (FFW), JUAN TAN, RAMON JABAR, and FRANCISCO CRISTOBAL, located at FFW Building, 1943 Taft Avenue, Malate, Manila, or at any place it could be found, and require respondents, their agents and assigns to turn over to the petitioner-union, the

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[4] *Id*. at 124-132, per Director IV Benedicto Ernesto R. Bitonio, Jr.

[5] *Id*. at 133.

[6] *Id*. at 109-111, per NCR Regional Director Maximo B. Lim.

TEMIC SEMICONDUCTORS INC. EMPLOYEES UNION (TSIEU) – FFW, all its properties, real or personal, stated in Annex "A" hereof and which are affected by the declaration of the nullity of the act of respondent federation in placing the petitioner union under receivership. **Insofar as the funds representing union dues, agency fees, bereavement benefits, cooperative shares and payment of loans, you are directed to cause the satisfaction thereof out of the movable goods or chattels, or in the absence thereof, out of the immovable properties of the respondents not exempt from execution**.

x x x x x x x x x

SO ORDERED. (Emphasis ours.)

On September 25, 1998, BLR Sheriffs Edgar Paredes and Nepomuceno Aleano issued notices of garnishment to several banks holding FFW bank accounts. However, on September 30, 1998, the NCR RD of BLR issued an Order directing the sheriffs to lift the notices of garnishment on the ground that there was a need for prior determination of the actual amounts due TSIEU. Consequently, on October 1, 1998, the sheriffs recalled the notices of garnishment. On the same date, private respondents, unaware of the lifting of the notices of garnishment, filed their Urgent Motion to Quash Writ of Execution and to Lift Notice of Garnishment.[7]

On October 12, 1998, TSIEU-Dimaano moved for the reconsideration of the September 30, 1998 Order of the NCR RD. On October 16, 1998, private respondents filed their Second Motion to Quash Writ of Execution.[8]

Meanwhile, on November 26, 1998, TSIEU-Robles filed its Motion for Intervention and/or to Quash the Writ of Execution with Third Party Claim, alleging they had been duly elected by the members of TSIEU to replace the group of Dimaano.

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[7] *Id*. at 134-141.

[8] *Id*. at 142-149.

Ruling of the NCR Regional Director

On March 30, 1999, the NCR RD resolved TSIEU-Dimaano's motion for reconsideration, TSIEU-Robles' motion for intervention, and the two motions to quash writ of execution filed by private respondents by issuing an Order, [9] the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered resolving that:

(a) the MOTION FOR RECONSIDERATION of petitioner is hereby granted. Let an *Alias* Writ of Execution be issued to enforce the Order of this Office dated 24 March 1998 specifically stating thereon the amount of SIX MILLION EIGHT HUNDRED NINETY-SIX THOUSAND FOUR HUNDRED PESOS - (₱6,896,400.00)

(b) The URGENT MOTION TO QUASH WRIT OF EXECUTION AND TO LIFT NOTICE OF GARNISHMENT and SECOND MOTION TO QUASH filed by respondent [are] dismissed for lack of merit.

(c) the MOTION FOR INTERVENTION filed by intervenor Telefunken Semiconductors, Inc. Employees Union (TSIEU) – FFW Chapter (TSIEU-FFW) AND OLIVIA ROBLES is denied for lack of merit.

SO ORDERED.

The NCR RD reasoned that the September 30, 1998 Order lifting the notices of garnishment was issued in order to conduct proceedings solely to determine the actual amounts and properties subject of the writ of execution. The NCR RD pointed out that due proceeding was conducted on this matter with the parties filing their respective Manifestations with supporting documentary evidence. Finding for TSIEU-Dimaano, the NCR RD granted the above monetary claims, ordered the issuance of an *alias* writ of execution, and denied the motions of private respondents and TSIEU-Robles.

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[9] *Id*. at 96-108.

Aggrieved, private respondents and TSIEU-Robles filed their respective Memoranda of Appeal before the BLR, assailing the above Order of the NCR RD.

Ruling of the Bureau of Labor Relations

On September 18, 2000, the BLR, through public respondent Bitonio, Jr., rendered a Resolution,[10] voiding the September 23, 1998 writ of execution and the corresponding notices of garnishment, and setting aside the assailed March 30, 1999 Order of the NCR RD, ruling as follows:

> WHEREFORE, the appeal filed by FFW, *et al*. is hereby GRANTED and the order dated 30 March 1999 of the Regional Director is REVERSED and SET ASIDE. In lieu thereof, a new order is hereby issued declaring the writ of execution dated 23 September [1998] as null and void. Accordingly, the notices of garnishment issued as a consequence of this writ are lifted.
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> The appeal filed by the intervenors TSIEU-Robles is hereby DENIED for having become moot and academic.
>
> SO RESOLVED.

In reversing the March 30, 1999 Order of the NCR RD, public respondent held that the September 23, 1998 writ of execution was null and void for varying, going beyond, and interpreting the final and executory March 24, 1998 Order sought to be enforced by including a monetary judgment. Public respondent reasoned that the March 24, 1998 Order is nothing more than the declaration of nullity of receivership that includes the turn over of several real and personal properties to TSIEU-Dimaano and the remittance of PhP 6,896,400 for union dues, agency fees, bereavement benefits, cooperative shares, and payment of loans. Thus, Bitonio ruled that it was improper for the NCR RD to allow and for TSIEU-Dimaano to prove its claims in proceedings after the declaration of nullity of the receivership became final and executory.

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[10] *Id*. at 89-95.

On October 27, 2000, public respondent denied TSIEU-Dimaano's Motion for Reconsideration. Aggrieved, TSIEU-Dimaano elevated to the CA the resolutions of public respondent, the petition for review docketed as CA-G.R. SP No. 62587.

Ruling of the Court of Appeals

On October 30, 2002, the CA rendered the assailed Decision, affirming public respondent's September 18, 2000 and October 27, 2000 Resolutions. The *fallo* reads:

> WHEREFORE, the petition is DENIED. The challenged Resolutions of public respondent Benedicto Ernesto Bitonio, Jr. are hereby AFFIRMED.
>
> SO ORDERED.[11]

In affirming the appealed resolutions of the public respondent, the CA rejected TSIEU-Dimaano's contention that the September 23, 1998 writ of execution did not exceed the terms of the final and executory March 24, 1998 Order of the NCR RD. The CA agreed with public respondent's disquisition that the writ of execution went beyond the scope of the March 24, 1998 Order by requiring private respondents to turn over several properties and to remit monetary claims to TSIEU-Dimaano.

TSIEU-Dimaano's Motion for Reconsideration of the assailed decision was denied through the assailed October 22, 2003 CA Resolution. Thus, we have this Petition for Review on *Certiorari*.

The Issues

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING RESOLUTION DATED 27 OCTOBER 2000 AND DECISION DATED 18 SEPTEMBER 2000 WHICH ERRONEOUSLY FAILED TO RULE ON THE DETERMINATION OF THE PROPERTY RIGHTS IN FAVOR OF THE PETITIONERS AND IN DECLARING AS NULL AND VOID THE WRIT OF EXECUTION DATED 23

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[11] *Supra* note 1, at 282.

SEPTEMBER 1998 FOR ALLEGEDLY EXCEEDING THE TENOR OF THE ORDER DATED 24 MARCH 1998.

II.

WHETHER OR NOT THE NULLITY OF THE RECEIVERSHIP DIRECTS THE DELIVERY OF THE FUNDS AND OTHER SUBJECT PROPERTIES TO THE PETITIONERS.[12]

The core issue is whether the writ of execution granting the turn over of properties and remittance of monetary claims was within the terms of the final and executory Order sought to be enforced.

The Court's Ruling

A close review of applicable law and jurisprudence on the issue of the execution of a final and executory judgment of the NCR Regional Director of the BLR compels us to affirm the assailed decision and resolution of the CA sustaining public respondent's resolutions.

There is no dispute that the receivership of TSIEU ordered by private respondents has been duly nullified. The bone of contention is to what level does such declaration of nullity of receivership extend.

Ratio decidendi did not include the issue of property and monetary claims

A scrutiny of the March 24, 1998 Order of the NCR RD clearly bears out that what had been granted thereat was the nullification of the receivership of TSIEU by FFW, no more and no less. The *fallo* of the March 24, 1998 Order unequivocally granted merely the nullification of the receivership. The disquisitive part, body, or *ratio decidendi* of the March 24, 1998 Order — as distinguished from the *fallo* or dispositive portion — where the findings of fact and law, the reasons, and evidence to support such findings including the discussions of the issues leading to their determination are drawn from, likewise

[12] *Rollo*, p. 669.

obviously did not include the claim for properties and the remittance of any monetary claim. Verily, TSIEU-Dimaano never raised the issue of any monetary or property claims before the Office of the NCR RD and before the proceedings with the Hearing Officer. And much less did they raise this issue on appeal before the BLR when such was not granted by the March 24, 1998 Order. TSIEU-Dimaano's failure to do so is fatal to its claims insofar as the enforcement of the March 24, 1998 Order is concerned. They cannot now assert such claims in the enforcement of said final and executory order.

Final and executory judgment immutable; exceptions

It is axiomatic that "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."[13] Any act which violates such principle must immediately be struck down.[14] 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.[15]

The only exceptions to the rule on the immutability of a final judgment are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution

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[13] *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 562; citing *Ramos v. Ramos*, G.R. No. 144294, March 11, 2003, 399 SCRA 43, 47.

[14] *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 404; citing *Fortich v. Corona*, G.R. No. 131457, April 24, 1998, 289 SCRA 624.

[15] *Id*. at 404-405; citing *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 271.

unjust and inequitable.[16] None of the exceptions obtain in this case. Much less do the *nunc pro tunc* entries apply to the instant case. Thus, we so hold that the enforcement of the final and executory March 24, 1998 Order declaring the nullity of receivership cannot extend to the grant of money and property claimed by TSIEU-Dimaano.

We also agree with the appellate court that the proceedings conducted by the NCR RD for TSIEU-Dimaano to prove its claims for properties and receivables are null and void as such proceedings do not partake of the nature of *nunc pro tunc* entries which cause no prejudice to private respondents. Even granting *arguendo* that the exception of *nunc pro tunc* entries applies, which undoubtedly does not, still, we hold that the proceedings before the NCR RD do not prove the actual monetary and property claims. Without a full-blown hearing with testimonial evidence to prove and confirm such claims, the quasi-judicial body could not plausibly determine with certainty the claims as the documentary pieces of evidence presented by TSIEU-Dimaano were not substantially sufficient to prove such. As aptly pointed out by private respondents, the checks referred to by TSIEU-Dimaano do not prove its entire monetary claim. Evidently, the claims have to be substantially proven given the fact that those belonging to the TSIEU-Dimaano faction did not heed the October 27, 1995 return to work Order of the DOLE Secretary and were allegedly out of work, and this faction could not have been entitled to receive the amounts claimed.

WHEREFORE, this petition is hereby *DISMISSED* for lack of merit. The October 30, 2002 Decision and October 22, 2003 Resolution of the CA in CA-G.R. SP No. 62587 are hereby *AFFIRMED* ***IN TOTO***. Costs against petitioners.

SO ORDERED.

Carpio Morales (Acting Chairperson), Azcuna,[*] *Chico-Nazario,*[*] and *Nachura,*[*] *JJ.,* concur.

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[16] See *Peña*, *supra* note 14; *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586; *Ramos*, *supra* note 13.

[*] Additional members as per April 23, 2008 Division Raffle.

EN BANC

[G.R. No. 161455. May 20, 2008]

ATTY. RODOLFO D. PACTOLIN, *petitioner, vs.* **THE HONORABLE FOURTH DIVISION OF THE SANDIGANBAYAN, THE HON. SIMEON V. MARCELO, in his official capacity as the Ombudsman, and MARIO R. FERRAREN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; EXCLUSIVE JURISDICTION THEREOF; FALSIFICATION OF PUBLIC DOCUMENT UNDER THE REVISED PENAL CODE IS WITHIN THE JURISDICTION OF THE SANDIGANBAYAN.— Falsification of public document under the RPC is within the jurisdiction of the Sandiganbayan. This conclusion finds support from Sec. 4 of RA 8249, which enumerates the cases in which the Sandiganbayan has exclusive jurisdiction, as follows: Section 4. xxx a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense: (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including: (a) Provincial governors, vice-governors, members of the **Sangguniang Panlalawigan** and provincial treasurers, assessors, engineers and other provincial department heads; xxx (5) All other national and local officials classified as Grade '27' and higher under the Compensation and Positions Classification Act of 1989. b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

2. ID.; CRIMINAL PROCEDURE; INFORMATION; THE CHARACTER OF THE CRIME CHARGED IS NOT DETERMINED BY THE CAPTION OR THE PREAMBLE OF THE INFORMATION OR BY THE SPECIFICATION OF THE PROVISION OF LAW ALLEGED TO HAVE BEEN VIOLATED, BUT BY THE RECITAL OF THE ULTIMATE FACTS AND CIRCUMSTANCES IN THE COMPLAINT OR INFORMATION.— It is true that the Amended Information did not at all mention any statutory designation of the crime he is charged with. But, it is all too evident that the body of the information against him contains averments that unmistakably constitute falsification under Art. 171 and also Art. 172 of the RPC xxx. Note that the last paragraph of Art. 172 does not specify that the offending person is a public or private individual as does its par. 1. Note also that the last paragraph of Art. 172 alludes to the use of the false document embraced in par. 2 of Art . 171 where it was made to appear that "persons have participated in any act or proceeding when they did not in fact participate." Patently, even a public officer may be convicted under Art. 172. The crime in Art. 171 is absorbed by the last paragraph of Art. 172. Thus, Pactolin's argument about being deprived of his right to be informed of the charges against him when the Sandiganbayan convicted him as a private person under Art. 172, is baseless. The headings in italics of the two articles are not controlling. What is controlling is not the title of the complaint, or the designation of the offense charged or the particular law or part thereof allegedly violated, but the description of the crime charged and the particular facts therein recited. The character of the crime is not determined by the caption or the preamble of the information or by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information. In this case, the Amended Information encompasses the acts of Pactolin constitutive of a violation of Art. 172 in relation to par. 2 of Art. 172 of the RPC.

3. ID.; ID.; ID.; ID.; RULING IN BARTOLOME CASE (64548 & 645591, July 7, 1986) NOT APPLICABLE TO CASE AT BAR.— Pactolin also misapplied *Bartolome*. In *Bartolome*, there was no showing that the accused committed acts of falsification while they were discharging official functions,

and the information in *Bartolome* did not allege there was an intimate connection between the discharge of official duties and the commission of the offense. In this case, the State, in no uncertain words, alleged in the Amended Information and proved that Pactolin was a member of the *Sangguniang Panlalawigan* and took advantage of his position when he committed the falsification.

4. ID.; EVIDENCE; THE SUPREME COURT IS NOT A TRIER OF FACTS.— The Sandiganbayan's conviction of Pactolin was based on its factual findings after the prosecution presented both documentary and testimonial pieces of evidence. We are not a trier of facts so we defer to the factual findings of the lower court that had more opportunities and facilities to examine the evidence presented.

5. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENT; ABSENT SATISFACTORY EXPLANATION, ONE FOUND IN POSSESSION OF AND WHO USED A FORGED DOCUMENT IS THE FORGER AND IS THEREFORE GUILTY OF FALSIFICATION; CASE AT BAR.— The Sandiganbayan had established the following undisputed facts: (1) the request for financial assistance of the volleyball players, represented by Abastillas, was approved by Mayor Fuentes and not by OIC-Mayor Mario; (2) the original Abastillas letter was in the custody of Toledo in her official capacity and she testified that the approving authority was Mayor Fuentes and no other; (3) Pactolin borrowed the Abastillas letter for photocopying upon oral request, and Toledo granted the said request because she knew him as a member of the *Sangguniang Panlalawigan* of their province; and (4) Pactolin filed a complaint against Mario with the Ombudsman for illegal disbursement of public funds, and the principal document he attached to show the alleged illegal disbursement was the Abastillas letter on which was superimposed Mario's signature, thus making it appear that Mario approved the financial assistance to the volleyball players, and not Mayor Fuentes. In short, the Sandiganbayan clearly established that the copy of the Abastillas letter that Pactolin attached to his complaint was spurious. Given the clear absence of a satisfactory explanation regarding Pactolin's possession and use of the falsified Abastillas letter, the Sandiganbayan did not err in concluding that it was Pactolin who falsified the letter. The settled rule is that in the absence of satisfactory

explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; IMPLIES A CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT TANTAMOUNT TO LACK OF JURISDICTION; NOT PRESENT IN CASE AT BAR.— Neither do we agree with Pactolin that the Sandiganbayan gravely abused its discretion amounting to lack of jurisdiction. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The rule in this jurisdiction is that once a complaint or information is filed in court, any disposition of the case, be it dismissal, conviction, or acquittal of the accused, rests on the sound discretion of the court. The only qualification to this exercise of judicial prerogative is that the substantial rights of the accused must not be impaired nor the People be deprived of the right to due process. As we have discoursed, no substantial right of Pactolin has been impaired nor has there been any violation of his right to due process. He had been adequately informed by the detailed litany of the charges leveled against him in the information. He had the occasion to confront witnesses against him and the opportunity to question documents presented by the prosecution. Under no circumstance in this case has his right to due process been violated.

APPEARANCES OF COUNSEL

Fuentes & Pactolin Law Offices and *Sam Norman G. Fuentes* for petitioner.

D E C I S I O N

VELASCO, JR., *J.*:

Petitioner Atty. Rodolfo P. Pactolin was a former member of the *Sangguniang Panlalawigan* of Misamis Occidental. During Pactolin's term, sometime in May 1996, the mayor of Ozamis City, Benjamin A. Fuentes, received a letter dated May 3, 1996 from Elmer Abastillas, the playing coach and team captain of the Ozamis City volleyball team, requesting financial assistance

for the city's volleyball team. Mayor Fuentes immediately approved the request and then forwarded Abastillas' letter to the City Treasurer's Office for processing. Mayor Fuentes at that time designated Mario R. Ferraren, a member of the city council, as OIC (Officer-in-Charge)-Mayor for the duration of his trip to Cagayan de Oro City starting May 5, 1996. Abastillas received the check for PhP 10,000 on behalf of the volleyball team on May 8, 1996.

While Ferraren was OIC-Mayor, Pactolin went to the Ozamis City Treasurer's Office and asked to photocopy Abastillas' letter. Assistant City Treasurer Alma Y. Toledo lent the letter to Pactolin, having known him as a member of the *Sangguniang Panlalawigan*. Besides, he was accompanied by Solomon Villaueran, a city employee. Pactolin returned the letter to the City Treasurer's Office immediately after photocopying it.

Thereafter, on June 24, 1996, Pactolin filed a complaint, docketed as OMB-MIN-96-0416, against Mario with the Office of the Deputy Ombudsman-Mindanao, alleging that Mario illegally disbursed public funds worth PhP 10,000 in connivance with then City Accountant Cynthia Ferraren. Attached as Annex "A" to the complaint was the alleged falsified version of the Abastillas letter. The purported falsified letter showed that it was Mario and not Mayor Fuentes who approved the request for financial assistance. Aggrieved, Mario instituted a criminal complaint against Pactolin. Pactolin was charged with falsification of a public document under Article 171(2)[1] of the Revised Penal Code (RPC) in an Amended Information filed on January 31, 2000, as follows:

That on or about June 24, 1996, or some time prior or subsequent thereto, in Ozamis City, Misamis Occidental, Philippines, and within

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[1] ART. 171. *Falsification by public officer, employee; or notary or ecclesiastical minister.* — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.

the jurisdiction of this Honorable Court, the accused RODOLFO D. PACTOLIN, a high ranking public officer, being a member of the Sangguniang Panlalawigan of Misamis Occidental, committing the felony herein charged in relation to his office, and taking advantage of his official position as Sangguniang Panlalawigan Member and head of the athletic delegation of Misamis Occidental, did then and there, willfully, unlawfully and feloniously, falsify a document dated May 3, 1998 requesting from the city mayor of Ozamis City financial assistance, by intercalating thereon the printed name of Mario R. Ferraren, and the latter's position as OIC Mayor, and by imitating the latter's signature on top of the intercalated name "Mario R. Ferraren," thereby making it appear that OIC Mayor Mario R. Ferraren approved the request for financial assistance, when in truth and in fact, Mario R. Ferraren neither signed the subject letter nor approved the said request for financial assistance.

After arraignment in which Pactolin appeared on his own behalf and pleaded not guilty, and after trial on the merits in which Pactolin repeatedly failed to appear, the Sandiganbayan issued a Decision[2] on November 12, 2003, disposing, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Rodolfo D. Pactolin, guilty of Falsification under Article 172 of the Revised Penal Code, and in the absence of any aggravating or mitigating circumstances, he is sentenced to suffer the indeterminate penalty of imprisonment of 2 years and 4 months of *prision correccional* as minimum to 4 years, 9 months and 10 days of *prision correccional* as maximum, to suffer all the accessory penalties of *prision correccional*, and to pay a fine of ₱5,000.00, with subsidiary imprisonment in case of insolvency to pay the fine.

SO ORDERED.

On the stated premise that the falsified document was not in the official custody of Pactolin, nor was there evidence presented showing that the falsification was committed by him while in the performance of his duties, the Sandiganbayan found him liable for falsification under the first paragraph of Art. 172,

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[2] *Rollo*, pp. 28-38. Penned by Associate Justice Rodolfo G. Palattao and concurred in by Associate Justices Gregory S. Ong (Chairperson) and Norberto Y. Geraldez.

penalizing "any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document."

Pactolin's motion for reconsideration was denied. Hence, he filed this petition, raising the following issues:

I. WHETHER OR NOT FALSIFICATION UNDER THE REVISED PENAL CODE IS WITHIN THE PURVIEW OF THE JURISDICTION OF THE SANDIGANBAYAN? [sic]

II. WHETHER RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO ACTING WITHOUT OR IN EXCESS OF JURISDICTION IN CONVICTING PETITIONER WHEN BY ITS OWN FINDINGS OF FACTS THE FALSIFIED DOCUMENT WAS NOT IN THE OFFICIAL CUSTODY OF THE ACCUSED NOR WAS THERE ANY EVIDENCE PRESENTED THAT THE FALSIFICATION WAS COMMITTED BY ACCUSED WHILE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES? [sic]

Simply, the issues are: Did the Sandiganbayan have jurisdiction over the case? If so, did it gravely abuse its discretion when by its own findings the falsified document was not in the custody of Pactolin, and he falsified the document while in the performance of his duties?

Pactolin claims that the Sandiganbayan has no jurisdiction over the crime of falsification. First, according to Pactolin, even as Republic Act No. (RA) 8249, known as *An Act Further Defining the Jurisdiction of the Sandiganbayan, amending for the Purpose P.D. 1606, as Amended, Providing Funds therefor and for Other Purposes*, vests the Sandiganbayan with exclusive jurisdictional authority over certain offenses, the following requisites must concur before that court can exercise such jurisdiction: (1) the offense is committed in violation of (a) RA 3019, as amended, known as *The Anti-Graft and Corrupt Practices Act*, (b) RA 1379 or *The Law on Ill-gotten Wealth*, (c) Chapter II, Section 2, Title VII, Book II of the RPC, (d) Executive Order Nos. 1, 2, 14, and 14-A, or (e) other offenses or felonies whether simple or complex with other crimes;

(2) the offender committing the offenses in items (a), (b), (c), and (e) is a public official or employee holding any of the positions enumerated in Section 4, par. (a) of RA 8249; and (3) the offense committed is in relation to the office.[3] Pactolin argues that these requisites show that the crime of falsification as defined under Arts. 171 and 172 of the RPC is not within the jurisdiction of the Sandiganbayan. He also points out that nowhere under Sec. 4 of Presidential Decree No. 1606, RA 3019, RA 1379, or in Title VII, Book II of the RPC is "falsification of official document" mentioned. He relies on *Bartolome v. People*[4] as a case in point.

Our Ruling: The Sandiganbayan Has Jurisdiction

Falsification of public document under the RPC is within the jurisdiction of the Sandiganbayan. This conclusion finds support from Sec. 4 of RA 8249, which enumerates the cases in which the Sandiganbayan has exclusive jurisdiction, as follows:

> Section 4. x x x x x x x x x
>
> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
>
> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
>
> (a) Provincial governors, vice-governors, members of the **Sangguniang Panlalawigan** and provincial treasurers, assessors, engineers and other provincial department heads;
>
> x x x x x x x x x

[3] *Id*. at 230-231.

[4] Nos. 64548 & 64559, July 7, 1986, 142 SCRA 459.

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office. (Emphasis supplied.)

Going to another point, Pactolin, in his Memorandum, contends that the Sandiganbayan gravely abused its discretion when it convicted him as a private individual under an information charging him as a public official, thus violating his right to be informed of the nature and cause of the accusation against him and his right to due process of law. He claims that the information filed against him charged him with violation of Art. 171 of the RPC in his capacity as Board Member of the *Sangguniang Panlalawigan*, but the Sandiganbayan convicted him of violation of Art. 172 as a private individual. Thus, he avers, he had not been given a chance to defend himself from a criminal charge of which he had been convicted.

Again, Pactolin errs. It is true that the Amended Information did not at all mention any statutory designation of the crime he is charged with. But, it is all too evident that the body of the information against him contains averments that unmistakably constitute falsification under Art. 171 and also Art. 172 of the RPC, which, for reference, are quoted below:

Art.171. *Falsification by public officer, employee; or notary or ecclesiastical minister*.— x x x

x x x x x x x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate [as testified to by witnesses].

x x x x x x x x x

Art. 172. *Falsification by private individual and use of falsified documents*.— The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 shall be imposed upon:

1. Any private individual who shall commit any of the falsification enumerated in the next preceeding article in any public or official document or letter of exchange or any other kind of commercial document;

x x x x x x x x x

Any person who shall knowingly introduce in evidence in any judicial proceedings or to the damage of another or who, with the intent to cause such damage, shall **use any of the false documents embraced in the next preceeding article** or in any of the foregoing subdivisions of this article shall be punished by the penalty next lower in degree. (Emphasis supplied.)

Note that the last paragraph of Art. 172 does not specify that the offending person is a public or private individual as does its par. 1. Note also that the last paragraph of Art. 172 alludes to the use of the false document embraced in par. 2 of Art. 171 where it was made to appear that "persons have participated in any act or proceeding when they did not in fact participate." Patently, even a public officer may be convicted under Art. 172. The crime in Art. 171 is absorbed by the last paragraph of Art. 172. Thus, Pactolin's argument about being deprived of his right to be informed of the charges against him when the Sandiganbayan convicted him as a private person under Art. 172, is baseless. The headings in italics of the two articles are not controlling. What is controlling is not the title of the complaint, or the designation of the offense charged or the particular law or part thereof allegedly violated, but the description of the crime charged and the particular facts therein recited.[5] The character of the crime is not determined by the caption or the preamble of the information or by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.[6] In this case, the Amended Information encompasses

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[5] *People v. Malngan*, G.R. No. 170470, September 26, 2006, 503 SCRA 294, 330-331.

[6] *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 482.

the acts of Pactolin constitutive of a violation of Art. 172 in relation to par. 2 of Art. 171 of the RPC.

Pactolin also misapplied *Bartolome*.[7] In *Bartolome*, there was no showing that the accused committed acts of falsification while they were discharging official functions, and the information in *Bartolome* did not allege there was an intimate connection between the discharge of official duties and the commission of the offense. In this case, the State, in no uncertain words, alleged in the Amended Information and proved that Pactolin was a member of the *Sangguniang Panlalawigan* and took advantage of his position when he committed the falsification.

The Sandiganbayan Is Correct in Convicting Petitioner

As to the second issue, Pactolin avers that the Sandiganbayan gravely abused its discretion when it convicted him despite its own findings that the falsified document was not in his official custody and that there was no evidence he committed the falsification in the performance of his official duties.

Pactolin distorts the statement of the Sandiganbayan.

The Sandiganbayan's conviction of Pactolin was based on its factual findings after the prosecution presented both documentary and testimonial pieces of evidence. We are not a trier of facts so we defer to the factual findings of the lower court that had more opportunities and facilities to examine the evidence presented.

The Sandiganbayan had established the following undisputed facts: (1) the request for financial assistance of the volleyball players, represented by Abastillas, was approved by Mayor Fuentes and not by OIC-Mayor Mario; (2) the original Abastillas letter was in the custody of Toledo in her official capacity and she testified that the approving authority was Mayor Fuentes and no other; (3) Pactolin borrowed the Abastillas letter for photocopying upon oral request, and Toledo granted the said request because she knew him as a member of the *Sangguniang*

[7] *Supra* note 4.

Panlalawigan of their province; and (4) Pactolin filed a complaint against Mario with the Ombudsman for illegal disbursement of public funds, and the principal document he attached to show the alleged illegal disbursement was the Abastillas letter on which was superimposed Mario's signature, thus making it appear that Mario approved the financial assistance to the volleyball players, and not Mayor Fuentes. In short, the Sandiganbayan clearly established that the copy of the Abastillas letter that Pactolin attached to his complaint was spurious. Given the clear absence of a satisfactory explanation regarding Pactolin's possession and use of the falsified Abastillas letter, the Sandiganbayan did not err in concluding that it was Pactolin who falsified the letter. The settled rule is that in the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification.[8]

Neither do we agree with Pactolin that the Sandiganbayan gravely abused its discretion amounting to lack of jurisdiction. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[9] The rule in this jurisdiction is that once a complaint or information is filed in court, any disposition of the case, be it dismissal, conviction, or acquittal of the accused, rests on the sound discretion of the court.[10] The only qualification to this exercise of judicial prerogative is that the substantial rights of the accused must not be impaired nor the People be deprived of the right to due process. As we have discoursed, no substantial right of Pactolin has been impaired nor has there been any violation of his right to due process. He had been adequately informed by the detailed litany of the charges leveled against him in the information. He had the occasion to confront witnesses against him and the

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[8] *Maliwat v. Court of Appeals*, G.R. No. 107041, May 15, 1996, 256 SCRA 718, 734.

[9] *Pontejos v. Office of the Ombudsman*, G.R. Nos. 158613-14, February 22, 2006, 483 SCRA 83, 94.

[10] *Fuentes v. Sandiganbayan*, G.R. No. 164664, July 20, 2006, 495 SCRA 784, 800; citing *Crespo v. Mogul*, No. 53373, June 30, 1987, 151 SCRA 462, 467-468.

opportunity to question documents presented by the prosecution. Under no circumstance in this case has his right to due process been violated.

Lastly, Pactolin is a member of the Philippine bar. As a lawyer, he is bound by the profession's strict code of ethics. His conviction means he has not met the high ethical standard demanded by his profession. He must be dealt with accordingly.

WHEREFORE, the petition is *DENIED*. The Sandiganbayan's Decision dated November 12, 2003 in Criminal Case No. 25665 and its Resolution dated January 7, 2004 are *AFFIRMED* in their entirety. This Decision shall be treated as an administrative complaint against petitioner Atty. Rodolfo D. Pactolin under Rule 139-B of the Rules of Court and is referred to the Integrated Bar of the Philippines for appropriate action.

The Clerk of Court is directed to furnish private complainant Mario R. Ferraren with a copy of this Decision.

Costs against petitioner.

SO ORDERED.

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

Corona, J., on leave.

SECOND DIVISION

[G.R. No. 155034. May 22, 2008]

VIRGILIO SAPIO, *petitioner, vs.* **UNDALOC CONSTRUCTION and/or ENGR. CIRILO UNDALOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; ENTRIES IN THE COURSE OF BUSINESS; ENTRIES IN THE PAYROLL, BEING ENTRIES IN THE COURSE OF BUSINESS, ENJOY PRESUMPTION OF REGULARITY UNDER THE RULES OF COURT.— Absent any evidence to the contrary, good faith must be presumed in this case. Entries in the payroll, being entries in the course of business, enjoy the presumption of regularity under Rule 130, Section 43 of the Rules of Court. Hence, while as a general rule, the burden of proving payment of monetary claims rests on the employer, when fraud is alleged in the preparation of the payroll, the burden of evidence shifts to the employee and it is incumbent upon him to adduce clear and convincing evidence in support of his claim. Unfortunately, petitioner's bare assertions of fraud do not suffice to overcome the disputable presumption of regularity. While we adhere to the position of the appellate court that the "tendency" to alter the entries in the payrolls was not substantiated, we cannot however subscribe to the total deletion of the award of salary differential and attorney's fees, as it so ruled.

2. LABOR AND SOCIAL LEGISLATION; WAGES; THE LABOR ARBITER MISAPPLIED THE WAGE ORDERS WHEN HE WRONGLY CATEGORIZED RESPONDENT AS FALLING WITHIN THE FIRST CATEGORY; BASED ON THE STIPULATED NUMBER OF EMPLOYEES AND AUDITED FINANCIAL STATEMENTS, RESPONDENTS SHOULD HAVE BEEN COVERED BY THE SECOND CATEGORY.— The Labor Arbiter granted a salary differential of ₱24,902.88. The Labor Arbiter erred in his computation. He fixed the daily wage rate actually received by petitioner at ₱105.00 without taking into consideration the ₱141.00 rate indicated in the typewritten payroll sheets submitted by respondents. Moreover, the Labor Arbiter misapplied the wage orders when he wrongly categorized respondent as falling within the first category. Based on the stipulated number of employees and audited financial statements, respondents should have been covered by the second category. To avoid further delay in the disposition of this case which is not in consonance with the objective of speedy justice, we have to adjudge the rightful computation of the salary

differential based on the applicable wage orders. After all, the supporting records are complete. This Court finds that from 1 January to 30 August 1996 and 1 July 1997 to 31 May 1998, petitioner had received a wage less than the minimum mandated by law. Therefore, he is entitled to a salary differential. For the periods from 30 May to 31 December 1995 and 2 September 1996 to 30 June 1997, petitioner had received the correct wages. The total salary differential that petitioner is lawfully entitled to amounts to ₱6,578.00. However, pursuant to Section 12 of Republic Act (R.A.) No. 6727, as amended by R.A. No. 8188. Respondents are required to pay double the amount owed to petitioner, bringing their total liability to ₱13,156.00.

3. ID.; ID.; AWARD OF ATTORNEY'S FEES IS WARRANTED IN CASE AT BAR.— The award of attorney's fees is warranted under the circumstances of this case. Under Article 2208 of the New Civil Code, attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws but shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Wee Lim & Salas Law Firm for respondents.

D E C I S I O N

TINGA, *J.*:

Assailed in this Petition for Review[1] is the Decision[2] of the Court of Appeals[3] in CA-G.R. SP No. 66449 deleting the award of salary differential and attorney's fees to petitioner Virgilio

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[1] *Rollo*, pp. 9-21.

[2] *Id*. at 90-94; penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Josefina Guevara-Salonga and Regalado E. Maambong.

[3] Special Third Division.

Sapio, as well as the Resolution[4] denying his motion for reconsideration.

The controversy started with a complaint filed by petitioner against Undaloc Construction and/or Engineer Cirilo Undaloc for illegal dismissal, underpayment of wages and nonpayment of statutory benefits. Respondent Undaloc Construction, a single proprietorship owned by Cirilo Undaloc, is engaged in road construction business in Cebu City.

Petitioner had been employed as watchman from 1 May 1995 to 30 May 1998 when he was terminated on the ground that the project he was assigned to was already finished, he being allegedly a project employee. Petitioner asserted he was a regular employee having been engaged to perform works which are "usually necessary or desirable" in respondents' business. He claimed that from 1 May to 31 August 1995 and from 1 September to 31 December 1995, his daily wage rate was only ₱80.00 and ₱90.00, respectively, instead of ₱121.87 as mandated by Wage Order No. ROVII-03. From 1 March 1996 to 30 May 1998, his daily rate was ₱105.00. He further alleged that he was made to sign two payroll sheets, the first bearing the actual amount he received wherein his signature was affixed to the last column opposite his name, and the second containing only his name and signature. To buttress this allegation, petitioner presented the payroll sheet covering the period from 4 to 10 December 1995 in which the entries were written in pencil. He also averred that his salary from 18 to 30 May 1998 was withheld by respondents.[5]

For its part, respondent Cirilo Undaloc maintained that petitioner was hired as a project employee on 1 May 1995 and was assigned as watchman from one project to another until the termination of the project on 30 May 1998.[6] Refuting the claim of underpayment, respondent presented the payroll sheets from

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[4] Issued by the 7th Division; CA *rollo*, pp. 206-207.

[5] *Rollo*, pp. 23-26.

[6] *Id*. at 38.

2 September to 8 December 1996, 26 May to 15 June 1997, and 12 January to 31 May 1998.[7]

On 12 July 1999, the Labor Arbiter[8] rendered a decision the dispositive portion of which reads:

> WHEREFORE, in the [*sic*] light of the foregoing, judgment is rendered finding complainant to be a project employee and his termination was for an authorized cause. However, respondent is found liable to pay complainant's salary of ₱2,648.45 and 13th month pay of ₱2,489.00. Respondent is also found liable to pay complainant's salary differential in the amount of ₱24,902.88. Attorney's fee of ₱3,000.00 is also awarded.
>
> All other claims are dismissed for lack of merit.[9]

Respondents appealed the award of salary differential to the National Labor Relations Commission (NLRC). In a Decision[10] dated 28 August 2000, the NLRC sustained the findings of the Labor Arbiter.

Respondents elevated the case to the Court of Appeals which deleted the award of salary differential and attorney's fees.

Thus, this petition for review.

Petitioner raises two grounds, one procedural and the other substantive. On the procedural aspect, petitioner contends that the appellate court erred in failing to dismiss respondent's petition for *certiorari* brought before it on the ground that respondents failed to attach certified true copies of the NLRC's decision and resolution denying the motion for reconsideration.[11]

In his Comment on the Petition for *Certiorari* with Prayer for Temporary Restraining and/or Preliminary Injunction[12] filed

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[7] *Id*. at 40.

[8] Nicasio C. Aniñon.

[9] *Rollo*, p. 49.

[10] *Id*. at 67-70.

[11] *Id*. at 15.

[12] *Id*. at 124-125.

with the Court of Appeals on 22 November 2001, petitioner did not raise this procedural issue. Neither did he do so when he moved for reconsideration of the 8 May 2002 Decision of the Court of Appeals. It is only now before this Court that petitioner proffered the same. This belated submission spells doom for petitioner. More fundamentally, an examination of the Court of Appeals *rollo* belies petitioner as it confirms that the alleged missing documents were in fact attached to the petition.[13]

That petitioner was a project employee became a non-issue beginning with the decision of the Labor Arbiter. Contested still is his entitlement to salary differential, apart from attorney's fees.

Petitioner avers that he was paid a daily salary way below the minimum wage provided for by law.[14] His claim of salary differential represents the difference between the daily wage he actually received and the statutory minimum wage, which he presented as follows:

	Actual Daily Wage Received (for 8 hours worked)	**Minimum Daily Wage Provided by Law (for 8 hours worked)**
5-1-95 to 8-31-95 Place of Assignment:	₱80.00 plus 3 hrs. OT M.J. Cuenco-Imus Road Link	₱121.87
9-1-95 to 12-31-95 Place of Assignment:	₱90.00 plus 3 hrs. OT	₱121.87
1-1-96 to 2-28-96 Place of Assignment:	₱90.00 plus 3 hrs. OT	₱131.00
3-1-96 to 6-30-96 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱131.00

[13] *Supra* note 9.

[14] CA *rollo,* p. 95.

7-1-96 to 9-30-96 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱136.00
10-1-96 to 3-14-97 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱141.00
3-15-97 to 6-30-97 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱141.00
7-15-97 to 9-30-97 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱150.00
10-1-97 to 3-31-98 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱150.00
4-1-98 to 5-17-98 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱155.00
5-18-98 to 5-30-98 Place of Assignment:	₱105.00 plus 3 hrs. OT	₱160.00

To counter petitioner's assertions, respondents submitted typewritten and signed payroll sheets from 2 September to 8 December 1996, from 26 May to 15 June 1997, and from 12 January to 31 May 1998.[15] These payroll sheets clearly indicate that petitioner did receive a daily salary of ₱141.00.

In turn, petitioner presented the December 1995 payroll sheet written in pencil[16] in tandem with the assertion that he, together with his co-employees, was required to sign two sets of payroll sheets in different colors: white, which bears the actual amount he received with his signature affixed in the last column opposite his name, and yellow, where only his name appears thereon with his signature also affixed in the last column opposite his name.[17] In the December 1995 payroll sheet, petitioner appears to have received ₱90.00 only as his daily salary but he did not sign the same.

Banking on the fact that the December 1995 payroll sheet was written in pencil, the Labor Arbiter concluded that the entries

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[15] *Id*. at 121-175.

[16] *Rollo*, pp. 59-63.

[17] *Id*. at 56.

were susceptible to change or erasure and that that susceptibility in turn rendered the other payroll sheets though typewritten less credible. Thus:

> x x x Complainant's allegation that he was made to sign two (2) payrolls, the first page bears the actual amount he received when he affixed his signature in the last column and the original with entries written in pencil is admitted by the respondent that it did so. When respondent had his payrolls prepared in pencil, the tendency is that the entries therein will be erased and changed them so that it would appear that the salaries of the workers are in conformity with the law.
>
> The explanation given by the respondent through the affidavit of Jessica Labang that the payrolls were first written in pencil because of the numerous employees to be paid each Saturday, is not acceptable. The efforts done in preparing the payroll in pencil is practically the same if it was done in ballpen or through typewriters. Obviously, the purpose is to circumvent the law. When payrolls are prepared in pencil, it is so easy for the employer to alter the amounts actually paid to the workers and make it appear that the amounts paid to the workers are in accord with law. The probative value of the payrolls submitted by the respondent becomes questionable, thus, cannot be given weight. It is most likely that the entries in the payrolls are no longer the same entries when complainant signed them. Complainant is therefore entitled to salary differential as complainant's salary was only ₱105.00. x x x[18]

Thereupon, the Labor Arbiter proceeded to grant petitioner's salary differential to the tune of ₱24,902.88.

The Court of Appeals did not subscribe to the common findings of the Labor Arbiter and the NLRC. The appellate court pointed out that allegations of fraud in the preparation of payroll sheets must be substantiated by evidence and not by mere suspicions or conjectures, *viz*:

> As a general rule, factual findings and conclusions drawn by the National Labor Relations Commission are accorded great weight and respect upon appeal, even finality, as long as they are supported

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[18] *Id*. at 47-48.

by substantial evidence. Substantial evidence is more than a mere scintilla. It means such relevant evidence that a reasonable mind would accept as sufficient to support a conclusion. A suspicion or belief no matter how sincerely felt cannot be a substitute for factual findings carefully established through an orderly procedure.

The Labor Arbiter merely surmised and presumed that petitioners had the tendency to alter the entries in the payroll. Albeit the petitioner admitted that the payrolls were initially made in pencil, the same does not, and must not be presumed as groundwork for alteration. We find nothing in the proceedings, as well as in the pleadings submitted, to sustain the Labor Arbiter's findings of the alleged "tendency" to alter the entries.

It is elementary in this jurisdiction that whoever alleges fraud or mistake affecting a transaction must substantiate his allegation, since it is presumed that a person takes ordinary care of his concerns and private transactions have been fair and regular. Persons are presumed to have taken care of their business.

Absent any indication sufficient enough to support a conclusion, we cannot uphold the findings of the Labor Arbiter and the NLRC.[19]

The conclusion of the Labor Arbiter that entries in the December 1995 payroll sheet could have been altered is utterly baseless. The claim that the December 1995 payroll sheet was written in pencil and was thus rendered it prone to alterations or erasures is clearly *non sequitur*. The same is true with respect to the typewritten payroll sheets. In fact, neither the Labor Arbiter nor the NLRC found any alteration or erasure or traces thereat, whether on the pencil-written or typewritten payroll sheets. Indeed, the most minute examination will not reveal any tampering. Furthermore, if there is any adverse conclusion as regards the December 1995 payroll sheet, it must be confined only to it and cannot be applied to the typewritten payroll sheets.

Moreover, absent any evidence to the contrary, good faith must be presumed in this case. Entries in the payroll, being entries in the course of business, enjoy the presumption of regularity under Rule 130, Section 43 of the Rules of Court.

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[19] *Id*. at 93.

Hence, while as a general rule, the burden of proving payment of monetary claims rests on the employer,[20] when fraud is alleged in the preparation of the payroll, the burden of evidence shifts to the employee and it is incumbent upon him to adduce clear and convincing evidence in support of his claim.[21] Unfortunately, petitioner's bare assertions of fraud do not suffice to overcome the disputable presumption of regularity.

While we adhere to the position of the appellate court that the "tendency" to alter the entries in the payrolls was not substantiated, we cannot however subscribe to the total deletion of the award of salary differential and attorney's fees, as it so ruled.

The Labor Arbiter granted a salary differential of ₱24,902.88.[22]

The Labor Arbiter erred in his computation. He fixed the daily wage rate actually received by petitioner at ₱105.00[23] without taking into consideration the ₱141.00 rate indicated in the typewritten payroll sheets submitted by respondents. Moreover, the Labor Arbiter misapplied the wage orders[24] when he wrongly categorized respondent as falling within the first category. Based on the stipulated number of employees and audited financial statements,[25] respondents should have been covered by the second category.

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[20] *G&M (Phils), Inc. v. Cruz*, G.R. No. 140495, 15 April 2005, 456 SCRA 215, 221.

[21] *Kar Asia, Inc. v. Corona*, G.R. No. 154985, 24 August 2004, 437 SCRA 184.

[22] *Rollo,* p. 49.

[23] Said amount is the rate indicated by petitioner in the Complaint form submitted before the Regional Arbitration Branch of the NLRC.

[24] For purposes of determining the minimum wage rates, non-agricultural enterprises are classified into three categories, namely: (1) those employing more than 20 workers with a total asset of more than ₱5M; (2) employing not more than 20 workers with an asset of not more than ₱5M; and (3) employing not more than 20 workers with a capitalization of not more than ₱500,000.00.

[25] Respondents presented an audited financial statement bearing their assets amounting only to ₱1,573,106.84 in 1996 and ₱3,396,340.61 in 1997. *Rollo,* p. 24.

To avoid further delay in the disposition of this case which is not in consonance with the objective of speedy justice, we have to adjudge the rightful computation of the salary differential based on the applicable wage orders. After all, the supporting records are complete.

This Court finds that from 1 January to 30 August 1996 and 1 July 1997 to 31 May 1998, petitioner had received a wage less than the minimum mandated by law. Therefore, he is entitled to a salary differential. For the periods from 30 May to 31 December 1995 and 2 September 1996 to 30 June 1997, petitioner had received the correct wages. To illustrate:

	Wage actually received	**Statutory Minimum wage**	**Differential**
30 May – 31 December 1995	₱105.00	₱99.00[26]	0
1 January – 30 June 1996 (156 days)	₱105.00	₱125.00[27]	₱20.00/day or ₱3120.00
1 July – 30 August 1996 (52 days)	₱105.00	₱130.00[28]	₱25.00/day or ₱1300.00
2 – 30 September 1996	₱141.00[29]	₱130.00[30]	0
1 October 1996 – 15 March 1997	₱141.00	₱135.00[31]	0

[26] As mandated by Wage Order No. ROVII-01.

[27] Wage Order No. ROVII-04 prescribed the minimum wage rate of ₱125.00 effective 1 January 1996 to 30 June 1996.

[28] Wage Order No. ROVII-04 also provided for an increase of ₱5.00 effective 1 July 1996.

[29] Note that starting September 1996, petitioner received ₱141.00 as evidenced by the typewritten payrolls, the entries of which we sustained earlier. Prior thereto, petitioner only received ₱105.00 as found by the Labor Arbiter and uncontroverted by respondents.

[30] *Id*.

[31] Under Wage Order No. ROVII-04, effective 1 October 1996, the minimum wage was increased to ₱135.00.

16 March – 30 June 1997	₱141.00	₱139.00[32]	0
1 July – 30 September 1997 (78 days)	₱141.00	₱144.00[33]	₱3.00/day or ₱234.00
1 October 1997- 31 March 1998 (156 days)	₱141.00	₱149.00[34]	₱8.00/day or ₱1248.00
1 April – 31 May 1998 (52 days)	₱141.00	₱154.00[35]	₱13.00/day or ₱676.00

The total salary differential that petitioner is lawfully entitled to amounts to ₱6,578.00 However, pursuant to Section 12 of Republic Act (R.A.) No. 6727, as amended by R.A. No. 8188. Respondents are required to pay double the amount owed to petitioner, bringing their total liability to ₱13,156.00.

Section 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Act shall be punished by a fine not less than Twenty-five thousand pesos (₱25,000.00) nor more than One hundred thousand pesos (₱100,000.00) or imprisonment of not less than two (2) years nor more than four (4) years, or both such fine and imprisonment at the discretion of the court: *Provided*, That any person convicted under this Act shall not be entitled to the benefits provided for under the Probation Law.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees:

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[32] Wage Order No. ROVII-05 was issued increasing the minimum wage to ₱139.00 effective 16 March 1997 to 30 June 1997.

[33] A ₱5.00 increase effective 1 July 1997 as ordered by Wage Order No. ROVII-05.

[34] Wage Order No. ROVII-05 ordered another ₱5.00 increase effective October 1997.

[35] Wage Order ROVII-06 was issued mandating a wage increase of five (₱5.00) pesos per day beginning April 1, 1998, thereby raising the daily minimum wage to ₱154.00.

***Provided*, That payment of indemnity shall not absolve the employer from the criminal liability imposable under this Act.**

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers, including, but not limited to, the president, vice president, chief executive officer, general manager, managing director or partner. (Emphasis supplied)

The award of attorney's fees is warranted under the circumstances of this case. Under Article 2208 of the New Civil Code, attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws[36] but shall not exceed 10% of the amount awarded.[37] The fees may be deducted from the total amount due the winning party.

WHEREFORE, the petition is PARTIALLY GRANTED. Petitioner is awarded the salary differential in the reduced amount of ₱13,156.00 and respondents are directed to pay the same, as well as ten percent (10%) of the award as attorney's fees.

SO ORDERED.

Quisumbing (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.

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[36] *Remigio v. National Labor Relations Commission*, G.R. No. 159887, 12 April 2006, 487 SCRA 190, 215.

[37] Omnibus Rules Implementing the Labor Code, Rule VIII, Sec. 8, Book III, provides:

> Sec. 8. *Attorney's fees*.— Attorney's fees in any judicial or administrative proceedings for the recovery of wages shall not exceed 10% of the amount awarded. The fees may be deducted from the total amount due the winning party.

EN BANC

[G.R. No. 168766. May 22, 2008]

THE CIVIL SERVICE COMMISSION, *petitioner, vs.* **HENRY A. SOJOR,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; BY CLEAR PROVISION OF LAW, RESPONDENT IS A NON-CAREER CIVIL SERVANT WHO IS UNDER THE JURISDICTION OF THE CIVIL SERVICE COMMISSION.— Respondent, a state university president with a fixed term of office appointed by the governing board of trustees of the university, is a non-career civil service officer. He was appointed by the chairman and members of the governing board of CVPC. By clear provision of law, respondent is a non-career civil servant who is under the jurisdiction of the CSC.

2. ID.; ID.; ID.; THE POWER OF THE BOARD OF REGENTS TO DISCIPLINE OFFICIALS AND EMPLOYEES IS NOT EXCLUSIVE; THE COMMISSION HAS CONCURRENT JURISDICTION OVER A PRESIDENT OF A STATE UNIVERSITY.— There is no question that administrative power over the school exclusively belongs to its BOR. But does this exclusive administrative power extend to the power to remove its erring employees and officials? In light of the other provisions of R.A. No. 9299, respondent's argument that the BOR has exclusive power to remove its university officials must fail. Section 7 of R.A. No. 9299 states that the power to remove faculty members, employees, and officials of the university is granted to the BOR "in addition to its general powers of administration." This provision is essentially a reproduction of Section 4 of its predecessor, R.A. No. 8292, demonstrating that the intent of the lawmakers did not change even with the enactment of the new law. For clarity, the text of the said section is reproduced below: Sec. 7. *Powers and Duties of the Board of Regents*. — **The Board shall have the following specific powers and duties in addition to**

its general powers of administration and the exercise of all the powers granted to the Board of Directors of a corporation under existing laws: xxx xxx xxx i. To fix and adjust salaries of faculty members and administrative officials and employees, subject to the provisions of the Revised Compensation and Position Classification System and other pertinent budget and compensation laws governing hours of service and such other duties and conditions as it may deem proper; to grant them, at its discretion, leaves of absence under such regulations as it may promulgate, any provision of existing law to the contrary notwithstanding; **and to remove them for cause in accordance with the requirements of due process of law**. Verily, the BOR of NORSU has the sole power of administration over the university. But this power is not exclusive in the matter of disciplining and removing its employees and officials. Although the BOR of NORSU is given the specific power under R.A. No. 9299 to discipline its employees and officials, there is no showing that such power is exclusive. When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter. All members of the civil service are under the jurisdiction of the CSC, unless otherwise provided by law. Being a non-career civil servant does not remove respondent from the ambit of the CSC. Career or non-career, a civil service official or employee is within the jurisdiction of the CSC.

3. ID.; ID.; ID.; ACADEMIC FREEDOM MAY NOT BE INVOKED WHEN THERE ARE ALLEGED VIOLATIONS OF CIVIL SERVICE LAWS AND RULES.— Academic institutions and personnel are granted wide latitude of action under the principle of academic freedom. Academic freedom encompasses the freedom to determine who may teach, who may be taught, how it shall be taught, and who may be admitted to study. Following that doctrine, this Court has recognized that institutions of higher learning have the freedom to decide for itself the best methods to achieve their aims and objectives, free from outside coercion, except when the welfare of the general public so requires. They have the independence to determine who to accept

to study in their school and they cannot be compelled by *mandamus* to enroll a student. That principle, however, finds no application to the facts of the present case. Contrary to the matters traditionally held to be justified to be within the bounds of academic freedom, the administrative complaints filed against Sojor involve violations of civil service rules. He is facing charges of nepotism, dishonesty, falsification of official documents, grave misconduct, and conduct prejudicial to the best interest of the service. These are classified as grave offenses under civil service rules, punishable with suspension or even dismissal. This Court has held that the guaranteed academic freedom does not give an institution the unbridled authority to perform acts without any statutory basis. For that reason, a school official, who is a member of the civil service, may not be permitted to commit violations of civil service rules under the justification that he was free to do so under the principle of academic freedom.

4. ID.; ID.; ID.; RESPONDENT'S APPOINTMENT AS UNIVERSITY PRESIDENT DOES NOT SERVE AS A CONDONATION BY THE BOARD OF REGENTS OF THE ALLEGED ACTS IMPUTED TO HIM.— We do not agree with respondent's contention that his appointment to the position of president of NORSU, despite the pending administrative cases against him, served as a condonation by the BOR of the alleged acts imputed to him. The doctrine this Court laid down in *Salalima v. Guingona, Jr*. and *Aguinaldo v. Santos* are inapplicable to the present circumstances. Respondents in the mentioned cases are elective officials, unlike respondent here who is an appointed official. Indeed, election expresses the sovereign will of the people. Under the principle of *vox populi est suprema lex*, the re-election of a public official may, indeed, supersede a pending administrative case. The same cannot be said of a re-appointment to a non-career position. There is no sovereign will of the people to speak of when the BOR re-appointed respondent Sojor to the post of university president.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
M. Mikhail Lee L. Maximo for respondent.

D E C I S I O N

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

IS the president of a state university outside the reach of the disciplinary jurisdiction constitutionally granted to the Civil Service Commission (CSC) over all civil servants and officials?

Does the assumption by the CSC of jurisdiction over a president of a state university violate academic freedom?

The twin questions, among others, are posed in this petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) which annulled two (2) CSC Resolutions[2] against respondent Henry A. Sojor.

The Facts

The uncontroverted facts that led to the controversy, as found by the CSC and the CA, are as follows:

On August 1, 1991, respondent Sojor was appointed by then President Corazon Aquino as president of the Central Visayas Polytechnic College (CVPC) in Dumaguete City. In June 1997, Republic Act (R.A.) No. 8292, or the "Higher Education Modernization Act of 1997," was enacted. This law mandated that a Board of Trustees (BOT) be formed to act as the governing body in state colleges. The BOT of CVPC appointed respondent as president, with a four-year term beginning September 1998 up to September 2002.[3] Upon the expiration of his first term of office in 2002, he was appointed president of the institution for a second four-year term, expiring on September 24, 2006.[4]

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[1] *Rollo,* pp. 45-54. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Arsenio J. Magpale and Enrico A. Lanzanas, concurring.

[2] *Id*. at 123-128, 137-141. Resolution No. 040321 dated March 30, 2004 and Resolution No. 040766 dated July 6, 2004.

[3] *Id*. at 92.

[4] *Id*. at 93.

On June 25, 2004, CVPC was converted into the Negros Oriental State University (NORSU).[5] A Board of Regents (BOR) succeeded the BOT as its governing body.

Meanwhile, three (3) separate administrative cases against respondent were filed by CVPC faculty members before the CSC Regional Office (CSC-RO) No. VII in Cebu City, to wit:

1. ADMC DC No. 02-20(A) – Complaint for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service filed on June 26, 2002 by Jose Rene A. Cepe and Narciso P. Ragay. It was alleged that respondent approved the release of salary differentials despite the absence of the required Plantilla and Salary Adjustment Form and valid appointments.[6]
2. ADM DC No. 02-20 – Complaint for dishonesty, misconduct and falsification of official documents filed on July 10, 2002 by Jocelyn Juanon and Carolina Fe Santos. The complaint averred that respondent maliciously allowed the antedating and falsification of the reclassification differential payroll, to the prejudice of instructors and professors who have pending request for adjustment of their academic ranks.[7]
3. ADM DC No. 02-21 – Complaint for nepotism filed on August 15, 2002 by Rose Marie Palomar, a former part-time instructor of CVPC. It was alleged that respondent appointed his half-sister, Estrellas Sojor-Managuilas, as casual clerk, in violation of the

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[5] Republic Act No. 9299, entitled "An Act Converting the Central Visayas Polytechnic College (CVPC) into a State University to be known as the Negros Oriental State University (NORSU), Integrating therewith the Genaro Goñi Memorial College in the City of Bais, the Siaton Community College in the Municipality of Siaton, and the Mabinay Institute of Technology in the Municipality of Mabinay, all located in the Province of Negros Oriental and Appropriating Funds therefore," enacted on June 25, 2004.

[6] *Rollo,* pp. 58-61.

[7] *Id*. at 62-67.

provisions against nepotism under the Administrative Code.[8]

Before filing his counter-affidavits, respondent moved to dismiss the first two complaints on grounds of lack of jurisdiction, bar by prior judgment and forum shopping.

He claimed that the CSC had no jurisdiction over him as a presidential appointee. Being part of the non-competitive or unclassified service of the government, he was exclusively under the disciplinary jurisdiction of the Office of the President (OP). He argued that CSC had no authority to entertain, investigate and resolve charges against him; that the Civil Service Law contained no provisions on the investigation, discipline, and removal of presidential appointees. He also pointed out that the subject matter of the complaints had already been resolved by the Office of the Ombudsman.[9]

Finding no sufficient basis to sustain respondent's arguments, the CSC-RO denied his motion to dismiss in its Resolution dated September 4, 2002.[10] His motion for reconsideration[11] was likewise denied. Thus, respondent was formally charged with three administrative cases, namely: (1) Dishonesty, Misconduct, and Falsification of Official Document; (2) Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service; and (3) Nepotism.[12]

Respondent appealed the actions of the regional office to the Commission proper (CSC), raising the same arguments in his motion to dismiss.[13] He argued that since the BOT is headed

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[8] *Id*. at 73-75.

[9] *Id*. at 76-79. Motion to Dismiss on Grounds of Lack of Jurisdiction, Prior Judgment, and Forum Shopping, filed by Henry A. Sojor on August 20, 2002.

[10] *Id*. at 81-84.

[11] *Id*. at 88-91.

[12] *Id*. at 94-113.

[13] *Id*. at 114-122. Notice of Appeal with Appeal Memorandum dated October 28, 2002.

by the Committee on Higher Education Chairperson who was under the OP, the BOT was also under the OP. Since the president of CVPC was appointed by the BOT, then he was a presidential appointee. On the matter of the jurisdiction granted to CSC by virtue of Presidential Decree (P.D.) No. 807[14] enacted in October 1975, respondent contended that this was superseded by the provisions of R.A. No. 8292,[15] a later law which granted to the BOT the power to remove university officials.

CSC Disposition

In a Resolution dated March 30, 2004,[16] the CSC dismissed respondent's appeal and authorized its regional office to proceed with the investigation. He was also preventively suspended for 90 days. The *fallo* of the said resolution states:

> WHEREFORE, the appeal of Henry A. Sojor, President of Central Visayas Polytechnic College, is hereby DISMISSED. The Civil Service Commission Regional Office No. VII, Cebu City, is authorized to proceed with the formal investigation of the cases against Sojor and submit the investigation reports to the Commission within one hundred five (105) days from receipt hereof. Finally, Sojor is preventively suspended for ninety (90) days.[17]

In decreeing that it had jurisdiction over the disciplinary case against respondent, the CSC opined that his claim that he was a presidential appointee had no basis in fact or in law. CSC maintained that it had concurrent jurisdiction with the BOT of the CVPC. We quote:

> His appointment dated September 23, 2002 was signed by then Commission on Higher Education (CHED) Chairman Ester A. Garcia. Moreover, the said appointment expressly stated that it was approved and adopted by the Central Visayas Polytechnic College Board of Trustees on August 13, 2002 in accordance with Section 6 of Republic

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[14] Civil Service Law.

[15] The Higher Education Modernization Act of 1997.

[16] *Rollo,* pp. 123-136.

[17] *Id*. at 128.

Act No. 8292 (Higher Education Modernization Act of 1997), which explicitly provides that, "*He (the president of a state college) shall be appointed by the Board of Regents/Trustees, upon recommendation of a duly constituted search committee*." **Since the President of a state college is appointed by the Board of Regents/Trustees of the college concerned, it is crystal clear that he is not a presidential appointee. Therefore, it is without doubt that Sojor, being the President of a state college (Central Visayas Polytechnic College), is within the disciplinary jurisdiction of the Commission.**

The allegation of appellant Sojor that the Commission is bereft of disciplinary jurisdiction over him since the same is exclusively lodged in the CVPC Board of Trustees, being the appointing authority, cannot be considered. **The Commission and the CVPC Board of Trustees have concurrent jurisdiction over cases against officials and employees of the said agency**. Since the three (3) complaints against Sojor were filed with the Commission and not with the CVPC, then the former already acquired disciplinary jurisdiction over the appellant to the exclusion of the latter agency.[18] (Emphasis supplied)

The CSC categorized respondent as a third level official, as defined under its rules, who are under the jurisdiction of the Commission proper. Nevertheless, it adopted the formal charges issued by its regional office and ordered it to proceed with the investigation:

Pursuant to the Uniform Rules on Administrative Cases in the Civil Service, Sojor, being a third level official, is within the disciplinary jurisdiction of the Commission Proper. Thus, strictly speaking, the Commission has the sole jurisdiction to issue the formal charge against Sojor. x x x However, since the CSC RO No. VII already issued the formal charges against him and found merit in the said formal charges, the same is adopted. **The CSC RO No. VII is authorized to proceed with the formal investigation of the case against Sojor in accordance with the procedure outlined in the aforestated Uniform Rules**.[19] (Emphasis supplied)

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

[19] *Id*.

No merit was found by the CSC in respondent's motion for reconsideration and, accordingly, denied it with finality on July 6, 2004.[20]

Respondent appealed the CSC resolutions to the CA *via* a petition for *certiorari* and prohibition. He alleged that the CSC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed resolutions; that CSC encroached upon the academic freedom of CVPC; and that the power to remove, suspend, and discipline the president of CVPC was exclusively lodged in the BOT of CVPC.

CA Disposition

On September 29, 2004, the CA issued a writ of preliminary injunction directing the CSC to cease and desist from enforcing its Resolution dated March 30, 2004 and Resolution dated July 6, 2004.[21] Thus, the formal investigation of the administrative charges against Sojor before the CSC-RO was suspended.

On June 27, 2005, after giving both parties an opportunity to air their sides, the CA resolved in favor of respondent. It annulled the questioned CSC resolutions and permanently enjoined the CSC from proceeding with the administrative investigation. The dispositive part of the CA decision reads:

> WHEREFORE, in view of all the foregoing, and finding that the respondent Civil Service Commission acted without jurisdiction in issuing the assailed Resolution Nos. 040321 and 040766 dated March 20, 2004 and July 6, 2004, respectively, the same are hereby ANNULLED and SET ASIDE. The preliminary injunction issued by this Court on September 29, 2004 is hereby made permanent.
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> SO ORDERED.[22]

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[20] *Id*. at 137-141.

[21] *Id*. at 217-220.

[22] *Id*. at 54.

The CA ruled that the power to appoint carries with it the power to remove or to discipline. It declared that the enactment of R.A. No. 9299[23] in 2004, which converted CVPC into NORSU, did not divest the BOT of the power to discipline and remove its faculty members, administrative officials, and employees. Respondent was appointed as president of CVPC by the BOT by virtue of the authority granted to it under Section 6 of R.A. No. 8292.[24] The power of the BOT to remove and discipline erring employees, faculty members, and administrative officials as expressly provided for under Section 4 of R.A. No. 8292 is also granted to the BOR of NORSU under Section 7 of R.A. No. 9299. The said provision reads:

> *Power and Duties of Governing Boards*. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:
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> x x x x x x x x x
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> to fix and adjust salaries of faculty members and administrative officials and employees x x x; **and to remove them for cause in accordance with the requirements of due process of law**. (Emphasis added)

The CA added that Executive Order (E.O.) No. 292,[25] which grants disciplinary jurisdiction to the CSC over all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations with original charters, is a general law. According to the appellate court, E.O. No. 292 does not prevail over R.A. No. 9299,[26] a special law.

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[23] See note 5.

[24] Republic Act No. 9299 (2004), Sec. 7, which converted the CVPC into NORSU.

[25] Administrative Code of 1987.

[26] See note 15. The law converting CVPC into NORSU.

Issues

Petitioner CSC comes to Us, seeking to reverse the decision of the CA on the ground that THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER ACTED WITHOUT JURISDICTION IN ISSUING RESOLUTION NO. 040321 DATED MARCH 30, 2004 AND RESOLUTION NO. 04766 DATED JULY 6, 2004.[27]

Our Ruling

The petition is meritorious.

I. Jurisdiction of the CSC

The Constitution grants to the CSC administration over the entire civil service.[28] As defined, the civil service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation.[29] It is further classified into career and non-career service positions. Career service positions are those where: (1) entrance is based on merit and fitness or highly technical qualifications; (2) there is opportunity for advancement to higher career positions; and (3) there is security of tenure. These include:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other

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[27] *Rollo,* p. 16.

[28] CONSTITUTION (1987), Art. IX(B), Sec. 1.

[29] The Administrative Code (1987), Sec. 6; *id*., Sec. 2.

officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and

(7) Permanent laborers, whether skilled, semi-skilled, or unskilled.[30]

Career positions are further grouped into three levels. Entrance to the first two levels is determined through competitive examinations, while entrance to the third level is prescribed by the Career Executive Service Board.[31] The positions covered by each level are:

(a) The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(b) The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and

(c) The third level shall cover positions in the Career Executive Service.[32]

On the other hand, non-career service positions are characterized by: (1) entrance not by the usual tests of merit

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[30] *Id.*, Sec. 7.

[31] *Id.*, Sec. 8.

[32] *Id.*

and fitness; and (2) tenure which is limited to a period specified by law, coterminous with the appointing authority or subject to his pleasure, or limited to the duration of a particular project for which purpose employment was made.[33] The law states:

> 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.[34]

It is evident that CSC has been granted by the Constitution and the Administrative Code jurisdiction over all civil service positions in the government service, whether career or non-career. From this grant of general jurisdiction, the CSC promulgated the Revised Uniform Rules on Administrative Cases in the Civil Service.[35] We find that the specific jurisdiction, as spelled out in the CSC rules, did not depart from the general jurisdiction granted to it by law. The jurisdiction of the Regional Office of the CSC and the Commission central office (Commission Proper) is specified in the CSC rules as:

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[33] *Id*., Sec. 9.

[34] *Id*.

[35] CSC Memorandum Circular No. 19-99 (1999).

Section 4. *Jurisdiction of the Civil Service Commission*. — The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

Section 5. *Jurisdiction of the Civil Service Commission Proper*. — The Civil Service Commission Proper shall have jurisdiction over the following cases:

A. Disciplinary
1. Decisions of Civil Service Regional Offices brought before it on petition for review;
2. Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities, imposing penalties exceeding thirty days suspension or fine in an amount exceeding thirty days salary brought before it on appeal;
3. Complaints brought against Civil Service Commission Proper personnel;
4. Complaints against third level officials who are not presidential appointees;
5. **Complaints against Civil Service officials and employees which are not acted upon by the agencies and such other complaints requiring direct or immediate action, in the interest of justice;**
6. Requests for transfer of venue of hearing on cases being heard by Civil Service Regional Offices;
7. Appeals from the Order of Preventive Suspension; and
8. Such other actions or requests involving issues arising out of or in connection with the foregoing enumerations.

B. Non-Disciplinary
1. **Decisions of Civil Service Commission Regional Offices brought before it;**
2. Requests for favorable recommendation on petition for executive clemency;

3. Protests against the appointment, or other personnel actions, involving third level officials; and
4. Such other analogous actions or petitions arising out of or in relation with the foregoing enumerations.

Section 6. *Jurisdiction of Civil Service Regional Offices*. — The Civil Service Commission Regional Offices shall have jurisdiction over the following cases:

A. Disciplinary
1. **Complaints initiated by, or brought before, the Civil Service Commission Regional Offices provided that the alleged acts or omissions were committed within the jurisdiction of the Regional Office, including Civil Service examination anomalies or irregularities and the persons complained of are employees of agencies, local or national, within said geographical areas;**
2. Complaints involving Civil Service Commission Regional Office personnel who are appointees of said office; and
3. Petitions to place respondent under Preventive Suspension.

B. Non-Disciplinary

1. Disapproval of appointments brought before it on appeal;
2. Protests against the appointments of first and second level employees brought before it directly or on appeal. (Emphasis supplied)

Respondent, a state university president with a fixed term of office appointed by the governing board of trustees of the university, is a non-career civil service officer. He was appointed by the chairman and members of the governing board of CVPC. By clear provision of law, respondent is a non-career civil servant who is under the jurisdiction of the CSC.

II. The power of the BOR to discipline officials and employees is not exclusive. CSC has concurrent jurisdiction over a president of a state university.

Section 4 of R.A. No. 8292, or the Higher Education Modernization Act of 1997, under which law respondent was

appointed during the time material to the present case, provides that the school's governing board shall have the general powers of administration granted to a corporation. In addition, Section 4 of the law grants to the board the power to remove school faculty members, administrative officials, and employees for cause:

> Section 4. *Powers and Duties of Governing Boards*. — **The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation** under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:
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> x x x x x x x x x
>
> h) to fix and adjust salaries of faculty members and administrative officials and employees subject to the provisions of the revised compensation and classification system and other pertinent budget and compensation laws governing hours of service, and such other duties and conditions as it may deem proper; to grant them, at its discretion, leaves of absence under such regulations as it may promulgate, any provisions of existing law to the contrary not withstanding; **and to remove them for cause in accordance with the requirements of due process of law**. (Emphasis supplied)

The above section was subsequently reproduced as Section 7(i) of the succeeding law that converted CVPC into NORSU, R.A. No. 9299. Notably, and in contrast with the earlier law, R.A. No. 9299 now provides that the administration of the university and exercise of corporate powers of the board of the school shall be exclusive:

> Sec. 4. *Administration*. — The University shall have the general powers of a corporation set forth in Batas Pambansa Blg. 68, as amended, otherwise known as "The Corporation Code of the Philippines." **The administration of the University and the exercise of its corporate powers shall be vested exclusively in the Board of Regents and the president of the University insofar as authorized by the Board**.

Measured by the foregoing yardstick, there is no question that administrative power over the school exclusively belongs to its BOR. But does this exclusive administrative power extend to the power to remove its erring employees and officials?

In light of the other provisions of R.A. No. 9299, respondent's argument that the BOR has exclusive power to remove its university officials must fail. Section 7 of R.A. No. 9299 states that the power to remove faculty members, employees, and officials of the university is granted to the BOR "in addition to its general powers of administration." This provision is essentially a reproduction of Section 4 of its predecessor, R.A. No. 8292, demonstrating that the intent of the lawmakers did not change even with the enactment of the new law. For clarity, the text of the said section is reproduced below:

> Sec. 7. *Powers and Duties of the Board of Regents*. — **The Board shall have the following specific powers and duties in addition to its general powers of administration** and the exercise of all the powers granted to the Board of Directors of a corporation under existing laws:
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> x x x x x x x x x
>
> i. To fix and adjust salaries of faculty members and administrative officials and employees, subject to the provisions of the Revised Compensation and Position Classification System and other pertinent budget and compensation laws governing hours of service and such other duties and conditions as it may deem proper; to grant them, at its discretion, leaves of absence under such regulations as it may promulgate, any provision of existing law to the contrary notwithstanding; **and to remove them for cause in accordance with the requirements of due process of law**.[36] (Emphasis supplied)

Verily, the BOR of NORSU has the sole power of administration over the university. But this power is not exclusive in the matter of disciplining and removing its employees and officials.

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[36] Republic Act No. 9299, Sec. 7.

Although the BOR of NORSU is given the specific power under R.A. No. 9299 to discipline its employees and officials, there is no showing that such power is exclusive. When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter.[37]

All members of the civil service are under the jurisdiction of the CSC, unless otherwise provided by law. Being a non-career civil servant does not remove respondent from the ambit of the CSC. Career or non-career, a civil service official or employee is within the jurisdiction of the CSC.

This is not a case of first impression.

In *University of the Philippines v. Regino*,[38] this Court struck down the claim of exclusive jurisdiction of the UP BOR to discipline its employees. The Court held then:

> The Civil Service Law (PD 807) expressly vests in the Commission appellate jurisdiction in administrative disciplinary cases involving members of the Civil Service. Section 9(j) mandates that the Commission shall have the power to "hear and decide administrative disciplinary cases instituted directly with it in accordance with Section 37 or brought to it on appeal." And Section 37(a) provides that, "The Commission shall decide *upon appeal all administrative disciplinary cases involving the imposition of a penalty of* suspension for more than thirty (30) days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or *dismissal from office*." (Emphasis supplied)
>
> Under the 1972 Constitution, all government-owned or controlled corporations, regardless of the manner of their creation, were considered part of the Civil Service. Under the 1987 Constitution, only government-owned or controlled corporations with original

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[37] *Enrique v. Court of Appeals,* G.R. No. 79072, January 10, 1994, 229 SCRA 180, citing *Government Service Insurance System v. Civil Service Commission,* G.R. No. 87146, December 11, 1991, 204 SCRA 826.

[38] G.R. No. 88167, May 3, 1993, 221 SCRA 598.

charters fall within the scope of the Civil Service pursuant to Article IX-B, Section 2(1), which states:

> "The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations with original charters."

As a mere government-owned or controlled corporation, UP was clearly a part of the Civil Service under the 1973 Constitution and now continues to be so because it was created by a special law and has an original charter. **As a component of the Civil Service, UP is therefore governed by PD 807 and administrative cases involving the discipline of its employees come under the appellate jurisdiction of the Civil Service Commission**.[39] (Emphasis supplied)

In the more recent case of *Camacho v. Gloria*,[40] this Court lent credence to the concurrent jurisdiction of the CSC when it affirmed that a case against a university official may be filed either with the university's BOR or directly with the CSC. We quote:

Further, petitioner contends that the creation of the committee by the respondent Secretary, as Chairman of the USP Board of Regents, was contrary to the Civil Service Rules. However, he cites no specific provision of the Civil Service Law which was violated by the respondents in forming the investigating committee. The Civil Service Rules embodied in Executive Order 292 recognize the power of the Secretary and the university, through its governing board, to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. **Of course under EO 292, a complaint against a state university official may be filed either with the university's Board of Regents or directly with the Civil Service Commission, although the CSC may delegate the investigation of a complaint and for that purpose, may deputize any department, agency, official or group of officials to conduct such investigation**.[41] (Emphasis supplied)

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[39] *University of the Philippines v. Regino, id*. at 601-602.

[40] G.R. No. 138862, August 15, 2003, 409 SCRA 174.

[41] *Camacho v. Gloria, id*., citing Executive Order No. 292, Sec. 47.

Thus, CSC validly took cognizance of the administrative complaints directly filed before the regional office, concerning violations of civil service rules against respondent.

III. Academic freedom may not be invoked when there are alleged violations of civil service laws and rules.

Certainly, academic institutions and personnel are granted wide latitude of action under the principle of academic freedom. Academic freedom encompasses the freedom to determine who may teach, who may be taught, how it shall be taught, and who may be admitted to study.[42] Following that doctrine, this Court has recognized that institutions of higher learning have the freedom to decide for itself the best methods to achieve their aims and objectives, free from outside coercion, except when the welfare of the general public so requires.[43] They have the independence to determine who to accept to study in their school and they cannot be compelled by *mandamus* to enroll a student.[44]

That principle, however, finds no application to the facts of the present case. Contrary to the matters traditionally held to be justified to be within the bounds of academic freedom, the administrative complaints filed against Sojor involve violations of civil service rules. He is facing charges of nepotism, dishonesty, falsification of official documents, grave misconduct, and conduct prejudicial to the best interest of the service. These are classified as grave offenses under civil service rules, punishable with suspension or even dismissal.[45]

This Court has held that the guaranteed academic freedom does not give an institution the unbridled authority to perform

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[42] *Miriam College Foundation, Inc. v. Court of Appeals,* G.R. No. 127930, December 15, 2000, 348 SCRA 265.

[43] *Camacho v. Coresis,* 436 Phil. 449 (2002).

[44] *Tangonan v. Paño,* G.R. No. L-45157, June 27, 1985, 137 SCRA 245.

[45] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Sec. 52(A).

acts without any statutory basis.[46] For that reason, a school official, who is a member of the civil service, may not be permitted to commit violations of civil service rules under the justification that he was free to do so under the principle of academic freedom.

Lastly, We do not agree with respondent's contention that his appointment to the position of president of NORSU, despite the pending administrative cases against him, served as a condonation by the BOR of the alleged acts imputed to him. The doctrine this Court laid down in *Salalima v. Guingona, Jr.*[47] and *Aguinaldo v. Santos*[48] are inapplicable to the present circumstances. Respondents in the mentioned cases are elective officials, unlike respondent here who is an appointed official. Indeed, election expresses the sovereign will of the people.[49] Under the principle of *vox populi est suprema lex,* the re-election of a public official may, indeed, supersede a pending administrative case. The same cannot be said of a re-appointment to a non-career position. There is no sovereign will of the people to speak of when the BOR re-appointed respondent Sojor to the post of university president.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals is *REVERSED and SET ASIDE*. The assailed Resolutions of the Civil Service Commission are *REINSTATED*.

SO ORDERED.

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

Puno, C.J., certifies that *J*. Corona concurred in the decision.

Carpio, J., on leave.

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[46] *Benguet State University v. Commission on Audit,* G.R. No. 169637, June 8, 2007.

[47] G.R. Nos. 117589-92, May 22, 1996, 257 SCRA 55.

[48] G.R. No. 94115, August 21, 1992, 212 SCRA 768.

[49] *People v. Jalosjos,* G.R. Nos. 132875-76, February 3, 2000, 381 SCRA 690.

SECOND DIVISION

[G.R. No. 170478. May 22, 2008]

SPS. TERESITO Y. VILLACASTIN and LOURDES FUA VILLACASTIN, *petitioners, vs.* **PAUL PELAEZ,** *respondent.*

SYLLABUS

REMEDIAL LAW; COURTS; JURISDICTION; REGULAR COURTS HAVE JURISDICTION OVER POSSESSORY ACTIONS INVOLVING PUBLIC OR PRIVATE AGRICULTURAL LANDS.— Petitioners' action is clearly for the recovery of physical or material possession of the subject property only, a question which both the MCTC and the RTC ruled petitioners are entitled to. It does not involve the adjudication of an agrarian reform matter, nor an agrarian dispute falling within the jurisdiction of the DARAB. Courts have jurisdiction over possessory actions involving public or private agricultural lands to determine the issue of physical possession as this issue is independent of the question of disposition and alienation of such lands which should be threshed out in the DAR. Thus, jurisdiction was rightfully exercised by the MCTC and the RTC.

APPEARANCES OF COUNSEL

Hilario C. Baril for petitioners.
Zosa & Quijano Law Offices for respondent.

D E C I S I O N

TINGA, *J.*:

A conflict of jurisdiction between the Department of Agrarian Reform Adjudication Board (DARAB) and the regular trial courts is at the core of the present case. Petitioners question the Decision[1]

[1] *Rollo*, pp. 22-30; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Pampio P. Abarintos and Vicente L. Yap.

of the Court of Appeals dated February 7, 2005, in CA-G.R. SP. No. 83873, which upheld the primary and exclusive jurisdiction of the DARAB in cases involving the use or possession of lands covered by agrarian laws.

The facts, as culled from the record, are as follows:

On June 29, 1976, respondent Paul Pelaez and his wife mortgaged their agricultural lands bearing Original Certificates of Title Nos. 0-10343, 0-10344 and 0-10345, situated in Barrio Kodia, Madridejos, Cebu, to the Development Bank of the Philippines (DBP) Bogo Branch, Cebu. For failure of the Pelaez spouses to pay their mortgage obligation, the properties were foreclosed and subsequently sold at public auction.

The purported tenants of the property, Anastacio Alob, Francisco Alob, Jesus Cordova, Manuel Sanchez, Elia Giltendez, Flora dela Peña, Eliseo Rayco, Benjamin Santillan, Pascual Gilbuena, Jesus Alob, Renaldo Grande, and Julieto Manzueto, filed an action to annul the mortgage, foreclosure and sale of the properties, claiming that they are the owners thereof under Presidential Decree No. 27. The case was docketed as Reg. Case No. VII-76-C-90.

In the meantime, on May 10, 1988, petitioners filed a Complaint for Forcible Entry with Prayer for a Writ of Preliminary Mandatory Injunction,[2] docketed as Civil Case No. 79, with the First Municipal Circuit Trial Court (MCTC) of Bantayan, Cebu, against respondent and a certain Elesio Monteseven. The complaint averred that plaintiffs (petitioners herein) are the owners and actual possessors of the subject landholding and that defendants, having entered the property through stealth and strategy, unlawfully deprived plaintiffs of possession thereof.

Respondent countered that he is the owner of the subject property, which was foreclosed by the DBP and later purchased by petitioners at an auction sale. Petitioners, however, were allegedly never in possession of the subject property as they failed to apply for a writ of possession therefor. Respondent

[2] Records, pp. 1-4.

further claimed that he had redeemed the property on March 3, 1988 and accordingly reacquired possession thereof.[3]

Meanwhile, the Provincial Agrarian Reform Adjudicator in Cebu rendered a decision in Reg. Case No. VII-76-C-90 dated February 15, 1993, in favor of the tenants, the dispositive portion of which states:

> WHEREFORE, in the light of the foregoing view, DECISION is hereby rendered as follows:
>
> 1. Declaring complainants herein with the exception of Silbino Arranquez[,] Jr. and Claro Gilbuela who earlier withdraw from this case as bonafide tenant farmers of the parcels in question covered by P.D. [No.] 27;
>
> 2. Declaring the mortgage executed by Sps. Paul and Elnora Pelaez to respondent DBP and the subsequent foreclosure and eventual sale thereof to Sps. Teresito and Lourdes Villacastin as null and void *ab initio* as it is contrary to law, public order and public policy;
>
> 3. Declaring complainants herein to properly account their deposited shares/lease rentals before the DAR office of Bantayan[,] Cebu and deliver the said deposited [share/lease] rentals including the forthcoming harvest thereon to respondent landowners Sps. Paul and Elnora Pelaez with the assistance of the MARO of Bantayan, Madridejos, Cebu.
>
> 4. No pronouncement as to cost.[4]

This decision was affirmed by the DARAB in a Decision[5] dated February 22, 2000.

On January 6, 2000, the MCTC rendered judgment in Civil Case No. 79 in favor of petitioners and disposed as follows:

> WHEREFORE, premises considered, defendant is hereby ordered:
>
> a) To return to plaintiffs possession of the parcel of land above-described and vacate the premises;

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[3] *Id*. at 32-35.

[4] *Id*. at 80.

[5] *Id*. at 79-84.

b) To pay the costs of litigation;

c) Moral and exemplary damages not recoverable in ejectment suit is denied;

d) Expenses claimed not duly proven are disallowed;

e) To release in favor of the plaintiffs the cash bond the sum of ₱5,000.00 deposited pursuant to the issuance of a Writ of Preliminary Mandatory Injunction.[6]

In a Decision[7] dated March 10, 2004, the Regional Trial Court (RTC) of Dakit, Bogo, Cebu, Branch 61, affirmed the MCTC decision.

The Court of Appeals, however, ruled that regular courts should respect the primary jurisdiction vested upon the DARAB in cases involving agricultural lands such as the property subject of this case. Accordingly, it set aside the decision rendered by the RTC and the MCTC, and dismissed the complaint for forcible entry filed by petitioners in this case.

The appellate court denied reconsideration in its Resolution[8] dated November 11, 2005.

Petitioners contend that Civil Case No. 79 did not involve any agrarian matter and thus, the MCTC correctly exercised jurisdiction over the case.

In his Comment[9] dated March 21, 2006, respondent underscores the fact that the parcels of land subject of this case are tenanted agricultural lands. Before judgment was rendered in the forcible entry case, the tenants of the property already filed a suit with the DARAB for the annulment of the real estate mortgage executed by respondent over the same in favor of DBP and the subsequent foreclosure and auction sale in favor of petitioners. The DARAB's decision declaring the

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[6] *Id*. at 120.

[7] *Id*. at 85-90.

[8] *Id*. at 46-47.

[9] *Id*. at 113-119.

mortgage, foreclosure and auction sale null and void became final as regards petitioners who did not appeal from the decision. Respondent asserts that the complaint for forcible entry filed by petitioners had lost its legal basis after the DARAB declared that the foreclosure and auction sale of the subject property were null and void.

Petitioners filed a Reply[10] dated July 28, 2006, insisting that the tenant-farmers involved in the DARAB case were not parties to the forcible entry case, the only defendant therein being respondent in this case. Respondent, in turn, raised the defense of ownership, thereby joining the issues regarding possession and ownership.

Petitioners further note their argument in their Motion for Reconsideration[11] of the Decision of the Court of Appeals that the subject property had been declared as wilderness area and the same had been classified as alienable and disposable on December 22, 1987. In support of this contention, they submitted a Department of Agrarian Reform Order[12] dated September 12, 1997 to the effect that the subject property falls within the administrative authority or competence of the Department of Environment and Natural Resources (DENR). The order directed the PARO of Cebu and the MARO of Bantayan, Cebu to cease and desist from further activities affecting the subject property under Operation Land Transfer, and to refer the matter to the DENR.

Jurisdiction over the subject matter is determined by the allegations of the complaint.[13] In ascertaining, for instance, whether an action is one for forcible entry falling within the exclusive jurisdiction of the inferior courts, the averments of the complaint and the character of the relief sought are to be examined.[14]

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[10] *Id*. at 128-132.

[11] *Id*. at 31-38.

[12] *Id*. at 41-45.

[13] *Sindico v. Diaz*, G.R. No. 147444, October 1, 2004, 440 SCRA 50, 53.

[14] *Sps. Tirona v. Hon. Alejo*, 419 Phil. 285, 297 (2001).

A review of the complaint reveals that the pertinent allegations thereof sufficiently vest jurisdiction over the action on the MCTC. The complaint alleges as follows:

III

That the plaintiffs are the owners and legal as well as actual possessors of a parcel of agricultural land more particularly described as follows:

x x x x x x x x x

IV

That the defendant, sometime in the second week of March 1988, by strategy and through stealth entered the above-described land of the plaintiffs and took possession thereof; thus, depriving said plaintiffs of the possession thereof;

V

That several demands were made the plaintiffs upon the defendants to restore to them the possession of the above-described parcel of land; but, defendants refused and still refuse to restore possession of said property to the plaintiffs;[15]

It has not escaped our notice that no landowner-tenant *vinculum juris* or juridical tie was alleged between petitioners and respondent, let alone that which would characterize the relationship as an agrarian dispute.[16] Rule II of the DARAB

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[15] Records, pp. 1-2.

[16] Section 3(d) of R.A. No. 6657 or the Comprehensive Agrarian Reform Law defines "agrarian dispute" over which the DARAB has exclusive original jurisdiction as:

> (d) . . . refer[ing] to 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.

Rules[17] provides that the DARAB "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 Order 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."

Petitioners' action is clearly for the recovery of physical or material possession of the subject property only, a question which both the MCTC and the RTC ruled petitioners are entitled to. It does not involve the adjudication of an agrarian reform matter, nor an agrarian dispute falling within the jurisdiction of the DARAB.

Courts have jurisdiction over possessory actions involving public or private agricultural lands to determine the issue of physical possession as this issue is independent of the question of disposition and alienation of such lands which should be threshed out in the DAR.[18] Thus, jurisdiction was rightfully exercised by the MCTC and the RTC.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP. No. 83873 dated February 7, 2005, and its Resolution dated November 11, 2005, are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Dakit, Bogo, Cebu, Branch 61, dated March 10, 2004, affirming the decision of the Municipal Circuit Trial Court of Bantayan, Cebu, dated June 6, 2000, is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Quisumbing (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.

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[17] RULES OF PROCEDURE GOVERNING PROCEEDINGS BEFORE THE DAR ADJUDICATION BOARD AND DIFFERENT REGIONAL AND PROVINCIAL ADJUDICATORS.

[18] *David v. Cordova*, G.R. No. 152992, July 27, 2005, 464 SCRA 384, 403-404.

SECOND DIVISION

[G.R. No. 159889. June 5, 2008]

WALTER VILLANUEVA and AURORA VILLANUEVA, *petitioners, vs.* **FLORENTINO CHIONG and ELISERA CHIONG,** *respondents.*

SYLLABUS

1. CIVIL LAW; PERSONS; CONJUGAL NATURE OF PROPERTY; SEPARATION IN FACT BETWEEN HUSBAND AND WIFE WITHOUT JUDICIAL APPROVAL SHALL NOT AFFECT THE CONJUGAL PARTNERSHIP; CASE AT BAR.— Anent the first issue, petitioners' contention that the lot belongs exclusively to Florentino because of his separation in fact from his wife, Elisera, at the time of sale dissolved their property relations, is bereft of merit. Respondents' separation in fact neither affected the conjugal nature of the lot nor prejudiced Elisera's interest over it. Under Article 178 of the Civil Code, the separation in fact between husband and wife without judicial approval shall not affect the conjugal partnership. The lot retains its conjugal nature.

2. ID.; ID.; ID.; PROPERTY ACQUIRED DURING MARRIAGE PRESUMED TO BELONG TO THE CONJUGAL PARTNERSHIP OF GAINS.— Likewise, under Article 160 of the Civil Code, all property acquired by the spouses during the marriage is presumed to belong to the conjugal partnership of gains, unless it is proved that it pertains exclusively to the husband or to the wife. Petitioners' mere insistence as to the lot's supposed exclusive nature is insufficient to overcome such presumption when taken against all the evidence for respondents.

3. ID.; ID.; CONJUGAL PROPERTY; HUSBAND'S ALIENATION WITHOUT WIFE'S CONSENT PRIOR TO EFFECTIVITY OF THE FAMILY CODE, MERELY VOIDABLE.— Anent the second issue, the sale by Florentino without Elisera's consent is not, however, void *ab initio.* In *Vda. de Ramones v. Agbayani,* citing *Villaranda v. Villaranda,* we held that without the wife's consent, the husband's alienation or encumbrance of conjugal property prior to the effectivity of

the Family Code on August 3, 1988 is not void, but merely voidable. Articles 166 and 173 of the Civil Code provide: ART. 166. Unless the wife has been declared a ***non compos mentis*** or a spendthrift, or is under civil interdiction or is confined in a leprosarium, **the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent**. . . This article shall not apply to property acquired by the conjugal partnership before the effective date of this Code. ART. 173. **The wife may, during the marriage, and within ten years from the transaction** questioned, **ask** the courts **for the annulment of any contract of the husband entered into without her consent,** when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband.

4. ID.; ID.; ID.; CONTRACTS INVOLVING SALE OF CONJUGAL PROPERTY MAY BE QUESTIONED WITHIN TEN YEARS FROM EXECUTION.— Applying Article 166, the consent of both Elisera and Florentino is necessary for the sale of a conjugal property to be valid. In this case, the requisite consent of Elisera was not obtained when Florentino verbally sold the lot in 1985 and executed the Deed of Absolute Sale on May 13, 1992. Accordingly, the contract entered by Florentino is annullable at Elisera's instance, during the marriage and within ten years from the transaction questioned, conformably with Article 173. Fortunately, Elisera timely questioned the sale when she filed Civil Case No. 4383 on July 5, 1991, perfectly within ten years from the date of sale and execution of the deed.

5. ID.; ID.; ID.; ID.; ID.; CONTRACT MUST BE ANNULLED IN ITS ENTIRETY.— Petitioners finally contend that, assuming *arguendo* the property is still conjugal, the transaction should not be entirely voided as Florentino had one-half share over the lot. Petitioners' stance lacks merit. In *Heirs of Ignacia Aguilar-Reyes v. Mijares* citing *Bucoy v. Paulino, et al.,* a case involving the annulment of sale executed by the husband without the consent of the wife, it was held that the alienation must be annulled in its entirety and not only insofar as the share of the wife in the conjugal property is concerned. Although the transaction in the said case was declared void and not merely voidable, the rationale for the annulment of the whole transaction

is the same. Thus: The plain meaning attached to the plain language of the law is that the contract, in its entirety, executed by the husband without the wife's consent, may be annulled by the wife. Had Congress intended to limit such annulment in so far as the contract shall "prejudice" the wife, such limitation should have been spelled out in the statute. It is not the legitimate concern of this Court to recast the law. As Mr. Justice Jose B. L. Reyes of this Court and Judge Ricardo C. Puno of the Court of First Instance correctly stated, "[t]he rule (in the first sentence of Article 173) revokes *Baello vs. Villanueva*, 54 Phil. 213 and *Coque vs. Navas Sioca*, 45 Phil. 430," in which cases annulment was held to refer only to the extent of the one-half interest of the wife...

6. ID.; ID.; ID.; ID.; ID.; ID.; RESTORATION OF WHAT HAS BEEN GIVEN IS PROPER.— Now, if a voidable contract is annulled, the restoration of what has been given is proper. Article 1398 of the Civil Code provides: An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law. In obligations to render service, the value thereof shall be the basis for damages. The effect of annulment of the contract is to wipe it out of existence, and to restore the parties, *insofar as legally and equitably possible,* to their original situation before the contract was entered into.

7. ID.; ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— Strictly applying Article 1398 to the instant case, petitioners should return to respondents the land with its fruits and respondent Florentino should return to petitioners the sum of ₱8,000, which he received as the price of the land, together with interest thereon. On the matter of fruits and interests, we take into consideration that petitioners have been using the land and have derived benefit from it just as respondent Florentino has used the price of the land in the sum of ₱8,000. Hence, if, as ordered by the lower court, Florentino is to pay a reasonable amount or legal interest for the use of the money then petitioners should also be required to pay a reasonable amount for the use of the land. Under the particular circumstances of this case, however, it would be equitable to consider the two amounts as offsetting each other. Hence, the award of the trial court for the payment of interest should be deleted.

APPEARANCES OF COUNSEL

Feliciano M. Maraon for petitioners.
Mejorada Mejorada & Mejorada Law Firm for E. Chiong.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review on *certiorari* seeks the modification of the Decision[1] dated December 17, 2002 of the Court of Appeals in CA-G.R. CV. No. 68383, which had affirmed the Joint Decision[2] dated July 19, 2000 of the Regional Trial Court (RTC) of Dipolog City, Branch 6, in Civil Case No. 4460. The RTC annulled the sale made by respondent Florentino Chiong in favor of petitioners Walter and Aurora Villanueva conveying a portion of a parcel of land which respondents acquired during their marriage.

The pertinent facts are as follows:

Respondents Florentino and Elisera Chiong were married sometime in January 1960 but have been separated in fact since 1975. During their marriage, they acquired Lot No. 997-D-1 situated at Poblacion, Dipolog City and covered by Transfer Certificate of Title (TCT) No. (T-19393)-2325,[3] issued by the Registry of Deeds of Zamboanga del Norte. Sometime in 1985, Florentino sold the one-half western portion of the lot to petitioners for ₱8,000, payable in installments. Thereafter, Florentino allowed petitioners to occupy[4] the lot and build a store, a shop, and a

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[1] *Rollo,* pp. 21-31. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Ruben T. Reyes (now a member of this Court) and Edgardo F. Sundiam, concurring.

[2] Records, pp. 123-130 (Civil Case No. 4460). Penned by Judge Primitivo S. Abarquez, Jr.

[3] Exhibit "A" (Civil Case No. 4383) and Exhibit "1" (Civil Case No. 4460), folder of exhibits, p. 1.

[4] TSN, October 11, 1996, p. 10. As admitted by Elisera, petitioners were already occupying the subject parcel of land since 1976.

house thereon. Shortly after their last installment payment on December 13, 1986,[5] petitioners demanded from respondents the execution of a deed of sale in their favor. Elisera, however, refused to sign a deed of sale.

On July 5, 1991, Elisera filed with the RTC a Complaint[6] for Quieting of Title with Damages, docketed as Civil Case No. 4383. On February 12, 1992, petitioners filed with the RTC a Complaint[7] for Specific Performance with Damages, docketed as Civil Case No. 4460. Upon proper motion, the RTC consolidated these two cases.[8]

On May 13, 1992, Florentino executed the questioned Deed of Absolute Sale[9] in favor of petitioners.

On July 19, 2000, the RTC, in its Joint Decision, annulled the deed of absolute sale dated May 13, 1992, and ordered petitioners to vacate the lot and remove all improvements therein. The RTC likewise dismissed Civil Case No. 4460, but ordered Florentino to return to petitioners the consideration of the sale with interest from May 13, 1992.[10] The *fallo* of the decision reads:

> WHEREFORE, by preponderance of evidence, judgment is hereby rendered as follows:
>
> For Civil Case No. 4383, (a) annulling the Deed of Sale executed by Florentino Chiong in favor of Walter Villanueva, dated May 13, 1992 (Exhibit "2"); ordering defendant Walter Villanueva to vacate the entire land in question and to remove all buildings therein, subject to [i]ndemnity of whatever damages he may incur by virtue of the removal of such buildings, within a period of 60 days from the finality of this decision; award of damages is hereby denied for lack of proof.

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[5] Exhibit "1" to "1-WWW" (Civil Case No. 4460), folder of exhibits, p. 1.

[6] Records (Civil Case No. 4383), pp. 1-6.

[7] Records (Civil Case No. 4460), pp. 1-4.

[8] *Id*. at 29.

[9] Exhibit "2" (Civil Case No. 4460), folder of exhibits, p. 2.

[10] *Rollo*, p. 16.

In Civil Case No. 4460, complaint is hereby dismissed, but defendant Florentino Chiong, having received the amount of ₱8,000.00 as consideration of the sale of the land subject of the controversy, the sale being annulled by this Court, is ordered to return the said amount to [the] spouses Villanueva, with interest to be computed from the date of the annulled deed of sale, until the same is fully paid, within the period of 60 days from finality of this judgment. Until such amount is returned, together with the interest, [the] spouses Villanueva may continue to occupy the premises in question.

No pronouncement as to costs.

IT IS SO ORDERED.[11]

The Court of Appeals affirmed the RTC's decision:

WHEREFORE, premises considered, the appealed decision dated July 19, 2000 of the Regional Trial Court, Branch 6, Dipolog City is hereby **AFFIRMED.**

SO ORDERED.[12]

Petitioners sought reconsideration, but to no avail. Hence, this petition.

Petitioners assign the following errors as issues for our resolution:

I.

THAT THE COURT *A QUO* AS WELL AS THE HONORABLE COURT OF APPEALS ... GRAVELY ERRED IN NOT HOLDING THAT THE LAND IN QUESTION BELONGED SOLELY TO RESPONDENT FLORENTINO CHIONG AND ULTIMATELY TO THE HEREIN PETITIONERS.

II.

THAT THE LOWER COURT AS WELL AS THE HONORABLE COURT OF APPEALS … LIKEWISE ERRED IN DECLARING AS NULL AND VOID THE DEED OF SALE EXECUTED BY

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[11] *Id*. at 16-17.

[12] *Id*. at 31.

RESPONDENT FLORENTINO CHIONG IN FAVOR OF THE HEREIN PETITIONERS.[13]

Simply put, the basic issues are: (1) Is the subject lot an exclusive property of Florentino or a conjugal property of respondents? (2) Was its sale by Florentino without Elisera's consent valid?

Petitioners contend that the Court of Appeals erred when it held that the lot is conjugal property. They claim that the lot belongs exclusively to Florentino because respondents were already separated in fact at the time of sale and that the share of Elisera, which pertains to the eastern part of Lot No. 997-D-1, had previously been sold to Spouses Jesus Y. Castro and Aida Cuenca. They also aver that while there was no formal liquidation of respondents' properties, their separation in fact resulted in its actual liquidation. Further, assuming *arguendo* that the lot is still conjugal, the transaction should not be entirely voided as Florentino had one-half share over it.

Elisera, for her part, counters that the sale of the lot to petitioners without her knowledge, consent or authority, was void because the lot is conjugal property. She adds that the sale was neither authorized by any competent court nor did it redound to her or their children's benefit. As proof of the lot's conjugal nature, she presented a transfer certificate of title, a real property tax declaration, and a Memorandum of Agreement[14] dated November 19, 1979 which she and her husband had executed for the administration of their conjugal properties.[15]

Anent the first issue, petitioners' contention that the lot belongs exclusively to Florentino because of his separation in fact from his wife, Elisera, at the time of sale dissolved their property

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[13] *Id*. at 76.

[14] Exhibit "D" (Civil Case No. 4383) and Exhibit "3" (Civil Case No. 4460), folder of exhibits, pp. 4-5.

[15] *Rollo,* pp. 61-65. Respondent Florentino failed to file his comment on the petition for review, it appearing that he left his place of residence. Thus, the court resolved to consider the filing of comment by respondent Florentino as waived.

relations, is bereft of merit. Respondents' separation in fact neither affected the conjugal nature of the lot nor prejudiced Elisera's interest over it. Under Article 178[16] of the Civil Code, the separation in fact between husband and wife without judicial approval shall not affect the conjugal partnership. The lot retains its conjugal nature.

Likewise, under Article 160[17] of the Civil Code, all property acquired by the spouses during the marriage is presumed to belong to the conjugal partnership of gains, unless it is proved that it pertains exclusively to the husband or to the wife. Petitioners' mere insistence as to the lot's supposed exclusive nature is insufficient to overcome such presumption when taken against all the evidence for respondents.

On the basis alone of the certificate of title, it cannot be presumed that the lot was acquired during the marriage and that it is conjugal property since it was registered "in the name of Florentino Chiong, Filipino, of legal age, married to Elisera Chiong… ."[18] But Elisera also presented a real property tax

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[16] ART. 178. The separation in fact between husband and wife without judicial approval, shall not affect the conjugal partnership …

[17] ART. 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

[18] Exhibit "A" (Civil Case No. 4383) and Exhibit "1" (Civil Case No. 4460), folder of exhibits, p. 1.

x x x x x x x x x

…is registered in accordance with the provisions of the Land Registration Act in the name of FLORENTINO CHIONG, Filipino, of legal age, married to Elisera Chiong….

x x x x x x x x x

See *Ruiz v. Court of Appeals*, G.R. No. 146942, April 22, 2003, 401 SCRA 410, 419.

Under prevailing jurisprudence, the fact that the title is in the name of the husband alone is determinative of its nature as belonging exclusively to said spouse and the only import of the title is that Florentino is the owner of said property, the same having been registered in his name alone, and that he is married to Elisera Chiong.

declaration acknowledging her and Florentino as owners of the lot. In addition, Florentino and Elisera categorically declared in the Memorandum of Agreement they executed that the lot is a conjugal property.[19] Moreover, the conjugal nature of the lot was admitted by Florentino in the Deed of Absolute Sale dated May 13, 1992, where he declared his capacity to sell as a co-owner of the subject lot.[20]

Anent the second issue, the sale by Florentino without Elisera's consent is not, however, void *ab initio*. In *Vda. de Ramones v. Agbayani*,[21] citing *Villaranda v. Villaranda*,[22] we held that without the wife's consent, the husband's alienation or encumbrance of conjugal property prior to the effectivity of the Family Code on August 3, 1988 is not void, but merely voidable. Articles 166 and 173 of the Civil Code[23] provide:

ART. 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a

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[19] Exhibit "D" (Civil Case No. 4383) and Exhibit "3" (Civil Case No. 4460), folder of exhibits, p. 4.

KNOW ALL MEN BY THESE PRESENTS:

This agreement entered into by and between ELISERA CARBONEL CHIONG…hereinafter referred to as the FIRST PARTY, and FLORENTINO CHIONG, … as the SECOND PARTY

x x x x x x x x x

That the FIRST and SECOND PARTIES have the following conjugal properties:

x x x x x x x x x

d. Residential lot situated at Poblacion Dipolog City at Katipunan Street, with an area of 207 square meters, more or less titled in the name of the spouses;

x x x x x x x x x

[20] Exhibit "2" (Civil Case No. 4460), folder of exhibits, p. 2.

[21] G.R. No. 137808, September 30, 2005, 471 SCRA 306.

[22] G. R. No. 153447, February 23, 2004, 423 SCRA 571.

[23] Since all the relevant events and transactions took place before the effectivity of the Family Code on August 3, 1988, the pertinent law is the Civil Code of the Philippines which took effect on August 30, 1950.

leprosarium, **the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent…**

This article shall not apply to property acquired by the conjugal partnership before the effective date of this Code.

ART. 173. **The wife may, during the marriage, and within ten years from the transaction** questioned, **ask** the courts **for the annulment of any contract of the husband entered into without her consent**, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may demand the value of property fraudulently alienated by the husband. (Emphasis supplied.)

Applying Article 166, the consent of both Elisera and Florentino is necessary for the sale of a conjugal property to be valid. In this case, the requisite consent of Elisera was not obtained when Florentino verbally sold the lot in 1985 and executed the Deed of Absolute Sale on May 13, 1992. Accordingly, the contract entered by Florentino is annullable at Elisera's instance, during the marriage and within ten years from the transaction questioned, conformably with Article 173. Fortunately, Elisera timely questioned the sale when she filed Civil Case No. 4383 on July 5, 1991, perfectly within ten years from the date of sale and execution of the deed.

Petitioners finally contend that, assuming *arguendo* the property is still conjugal, the transaction should not be entirely voided as Florentino had one-half share over the lot. Petitioners' stance lacks merit. In *Heirs of Ignacia Aguilar-Reyes v. Mijares*[24] citing *Bucoy v. Paulino, et al.*,[25] a case involving the annulment of sale executed by the husband without the consent of the wife, it was held that the alienation must be annulled in its entirety and not only insofar as the share of the wife in the conjugal property is concerned. Although the transaction in

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[24] G.R. No. 143826, August 28, 2003, 410 SCRA 97.

[25] 131 Phil. 790 (1968).

the said case was declared void and not merely voidable, the rationale for the annulment of the whole transaction is the same. Thus:

> The plain meaning attached to the plain language of the law is that the contract, in its entirety, executed by the husband without the wife's consent, may be annulled by the wife. Had Congress intended to limit such annulment in so far as the contract shall "prejudice" the wife, such limitation should have been spelled out in the statute. It is not the legitimate concern of this Court to recast the law. As Mr. Justice Jose B. L. Reyes of this Court and Judge Ricardo C. Puno of the Court of First Instance correctly stated, "[t]he rule (in the first sentence of Article 173) revokes *Baello vs. Villanueva*, 54 Phil. 213 and *Coque vs. Navas Sioca,* 45 Phil. 430," in which cases annulment was held to refer only to the extent of the one-half interest of the wife....[26]

Now, if a voidable contract is annulled, the restoration of what has been given is proper.[27] Article 1398 of the Civil Code provides:

> An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.
>
> In obligations to render service, the value thereof shall be the basis for damages.

The effect of annulment of the contract is to wipe it out of existence, and to restore the parties, *insofar as legally and equitably possible*, to their original situation before the contract was entered into.[28]

Strictly applying Article 1398 to the instant case, petitioners should return to respondents the land with its fruits[29] and

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[26] *Supra* note 24, at 106-107.

[27] *Id*. at 109.

[28] Tolentino, *CIVIL CODE*, Vol. IV, p. 608.

[29] *Dumasug v. Modelo*, 34 Phil. 252 (1916).

respondent Florentino should return to petitioners the sum of ₱8,000, which he received as the price of the land, together with interest thereon.

On the matter of fruits and interests, we take into consideration that petitioners have been using the land and have derived benefit from it just as respondent Florentino has used the price of the land in the sum of ₱8,000. Hence, if, as ordered by the lower court, Florentino is to pay a reasonable amount or legal interest for the use of the money then petitioners should also be required to pay a reasonable amount for the use of the land.[30] Under the particular circumstances of this case, however, it would be equitable to consider the two amounts as offsetting each other. Hence, the award of the trial court for the payment of interest should be deleted.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated December 17, 2002 of the Court of Appeals in CA-G.R. CV. No. 68383 affirming the Joint Decision dated July 19, 2000 of the Regional Trial Court of Dipolog City, Branch 6, in Civil Case No. 4460 is hereby *AFFIRMED with MODIFICATION*. The order for the payment of interest is *DELETED*.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo-de Castro,[*] and *Brion, JJ.,* concur.

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[30] *Guido v. De Borja*, 12 Phil. 718 (1909).

[*] Additional member in place of Justice Conchita Carpio Morales who was on leave of absence.

EN BANC

[G.R. No. 182795. June 5, 2008]

ARMANDO Q. CANLAS, MIGUEL D. CAPISTRANO, MARRIETA PIA, *petitioners, vs.* **NAPICO HOMEOWNERS ASS'N., I – XIII, INC., *ET AL.*,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; WRIT OF *AMPARO*; ENUMERATION OF RIGHTS FOR WHICH REMEDY IS AVAILABLE.— The Rule on the Writ of *Amparo* provides: SECTION 1. *Petition.* — The petition for a writ of *amparo* is a remedy available to any person whose **right to life, liberty and security** is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— The threatened demolition of a dwelling by virtue of a final judgment of the court, which in this case was affirmed with finality by this Court in G.R. Nos. 177448, 180768, 177701, 177038, **is not included** among the enumeration of rights as stated in the above-quoted Section 1 for which the remedy of a writ of *amparo* is made available. Their claim to their dwelling, assuming they still have any despite the final and executory judgment adverse to them, does not constitute right to life, liberty and security. There is, therefore, no legal basis for the issuance of writ of *amparo*. Besides, the factual and legal basis for petitioners' claim to the land in question is not alleged in the petition at all. The Court can only surmise that these rights and interest had already been threshed out and settled in the four cases cited above. No writ of *amparo* may be issued unless there is a clear allegation of the supposed factual and legal basis of the right sought to be protected.

3. ID.; ID.; ID.; ID.; THE WRIT SHALL BE ISSUED UPON THE FILING OF THE PETITION, IF ON ITS FACE, IT OUGHT TO ISSUE; CASE AT BAR.— Under Section 6 of the same

rules, the court shall issue the writ upon the filing of the petition, only **if on its face**, the court ought to issue said writ. SECTION 6. *Issuance of the Writ.* — Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it. The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven (7) days for the date of its issuance. Considering that there is no legal basis of its issuance, as in this case, the writ will not be issued and the petition will be dismissed outright.

APPEARANCES OF COUNSEL

Joel F. Pradia for Napico Homeowners Ass'n. I-XIII, Inc.
Pablo M. Martin for private respondents.

R E S O L U T I O N

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

THE present petition filed on May 26, 2008 seeks the issuance of a *Writ of Amparo* upon the following premise:

Petitioners were deprived of their liberty, freedom and/or rights to shelter enshrined and embodied in our Constitution, as the result of these nefarious activities of both the Private and Public Respondents. This ardent request filed before this Honorable Supreme Court is the only solution to this problem via this newly advocated principles incorporated in the Rules — the "RULE ON THE WRIT OF AMPARO."[1]

It appears that petitioners are settlers in a certain parcel of land situated in Barangay Manggahan, Pasig City. Their dwellings/houses have either been demolished as of the time of filing of the petition, or is about to be demolished pursuant to a court judgment.

[1] *Rollo,* p. 6.

While they attempted to focus on issuance of what they claimed to be fraudulent and spurious land titles, to wit:

> Petitioners herein are desirous to help the government, the best way they can, to unearth these so-called **"syndicates"** clothed with governmental functions, in cahoots with the **"squatting syndicates"** - - - - the low (sic) so defines. If only to give its proper meanings, the Government must be the first one to cleans (sic) its ranks from these unscrupulous political protégées. If unabated would certainly ruin and/or destroy the efficacy of the Torrens System of land registration in this Country. It is therefore the ardent initiatives of the herein Petitioners, by way of the said prayer for the issuance of the Writ of Amparo, **that these unprincipled Land Officials be summoned to answer their participation in the issuances of these fraudulent and spurious titles, NOW, in the hands of the Private Respondents. The Courts of Justice, including this Honorable Supreme Court, are likewise being made to believe that said titles in the possession of the Private Respondents were issued untainted with frauds.**[2]

what the petition ultimately seeks is the reversal of this Court's dismissal of petitions in G.R. Nos. 177448, 180768, 177701, 177038, thus:

> That, Petitioners herein knew before hand that: there can be no motion for reconsideration for the second or third time to be filed before this Honorable Supreme Court. As such therefore, Petitioners herein are aware of the opinion that this present petition should not in any way be treated as such motions fore (sic) reconsideration. Solely, this petition is only for the possible issuance of the writ of amparo, although it might affect the previous rulings of this Honorable Supreme Court in these cases, **G.R. Nos. 177448, 180768, 177701 and 177038. Inherent in the powers of the Supreme Court of the Philippines is to modify, reverse and set aside, even its own previous decision, that can not be thwarted nor influenced by any one, but, only on the basis of merits and evidence. This is the purpose of this petition for the Writ of Amparo.**[3]

We dismiss the petition.

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

[3] *Id*. at 10-11.

The Rule on the Writ of *Amparo* provides:

SECTION 1. *Petition.* — The petition for a writ of *amparo* is a remedy available to any person whose **right to life, liberty and security** is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof. (Emphasis supplied.)

The threatened demolition of a dwelling by virtue of a final judgment of the court, which in this case was affirmed with finality by this Court in G.R. Nos. 177448, 180768, 177701, 177038, **is not included** among the enumeration of rights as stated in the above-quoted Section 1 for which the remedy of a writ of *amparo* is made available. Their claim to their dwelling, assuming they still have any despite the final and executory judgment adverse to them, does not constitute right to life, liberty and security. There is, therefore, no legal basis for the issuance of the writ of *amparo*.

Besides, the factual and legal basis for petitioners' claim to the land in question is not alleged in the petition at all. The Court can only surmise that these rights and interest had already been threshed out and settled in the four cases cited above. No writ of *amparo* may be issued unless there is a clear allegation of the supposed factual and legal basis of the right sought to be protected.

Under Section 6 of the same rules, the court shall issue the writ upon the filing of the petition, only **if on its face**, the court ought to issue said writ.

SECTION 6. *Issuance of the Writ.* — Upon the filing of the petition, the court, justice or judge shall immediately order the issuance of the writ if on its face it ought to issue. The clerk of court shall issue the writ under the seal of the court; or in case of urgent necessity, the justice or the judge may issue the writ under his or her own hand, and may deputize any officer or person to serve it.

The writ shall also set the date and time for summary hearing of the petition which shall not be later than seven (7) days from the date of its issuance.

Considering that there is no legal basis for its issuance, as in this case, the writ will not be issued and the petition will be dismissed outright.

This new remedy of writ of *amparo* which is made available by this Court is intended for the protection of the highest possible rights of any person, which is his or her right to life, liberty and security. The Court will not spare any time or effort on its part in order to give priority to petitions of this nature. However, the Court will also not waste its precious time and effort on matters not covered by the writ.

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Leonardo-de Castro, and *Brion, JJ.,* concur.

Carpio Morales,[*] *Velasco, Jr.,*[**] and *Nachura,*[***] *JJ.,* on official leave.

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[*] on official leave per Special Order No. 505 dated May 15, 2008.

[**] on official leave per Special Order No. 504 dated May 15, 2008.

[***] on official leave per Special Order No. 507 dated May 28, 2008.

FIRST DIVISION

[A.M. No. 07-10-254-MeTC. June 12, 2008]

RE: ABSENCE WITHOUT OFFICIAL LEAVE OF MERLIE N. YUSON, Court Stenographer, Metropolitan Trial Court, Branch 1, Manila.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE RULES AND REGULATIONS; EFFECT OF ABSENCES WITHOUT APPROVED LEAVE; CASE AT BAR.— Rule XVI, Section 63 of the Omnibus Civil Service Rules and Regulations, as amended by Circular No. 14, s. 1999, provides: Section 63. *Effect of absences without approved leave*. — **An official or employee who is continuously absent without approved leave for at least thirty (30) calendar days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice.** He shall, however, be informed, at his address appearing on his 201 files, of his separation from the service, not later than five (5) days from its effectivity. x x x Under the foregoing civil service rules, Yuson should be separated from the service or dropped from the rolls on account of her continued unauthorized absence since April 2007.

2. ID.; ID.; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; COURT PERSONNEL; AN EMPLOYEE WHO GOES ON AWOL CAUSES DELAY IN THE ADMINISTRATION OF JUSTICE.— A court employee who goes on AWOL for a prolonged period of time disrupts the normal function of the organization and interrupts its operations. As such, she causes delay in the administration of justice. Her conduct is prejudicial to the best interest of public service. It contravenes a public servant's duty to serve the public with the utmost degree of responsibility, integrity, loyalty and efficiency. It also manifests disrespect to her superiors and colleagues, in particular, and for the service and the public at large, in general.

3. ID.; ID.; ID.; ID.; ID.; CONDUCT AND BEHAVIOR OF ALL COURT PERSONNEL CIRCUMSCRIBED WITH HEAVY

BURDEN OF RESPONSIBILITY.— The conduct and behavior of all court personnel are circumscribed with the heavy burden of responsibility. This Court cannot countenance any act or omission on the part of all those involved in the administration of justice which violates the norm of public accountability and diminishes or tends to diminish the faith of the people in the judiciary.

R E S O L U T I O N

CORONA, *J.*:

This administrative matter concerns Merlie N. Yuson, court stenographer in Branch 1 of the Metropolitan Trial Court (MeTC) of Manila.

The records of the Employees Leave Division of the Office of Administrative Services (ELD-OAS) in the Office of the Court Administrator (OCA) show that Yuson has not submitted her bundy cards since April 2007. Neither has she reported for work nor filed an application for leave.

On July 11, 2007, the ELD-OAS sent Yuson a telegram requiring her to submit her bundy cards. She did not comply.

In a letter dated July 16, 2007, Judge Ma. Ruby B. Camarista of Branch 1 of the MeTC of Manila informed the OCA that Yuson had not reported for work since April 2007 without filing any application for leave.

In a memorandum dated June 15, 2007, the OAS recommended that the salaries and benefits of Yuson be withheld. The OCA approved it. Subsequently, the OCA recommended that Yuson be dropped from the rolls effective April 1, 2007 for absence without official leave (AWOL). Her position was declared vacant.[1]

We approve the recommendation of the OCA.

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[1] Memorandum dated September 17, 2007, *rollo*, pp. 1-2.

Rule XVI, Section 63 of the Omnibus Civil Service Rules and Regulations, as amended by Circular No. 14, s. 1999, provides:

Section 63. *Effect of absences without approved leave*. — **An official or employee who is continuously absent without approved leave for at least thirty (30) calendar days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice.** He shall, however, be informed, at his address appearing on his 201 files, of his separation from the service, not later than five (5) days from its effectivity. x x x (emphasis supplied)

Under the foregoing civil service rules, Yuson should be separated from the service or dropped from the rolls on account of her continued unauthorized absence since April 2007.

A court employee who goes on AWOL for a prolonged period of time disrupts the normal function of the organization[2] and interrupts its operations. As such, she causes delay in the administration of justice. Her conduct is prejudicial to the best interest of public service.[3] It contravenes a public servant's duty to serve the public with the utmost degree of responsibility, integrity, loyalty and efficiency.[4] It also manifests disrespect to her superiors and colleagues, in particular, and for the service and the public at large, in general.[5]

By going on AWOL, Yuson grossly disregarded and neglected the duties of her office. She failed to adhere to the high standards of public accountability imposed on those in government service.[6]

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[2] *Re: Absence Without Official Leave of Ms. Fernandita B. Borja*, A.M. No. 06-1-10-MCTC, 13 April 2007; *Re: Absence Without Official Leave of Mr. Robert L. Borcillo*, A.M. No. 07-7-343-RTC, 05 September 2007.

[3] *Re: Absence Without Official Leave of Mr. Basri A. Abbas*, A.M. No. 06-2-96-RTC, 31 March 2006, 486 SCRA 32.

[4] *Re: Absence Without Official Leave of Ms. Fernandita B. Borja*, *supra*.

[5] *Id*.

[6] *Id*.; *Re: Absence Without Official Leave of Mr. Robert L. Borcillo*, *supra*.

Moreover, it showed her indifference to the sacred task of the judiciary to dispense justice effectively, efficiently, properly and promptly.

The conduct and behavior of all court personnel are circumscribed with the heavy burden of responsibility. This Court cannot countenance any act or omission on the part of all those involved in the administration of justice which violates the norm of public accountability and diminishes or tends to diminish the faith of the people in the judiciary.[7]

WHEREFORE, Merlie N. Yuson, court stenographer in Branch 1 of the Metropolitan Trial Court of Manila, is hereby *DROPPED* from the rolls and her position declared *VACANT*.

Let copies of this resolution be served on Yuson at her address appearing on her 201 files pursuant to Rule XVI, Section 63 of the Omnibus Civil Service Rules and Regulations, as amended.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[A.M. No. HOJ-07-01. June 12, 2008]

HON. MOISES M. PARDO, Executive Judge, Regional Trial Court, Branch 31, Cabarroguis, Quirino, *complainant, vs.* **LUGEORGE N. DISCIPULO, Electrician II, Maintenance Unit, Halls of Justice, Cabarroguis, Quirino,** *respondent.*

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[7] *Re: Absence Without Official Leave of Mr. Basri A. Abbas*, *supra*; *Re: Absence Without Official Leave of Mr. Robert L. Borcillo*, *supra*.

SYLLABUS

1. POLITICAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; COURT PERSONNEL; SHOULD INDICATE IN THEIR BUNDY CARDS THE TRUTHFUL AND ACCURATE TIMES OF THEIR ARRIVAL AT AND DEPARTURE FROM THE OFFICE.— OCA Circular No. 7-2003 states that court personnel should indicate in their bundy cards the *truthful* and *accurate* times of their arrival at, and departure from, the office. In *Garcia v. Bada* and *Servino v. Adolfo*, the Court held that court employees must follow the clear mandate of OCA Circular No. 7-2003. Indeed, all judicial employees must devote their official time to government service and exercise a high degree of professionalism.

2. ID.; ID.; ID.; ID.; ID.; PROCEDURE FOLLOWED IN RTC, CABARROGUIS, QUIRINO IN CASE AT BAR.— Justice Atienza and Judge Pardo described the procedure followed in keeping time records, respectively: In the Regional Trial Court of Cabarroguis, Quirino, a bundy clock is used by the employees to register their time of arrival [at] the office, and [their time of departure from] the office. Complementing the bundy clock is [the] logbook where [the security guards on duty write the names of the employees who report for work, their time of arrival, and their time of departure.] x x x The names of [the] employees[, their time of arrival, and their time of departure] are all written by the security guards on duty. x x x [Whether an employee reported for work or not can be determined — even if that employee forgot to punch his or her time card in the bundy clock — by checking the records in the logbook.] The Security Guards x x x make the entries in the Attendance Logbook. The Security guards on duty, two (2) at a time, are stationed at the entrance of the Hall[s] of Justice and the Attendance Logbook [is placed] on top of a table at the entrance of the Hall[s] of Justice. The Security Guards on duty make all the entries in the attendance logbook except for the signatures of the employees.

3. ID.; ID.; ID.; ID.; ID.; EMPLOYEES WHO COMMIT IRREGULARITIES IN THE KEEPING OF TIME RECORDS ARE ADMINISTRATIVELY LIABLE.— In *Duque v. Aspiras*, the Court held that employees who commit irregularities in

the keeping of time records are administratively liable. Falsification of time records constitutes dishonesty, which is a disposition to lie or deceive. In *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine on Several Dates*, the Court imposed the penalty of six months suspension to an employee found guilty of dishonesty for falsifying his time records.

4. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; COMPLAINANT BEARS THE BURDEN OF PROVING, BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN THE COMPLAINT; CASE AT BAR. — "In administrative proceedings, the complainant bears the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Discipulo failed to substantiate his charge that Judge Pardo is liable for gross misconduct: (1) he did not mention the dates when Judge Pardo allegedly committed the acts complained of; (2) he did not mention the names of those who allegedly drank alcohol during office hours or the names of those whom Judge Pardo allegedly harassed; and (3) he did not present any witness or any concrete proof to support his allegations.

APPEARANCES OF COUNSEL

Soller Peig Escat & Peig for complainant.

R E S O L U T I O N

CARPIO, *J.*:

This case involves (1) a complaint for dishonesty against Lugeorge N. Discipulo (Discipulo), Electrician II, Halls of Justice, Cabarroguis, Quirino (Halls of Justice), filed by Judge Moises M. Pardo (Judge Pardo), Executive Judge, Regional Trial Court, Judicial Region II, Cabarroguis, Quirino (RTC); and (2) a counter-complaint for gross misconduct against Judge Pardo filed by Discipulo.

In his letter-complaint[1] dated 20 March 2006 and addressed to the Office of Administrative Services (OAS), Judge Pardo charged Discipulo with falsifying his February 2006 time card and the logbook of the security guards at the Halls of Justice. Judge Pardo alleged that:

> On February 9, 2006, at around 8:00 a.m., Mr. Discipulo arrived at the Hall[s] of Justice and [punched] his time card [in] the bundy clock. Immediately thereafter x x x, Mr. Discipulo left the Hall[s] of Justice and never came back on that day. For this reason, Mr. Discipulo did not [punch] his time card [in] the bundy clock [after office hours] on that day. For [the same] reason, Security Guards on duty Rodel de Guzman and Prudencio Ciano did not enter the [time of departure] of Mr. Discipulo on that date.
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> x x x x x x x x x
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> [O]n February 17, 2006, Mr. Discipulo [punched] his time card [in] the bundy clock at 12:30 p.m. [After punching his time card, he] immediately left the Hall[s] of Justice and never came back on that day. For this reason, Security Guards on duty Estabillo and Bartido did not indicate [Discipulo's time of departure] in the attendance logbook on that date.
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> On March 1, 2006, at around 8:20 in the morning, Mr. Discipulo borrowed the Attendance Logbook from Security Guards on duty Rodel De Guzman and Prudencio Ciano and brought the same to the Office of the Clerk of Court. Without asking for the permission of the security guards, or even just informing them x x x, Mr. Discipulo [wrote "12:00" and "5:00" as his time of departure on 9 and 17 February 2006, respectively]. x x x
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> Upon discovering what Mr. Discipulo did, the two (2) security guards [put a note and signed the pages where Discipulo made insertions]. They also issued to Judge Pardo [a] certification dated March 1, 2006 narrating the foregoing facts.
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> Also on March 1, 2006, at around 9:00 a.m., Mr. Discipulo [wrote on his time card "12:00" and "5:00" as his time of departure on 9 and 17 February 2006, respectively].[2]

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[1] *Rollo*, p. 93.

[2] OCA I.P.I. No. 06-01-HOJ, Memorandum for Complainant-Respondent Judge Moises M. Pardo, 20 March 2007, pp. 9-10.

Judge Pardo submitted a photocopy of the time card[3] and a photocopy of the certification[4] of security guards Rodel de Guzman (De Guzman) and Prudencio Ciano (Ciano). On his time card, Discipulo inserted "12:00" and "5:00" as his time of departure from the office on 9 and 17 February 2006, respectively. In their certification, De Guzman and Ciano stated that Discipulo took the logbook and inserted "12:00" and "5:00" as his time of departure from the office on 9 and 17 February 2006, respectively.

In its Memorandum[5] dated 31 May 2006, the OAS directed Discipulo to comment on Judge Pardo's letter-complaint. In his comment and counter-complaint[6] dated 13 June 2006, Discipulo denied committing falsification of official document. According to him, he made the insertions on his time card because he forgot to punch it in the bundy clock on 9 and 17 February 2006. Discipulo submitted the affidavit[7] of Atty. Jessie W. Tuldague (Tuldague), clerk of court of the RTC, and the joint affidavit[8] of other court employees Vilma Agustin (Agustin), Naty S. Fernando (Fernando), George Mateo (Mateo), and Gil Orias (Orias) to vouch that he was present on 9 and 17 February 2006.

Discipulo charged Judge Pardo with gross misconduct: (1) Judge Pardo initiated and allowed drinking of alcohol during office hours on 6 July 2004; (2) he allowed court employees Luhlu M. Bugawan (Bugawan) and Lilia Casuple (Casuple) to leave the RTC during office hours without justifiable reason; (3) he ordered the security guards to consider Bugawan as present on 16 July 2004 when in fact she was absent; (4) he ordered the security guards to punch the time card of Jaime Calpatura (Calpatura), officer-in-charge at the RTC, in the bundy clock;

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[3] *Rollo*, p. 95.

[4] *Id*. at 96.

[5] *Id*. at 88.

[6] *Id*. at 7-9.

[7] *Id*. at 22-23.

[8] *Id*. at 24-25.

(5) he declared an early dismissal on 18 May and 26 August 2004 without any justifiable reason; (6) he harassed court employees who testified against him in administrative cases pending before the Court; and (7) he did not observe official working hours.

In its Memorandum[9] dated 16 June 2006, the OAS referred the matter to the Office of the Court Administrator (OCA) for appropriate action. In its 1st Indorsement[10] dated 30 June 2006, the OCA required Judge Pardo to comment on Discipulo's counter-complaint.

In his comment and reply[11] dated 9 August 2006, Judge Pardo (1) stated that Discipulo admitted in his comment and counter-complaint that he falsified the time card and the logbook; (2) stated that Discipulo falsely accused him of being motivated by bad faith in instituting the instant case; (3) questioned the credibility of Tuldague, Agustin, Fernando, Mateo, and Orias; (4) denied condoning drinking of alcohol during office hours; (5) denied allowing Bugawan and Casuple to leave the RTC during office hours without justifiable reason; (6) denied ordering the security guards to consider Bugawan as present when in fact she was not; (7) denied ordering the security guards to punch the time card of Calpatura in the bundy clock; (8) denied declaring an early dismissal on 18 May and 26 August 2004; (9) denied harassing court employees; and (10) stated that he observed official working hours.

In its Report[12] dated 17 October 2006, the OCA stated that Judge Pardo and Discipulo presented two contradicting sets of facts. It stated that liability could not be determined based on the records alone and recommended that the matter be referred to a consultant of the OCA for investigation, report, and recommendation. In its Resolution dated 13 December 2006,

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[9] *Id*. at 100.

[10] *Id*. at 138.

[11] *Id*. at 142-153.

[12] *Id*. at 1-4.

the Court resolved to refer the matter to a consultant of the OCA.

In his Report dated 19 March 2007, hearing officer-designate and retired Justice Narciso T. Atienza (Justice Atienza) found that Discipulo is liable for dishonesty and that Discipulo failed to prove his allegations against Judge Pardo. Justice Atienza recommended that Discipulo be suspended from office for six months and one day and that the charge against Judge Pardo be dismissed.

The Court agrees with Justice Atienza's findings and recommendations.

OCA Circular No. 7-2003 states that court personnel should indicate in their bundy cards the *truthful* and *accurate* times of their arrival at, and departure from, the office. In *Garcia v. Bada*[13] and *Servino v. Adolfo*,[14] the Court held that court employees must follow the clear mandate of OCA Circular No. 7-2003. Indeed, all judicial employees must devote their official time to government service and exercise a high degree of professionalism.[15]

Justice Atienza and Judge Pardo described the procedure followed in keeping time records, respectively:

> In the Regional Trial Court of Cabarroguis, Quirino, a bundy clock is used by the employees to register their time of arrival [at] the office, and [their time of departure from] the office. Complementing the bundy clock is [the] logbook where [the security guards on duty write the names of the employees who report for work, their time of arrival, and their time of departure.] x x x The names of [the] employees[, their time of arrival, and their time of departure] are all written by the security guards on duty. x x x [Whether an employee

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[13] A.M. No. P-07-2311, 23 August 2007, 530 SCRA 779, 783.

[14] A.M. No. P-06-2204, 30 November 2006, 509 SCRA 42, 52.

[15] *Concerned Litigants v. Araya, Jr.*, A.M. No. P-05-1960, 26 January 2007, 513 SCRA 9, 20; *Re: Findings of Irregularity on the Bundy Cards of Personnel of the RTC, Br. 26 and MTC, Medina, Misamis Oriental*, A.M. No. 04-11-671-RTC, 14 October 2005, 473 SCRA 1, 12.

reported for work or not can be determined — even if that employee forgot to punch his or her time card in the bundy clock — by checking the records in the logbook.][16]

The Security Guards x x x make the entries in the Attendance Logbook. The Security guards on duty, two (2) at a time, are stationed at the entrance of the Hall[s] of Justice and the Attendance Logbook [is placed] on top of a table at the entrance of the Hall[s] of Justice. The Security Guards on duty make all the entries in the attendance logbook except for the signatures of the employees.[17]

The surrounding circumstances show that Discipulo is liable for dishonesty: (1) Discipulo admitted inserting "12:00" and "5:00" on his time card; (2) the security guards did not see Discipulo punch his time card in the bundy clock at 12:00 p.m. and 5:00 p.m. on 9 and 17 February 2006, respectively; (3) the logbook did not contain Discipulo's time of departure on 9 and 17 February 2006; (4) Discipulo took the logbook and brought it to the Office of the Clerk of Court; and (5) Discipulo inserted "12:00" and "5:00" on the logbook without informing the security guards. Justice Atienza observed that:

When [**Discipulo borrowed**] **the logbook from the security guards** x x x on March 1, 2006, **his intention was not just to compare** [**the time**] **appearing** [**on**] **his bundy card** x x x **with** [**the time appearing in the logbook,**] **but to** [**insert on the logbook the time he typed on**] **his bundy card**. **If Discipulo's intention** [**were**] **just to compare** [**the time appearing**] **in the logbook with** [**the time appearing in**] **the bundy card** x x x**, he would have** [**checked the logbook right there**] **on the table of the security guards or asked the permission of the security guards before writing anything in the logbook**.

x x x **The testimonies of Tuldague and the other employees of the Office of the Clerk of Court are not as credible as the testimonies of security guards** [**D**]**e Guzman and Ciano who have**

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[16] OCA I.P.I. No. 06-01-HOJ, Investigation Report, 19 March 2007, pp. 11-12.

[17] OCA I.P.I. No. 06-01-HOJ, Memorandum for Complainant-Respondent Judge Moises M. Pardo, 20 March 2007, p. 9.

no interest whatsoever in the outcome of the [**instant**] **case and** [**whose testimonies**] **are supported by the entries in the logbook**. The guards were in good terms with Discipulo before and after March 1, 2006. On the other hand, Tuldague was a complainant in an administrative case against Judge Pardo. He was the one who prepared all the pleadings Discipulo filed in the instant case. Tuldague showed hostility towards [J]udge Pardo.

x x x x x x x x x

The security guards on duty did not see Discipulo [**punch his time card in the bundy clock at 12:00 and 5:00 p.m. on 9 and 17 February 2006, respectively**]. **The only plausible explanation why Discipulo's time card was** [**punched in the bundy clock in the morning and at noon of 9 and 17 February 2006, respectively, and was not punched in the bundy clock after office hours on those dates is**] **that he left the office surreptitiously or without the knowledge of the security guards** x x x, otherwise [the time he left the office] would have been entered in the logbook.[18] (Emphasis ours)

In *Duque v. Aspiras*,[19] the Court held that employees who commit irregularities in the keeping of time records are administratively liable. Falsification of time records constitutes dishonesty,[20] which is a disposition to lie or deceive.[21] In *Re:*

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[18] OCA I.P.I. No. 06-01-HOJ, Investigation Report, 19 March 2007, pp. 12-15.

[19] A.M. No. P-05-2036, 15 July 2005, 463 SCRA 447, 454.

[20] *Gillamac-Ortiz v. Almeida, Jr.*, A.M. No. P-07-2401, 28 November 2007; *Servino v. Adolfo*, A.M. No. P-06-2204, 30 November 2006, 509 SCRA 42, 53; *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga*, A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 61; *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court*, *Third Division*, A.M. No. 2001-7-SC, 22 July 2005, 464 SCRA 1, 13.

[21] *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga*, A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 61-62.

Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine on Several Dates,[22] the Court imposed the penalty of six months suspension to an employee found guilty of dishonesty for falsifying his time records.

"In administrative proceedings, the complainant bears the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[23] Discipulo failed to substantiate his charge that Judge Pardo is liable for gross misconduct: (1) he did not mention the dates when Judge Pardo allegedly committed the acts complained of; (2) he did not mention the names of those who allegedly drank alcohol during office hours or the names of those whom Judge Pardo allegedly harassed; and (3) he did not present any witness or any concrete proof to support his allegations.

Judge Pardo denied committing any misconduct. Judge Pardo asserted that (1) he brought some court employees when he was out for *official business*; (2) Bugawan's and Casuple's time records were true and accurate; (3) court employees were present until 5:00 p.m. on 18 May and 26 August 2004; (4) he was duty-bound to inspect the logbook and to inquire if there was any irregularity; and (5) he observed the official working hours. Without any *substantial* evidence to prove that Judge Pardo is guilty of gross misconduct, the Court cannot hold him administratively liable.

WHEREFORE, the Court finds respondent Lugeorge N. Discipulo, Electrician II, Maintenance Unit, Halls of Justice, Cabarroguis, Quirino, *GUILTY* of *DISHONESTY*. Accordingly, the Court *SUSPENDS* him for six months and *STERNLY WARNS* him that a repetition of the same or similar offense shall be dealt with more severely.

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[22] A.M. No. 2005-07-SC, 19 April 2006, 487 SCRA 352, 369.

[23] *Pan v. Salamat*, A.M. No. P-03-1678, 26 June 2006, 492 SCRA 460, 466.

The Court *DISMISSES* the charge against Judge Moises M. Pardo, Executive Judge, Regional Trial Court, Judicial Region II, Cabarroguis, Quirino, for lack of merit.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[A.M. No. MTJ-07-1686. June 12, 2008]
(Formerly OCA IPI No. 07-1896-MTJ)

ALBERTO SIBULO, *complainant*, *vs.* **Judge LORINDA B. TOLEDO-MUPAS, Municipal Trial Court, Dasmariñas, Cavite,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; JUDGES OF FIRST LEVEL COURTS ARE NO LONGER AUTHORIZED TO CONDUCT PRELIMINARY INVESTIGATION.— As correctly pointed out by complainant, judges of first level courts are no longer authorized to conduct preliminary investigation. This is pursuant to the amendment made by this Court on August 30, 2005 in A.M. No. 05-8-26-SC *Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts*, which took effect on October 3, 2005.

2. ID.; ID.; ID.; ID.; ORDER OF RESPONDENT JUDGE FOR COMPLAINANT TO SUBMIT HIS COUNTER-AFFIDAVIT, PROPER AND IN ACCORD WITH RULES STATING THAT SUCH COUNTER-AFFIDAVIT SHALL CONSTITUTE THE DIRECT TESTIMONY OF THE WITNESS.— Hence, the order of respondent for complainant to submit his counter-affidavit is but proper. The directive should not be taken as

a requirement of preliminary investigation but one simply intended to comply with the provisions of the Rules that state that the affidavits submitted by the parties shall constitute the direct testimonies of the witnesses who executed the same and that failure to submit the same would not allow any witness to testify, except by way of rebuttal or surrebuttal.

3. ID.; JUDGES; PENALTIES; IGNORANCE OF THE LAW; FOR LIABILITY TO ATTACH, ASSAILED ORDER OF JUDGE MUST NOT ONLY BE FOUND TO BE ERRONEOUS BUT MUST BE ESTABLISHED TO HAVE BEEN DONE WITH BAD FAITH, DISHONESTY OR SOME SIMILAR MOTIVE; CASE AT BAR.— For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found to be erroneous but must be established to have been done with bad faith, dishonesty, hatred or some similar motive. In this case, the record is wanting in any showing that respondent was moved by wrongful, improper or unlawful conduct in setting the preliminary conference before the accused was arraigned. Complainant failed to substantiate any bad faith, malice or corrupt purpose that may have been present at the time the mistaken procedure was carried out by respondent.

4. ID.; ID.; ID.; ID.; WHAT IS SIGNIFICANT IS WHETHER ORDER, DECISION OR ACTUATION OF JUDGE UNREASONABLY DEFEATED THE VERY PURPOSE OF THE LAW AND UNFAIRLY PREJUDICED THE CAUSE OF LITIGANTS; CASE AT BAR.— Moreover, the fact that a judge failed to recognize a "basic" or "elementary" law or rule of procedure would not automatically warrant a conclusion that he is liable for gross ignorance. What is significant is whether the subject order, decision or actuation of the judge unreasonably defeated the very purpose of the law or rule under consideration and unfairly prejudiced the cause of the litigants. This was not present here. Note that even if the conference was held prior to the arraignment of complainant, the resolution of respondent finding probable cause against him was issued on October 25, 2006, or just a little over a month after he filed his counter-affidavit on September 22, 2006. Thus, no remarkable delay in the proceedings resulted. Further, no substantial injury was caused to the accused or to the private complainant in the criminal cases.

D E C I S I O N

AZCUNA, *J.*:

This is an administrative case for abuse of authority against respondent Judge Lorinda B. Toledo-Mupas, who, as of now, has already been dismissed from service.

The Facts

In his verified complaint-affidavit received by the Office of the Court Administrator (OCA) on January 18, 2007, Alberto Sibulo charged MTC Judge Lorinda B. Toledo-Mupas with abuse of authority.

Complainant alleged that he is the accused in Criminal Case Nos. 06-0402 to 03 for Grave Threat and Slight Physical Injuries, which are pending before respondent's court; that on August 9, 2006, respondent directed complainant to submit his counter-affidavit within ten (10) days from receipt of the Order[1] and set the case for "conference" on October 11, 2006; that as the parties failed to amicably settle, the case was submitted for resolution; and that on October 25, 2006, respondent set the case for arraignment after finding probable cause to indict complainant of the crimes charged. Complainant asserted that respondent, being a judge of a first level court, no longer had authority to conduct preliminary investigation under Rules 112 and 114 of the Rules on Criminal Procedure, as amended.

On February 27, 2007, respondent filed her Comment praying for the summary dismissal of the complaint. She argued that even with the amendment of Rules 112 and 114 the cases against complainant are still within the jurisdiction of the MTC, considering that the crimes involved are Grave Threats and Slight Physical Injuries which are defined and penalized by Articles 282 and 266, respectively, of the Revised Penal Code, and governed by the Rules on Summary Procedure which no longer requires the

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[1] It appears on record that complainant filed a *"Kontra Salaysay"* on September 22, 2006.

conduct of preliminary investigation. Respondent claimed that complainant is merely using this administrative complaint to evade his own liability on the pending criminal cases.

The OCA Findings

In its August 28, 2007 Report, the OCA noted that the criminal cases filed against complainant are indeed covered by the provisions of the 1991 Revised Rule on Summary Procedure. However, it found that respondent did not observe Sections 12, 13, and 14 of the Rule which provide that after the accused has submitted his counter-affidavit and the judge found reasonable ground to hold him for trial, the court should set the case for arraignment and, thereafter, conduct a preliminary conference before trial proper. "Basic" and "elementary" as the rules are, the OCA opined that respondent displayed gross ignorance of the law and procedure when she conducted the conference before complainant was arraigned.

Also, the OCA considered that this administrative matter is not the first time for respondent since she had already been previously sanctioned in: *Español v. Mupas* (A.M. No. MTJ-01-1348, November 11, 2004, 442 SCRA 13), where she was meted a fine of ₱21,000 for gross ignorance of the law and violation of the Code of Judicial Conduct; *Loss of Court Exhibits at MTC-Dasmariñas, Cavite* (A.M. No. MTJ-03-1491, June 8, 2005, 459 SCRA 313), where she was suspended for three (3) months without pay for gross misconduct and gross ignorance of the law; *Bitoon v. Toledo-Mupas* (A.M. No. MTJ-05-1598, August 9, 2005, 466 SCRA 17), where she was again suspended for three (3) months without salary and benefits and fined in the amount of ₱40,000 for gross ignorance of the law and incompetence;[2] and in *Español v. Toledo-Mupas* (A.M. No. MTJ-03-1462, April 19, 2007, 521 SCRA 403), where she was finally ordered dismissed from service for gross ignorance of the law. Hence, it was proposed that respondent be ordered to

[2] Upon respondent's motion for reconsideration, however, the Court deleted the fine of ₱40,000 (*see* A.M. No. MTJ-05-1598, January 23, 2006, 479 SCRA 351).

pay a fine in the amount of ₱40,000, to be deducted from whatever benefits are due her.

The Court's Ruling

As correctly pointed out by complainant, judges of first level courts are no longer authorized to conduct preliminary investigation. This is pursuant to the amendment made by this Court on August 30, 2005 in A.M. No. 05-8-26-SC *Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts*, which took effect on October 3, 2005.[3]

Even so, the determination of whether respondent judge has authority to conduct preliminary investigation in the criminal cases filed against complainant is not decisive in the resolution of this administrative case. As the OCA fittingly observed, the Rules on Summary Procedure govern the conduct of the criminal proceedings. Said Rules state:

Sec. 12. *Duty of court*. —

(a) *If commenced by complaint*. — On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss the case outright for being patently without basis or merit and order the release of the accused if in custody.

(b) *If commenced by information*. — When the case is commenced by information, or is not dismissed pursuant to the next preceding paragraph, the court shall issue an order which, together with copies of the affidavits and other evidence submitted by the prosecution, shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf,

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[3] See *Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176, 191; *Verzosa v. Contreras*, A.M. No. MTJ-06-1636, March 12, 2007, 518 SCRA 94,106; *Lumbos v. Baliguat*, A.M. No. MTJ-06-1641, July 27, 2006, 496 SCRA 556, 571-572; *Landayan v. Quilantang*, A.M. No. MTJ-06-1632, May 4, 2006, 489 SCRA 360, 366; *Bitoon v. Toledo-Mupas*, A.M. No. MTJ-05-1598, January 23, 2006, 479 SCRA 351, 354; *Ora v. Almajar*, A.M. No. MTJ-05-1599, October 14, 2005, 473 SCRA 17, 21; and *Gozun v. Gozum*, A.M. No. MTJ-00-1324, October 5, 2005, 472 SCRA 49, 62-63.

serving copies thereof on the complainant or prosecutor not later than ten (10) days from receipt of said order. The prosecution may file reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.

Sec. 13. *Arraignment and trial*. — Should the court, upon a consideration of the complaint or information and the affidavits submitted by both parties, find no cause or ground to hold the accused for trial, it shall order the dismissal of the case; otherwise, the court shall set the case for arraignment and trial.

If the accused is in custody for the crime charged, he shall be immediately arraigned and if he enters a plea of guilty, he shall forthwith be sentenced.

Sec. 14. *Preliminary conference*. — Before conducting the trial, the court shall call the parties to a preliminary conference during which a stipulation of facts may be entered into, or the propriety of allowing the accused to enter a plea of guilty to a lesser offense may be considered, or such other matters may be taken up to clarify the issues and to ensure a speedy disposition of the case. However, no admission by the accused shall be used against him unless reduced to writing and signed by the accused and his counsel. A refusal or failure to stipulate shall not prejudice the accused.

Sec. 15. *Procedure of trial*. — At the trial, the affidavits submitted by the parties shall constitute the direct testimonies of the witnesses who executed the same. Witnesses who testified may be subjected to cross-examination, redirect or re-cross examination. Should the affiant fail to testify, his affidavit shall not be considered as competent evidence for the party presenting the affidavit, but the adverse party may utilize the same for any admissible purpose.

Except in rebuttal or surrebuttal, no witness shall be allowed to testify unless his affidavit was previously submitted to the court in accordance with Section 12 hereof.

However, should a party desire to present additional affidavits or counter-affidavits as part of his direct evidence, he shall so manifest during the preliminary conference, stating the purpose thereof. If allowed by the court, the additional affidavits of the prosecution or the counter-affidavits of the defense shall be submitted to the court and served on the adverse party not later than three (3) days after the termination of the preliminary conference. If the additional affidavits are presented by the prosecution, the accused may file

his counter-affidavits and serve the same on the prosecution within three (3) days from such service.

Hence, the order of respondent for complainant to submit his counter-affidavit is but proper. The directive should not be taken as a requirement of preliminary investigation but one simply intended to comply with the provisions of the Rules that state that the affidavits submitted by the parties shall constitute the direct testimonies of the witnesses who executed the same and that failure to submit the same would not allow any witness to testify, except by way of rebuttal or surrebuttal.

In this case, however, respondent committed an error not subject of the complaint. As the OCA found, instead of conducting the preliminary conference *after* arraignment and prior to trial, respondent held the conference *before* complainant was arraigned. To the OCA, this constitutes gross ignorance of the law considering that the rule itself is "basic" and "elementary"; hence, deserving of a fine amounting to ₱40,000.

The Court does not agree.

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found to be erroneous but must be established to have been done with bad faith, dishonesty, hatred or some similar motive.[4] In this case, the record is wanting in any showing that respondent was moved by wrongful, improper or unlawful conduct in setting the preliminary conference before the accused was arraigned. Complainant failed to substantiate any bad faith, malice or corrupt purpose that may have been present at the time the mistaken procedure was carried out by respondent.

Moreover, the fact that a judge failed to recognize a "basic" or "elementary" law or rule of procedure would not automatically warrant a conclusion that he is liable for gross ignorance. What is significant is whether the subject order, decision or actuation of the judge unreasonably defeated the very purpose of the law

[4] *Mabini v. Judge Toledo-Mupas*, 457 Phil. 19, 24 (2003).

or rule under consideration and unfairly prejudiced the cause of the litigants. This was not present here. Note that even if the conference was held prior to the arraignment of complainant, the resolution of respondent finding probable cause against him was issued on October 25, 2006, or just a little over a month after he filed his counter-affidavit on September 22, 2006. Thus, no remarkable delay in the proceedings resulted. Further, no substantial injury was caused to the accused or to the private complainant in the criminal cases.

In light of these, the Court holds that an order to pay a fine of ₱40,000 would not be commensurate to the error of respondent. A penalty of reprimand would be sufficient for the mistake. Considering, however, respondent's severance from judicial service as of last year, such penalty no longer finds relevance.

This ruling does not grant tolerance to non-compliance with the rules of procedure. The Court even now strongly reiterates that incumbent judges should relentlessly be mindful that the Rules on Summary Procedure were issued for the purpose of achieving "an expeditious and inexpensive determination of cases"[5] and were espoused primarily to enforce the constitutional rights of litigants to the speedy disposition of cases;[6] hence, strict adherence to their letter and intent should at all times be earnestly observed.

WHEREFORE, in view of the foregoing, the complaint is *DISMISSED*.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Leonardo-de Castro, JJ.,* concur.

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[5] *Balajedeong v. Del Rosario*, A.M. No. MTJ-07-1662, June 8, 2007, 524 SCRA 13, 19; and *Arcenas v. Avelino*, A.M. No. MTJ-05-1583, March 11, 2005, 453 SCRA 202, 209.

[6] *Bernaldez v. Avelino*, A.M. No. MTJ-07-1672, July 9, 2007, 527 SCRA 11, 20; and *Tugot v. Coliflores*, A.M. No. MTJ-00-1332, February 16, 2004, 423 SCRA 1, 9.

EN BANC

[A.M. OCA I.P.I. No. 07-108-CA-J. June 12, 2008]

ERLINDA BILDNER, *complainant, vs.* **JUSTICE VICENTE Q. ROXAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; *CERTIORARI* (RULE 65); ACTION AFTER COMMENT IS FILED.— On the first complaint. Sec. 8, Rule 65 of the Rules on Civil Procedure provides that the CA, in dealing with a petition for *certiorari*, shall either (1) render judgment for the relief prayed for or (2) dismiss the petition if it is patently without merit, prosecuted manifestly for delay, or the questions raised before it are too unsubstantial to require consideration. Sec. 8 states: Sec. 8. *Proceedings after comment is filed.* — After the comment or other pleadings required by the court are filed, or the time of the filing thereof has expired, the court **may** hear the case or require the parties to require memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled. The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

2. ID.; ID.; ID.; MOTION TO WITHDRAW PETITION, LEFT TO THE JUDGE.— A scrutiny of Sec. 8 would show that there is nothing in it that requires that the judge dismiss a petition whenever a motion to withdraw petition is filed. The decision to grant or deny the motion to withdraw is discretionary on the part of the judge. By analogy, after an answer has been filed, the plaintiff cannot unilaterally withdraw his complaint or information. The decision to allow or disallow a motion to withdraw from a case is left to the discretion of the judge. Complainant cites *Solar Entertainment v. Court of Appeals* and *Patli v. Purugganan* to show that courts have granted similar petitions even after a comment had already been filed.

Complainant is right. Motions to withdraw petitions have been granted in the past and more often so. But, as we said, the decision to grant or not to grant is fully within the discretion of the court, most especially when the circumstances surrounding the case dictate that the judge make a ruling on jurisdiction.

3. ID.; ID.; JURISDICTION; SECTION 5.2 OF R.A. NO. 8799, EFFECTIVE IN 2000, CONFERS ON REGULAR COURTS ADJUDICATIVE FUNCTIONS ONCE ENJOYED BY SEC UNDER P.D. NO. 902-A.— Sec. 5.2 of Republic Act No. 8799 or the *Securities Regulation Code*, made effective in 2000, confers on regular courts the adjudicative functions once enjoyed by the SEC under Presidential Decree No. 902-A. Sec. 5.2 states: 5.2 The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

4. ID.; ID.; MOTIONS; BEING MAINLY A REVIEW COURT, THE COURT OF APPEALS HAS THE DISCRETION TO HEAR THE MOTION OF A PARTY.— Sec. 3, Rule 49 of the Rules of Court tells us that "motions shall **not** be set for hearing and, unless the [CA] otherwise directs, no hearing or oral argument shall be allowed in support thereof." Being mainly a review court, the CA has the discretion to hear the motion of a party. It has not been sufficiently demonstrated that respondent Justice abused his discretion in not granting complainant's prayer for a hearing considering that the issue on the authority of Nieto's counsel can be resolved sans the requested hearing based solely on the submissions of the parties. Besides, the matter was inconsequential to the issue of jurisdiction.

5. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER LOWER COURTS; ADMINISTRATIVE COMPLAINT CAN HARDLY BE CONSIDERED AS AN

APPROPRIATE CORRECTIVE JUDICIAL REMEDY.— Allegations of gross ignorance, ill motives, and bias against a magistrate are serious charges. They cannot be made to rest on pure speculation and suspicion alone, as here. If an aggrieved party honestly feels that a judge had rendered an erroneous decision or gravely abused his discretion in the exercise of his judicial functions, the Rules of Court to be sure affords such party adequate judicial remedies. An administrative complaint, with the end in view of having the judge suspended, or worse, dismissed for any of his act perceived to be irregular or erroneous, can hardly be considered as an appropriate corrective judicial remedy.

APPEARANCES OF COUNSEL

Dennis R. Manzanal for complainant.

R E S O L U T I O N

VELASCO, JR., *J.*:

This administrative complaint filed on June 6, 2007 by Erlinda Bildner, president of the Philippine Communications Satellite Corporation (PHILCOMSAT), against Court of Appeals (CA) Justice Vicente Q. Roxas charges Justice Roxas with gross ignorance of the law in deciding CA-G.R. SP No. 94038 entitled *Manuel H. Nieto, Jr. v. Securities and Exchange Commission* (*Nieto*) when he granted the petition despite the Motion to Withdraw Petition based on a Memorandum of Understanding (MOU) among the opposing factions of stockholders of the Philippine Holdings Corporation (PHC). Bildner also alleges that Justice Roxas was guilty of obvious impartiality when he disregarded her motion for a hearing to determine the authority of the counsel representing Manuel Nieto, Jr., the hold-over president of PHC. Eighty-one percent (81%) of PHC is owned by PHILCOMSAT, which complainant Bildner heads. It is fully owned by the Philippine Overseas Telecommunications Corporation.

The problem started in August 2004. After having no annual elections from 2000 to 2003, the stockholders of PHC held

their annual elections upon request of a minority stockholder, one Jose Ma. Ozamis. But since the elections were under protest, the same group of directors/officers headed by Nieto kept their positions on a hold-over capacity. On May 16, 2005, Ozamis requested the Securities and Exchange Commission (SEC) to call an annual stockholders' meeting that the SEC granted in an order on February 26, 2006. Nieto sought reconsideration of the order averring that PHC had pending cases that had yet to be resolved before the SEC could call the meeting.

Bildner and her group resisted the objection of Nieto to holding a meeting, alleging that the cases alluded to by Nieto had long been in existence even before the August 2004 meeting of PHC. The SEC denied the motion for reconsideration of Nieto. It said that those cases had nothing to do with the petition calling for a stockholders' meeting and their pendency was no reason not to hold the annual meeting.

Hence, on April 11, 2006, Nieto filed before the CA a petition for *certiorari* and prohibition with prayer for a temporary restraining order (TRO) and a writ of preliminary injunction, docketed as CA-G.R. SP No. 94038. Nieto alleged that the SEC committed grave abuse of discretion when it issued the orders dated February 26, 2006 and April 4, 2006 in SEC Case No. 02-06-0133 that involved intra-corporate matters, matters that are outside the jurisdiction of the SEC.

Bildner filed an opposition to the application for a TRO, asserting that the SEC had jurisdiction to compel the officers of any registered corporation or association to call a stockholders' meeting.

Meanwhile, on July 1, 2006, the majority stockholders of PHC, including Bildner, entered into an MOU and requested the SEC to set a date for the annual stockholders meeting.

Four days after the execution of the MOU, on July 5, 2006, the CA, with Justice Roxas as *ponente*, issued a TRO enjoining the respondents in CA-G.R. SP No. 94038 from implementing the assailed orders in SEC Case No. 02-06-0133.

On July 26, 2006, in her Comment with Motion to Lift TRO and Motion to Set Case for Hearing of CA-G.R. SP No. 94038,

Bildner insisted that the SEC had the jurisdiction to call an annual stockholders meeting. Anent the Motion to Set Case for Hearing, she claimed that she had evidence to show that Nieto was misled by his counsels of record into signing the petition before the CA. She posited that had the CA not issued the TRO, the SEC could have resolved the stockholders' dilemma.

The SEC in its Comment maintained that CA-G.R. SP No. 94038 had become mooted by the MOU. It likewise asserted that it had jurisdiction to call the PHC elections.

Despite the MOU, on August 16, 2006, the CA issued a Resolution issuing a writ of preliminary injunction.

Thereafter, on September 1, 2006, Nieto filed a Motion to Withdraw Petition that the CA, with Justice Roxas as *ponente*, denied. The CA said the motion came too late inasmuch as the SEC Comment had already been filed. According to the CA, under Section 8, Rule 65 of the Rules of Civil Procedure, the CA was confined only to two options: to either grant or dismiss the petition. The CA Decision held that the assailed SEC orders were issued with grave abuse of discretion as they effectively rendered moot any decision that the regular courts may make on the disputed elections. The dispositive portion of the CA's October 30, 2006 Decision[1] states:

> WHEREFORE, premises considered, petition is hereby GRANTED. The February 26, 2006 and the two (2) April 4, 2006 Orders of the SEC in SEC Case No. 02-06-133 are hereby ANNULLED. The Securities and Exchange Commission is hereby DIRECTED to stay its hand and cease in the exercise of its regulatory powers, as in this case, when they interfere with or render moot the exercise of the adjudicative powers already transferred from the SEC to the regular courts.
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> SO ORDERED.

Hence, we have this administrative complaint charging Justice Roxas with gross ignorance of the law and obvious impartiality.

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[1] Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Edgardo P. Cruz and Ramon M. Bato, Jr.

The complaint has no merit. Essentially, complainant raises two grounds: *First*, Justice Roxas should not have granted Nieto's petition before the CA because it had been superseded by Nieto's Motion to Withdraw Petition. *Second*, Justice Roxas should have acted on complainant's motion to set a hearing to determine the authority of Nieto's former counsels to represent him.

On the first complaint. Sec. 8, Rule 65 of the Rules on Civil Procedure provides that the CA, in dealing with a petition for *certiorari*, shall either (1) render judgment for the relief prayed for or (2) dismiss the petition if it is patently without merit, prosecuted manifestly for delay, or the questions raised before it are too unsubstantial to require consideration. Sec. 8 states:

> Sec. 8. *Proceedings after comment is filed.* — After the comment or other pleadings required by the court are filed, or the time of the filing thereof has expired, the court **may** hear the case or require the parties to require memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.
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> The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

A scrutiny of Sec. 8 would show that there is nothing in it that requires that the judge dismiss a petition whenever a motion to withdraw petition is filed. The decision to grant or deny the motion to withdraw is discretionary on the part of the judge. By analogy, after an answer has been filed, the plaintiff cannot unilaterally withdraw his complaint or information.[2] The decision to allow or disallow a motion to withdraw from a case is left to the discretion of the judge. Complainant cites *Solar Entertainment*

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[2] *San Miguel Corporation v. Sandiganbayan*, G.R. Nos. 104637-38 & 109797, September 14, 2000, 340 SCRA 289.

v. Court of Appeals[3] and *Patli v. Purugganan*[4] to show that courts have granted similar petitions even after a comment had already been filed. Complainant is right. Motions to withdraw petitions have been granted in the past and more often so. But, as we said, the decision to grant or not to grant is fully within the discretion of the court, most especially when the circumstances surrounding the case dictate that the judge make a ruling on jurisdiction.

In this case, we are inclined to agree with respondent justice that CA-G.R. SP No. 94038, a petition for *certiorari* under Rule 65, involves an error in jurisdiction and, thus, the primordial issue of jurisdiction must first be passed upon by the CA. Sec. 5.2 of Republic Act No. 8799 or the *Securities Regulation Code*, made effective in 2000, confers on regular courts the adjudicative functions once enjoyed by the SEC under Presidential Decree No. 902-A. Sec. 5.2 states:

> 5.2 The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

A review of the dispositive portion of the October 30, 2006 Decision in CA-G.R. SP No. 94038 will readily reveal that the reason stated for ordering the SEC "to stay its hand and cease in the exercise of its regulatory powers" is that the SEC order would "interfere with or render moot the exercise of the adjudicative powers already removed from the SEC and

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[3] G.R. No. 150146, September 10, 2003 Resolution.

[4] CA-G.R. SP No. 67087, September 27, 2006 CA Decision.

transferred to the regular courts."[5] Patently, this statement is a ruling on the issue of jurisdiction.

Further, we do not agree with complainant's averment that the PHC controversy on its annual elections would have been resolved had the CA granted the motion to withdraw the petition because the parties would still have to contend with the SEC's lack of jurisdiction over the controversy. Besides, the issuance of the TRO against the SEC did not prejudice the parties to *Nieto*. The contending stockholders may still settle the representation dispute among themselves. After the finality of the October 30, 2006 CA Decision, they could have simply agreed to the holding of the annual elections. Hence, there was no serious prejudice to the parties.

Complainant's other charge is that respondent justice showed obvious interest, partiality, and overzealousness in the case when he disregarded complainant's motion to set the case for hearing to determine the authority of Nieto's counsels in CA-G.R. SP No. 94038. The accusation is bereft of merit. Sec. 3, Rule 49 of the Rules of Court tells us that "motions shall **not** be set for hearing and, unless the [CA] otherwise directs, no hearing or oral argument shall be allowed in support thereof." Being mainly a review court, the CA has the discretion to hear the motion of a party. It has not been sufficiently demonstrated that respondent Justice abused his discretion in not granting complainant's prayer for a hearing considering that the issue on the authority of Nieto's counsel can be resolved sans the requested hearing based solely on the submissions of the parties. Besides, the matter was inconsequential to the issue of jurisdiction.

One last note. Without necessarily reflecting on the *bona fides* of the filing of this complaint, the Court notes that the complainant imputes ill motives on respondent justice and, without so much as presenting proof to support her imputation, seeks an investigation as to his motives. Allegations of gross ignorance, ill motives, and bias against a magistrate are serious charges. They cannot be made to rest on pure speculation and suspicion

[5] *Supra* note 1.

alone, as here. If an aggrieved party honestly feels that a judge had rendered an erroneous decision or gravely abused his discretion in the exercise of his judicial functions, the Rules of Court to be sure affords such party adequate judicial remedies. An administrative complaint, with the end in view of having the judge suspended, or worse, dismissed for any of his act perceived to be irregular or erroneous, can hardly be considered as an appropriate corrective judicial remedy.[6]

WHEREFORE, this complaint charging CA Justice Vicente Q. Roxas for gross ignorance of the law and obvious partiality is *DISMISSED* for lack of merit.

SO ORDERED.

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

Corona, J., on leave.

FIRST DIVISION

[A.M. No. P-05-1969. June 12, 2008]

AURORA B. GO, *complainant, vs.* **TERESITA C. REMOTIGUE, Clerk of Court, Municipal Trial Court in Cities-OCC, Cebu City,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES AND SHOULD BE COMPLIED WITH IN GOOD

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[6] See *Santos v. Orlino*, A.M. No. RTJ-98-1418, September 25, 1998, 296 SCRA 101, 106.

FAITH.— The Trust Agreement, signed by both parties and their instrumental witnesses and duly notarized by a notary public, serves as the repository of the terms and conditions of what complainant and respondent have agreed to be valid and binding between them and, therefore, constitutes the law between them. Under Article 1159 of the Civil Code, obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. The Trust Agreement, executed by the parties on June 10, 2003, clearly shows that both complainant and respondent expressly bound themselves, to the exclusion of other persons, to be partners in their lending business.

2. REMEDIAL LAW; EVIDENCE; NO EVIDENCE TO SHOW RESPONDENT'S COUSIN IS A PARTY TO THE AGREEMENT; SINCE LENDING BUSINESS WAS PURELY THE ENDEAVOR OF BOTH COMPLAINANT AND RESPONDENT, RESPONDENT IS GUILTY OF VIOLATING ADMINISTRATIVE CIRCULAR NO. 5.— Nowhere is the number of respondent's cousin, Conchita Pepito, mentioned as a party to the said agreement or even joined as a second party together with respondent. This glaring fact belies the defense of respondent that the lending business was a partnership between complainant and her cousin, Conchita Pepito. Thus, in no uncertain terms can it be concluded that the lending business was purely the endeavor of both complainant and respondent. In this regard, the Court finds respondent guilty of violation of Administrative Circular No. 5 for engaging directly in the lending business with complainant.

3. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT HAS THE POWER TO ISSUE RULES FOR THE EFFICIENT AND SPEEDY ADMINISTRATION OF JUSTICE; REASON.— The avowed objective of Administrative Circular No. 5 is to ensure that the entire time of the officials and employees of the Judiciary be devoted to their official work to ensure the efficient and speedy administration of justice. Unlike that of the rest of the government workforce, the nature of work of the officials and employees of the courts requires them to serve with maximum efficiency and the highest degree of devotion to duty in order to maintain public confidence in the Judiciary. This is true even if the private business, vocation or profession would be undertaken outside the office hours.

D E C I S I O N

AZCUNA, *J.*:

This is an administrative complaint filed by complainant Aurora B. Go against respondent Teresita C. Remotigue, Clerk of Court in the Municipal Trial Court in Cities, Cebu City for Conduct Unbecoming a Court Employee.

In her complaint dated September 13, 2004, complainant alleged that on February 26, 2003, complainant and respondent entered into an agreement to engage in the lending business with the court personnel of Cebu City as their prospective clients. This agreement was formalized by virtue of a Trust Agreement dated June 10, 2003[1] wherein complainant agreed to contribute ₱150,000 as capital to be used for lending money with a stipulation that the 10% monthly interest earned on the loans would be divided equally between them. However, respondent ceased to remit complainant's 50% share from the interest collected from clients. Thus, in July 2003, complainant signified her intention to terminate their business partnership and requested respondent to return the amount of the capital with the interest thereon. Respondent failed to comply despite verbal and written demands, the last of which was a handwritten letter dated May 12, 2004[2] which demanded the return of her contribution with the corresponding interest within two weeks from notice thereof. According to complainant, in one of her conversations with respondent, the latter arrogantly told her in the Cebuano dialect, "*Sige kiha nalang sa husgado. Og kita nalang ta sa husgado kon maka-sukot ka ba, labin nga dili ako mobayad sa imo.*" ("Go ahead, file a case in court. Let us see if you can get anything from me, the more I will not pay you.") Complainant got worried that respondent might not settle her just claim as the latter even bragged about her influence and connection with the courts in Cebu City.

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[1] *Rollo*, p. 5 (Annex A of the Complaint).

[2] *Id.,* p. 7 (Annex B of the Complaint).

In her Comment dated December 10, 2004, respondent admitted that she and complainant had entered into a lending agreement in the lending business of her cousin, Conchita Pepito of Leyte, but denied that the same was particularly for the court personnel of Cebu City. Respondent pointed out that complainant proposed to her the lending business which would have the court employees of Cebu as clients, but knowing that it would be improper, she declined and instead, proposed that they join the lending business owned by her cousin, Conchita Pepito. Respondent countered that she continued to remit the share of complainant until March 2004 and that she only ceased to remit the interests when complainant informed her about her desire to terminate their lending business. She appended in her Comment the 21 deposit/payment slips[3] of Bank of the Philippine Islands (BPI)[4] under her name and BPI Savings Account Number 2941-0008-89 evidencing her payment of complainant's share of the monthly interests and the ₱90,000 as partial refund of the principal amount of ₱150,000 while the outstanding amount cannot be returned yet as they were tied to long term loans. Contrary to complainant's claim, respondent said that complainant signified her intention to terminate their business relationship through verbal demands in February 2004, not in July 2003, as complainant needed funds to support her campaign as municipal mayor of Calubian, Leyte in the 2004 elections. Respondent claimed that she did not make an assurance that the capital contribution by the complainant would be returned immediately upon termination of their undertaking and as a consequence, she ceased granting loans to clients. She asserted that the lending business was a private undertaking and not confined to court employees in Cebu City and that she never used her position in the court to facilitate the lending business.

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[3] The 21 deposit/payment slips represented the monthly interests due the complainant on various dates, to wit: 16 slips amounting to ₱2,500 each, two slips with ₱5,000 each, and one each amounting to ₱700 and ₱4,000, respectively, and a separate slip dated April 16, 2004 amounting to ₱90,000 which represented the partial payment of the principal amount.

[4] *Rollo*, pp. 13-15 (Annexes 1 to 1-S and Annex 2 of the Complaint).

In its Report dated January 24, 2005, the Office of the Court Administrator (OCA) recommended that the case be redocketed as a regular administrative matter and that respondent be suspended from office for a period of one (1) month without pay for violation of Administrative Circular No. 5. The OCA found that per the Trust Agreement and her own admission, respondent was engaged in the business of lending, with the complainant providing the capital, and, thus, violated Administrative Circular No. 5 (Re: Prohibition for All Officials and Employees of the Judiciary to Work as Insurance Agents), dated October 4, 1988, which prohibits all officials and employees of the judiciary from engaging directly in any private business, vocation or profession. The OCA made no distinction whether respondent's business caters to court personnel in particular or that she utilizes her time outside of office hours to pursue her business. It emphasized that the public trust character of the office proscribes her from engaging in any private activity.

The recommendation of the OCA is well-taken. The Trust Agreement, signed by both parties and their instrumental witnesses and duly notarized by a notary public, serves as the repository of the terms and conditions of what complainant and respondent have agreed to be valid and binding between them and, therefore, constitutes the law between them. Under Article 1159 of the Civil Code, obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. The Trust Agreement,[5] executed by the parties on June 10, 2003, clearly shows that both complainant and respondent expressly bound themselves, to the exclusion of other persons, to be partners in the lending business with the following stipulations:

TRUST AGREEMENT

This Trust Agreement made and entered into by and between:

AURORA B. GO, of legal age, Filipino, married, with residence and postal address at M/F Diez Bldg., corner Ramos and Ranudo Sts., Cebu City, hereinafter known as the **FIRST PARTY**;

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[5] *Id.*, pp. 5-6 (Annex A of the Complaint).

— and —

TERESITA C. REMOTIGUE, also of legal (sic), Filipino, with residence and postal address at No. 5, Naya Village, Tisa, Cebu City, hereinafter known as the **SECOND PARTY**, by virtue of this agreement:

1. The First Party entrusts the sum of **ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00)** to the Second Party. The first ₱50,000.00 was entrusted by the First Party to the Second Party on February 26, 2003, while the second ₱50,000.00 was entrusted on April 2, 2003 and the third ₱50,000.00 was entrusted on June 9, 2003;
2. The Second Party shall use the money entrusted for a lending business, which shall impose an interest of ten percent (10%) per month;
3. Earned interest shall be shared equally between the First and the Second Parties;
4. Interest earned every month shall be deposited by the Second Party to the account of the First Party with the Bank of the Philippines Islands identified as **S/A No. 2941-0008-89** on or before the 15th day of every month;
5. Every cash out for lending shall be withdrawn from the Bank of the Philippines Islands in the account of Aurora B. Go under **S/A No. 2945-0065-71**;
6. Any collection from the lending shall be deposited with the Bank of the Philippines Islands for the account of the First Party under **S/A No. 2945-0065-71**;
7. Any cash available shall be rolled or applied for lending;
8. The First Party shall, upon 30-day prior notice given to the Second Party, have the right to cease the lending operations;
9. Upon being notified of the First Party's intent to stop the operations, the Second Party shall cease to shell out money for clients, though the operation shall continue as far as collection and enforcement of the loan are concerned;
10. The Second Party shall have the right to withdraw from the agreement provided that she shall have liquidated and accounted for amount entrusted to her and the supposed interest gained.

11. Any agreement previously entered into by the parties are hereby superseded.

IN WITNESS WHEREOF, we have hereunto affix our signature this June 10, 2003, in the City of Cebu, Philippines.

(Sgd.) **AURORA B. GO**	(Sgd.) **TERESITA C. REMOTIGUE**
First Party	Second Party
CTC. No. 20725743	CTC No. 17007188
Issued on Feb. 3, 2003	Issued on Jan. 29, 2003
Issued in Manila	Issued in Cebu City

Signed in Presence of:

(Sgd.) Rock-Allan Bastes (Sgd.) Bella Purita Aranas

ACKNOWLEDGEMENT

BEFORE ME, in the City of Cebu, Philippines, this June 10, 2003, personally appeared Aurora B. Go, First Party and Teresita C. Remotigue, Second Party, whose Community Tax Certificates are indicated below their names. Both of them are known to me to be the same persons who executed the foregoing document and they acknowledge that the same is their free act and voluntary deed.

WITNESS MY HAND AND NOTARIAL SEAL this June 10, 2003, in the City of Cebu, Philippines.

(Sgd.) **RICO V. TAUTHO**
Notary Public
Until December 31, 2004
PTR No. 814713–1-3-2003
IBP No. 555143–1-2-2003
Cebu City

Doc. No. 65;
Page No. 13;
Book No. XVII;
Series of 2003.

A perusal of the specific terms and conditions of the Trust Agreement shows, among others, that complainant, the "first party," entrusts to respondent, the "second party," the total amount of ₱150,000, staggered in three payments of ₱50,000 each (*i.e.*, February 26, 2003, April 2, 2003, and June 9, 2003) to be used for their lending business; that respondent shall use the money entrusted to her for the purpose of their lending business; that the 10% monthly interest earned shall be shared equally between them; that respondent shall deposit complainant's share of the monthly interest with the BPI under Savings Account No. 2941-0008-89 on or before the 15th of every month; that the amount to be loaned by the borrower shall be withdrawn by respondent from BPI under Savings Account No. 2945-0065-71; and that respondent shall deposit with BPI under Savings Account No. 2945-0065-71, which is the account name of complainant, any amount collected from the loans. Nowhere is the number of respondent's cousin, Conchita Pepito, mentioned as a party to the said agreement or even joined as a second party together with respondent. This glaring fact belies the defense of respondent that the lending business was a partnership between complainant and her cousin, Conchita Pepito. Thus, in no uncertain terms can it be concluded that the lending business was purely the endeavor of both complainant and respondent. In this regard, the Court finds respondent guilty of violation of Administrative Circular No. 5 for engaging directly in the lending business with complainant.

Administrative Circular No. 5 states that:

> In line with Section 12, Rule XVIII of the Revised Civil Service Rules, the Executive Department issued Memorandum Circular No. 17 dated September 4, 1986 authorizing heads of the government offices to grant their employees permission to "engage directly in private business, vocation or profession xxx outside office hours."
>
> However, in its *En Banc* resolution dated October 1, 1987, denying the request of Atty. Froilan L. Valdez of the Office of Associate Justice Ameurfina Melencio-Herrera, to be commissioned as a Notary Public, the Court expressed the view that the provisions of Memorandum Circular No. 17 of the Executive Department are not applicable to officials or employees of the courts considering the

express prohibition of the Rules of Court and the nature of their work which requires them to serve with highest degree of efficiency and responsibility, in order to maintain public confidence in the Judiciary. The same policy was adopted in Administrative Matter No. 88-6-002-SC, June 21, 1988, where the court denied the request of Ms. Esther C. Rabanal, Technical Assistant II, Leave Section, Office of Administrative Services of this Court, to work as an insurance agent after office hours including Saturdays, Sundays and holidays. Indeed, the entire time of Judiciary officials and employees must be devoted to government service to [ensure] efficiency and speedy administration of justice.

ACCORDINGLY, all officials and employees of the Judiciary are hereby enjoined from being commissioned as insurance agents or from engaging in any related activities and, to immediately desist therefrom if presently engaged thereat.

October 4, 1988.

(Sgd.) MARCELO B. FERNAN
Chief Justice

The avowed objective of Administrative Circular No. 5 is to ensure that the entire time of the officials and employees of the Judiciary be devoted to their official work to ensure the efficient and speedy administration of justice. Unlike that of the rest of the government workforce, the nature of work of the officials and employees of the courts requires them to serve with maximum efficiency and the highest degree of devotion to duty in order to maintain public confidence in the Judiciary.[6] This is true even if the private business, vocation or profession would be undertaken outside the office hours.[7]

The Court, in a host of cases, has invariably imposed commensurate sanctions upon court employees for violation of Administrative Circular No. 5 depending on the gravity of the offense committed and, likewise, taking into consideration the

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[6] *Concerned Citizen vs. Bautista*, Adm. Matter No. P-04-1876, August 31, 2004, 437 SCRA 234.

[7] *Biyaheros Mart Livelihood Association, Inc. vs. Cabusao, Jr.*, Adm. Matter No. P-93-811, June 2, 1994, 232 SCRA 707.

personal records of the respondent employees as to prior administrative cases instituted against them. The Court reprimanded a stenographer for appearing as a representative of one of the complainants in a labor case before the National Labor Relations Commission;[8] imposed a fine of ₱1,000.00 upon a court aide who operated a *sari-sari* store in the court premises;[9] imposed a fine of ₱5,000 upon a process server of the Office of the Clerk of Court, Regional Trial Court, Balanga City, Bataan who facilitated the bail bond of an accused who had a pending case in one of the courts in the said city;[10] suspended a sheriff for one (1) month without pay as he "moonlighted" as the administrator/trustee of a market after office hours to augment his meager salary;[11] suspended for six (6) months without pay a court stenographer who engaged in a pyramiding business and solicited investments during office hours;[12] and dismissed from the service with forfeiture of all the benefits due a clerk for working as part-time sales agent of an appliance center and for other offenses, specifically, falsification of her daily time records and infliction of physical injuries upon therein complainant in a public place under scandalous circumstances.

Considering that the act of engaging in the lending business is the first offense of the respondent, who has rendered more that 26 years of government service, the penalty of suspension from office for a period of one (1) month without pay is appropriate in this case.

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[8] *Abeto vs. Garcesa*, Adm. Matter No. P-88-269, December 29, 1995, 251 SCRA 539.

[9] *Quiroz vs. Orfila*, A.M. No. P-96-1210, May 7, 1997, 272 SCRA 324.

[10] *Concerned Citizen vs. Bautista*, Adm. Matter No. P-04-1876, August 31, 2004, 437 SCRA 234.

[11] *Biyaheros Mart Livelihood Association, Inc. vs. Cabusao, Jr.*, Adm. Matter No. P-93-811, June 2, 1994, 232 SCRA 707.

[12] *Gasulas vs. Maralit*, A.M. No. P-90-416, August 25, 1994, 235 SCRA 585.

WHEREFORE, respondent *TERESITA C. REMOTIGUE*, Clerk of Court in the Municipal Trial Court in Cities, Cebu City, is hereby found *GUILTY* of violation of Administrative Circular No. 5, dated October 4, 1988, and *SUSPENDED* from office without pay for a period of one (1) month, with a *STERN WARNING* that a repetition of the same or similar acts will be dealt with more severely. Let this Decision be noted in the personal record of herein respondent.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[A.M. No. P-06-2118. June 12, 2008]
(Formerly OCA I.P.I. No. 05-2189-P)

TEOFILA C. DE VERA, Legal Researcher II, Regional Trial Court, Branch 92, Calamba City, *complainant, vs.* **ANTHONY E. RIMAS, Utility Worker, Regional Trial Court, Branch 92, Calamba City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; MORAL RIGHTEOUSNESS AND UPRIGHTNESS; NO OTHER OFFICE IN GOVERNMENT SERVICE EXACTS GREATER DEMAND FROM ITS EMPLOYEES THAN THE JUDICIARY.— It must be stressed that judicial employees must exercise at all times a high degree of professionalism and responsibility, as service in the judiciary is not only a duty but also a mission. Moreover, the Code of Conduct and Ethical

Standards for Public Officials and Employees (Republic Act No. 6713) articulates the state's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary.

2. ID.; ID.; DISHONESTY; FALSIFICATION OF DAILY TIME RECORDS (DTRs) IS PATENT DISHONESTY.— Falsification of DTRs is patent dishonesty. Dishonesty is a "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." Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary.

3. ID.; ID.; PENALTIES; MITIGATING CIRCUMSTANCE MAY BE CONSIDERED EVEN IF NOT RAISED BY THE RESPONDENT IN THE INTEREST OF SUBSTANTIAL JUSTICE.— However, such an extreme penalty is not hastily inflicted upon an erring employee especially so in cases where there exist mitigating circumstances that could alleviate the culpability. Under the schedule of penalties adopted by the Civil Service, dishonesty, grave misconduct and falsification of official document are classified as grave offenses and the penalty imposable is dismissal. However, inasmuch as this is respondent's first offense, it is considered a mitigating circumstance in his favor. Even if the law specifically states that the appreciation of the mitigating circumstance must first be invoked or pleaded by the proper party, the same may be considered even if not raised by the respondent in the interest of substantial justice.

4. ID.; CONSTITUTIONAL LAW; JUDICIARY; PUBLIC CONFIDENCE AND RESPECT FOR JUSTICE SYSTEM, INSPIRED BY COURT OFFICIALS, AND EMPLOYEES, STRICTLY OBSERVING OFFICIAL TIME AT ALL TIMES.— As this Court has enunciated in "*A Very Concerned Employee and Citizen v. Lourdes S. De Mateo, Clerk III, MTCC, Koronadal City, South Cotabato*": Respondent, it should be

> stressed, failed to live up to the standards of honesty and integrity in the public service. As the Constitution . . . phrases it, public office is a public trust. Inherent in this mandate of trust is the observance of prescribed office hours and the efficient use thereof for public service, if only to recompense the Government, and ultimately the people, who shoulder the cost of maintaining the Judiciary. Thus, to inspire public confidence and respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. They must bear in mind that punctuality is a virtue, but absenteeism and tardiness are impermissible. The Court is duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are found undesirable. We cannot countenance any act or omission by any court employee that violates the norm of public accountability, which would diminish the faith of the people in the Judiciary.

D E C I S I O N

AZCUNA, *J.*:

Before this Court is an affidavit-complaint[1] dated April 11, 2005 filed by Teofila C. De Vera (complainant), Court Legal Researcher II, against Utility Worker Anthony E. Rimas (respondent) of the Regional Trial Court (RTC), Branch 92, Calamba City charging him with grave misconduct (dishonesty, falsification of public document and harassment) and neglect of duty relative to OCA IPI No. 04-1846-P entitled "*Anthony E. Rimas vs. Teofila C. De Vera*."

The affidavit[2] alleges that complainant, who is the respondent in OCA IPI No. 04-1846-P, accuses herein respondent of willfully making false entries in his Daily Time Records (DTRs) for the months of March, April, June, July, August, September, October, November, and December of the year 2003. Complainant adds that the entries found in those DTRs do not tally with what appears in the court's Daily Attendance Sheet. She maintains

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[1] *Rollo*, pp. 2-12.

[2] Also captioned as "Counter-Charge."

that respondent's purpose in filing OCA IPI No. 04-1846-P was to harass her and to compel her to sign his DTRs despite the fact that the signatory appearing thereon was Presiding Judge Antonio S. Pozas. She claims that notwithstanding the fact that respondent was suspended in the past for his tardiness and habitual absenteeism, the latter never changed. Complainant further adds that among the five RTC branches in Calamba City, Branch 92 is the dirtiest because respondent is not doing his job as a utility worker. Lastly, complainant asserts that respondent acts like a sheriff of the court, fancies attending court hearings, and even introduces himself as the sheriff of RTC, Branch 92 to the public.

The Court Administrator thereupon ordered respondent, by 1st Indorsement of May 10, 2005,[3] to submit his Comment within ten days from receipt.

In his Comment[4] dated June 13, 2005, respondent vehemently denies the allegations in the complaint. He avers that all the DTRs which he had signed and submitted to this Court are correct as to the hours of work he performed in their office. He maintains that their office may not be the cleanest of all the offices in RTC, Calamba City but it definitely is not dirty. Respondent avows that he exerted efforts to maintain the cleanliness of their office, and when he wanted to clean it before 8:00 a.m. or after 5:00 p.m., he was not allowed to do so because his office keys were confiscated by the complainant. He narrates that at one time, while he was mopping the floor, complainant shouted at him in front of so many people in their office. Respondent alleges that complainant is threatening to file a libel case against him because of the administrative complaint he filed. He argues that it should be the complainant who ought to be held liable for libelous statements in her Comment in OCA IPI No. 04-1846-P for imputing a crime (killing a person) against him. Respondent likewise accuses the complainant of being remiss in the performance of her duties at the time that

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[3] *Rollo*, p. 168.

[4] *Id.* at 169-173.

she was the acting clerk of court of the RTC, Branch 92. He further charges the complainant not only of manipulating the daily attendance records, but also of deliberately disregarding, to his prejudice, the DTRs he submitted for her verification and signature. Respondent insists that complainant was impelled by a wrongful motive in filing her belated counter-charge and that she only wanted to get even with him because of the administrative case that was filed against her.

In a letter[5] dated November 11, 2005, complainant submitted to the Office of the Court Administrator (OCA) a copy of the October 3, 2005 Resolution[6] of the Third Division of this Court in A.M. No. P-04-1905 (OCA IPI No. 04-1846-P), dismissing the case. In the said Resolution, the Court noted the Memorandum dated September 2, 2005 of the OCA on the report and recommendation submitted by Executive Judge Jesus A. Santiago, RTC, Calamba City, Laguna, on the complaint against complainant for allegedly using her position as a means to harass her co-employees, finding that:

> We agree with the findings and recommendation of the investigating judge. Resistance is always expected whenever a clerk of court or an officer-in-charge, as in this case, imposes discipline among her staff. The OIC would be an unpopular member of the court especially to those who are restrained from continuing their wrongdoings.
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> It is also expected from respondent De Vera to be wanting in management abilities considering that she is only a legal researcher designated as an officer-in-charge. Nevertheless, she made a commendable act when she put her foot down and refused to take part in an anomalous act, refusing to sign the erroneous DTRs.
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> If anybody should be held administratively liable, it is not respondent but the complainant in the instant administrative case. It is evident from the record that he is guilty of falsification by making it appear in his DTRs that he has no tardiness, undertime or absences in spite the fact that the logbook and attendance sheets of the court indicate otherwise.

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[5] *Id.* at 174.

[6] *Id.* at 175-176.

As recommended in the said memorandum, the Court resolves to ***DISMISS*** the present administrative complaint against Ms. Teofila C. de Vera, Court Legal Researcher II/Officer-in-Charge, Regional Trial Court, Calamba City, Laguna, Branch 92, for lack of merit.[7]

In the agenda report[8] dated December 19, 2005, the OCA recommended that respondent be suspended from office for six months and one day without pay with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely. The Court Administrator stated:

The parties presented conflicting versions of the incidents subject of the complaint. Such factual issues could not be determined and resolved merely on the basis of the pleadings submitted by the parties. However, since a formal investigation of A.M. No. P-04-1905 (formerly OCA IPI No. 04-1846-P) had already been conducted by Executive Judge Jesus A. Santiago of RTC, Calamba City, there is no need for the instant Informal Preliminary Inquiry (OCA I.P.I. 05-2189-P) to be redocketed as a regular administrative matter and be referred to the executive judge for investigation, report and recommendation because the issues raised herein are the same issues raised in A.M. No. P-04-1905 (OCA IPI No. 04-1846-P).

Based on the *Report and Recommendation* dated May 20, 2005 of Executive Judge Jesus A. Santiago, he found that Anthony E. Rimas falsified his Daily Time Records. He stated that *"the attendance sheets and logbook pages show that Anthony E. Rimas indeed had the propensity to indicate that he reported at the appointed hour of 8:00 A.M., when he was late most of the time; and to indicate that he worked until 5:00 P.M., even when he left the office earlier; or did not make any entry in the attendance sheets or logbooks as to the time of his arrival and/or departure."*

It is perhaps true that the daily time record, be it hand written or by bundy clock, is the most violated civil service form. The absence of respondent Anthony E. Rimas from the office, even for a few hours in one day, is certainly inconsistent with his declaration in his DTRs that he was present in office during those hours. Such declarations in the DTRs undeniably amount to acts of falsification.

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[7] *Id.* at 175-176.

[8] *Id*. at 180-183.

Falsification in an official document such as the DTR is considered a grave offense under CSC Revised Uniform Rules and is penalized with dismissal for the first offense. It is also punishable as a criminal offense under Article 171 of the Revised Penal Code.

The Supreme Court has repeatedly held that everyone in the judiciary, from the presiding judge to the clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free of any suspicion that may taint the judiciary. For this reason, the respondent should be penalized for knowingly making false entries in his DTRs. However, the Court has, in several cases, refrained from imposing the extreme penalty of dismissal where the erring employee had not been previously charged with an administrative offense. Inasmuch as the respondent in this case has not been administratively charged prior to this case, the same shall be considered as a mitigating circumstance in his favor.[9]

The findings of the OCA are well-taken.

It must be stressed that judicial employees must exercise at all times a high degree of professionalism and responsibility, as service in the judiciary is not only a duty but also a mission.[10] Moreover, the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) articulates the state's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary.[11]

Falsification of DTRs is patent dishonesty. Dishonesty is a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle;

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[9] *Id*. at 182-183.

[10] *Re: Findings of Irregularity on the Bundy Cards of Personnel of the RTC, Br. 26 and MTC Medina, Misamis Oriental*, A.M. No. 04-11-671-RTC, 14 October 2005, 473 SCRA 1, 12.

[11] *Re: Falsification of Daily Time Records of Maria Fe P. Brooks, Court Interpreter, RTC, Quezon City, Br. 96,* A.M. No. P-05-2086, 20 October 2005, 473 SCRA 483, 487-488.

lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[12] Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary.[13]

However, such an extreme penalty is not hastily inflicted upon an erring employee especially so in cases where there exist mitigating circumstances that could alleviate the culpability. Under the schedule of penalties adopted by the Civil Service, dishonesty,[14] grave misconduct[15] and falsification of official document[16] are classified as grave offenses and the penalty imposable is dismissal. However, inasmuch as this is respondent's first offense, it is considered a mitigating circumstance in his favor. Even if the law specifically states that the appreciation of the mitigating circumstance must first be invoked or pleaded by the proper party, the same may be considered even if not raised by the respondent in the interest of substantial justice.[17]

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[12] *Corpuz v. Ramiterre*, A.M. No. P-04-1779, 25 November 2005, 476 SCRA 108, 121.

[13] *A Very Concerned Employee and Citizen v. Lourdes S. De Mateo*, *Clerk III, MTCC, Koronadal City, South Cotabato,* A. M. No. P-05-2100, 27 December 2007.

[14] Rule IV, Section 52 A (1) of the "Uniform Rules on Administrative Cases in the Civil Service," Resolution No. 991936 of the Civil Service Commission.

[15] Rule IV, Section 52 A (3) of the "Uniform Rules on Administrative Cases in the Civil Service," Resolution No. 991936 of the Civil Service Commission.

[16] Rule IV, Section 52 A (6) of the "Uniform Rules on Administrative Cases in the Civil Service," Resolution No. 991936 of the Civil Service Commission.

[17] Rule IV, Section 53 of the "Uniform Rules on Administrative Cases in the Civil Service," Resolution No. 991936 of the Civil Service Commission.

As this Court has enunciated in "*A Very Concerned Employee and Citizen v. Lourdes S. De Mateo, Clerk III, MTCC, Koronadal City, South Cotabato*":[18]

> Respondent, it should be stressed, failed to live up to the standards of honesty and integrity in the public service. As the Constitution . . . phrases it, public office is a public trust. Inherent in this mandate of trust is the observance of prescribed office hours and the efficient use thereof for public service, if only to recompense the Government, and ultimately the people, who shoulder the cost of maintaining the Judiciary. Thus, to inspire public confidence and respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. They must bear in mind that punctuality is a virtue, but absenteeism and tardiness are impermissible.
>
> The Court is duty-bound to sternly wield a corrective hand to discipline errant employees and to weed out those who are found undesirable. We cannot countenance any act or omission by any court employee that violates the norm of public accountability, which would diminish the faith of the people in the Judiciary.[19]

WHEREFORE, respondent *ANTHONY E. RIMAS*, Utility Worker, Regional Trial Court, Branch 92, Calamba City is found *GUILTY* of falsification of official document and dishonesty, and is *SUSPENDED* for six (6) months and one (1) day without pay with a *STERN WARNING* that a repetition of the same or similar acts in the future shall be dealt with more severely.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Leonardo-de Castro, JJ.,* concur.

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[18] *Supra*, note 13.

[19] *Id*.

FIRST DIVISION

[A.M. No. P-06-2143. June 12, 2008]
(Formerly OCA IPI No. 06-2384-P)

RE: ANONYMOUS LETTER-COMPLAINT AGAINST JESUSA SUSANA CARDOZO, Clerk III, Regional Trial Court, Branch 44, Dagupan City.

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; JUDICIARY; ILLICIT RELATIONS; CONSIDERED DISGRACEFUL AND IMMORAL CONDUCT WHICH IS SUBJECT TO DISCIPLINARY ACTION.— On several occasions, this Court has held that an illicit relation is considered disgraceful and immoral conduct which is subject to disciplinary action. Under the *Uniform Rules on Administrative Cases in the Civil Service Commission* adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999, disgraceful and immoral conduct is a grave offense for which a penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the first offense while the penalty of dismissal is imposed for the second offense. While respondent tried to deny the accusations against her, the Court finds no reason to doubt the findings of the investigating team and the recommendation of the OCA.

2. ID.; ID.; ID.; IMPERATIVE DUTY OF EVERY EMPLOYEE OF THE COURT TO MAINTAIN ITS GOOD NAME AND STANDING AS A TRUE TEMPLE OF JUSTICE.— As a court employee, respondent should be reminded that the image of a court of justice is mirrored in the conduct, official or otherwise, of the women and men who work in the judiciary, from the judge to the lowest of its personnel. Hence, it becomes the imperative duty of every employee of the court to maintain its good name and standing as a true temple of justice. Based on the foregoing, respondent failed to maintain such conduct, characterized by propriety and decorum, to earn and uphold the respect of the public for the judiciary.

D E C I S I O N

AZCUNA, *J.*:

For decision is an anonymous letter-complaint[1] dated May 2, 2005, filed with the Office of the Court Administrator (OCA), charging respondent Jesusa Susana Cardozo, Clerk III, Regional Trial Court (RTC), Branch 44, Dagupan City, with Disgraceful and Immoral Conduct and Ill-gotten wealth.

In support of the charge, the unknown complainant alleged that respondent was engaged in an illicit relationship with a certain Mr. Beltran, a retired Fire Marshall, who is a married man;[2] that they are living together as husband and wife in a house owned by respondent; and that every afternoon, Mr. Beltran fetches respondent at her office. Complainant likewise claimed that respondent used the names of judges to extort sums of money from party-litigants; and considering that she is only a Clerk III, complainant is curious as to where she got the money to build a house and buy jewelries.[3]

Pursuant to a Memorandum dated August 10, 2005, a team conducted on August 17-19, 2005 a discreet investigation regarding the matter.[4]

In its Investigation Report[5] dated August 25, 2005, the team discovered that respondent is married to Reynaldo T. Cardozo, who is now residing in the United States of America; that they have two minor children who are living with respondent's parents and are being supported by their father for their educational needs; that Mr. Beltran is married to a teacher residing in Sta. Barbara, Pangasinan; and that they also have children of their own who are living with his wife in Sta. Barbara.[6]

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[1] *Rollo*, p. 13.

[2] *Id.*

[3] *Id.*

[4] *Id.* at 7.

[5] *Id.* at 7-10.

[6] *Id.* at 7-8.

Upon verification, they found that respondent filed a petition for Declaration of Nullity of Marriage[7] with the RTC, Branch 43, Dagupan City, praying for custody and support for their children. The RTC granted the petition in its Decision[8] dated June 23, 1997. However, with the exception of the order granting support to their children, the decision was reversed by the Court of Appeals.[9]

They also found that the newly-constructed house of respondent was built when Mr. Beltran decided to live with respondent and that the money used in its construction came from the retirement benefits recently obtained by Mr. Beltran. Further, the lot on which the house was constructed was registered in the name of respondent's mother and is within the compound where respondent and her family reside.[10] They also learned that no real property was registered in respondent's name in Calasiao and Dagupan City, Pangasinan.[11]

When they met respondent, the team observed that contrary to what was alleged in the letter-complaint, she was modest on how she presented herself.[12]

The team thus concluded that there was sufficient basis to sustain complainant's allegation of respondent's illicit relationship with Mr. Beltran. There was, however, no evidence to support the charge of ill-gotten wealth.[13]

Ultimately, the team recommended that the anonymous letter-complaint be referred to the Legal Office, OCA, for appropriate action and that respondent be required to show cause why no

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[7] *Id.* at 24-28.

[8] *Id.* at 15-18.

[9] *Id.* at 19.

[10] *Id.* at 8.

[11] *Id.* at 9.

[12] *Id.*

[13] *Id.*

disciplinary action should be taken against her for the above acts.[14]

In her Comment[15] dated September 26, 2005, respondent vehemently denies the accusations against her, claiming that complainant's allegations were untrue, fabricated, and malicious. She alleges that she is not engaged in an illicit relationship with Mr. Beltran or anyone else. Considering that she was living with her mother, sibling and children, they allegedly would not allow her to have an illicit relationship with anybody.[16]

She maintains that while she is separated from her husband, that she had filed a complaint for annulment of marriage before the RTC, Branch 43, Dagupan City, which was granted in a Decision[17] dated June 23, 1997. Despite being a single mother, she managed to support their two children. Respondent avers that from the money she borrowed from her mother, she entered the rice trading business and the buying and selling of goods. She also put up a "*kambingan*" [goat farm] on their family's lot.[18]

Respondent further alleges that with the help of her sister who works as a nurse in Saudi Arabia, she constructed a small bungalow inside their mother's lot, to give her and her children a decent place to live in after they were abandoned by her husband. She added that because of her meager earnings, she availed of several loans from the government and regularly receives financial help from her mother and sister.[19]

Respondent asserts that she never received any amount of money from party-litigants in exchange for favors from judges and that from the time she entered government service up to

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[14] *Id*.

[15] *Id.* at 20-23.

[16] *Id.* at 21.

[17] *Id.* at 15-18

[18] *Supra*, note 16.

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

the present, she has been honest in all her dealings and never engaged in any illegal and/or immoral transactions. Respondent avers that if at times she wore jewelries, they are modest and within her means to buy or were given to her by her sister and that up to the present, she remained poor and simple.[20]

In its Evaluation and Recommendation,[21] the OCA adopted the findings of the investigating team and recommended that the case be re-docketed as a regular administrative matter and that respondent be found guilty of immorality and suspended for six months and one day, without pay.[22]

The issue for resolution is whether or not respondent is guilty of immorality and unexplained wealth warranting the imposition of administrative sanctions.

As regards the charge of respondent's unexplained wealth, this Court agrees with the conclusion of the investigating team. After investigation, they found that no real properties were registered in respondent's name, and her residence is located within the compound owned by her mother. When the team met respondent, they found that she dresses herself modestly, contrary to the accusations against her. In addition, the team learned that Mr. Beltran funded the construction of the house through his retirement benefits. Consequently, there is no sufficient basis to establish that respondent possesses ill-gotten wealth.

Anent the charge of immorality, this Court resolves the issue in the affirmative. Buttressed by the findings of the investigating team, there is undoubtedly sufficient and substantial evidence showing that respondent, a married woman although separated *de facto* from her husband, is having an illicit relationship with another man, one Mr. Beltran.

On several occasions, this Court has held that an illicit relation is considered disgraceful and immoral conduct which is subject

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[20] *Id.* at 22-23.

[21] *Id.* at 1-4.

[22] *Id.* at 4.

to disciplinary action.[23] Under the *Uniform Rules on Administrative Cases in the Civil Service Commission* adopted and approved by the Civil Service Commission in its Resolution No. 991936 dated August 31, 1999, disgraceful and immoral conduct is a grave offense for which a penalty of suspension for six (6) months and one (1) day to one (1) year shall be imposed for the first offense while the penalty of dismissal is imposed for the second offense.[24] While respondent tried to deny the accusations against her, the Court finds no reason to doubt the findings of the investigating team and the recommendation of the OCA.

As a court employee, respondent should be reminded that the image of a court of justice is mirrored in the conduct, official or otherwise, of the women and men who work in the judiciary, from the judge to the lowest of its personnel. Hence, it becomes the imperative duty of every employee of the court to maintain its good name and standing as a true temple of justice.[25] Based on the foregoing, respondent failed to maintain such conduct, characterized by propriety and decorum, to earn and uphold the respect of the public for the judiciary.

WHEREFORE, respondent Jesusa Susana Cardozo is hereby adjudged *GUILTY* of Disgraceful and Immoral Conduct and is *SUSPENDED* for six (6) months and one (1) day without pay. Respondent is *STERNLY WARNED* that a repetition of the same or similar offense will be dealt with more severely.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Leonardo-de Castro, JJ.,* concur.

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[23] *Dela Torre-Yadao v. Cabanatan*, A.M. No. P-05-1953, June 8, 2005, 459 SCRA 332, 338; *Maguad v. De Guzman,* A.M. No. P-94-1015, March 29, 1999, 305 SCRA 469, 476.

[24] Rule IV, Section 52 (A)(15).

[25] *Rodrigo-Ebron v. Adolfo*, A.M. No. P-06-2231, April 27, 2007, 522 SCRA 286, 294.

EN BANC

[A.M. No. P-06-2192. June 12, 2008]
(Formerly OCA IPI No. 05-2165-P)

JUDGE LUISITO C. SARDILLO, Acting Presiding Judge, Regional Trial Court, Branch 130, Caloocan City, and ATTY. ANDREI BON C. TAGUM, *complainants, vs.* **SHERWIN M. BALOLOY, Process Server, Regional Trial Court, Branch 130, Caloocan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; JUDICIARY; PROCESS SERVERS; VITAL ROLE IN THE ADMINISTRATION OF JUSTICE.— The importance of the process server's duty must be underscored. A process server plays a vital role in the administration of justice. It is through him that defendants learn of the action brought against them by the complainant. It is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant.

2. ID.; ID.; ID.; ID.; RESPONDENT BALOLOY WAS REMISS IN THE PERFORMANCE OF HIS DUTIES AND FAILED TO FOLLOW THE PROCEDURE FOR PERSONAL SERVICE OF SUMMONS.— This Court is not swayed by respondent's lame excuses. There is too much disparity between the number of days when he could not serve the summons and the number of days when he could. Not only was respondent remiss in the performance of his duties; he failed to follow the procedure in instances in which a party litigant wanted personal service of summons, namely, to submit a statement of estimated expenses for the court's approval and a statement of liquidation after service.

3. ID.; ID.; ID.; ID.; MISCONDUCT; CONSTRUED; PENALTY.— Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which

must be established by substantial evidence. In the present case, it has been sufficiently proven that respondent willfully violated established rules. Despite being warned, respondent's improper conduct of accepting ₱3,000 to defray his travel expenses in serving the summons and the unreasonable delay in its service, against the clear mandate of the rules, subjected the court's image to distrust. For this, the Court finds respondent guilty of Grave Misconduct.

4. ID.; ID.; A PUBLIC SERVANT MUST EXHIBIT AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND INTEGRITY.— No less than the Constitution provides that "[p]ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." This central tenet in a government official's career is more than just a moral imploration. *It is a legal imperative*. There is a constant need to maintain the faith and confidence of the people in the government and its agencies and instrumentalities. A public servant must exhibit at all times the highest sense of honesty and integrity.

D E C I S I O N

PER CURIAM:

For resolution is an administrative complaint[1] filed by Judge Luisito C. Sardillo, Acting Presiding Judge, Regional Trial Court (RTC), Branch 130, Caloocan City, and Atty. Andrei Bon C. Tagum, against respondent Sherwin M. Baloloy, Process Server, RTC, Branch 130, Caloocan City, for Grave Misconduct.

The antecedents are as follows:

Pending before the RTC, Branch 130, Caloocan City was Civil Case No. C-21018 entitled *"Catherine Antonio vs. Rico Ramirez,"* for Declaration of Nullity of Marriage.

On November 25, 2004 therein petitioner, Antonio, filed a Second Motion for Service of Summons with Manifestation on

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

the Unbecoming Conduct of the Branch Process Server.[2] Movant Antonio outlined the improper conduct of respondent regarding the latter's failure to serve summons in connection with her Civil Case No. C-21018. Antonio alleged that on November 14, 2004, she filed an Urgent Motion for Service of Summons citing the fact that since September 14, 2004 no summons had yet been served upon Ramirez; that respondent misrepresented that he could personally and immediately serve the summons on Ramirez; that respondent asked for the amount of ₱4,000 from Antonio's counsel as fare money; that her counsel reluctantly negotiated the reduction of the amount to ₱3,000, only to discover later that summons could not yet be issued in view of the resignation of the branch presiding judge; that despite the appointment of a presiding judge and numerous requests to respondent for the service of summons, no summons was served; and that despite the non-service of summons, respondent did not even volunteer to return the ₱3,000 given to him.[3] Ultimately, Antonio prayed that summons be immediately served and respondent's improper conduct be considered for appropriate action.[4]

Consequently, a Complaint dated February 21, 2005 was filed charging respondent with Grave Misconduct due to his failure to serve summons in connection with Civil Case No. C-21018. The complainant prayed that respondent be recommended for dismissal from service.[5]

In his Comment dated May 10, 2005,[6] respondent alleged that in September 2004, Atty. Andrei Bon C. Tagum, Antonio's counsel, inquired about their pending case. Respondent informed him that since a judge was yet to be assigned to the RTC, Branch 130, no summons could be issued to Ramirez. He

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

[3] *Id.* at 4-5.

[4] *Id.* at 6.

[5] *Id.* at 2-6.

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

added that once a judge was appointed, summons would then be issued and sent by mail to Ramirez's residence in Naga City. He claimed that Atty. Tagum wanted him to personally deliver the summons to Ramirez to ensure fast and effective service. Consequently, Atty. Tagum gave him ₱3,000 for his fare to Naga City.[7]

He admitted that when summons was eventually issued on November 12, 2004, he failed to immediately serve it because from November 18 to November 20, 2004, Naga City was struck by Typhoon "Yoyong." Four days later, he attended a three-day National Convention and Seminar Workshop sponsored by the Process Servers Association of the Philippines in Baguio City.[8]

He added that he unfortunately spent the ₱3,000 given to him for his fare to Naga City. After saving for his fare to Naga City, he personally served a copy of the summons to Ramirez on December 11, 2004.[9]

In a Resolution[10] dated July 5, 2006, this Court required the parties to manifest within fifteen days if they were willing to submit the administrative matter for decision based on the pleadings filed.

Judge Sardillo and respondent manifested their willingness to submit the matter for decision, embodied in their Manifestations dated August 1, 2006[11] and August 11, 2006,[12] respectively.

Thereafter, respondent informed the Court that Judge Sardillo died on June 8, 2007.[13] He further notified the Court that he

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[7] *Id.* at 8.

[8] *Id.* at 11.

[9] *Id.* at 10.

[10] *Id.* at 15.

[11] *Id.* at 17.

[12] *Id.* at 18.

[13] *Id.* at 21.

had just completed serving six (6) months suspension without pay in connection with another case and pleaded for the Court's mercy and understanding in the resolution of the instant administrative complaint.[14]

In its Report[15] dated April 10, 2006, the Office of the Court Administrator recommended that respondent be held guilty of Simple Neglect of Duty and be meted the penalty of suspension for three (3) months, without pay.

The issue for resolution is whether or not respondent was remiss in performing his duties warranting the imposition of administrative sanctions.

This Court resolves the issue in the affirmative.

The importance of the process server's duty must be underscored. A process server plays a vital role in the administration of justice.[16] It is through him that defendants learn of the action brought against them by the complainant. It is also through the service of summons by the process server that the trial court acquires jurisdiction over the defendant.[17]

Understandably, no summons could be served from the inception of the suit up to November 11, 2004 since no summons had yet been issued. However, when summons was eventually issued on November 12, 2004, it took respondent until December 11, 2004 to personally serve it on Ramirez. Respondent admitted that there was a delay in the service of the summons, but would justify it by reasoning that from November 18 to November 20, 2004 Naga City was struck by Typhoon "Yoyong" and from November 24 to November 26, 2004 he attended a three-day National Convention for process servers in Baguio City. He even added that he had spent the ₱3,000 given to him

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[14] *Id.* at 20.

[15] *Id.* at 12-14.

[16] See *Cañete v. Manlosa,* A.M. No. P-02-1547, October 3, 2003, 412 SCRA 580, 586.

[17] *Nery v. Gamolo*, A.M. No. P-01-1508. February 7, 2003, 397 SCRA 110, 117.

as fare to Naga City, and it took time for him to save for the fare money.

This Court is not swayed by respondent's lame excuses. There is too much disparity between the number of days when he could not serve the summons and the number of days when he could. Not only was respondent remiss in the performance of his duties; he failed to follow the procedure in instances in which a party litigant wanted personal service of summons, namely, to submit a statement of estimated expenses for the court's approval and a statement of liquidation after service.[18]

Moreover, this is not the fist time that respondent has been administratively charged. In no less than four instances, this Court applied administrative sanctions on respondent; and in each instance, it sternly warned respondent that a repetition of the same or similar offense will be dealt with more severely.

In *Baloloy v. Flores*,[19] respondent was fined for fighting with a co-worker employed in another branch of the trial court. In *Chiong v. Baloloy*,[20] respondent was suspended for six months without pay for punching a woman several times during office hours in the building where the courts and the Integrated Bar of the Philippines Office were located. In *Robles v. Baloloy*,[21] respondent was reprimanded for compromising the public's trust in the justice system though his unauthorized presence at a demolition site. In *Sardillo, et al. v. Baloloy*,[22] involving circumstances similar to the present case, this Court, in a Resolution dated December 5, 2007, found respondent guilty of Simple Misconduct and fined him ₱2,000 with a warning that a repetition of the same or similar offense shall be dealt with more severely. In said case, respondent also admitted receiving money for his fare from one of the parties and there

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[18] Rule 41, Sec. 10 (e), A.M. No. 04-2-04-SC.

[19] A.M. No. P-99-1357, September 4, 2001, 364 SCRA 317.

[20] A.M. No. P-01-1523, October 27, 2006, 505 SCRA 528.

[21] A.M. No. P-07-2305, April 3, 2007, 520 SCRA 196.

[22] A.M. No. P-06-2153, December 5, 2007.

was also an undue delay in the delivery of the summons for more than two months.

As reiterated in *Maxino v. Fabugais*:[23]

> A process server should be fully cognizant not only of the nature and responsibilities of his task but also of their impact in the speedy administration of justice. It is through the process server that a defendant learns of the action brought against him by the complainant. More importantly, it is through the service of summons of the process server that the trial court acquires jurisdiction over the defendant. As a public officer, the respondent is bound *virtute oficii* to bring to the discharge of his duties the prudence, caution and attention which careful men usually exercise in the management of their affairs. Relevant in the case at bar is the salutary reminder from this Court that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[24]

Thus, conformably to the mandate of speedy dispensation of justice stressed by the Constitution, it is crucial that summons, writs and other court processes be served expeditiously and without delay.[25]

No less than the Constitution provides that "[p]ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[26] This central tenet in a government official's career is more than just a moral imploration. *It is a legal imperative*. There is a constant need to maintain the faith and confidence of the people in the government and

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[23] A.M. No. P-05-1946, January 31, 2005, 450 SCRA 78.

[24] *Id. at* 85.

[25] *Supra,* note 17.

[26] SECTION 1, ARTICLE XI.

its agencies and instrumentalities. A public servant must exhibit at all times the highest sense of honesty and integrity.[27]

Sadly, despite numerous warnings, respondent still failed to keep his actions within due bounds, acting beyond the scope of his authority. Despite this Court's warning in *Sardillo, et al. v. Baloloy*[28] against the same or similar acts of impropriety, respondent again failed to expeditiously serve the summons and admittedly received ₱3,000 from Antonio for travel expenses in serving the summons to Naga City, which is clearly against the procedure for obtaining travel expenses for service of summons laid down in Rule 41, Sec. 10 (e), A.M. No. 04-2-04-SC.[29]

Misconduct is defined as a transgression of some established or definite rule of action; more particularly, it is an unlawful behavior by the public officer.[30] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. In the present case, it has been sufficiently proven that respondent willfully violated established rules. Despite being warned, respondent's improper

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[27] *Advincula v. Dicen*, G.R. No. 162403, May 16, 2005, 458 SCRA 696, 711.

[28] *Supra*, note 22.

[29] In addition to the fees above fixed, the amount of One Thousand (₱1,000.00) Pesos shall be deposited with the Clerk of Court upon filing of the complaint to defray the actual travel expenses of the sheriff, process server or other court-authorized persons in the service of summons, subpoena and other court processes that would be issued relative to the trial of the case. In case the initial deposit of One Thousand (₱1,000.00) Pesos is not sufficient, then the plaintiff or petitioner shall be required to make an additional deposit. The sheriff, process server or other court authorized person shall submit to the Court for its approval a statement of the estimated travel expenses for service of summons and court processes. Once approved, the Clerk of Court shall release the money to said sheriff or process server. After service, a statement of liquidation shall be submitted to the Court for approval. After rendition of judgment by the Court, any excess from the deposit shall be returned to the party who made the deposit.

[30] *Mendoza v. Navarro*, A.M. No. P-05-2034, September 11, 2006, 501 SCRA 354, 363.

conduct of accepting ₱3,000 to defray his travel expenses in serving the summons and the unreasonable delay in its service, against the clear mandate of the rules, subjected the court's image to distrust. For this, the Court finds respondent guilty of Grave Misconduct.

Section 52(A)(3) of the Revised Rules on Administrative Cases in the Civil Service classifies grave misconduct as a grave offense punishable by dismissal for the first (1st) offense.

WHEREFORE, respondent **SHERWIN M. BALOLOY** is found *GUILTY* of Grave Misconduct, and ordered *DISMISSED* from the service with forfeiture of all benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institution. This judgment is immediately executory.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Carpio Morales, Velasco, Jr., and *Nachura, JJ.,* on official leave.

FIRST DIVISION

[A.M. No. P-07-2330. June 12, 2008]
(Formerly A.M. OCA IPI No. P-03-1538-P)

LUDOVICO RAFAEL, *complainant, vs.* **BERNARDO G. SUALOG, Sheriff IV, Regional Trial Court, Branch 9, Kalibo, Aklan,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; SHERIFFS; JUDICIARY; REPEATEDLY, THE COURT HAS REMINDED SHERIFFS OF THEIR MANDATORY AND MINISTERIAL DUTY TO ENFORCE A WRIT OF EXECUTION ONCE IT IS PLACED IN THEIR HANDS.— Repeatedly, this Court has reminded sheriffs of their mandatory and ministerial duty to execute a writ strictly to the letter such that once the writ is placed in their hands, it is their responsibility, unless restrained by court order, to proceed with *reasonable* celerity and promptness to enforce the writ according to its mandate, ensuring at all times that the implementation of the judgment is not unduly deferred.

2. ID.; ID.; ID.; ID.; SHERIFFS SHOULD AT ALL TIMES RESPECT THE RIGHTS OF OTHERS AND ACT JUSTLY.— Definitely, like other public officials and employees serving the government, sheriffs should at all times respect the rights of others and act justly; they should necessarily refrain from doing acts contrary to law and public order. Respondent, in particular, should have executed the writ in a lawful, prudent and orderly manner, observing the high degree of diligence and professionalism expected of him as an agent of the law. In the exercise of his official actuations, it is his obligation to act with courtesy, self-restraint and civility when dealing with the public even when he is confronted with insolence or, as in this case, stubbornness.

3. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— His extra prompt, overzealous, and premature implementation of the second *alias* writ, therefore, which resulted in the illegal detention of complainant and some of his co-plaintiffs run counter to this bounden duty. The unlawful act itself is a badge of bad faith and evident intent to defeat the right of complainant and his co-plaintiffs in the face of the Deed of Undertaking, which was mutually agreed upon by the parties to preserve the *status quo* within thirty (30) days from September 24, 2003.

4. ID.; ID.; CIVIL SERVICE; UNIFORM RULES ON ADMINISTRATIVE CASES; GRAVE ABUSE OF AUTHORITY (OPPRESSION), DEFINED; PENALTY.— Under the Uniform Rules on Administrative Cases in the Civil

Service, respondent is guilty of grave abuse of authority (oppression), which is defined as a "misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury"; it is an "act of cruelty, severity, or excessive use of authority." Grave abuse of authority is a *grave* offense punishable with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal from service for the second infraction.

APPEARANCES OF COUNSEL

Norberto Malit for complainant.

D E C I S I O N

AZCUNA, *J.*:

This is an administrative case against respondent Bernardo G. Sualog, Sheriff IV, Regional Trial Court (RTC), Branch 9, Kalibo, Aklan, charging him with grave abuse of authority relative to the execution of the judgment in Civil Case No. 3300 for partition and/or recovery of real property and accounting with damages, filed by Ludovico Rafael.

In his letters dated December 18, 2002 and July 10, 2003 addressed to the Office of the Court Administrator (OCA), complainant alleged that on September 8, 1993, respondent, accompanied by members of the Philippine National Police of Nabas Police Station, Nabas, Aklan, arrived at his residence informing him and his co-plaintiffs that they have lost their case and, consequently, they have to place their houses under legal custody; respondent warned them that they would be liable for moral damages if they would resist; respondent further forced them to sign a document but they refused to do so since they could not understand its contents, which were written in English language; as a result, respondent directed them to go to the Municipal Hall of Nabas, Aklan, which, due to fear and in order to avoid any trouble, complainant and some of his co-plaintiffs did; upon arriving thereat, they were surprised to be detained;

while not actually imprisoned, their movements were guarded by the police so that they could not go back to their houses; upon the instance of the Mayor of Nabas, complainant and his sister Arsula[1] Rafael-Janoya were released from detention after two (2) days while his son Jim and nephew Salcedo Janoya were freed five (5) days after; later, respondent returned to their place to instruct them to vacate their houses and remove their things for the demolition; because of lack of education and fear of any violence, they had no choice but to accede to respondent; and that eventually the houses of complainant, Jim, Arsula and Salcedo were demolished even after complainant explained to respondent that their houses were not included in the case.[2]

Respondent, in his Comment dated March 5, 2003,[3] countered that the instant complaint stemmed from Civil Case No. 3300 entitled "*Ludovico Rafael, et al. versus Mamerto Rafael, et al.*," which was decided by the RTC of Aklan on September 4, 1990 in favor of the defendants; on December 14, 1990, when respondent served the writ of execution dated December 6, 1990, he explained to complainant and his co-plaintiffs that the case was dismissed and that there is a need for them to vacate the contested lots; complainant refused to vacate on the ground that he owns the land and has proof in support thereof; for refusing to obey the writ, a motion for contempt of court was thereafter filed by the defendants against complainant, his sons Dione and James, his sister Arsula, and his nephew, Salcedo; on August 2, 1991, the RTC resolved the contempt proceedings and directed the plaintiffs to remove their houses from the disputed lots within thirty (30) days from receipt of the Order, otherwise, the same would be removed and demolished at their expense; the belated appeal of the plaintiffs to the Court of Appeals was dismissed on August 31, 1992, which resolution became final and executory on September 13, 1992; on August 10, 1993, a

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[1] Also spelled as "Ursola" and "Ursula" in the pleadings.

[2] *Rollo*, pp. 1-3, 121-124.

[3] *Id.* at 78-82.

second *alias* writ of execution was issued by the RTC; in the execution of the *alias* writ on August 25 and 27, 1993, respondent served copies thereof to complainant and the other plaintiffs and explained to them in the local dialect its contents with the assistance of the *Punong Barangay*, but complainant and his co-plaintiffs did not comply; after seeking the assistance of the police authorities of Nabas, Aklan, respondent implemented the writ on September 28, 1993[4] but complainant and his co-plaintiffs again declined, stating that they would just voluntarily submit themselves to the police authorities and be confined in the Municipal Hall of Nabas rather than witness the demolition of their houses; and that respondent went on to enforce the alias writ and explained to complainant that they could proceed to the Municipal Hall and report whatever complaint they may have against the execution.

Respondent denied complainant's assertion that his house is not included in Civil Case No. 3300 since the latter was the principal plaintiff who actively participated in the case and in the Deed of Undertaking dated September 24, 1993, whereby he and his co-plaintiffs assisted by their counsel bound themselves to remove and demolish their houses at their own expense within thirty (30) days from the date thereof. He asserted that the present case is apparently caused by the miscommunication and strained relations of the plaintiffs and their counsel who failed to apprise them of the September 4, 1990 RTC decision and its effects as well as the subsequent incidents of the case; that he has faithfully adhered to the proper rules of procedure in implementing court orders; and that he has not committed any abuse of authority considering that he made several attempts to effectively and peacefully execute the writs to avoid violence and bloodshed.

On August 13, 2003, the OCA recommended that the case be referred to Hon. Marietta H. Valencia, Executive Judge of RTC Kalibo, Aklan for further investigation, report and

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[4] Records of the Police Blotter of Nabas Police Station of Nabas, Aklan, however, reveal that the incident took place on September 8, 1993. (*id.* at 125)

recommendation in view of its finding that the case could not be resolved on the basis of the pleadings submitted. The OCA opined that there are conflicting allegations on the part of complainant and respondent as to the manner the latter implemented the writ of execution and that there is also a need to clarify the "nebulous" circumstances leading to the alleged illegal detention of complainants and respondent's purported involvement therein.[5]

Acting on the referred administrative case, Judge Valencia ordered complainant to file the affidavits of his witnesses within fifteen (15) days from January 7, 2004 and granted respondent the same period within which to file his counter-affidavit. Despite this, complainant never submitted any affidavit up to the time Judge Valencia finally issued her Report on May 20, 2004. In recommending for the dismissal of the case against respondent, Judge Valencia opined:

> x x x. It appears that [the complainant] has lost interest in his complaint.
>
> While desistance by the complainant does not necessarily mean that the respondent should be exonerated from the administrative charge, aside from the allegations of the complainant, there is no documentary proof in the records that show that respondent abused his authority while implementing the writs of execution.
>
> Furthermore, respondent, as an officer of the court, is presumed to have regularly performed his official duty. (*citation omitted*)

The Report was transmitted back to the OCA. On October 27, 2004, it disagreed with Judge Valencia's proposition. Instead, the OCA recommended the ultimate penalty of dismissal from service, with forfeiture of all his benefits and with prejudice to his re-employment in any branch of the Government including government owned and controlled corporations. It ruled:

> As borne by the case records, the allegation of respondent that plaintiffs themselves *(sic)* voluntarily submitted themselves to the police authorities and allowed themselves to be confined in the

[5] *Id.* at 135-138.

Municipal Hall rather than witness the demolition of the houses is not credible. Respondent failed to countervail the narration contained in Entry No. 2003, Page 232, dated September 1993 in the Police Blotter of Nabas, Aklan Police Station, that complainant and his family were "arrested by Bernardo Sualog, Sheriff IV For (sic) their refusal to vacate the land in question x x x that said persons was (sic) under police custody for their detention as per request by (sic) Bernardo Sualog, Sheriff IV, SGD Tirazona." The presumption that respondent regularly performed his official duty in the implementation of the writ on 28 September 1994 *(sic)*, therefore, does not apply in the face of contrary evidence presented by the complainant. It is the police officer who recorded the entry in the police blotter who enjoys the presumption of regularity in the performance of his official function.

In *Cruz vs. Dalisay (A.M. No. R-181 P, 152 SCRA 485)*, the Court held that considering the ministerial nature of (the sheriff's) duty, it is incumbent upon him to ensure that only that portion of a decision ordained or decreed in the dispositive portion should be the subject of execution. No more, no less. Section 10(c) and (d), Rule 39 of the Rules of Court in hereunder quoted:

"SECTION 10. Execution of judgments for specific act. —

(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 peacefully 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 police officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property x x x. (underscoring supplied)

(d) Removal of improvements on property subject of execution. — When the property subject of the execution contains improvements constructed or planted by the judgment obligor x x x, the officer shall not destroy, demolish or remove said improvements except upon

> *special order of the court, issued upon motion of the judgment obligee after due hearing and after the former had failed to remove the same within a reasonable time fixed by the court*."

In the 02 August 1991 order of Judge Icamina, plaintiffs were ordered to remove their houses from the lots in dispute within thirty (30) days from receipt of the order[;] otherwise, their houses [would] be demolished at their own expense. However, a Deed of Understanding dated 24 September 1993 was executed by complainant and his co-plaintiffs with their counsel and the counsel for the defendants whereby plaintiffs bound themselves to remove and demolish their houses within thirty (30) days from 24 September 1993. Thus, complainant and his family had until 24 October 1993 to remove and demolish their houses.

The actuations of respondent in the implementation of the writ of execution on 28 September 1993 call for disciplinary action. The warrantless arrest made by respondent of complainant and his family members and their subsequent detention are illegal. Complainant's refusal to vacate the property in question is not a legal ground to justify respondent's actions. In fact, these constitute arbitrary detention. Moreover, the writ of execution was prematurely implemented on 28 September 1993 *(sic)* since complainant and his co-plaintiffs had until 24 October 1993 to demolish their houses. This act certainly erodes public confidence in the fairness of the courts, thus, respondent committed a disservice to the cause of justice.

This Court concurs with the OCA's findings but deems it appropriate to modify the extreme penalty proposed.

Repeatedly, this Court has reminded sheriffs of their mandatory and ministerial duty to execute a writ strictly to the letter such that once the writ is placed in their hands, it is their responsibility, unless restrained by court order, to proceed with *reasonable* celerity and promptness to enforce the writ according to its mandate, ensuring at all times that the implementation of the judgment is not unduly deferred.[6]

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[6] See *Estoque v. Girado*, A.M. No. P-06-2250, March 24, 2008, p. 6; *Velasco v. Tablizo*, A.M. No. P-05-1999, February 22, 2008, p. 5; and *Vargas v. Primo*, A.M. No. P-07-2336, January 24, 2008, pp. 4-5.

In this case, the enforcement of the *alias* writ was speedy but not reasonable; hence, it could not be considered as equitable under the given circumstances. Complainant and his co-plaintiffs were evidently prejudiced by the tempo by which respondent opted to conduct his official duty. This should not be the case since the expeditious and efficient execution of court orders and writs need not be done at the expense of due process and fair play.[7]

Respondent should have been guided by the precepts this Court set in *Balais v. Abuda*:[8]

> Respondents, and all Sheriffs for that matter, should be reminded that Writs of Execution should always be served and enforced with prudence and caution, taking into consideration all relevant circumstances. They should bear in mind the injunction in *Peñalosa vs. Viscaya* (84 SCRA 298 [1978]) that:
>
> > "Public Officers, as recipients of a public trust, are under obligation to perform the duties of their offices honestly, faithfully and to the best of their ability. As trustees for the public, they should demonstrate courtesy and civility in their official actuations with the public. Every public officer is bound to use reasonable skill and diligence in the performance of his official duties, particularly where rights of individuals may be jeopardized by his neglect. In sum, he is bound *virtute offici*, to bring to the discharge of his duties that prudence, caution and attention which careful men usually exercise in the management of their own affairs."[9]

and our emphasis in *Philippine Bank of Communications v. Torio*:[10]

> The authority of a sheriff is broad but it is not boundless. In the enforcement of judgments and judicial orders, a sheriff as an officer

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[7] *Stilgrove v. Sabas*, A.M. No. P-06-2257, November 29, 2006, 508 SCRA 383, 400.

[8] A.M. No. R-565-P, November 27, 1986, 146 SCRA 56.

[9] *Id*. at 60. See also *Stilgrove v. Sabas*, *supra* at 400.

[10] A. M. No. P-98-1260, January 14, 1998, 284 SCRA 67.

of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. He must know what is inherently right and wrong and is bound to discharge his duties with prudence and caution. Moreover, he must at all times show a high degree of professionalism in the performance of his duties.

A sheriff is required to perform the duties of his office without needless severity or oppression as he is an agent of the law. In enforcing a writ, he must not exercise unnecessary violence or subject the persons on whose premises he enters to indignities and he is liable where process is legally and properly issued but afterwards employed wrongfully and unlawfully by him.... (*citations omitted*)[11]

Definitely, like other public officials and employees serving the government, sheriffs should at all times respect the rights of others and act justly; they should necessarily refrain from doing acts contrary to law and public order.[12] Respondent, in particular, should have executed the writ in a lawful, prudent and orderly manner, observing the high degree of diligence and professionalism expected of him as an agent of the law. In the exercise of his official actuations, it is his obligation to act with courtesy, self-restraint and civility when dealing with the public even when he is confronted with insolence[13] or, as in this case, stubbornness. His extra prompt, overzealous, and premature implementation of the second *alias* writ, therefore, which resulted in the illegal detention of complainant and some of his co-plaintiffs run counter to this bounden duty. The unlawful act itself is a badge of bad faith and evident intent to defeat the right of complainant and his co-plaintiffs in the face of the Deed of Undertaking, which was mutually agreed upon by the parties to preserve the *status quo* within thirty (30) days from September 24, 2003.

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[11] *Id*. at 76.

[12] *Id.* at 77.

[13] *Stilgrove v. Sabas*, *supra*, 401.

Under the Uniform Rules on Administrative Cases in the Civil Service,[14] respondent is guilty of grave abuse of authority (oppression), which is defined as a "misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury"; it is an "act of cruelty, severity, or excessive use of authority."[15] Grave abuse of authority is a *grave* offense punishable with suspension for six (6) months and one (1) day to one (1) year for the first offense, and dismissal from service for the second infraction.[16] In this case, it appears that respondent has not been previously faulted administratively. So as not to hamper the performance of the duties of his office,[17] instead of suspending him, he is fined in an amount equivalent to his six (6) months salary.

WHEREFORE, respondent **BERNARDO G. SUALOG**, Sheriff IV, Regional Trial Court, Branch 9, Kalibo, Aklan, is found *GUILTY* of grave abuse of authority (oppression) and is *FINED* in an amount equivalent to his six months salary, with a *STERN WARNING* that a repetition of the same or similar act in the future shall be dealt with more severely.

Let a copy of this Decision be attached to the personnel record of respondent in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Leonardo-de Castro, JJ.,* concur.

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[14] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999 (see *Aranda, Jr. v. Alvarez*, A.M. No. P-04-1889, November 23, 2007).

[15] *Stilgrove v. Sabas*, *supra*, 394.

[16] CSC Res. No. 99-1936, Rule IV, Sec. 52(A)(14) (see *Stilgrove v. Sabas*, *supra*, 402).

[17] See *Estoque v. Girado*, *supra* note 6, *citing Sy v. Binasing*, A.M. No. P-06-2213, November 23, 2007, p. 4; *Jacinto v. Castro*, A.M. No. P-04-1907, July 3, 2007, 526 SCRA 272, 279; and *Tiu v. Dela Cruz*, A.M. No. P-06-2288, June 15, 2007, 524 SCRA 630, 640.

FIRST DIVISION

[A.M. No. P-07-2362. June 12, 2008]

MAGDALENA P. CATUNGAL, *complainant, vs.* **JOCELYN C. FERNANDEZ, Court Stenographer I, Municipal Trial Court, Caba, La Union,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; CIVIL SERVICE; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES; "JUST DEBTS," DEFINED.— Just debts refer to claims the existence and justness of which are admitted by the debtor. Fernandez's failure to comment on the affidavit-complaint implies her admission of the existence and justness of Catungal's claim. Also, Fernandez's letter dated 21 July 2003 clearly shows her admission of the existence of the debt and her repeated failure to pay it: I'm sorry Manang last Saturday *na collapse kasi ako saka sabi ni* Aweng*, wala pa raw pera. Kaya nag-absent ako ngayon para magremedyo ng pambayad ko sa iyo, punta ako ng* Agoo *para umutang ng pambayad ko sa yo sa* moneyline. *Bukas ka na lang punta ate* last promise *ko na sa yo*. Fernandez's letters, her refusal to comment on the affidavit-complaint, and the fact that the debt has remained unpaid since 15 March 2003 conclusively show that Fernandez willfully failed to fulfill her obligation to Catungal.

2. ID.; ID.; JUDICIARY; REFUSAL TO COMPLY WITH THE COURT'S DIRECTIVES CONSTITUTES INSUBORDINATION.— Aside from failing to pay her debt, Fernandez displayed her indifference by repeatedly refusing to comment on the affidavit-complaint. In its 1st Indorsement dated 8 October 2004 and 1st Tracer dated 18 March 2005, the OCA directed Fernandez to comment on the affidavit-complaint. In its Resolution dated 5 June 2006, the Court directed Fernandez to comment on the affidavit-complaint. Fernandez opted to ignore all these directives. Her disregard of the OCA's and the Court's directives is disrespectful and betrays a recalcitrant streak in character. A resolution of the Court should not be construed as a mere request. It should be

complied with promptly and completely. Refusal to comply with the Court's directives constitutes insubordination, which is a defiance of authority. It is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense. This is the *third* time the Court has found Fernandez guilty of insubordination. In *Marata* and *Bernal, Jr.*, the Court found her liable for insubordination for refusing to comment on the administrative complaint against her.

R E S O L U T I O N

CARPIO, *J.*:

This is a complaint for failure to pay a just debt filed by Magdalena P. Catungal (Catungal) against Jocelyn C. Fernandez (Fernandez), Court Stenographer I, Municipal Trial Court, Caba, La Union.

On 14 March 2003, Fernandez bought four cavans of rice worth ₱4,800 from Catungal. Fernandez signed a note[1] acknowledging her receipt of the rice and promised to pay the ₱4,800 on 15 March 2003.

Fernandez failed to pay on 15 March 2003. Catungal repeatedly demanded payment from Fernandez. Despite the repeated demands, Fernandez refused to pay. Fernandez kept on promising Catungal that she would pay her debt; however, she never did. Every time Catungal demanded payment, Fernandez made up an excuse why she could not pay: (1) in a letter[2] dated 19 March 2003, she stated that she was in Baguio; (2) in a letter[3] dated 27 March 2003, she stated that she had not received a certain check and that she was in Baguio; (3) in a letter[4] dated 2 June 2003, she stated that a certain piece of jewelry was in

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[1] *Rollo*, p. 5.

[2] *Id*. at 6.

[3] *Id*. at 7.

[4] *Id*. at 8.

Baguio and that she was on leave; (4) in a letter[5] dated 5 June 2003, she stated that her child was not able to bring the piece of jewelry from Baguio; (5) in a letter[6] dated 9 June 2003, she stated that she was going to Baguio to get the piece of jewelry; (6) in a letter[7] dated 23 June 2003, she stated that she would receive money from someone; and (7) in a letter[8] dated 21 July 2003, she stated that she got sick and that she would borrow money.

In an affidavit-complaint[9] dated 26 February 2004 and referred to the Office of the Court Administrator (OCA), Catungal charged Fernandez with willful failure to pay a just debt. In its 1st Indorsement[10] dated 8 October 2004, the OCA directed Fernandez to comment on the affidavit-complaint. Fernandez ignored the 1st Indorsement. In its 1st Tracer dated 18 March 2005, the OCA directed Fernandez to comment on the affidavit-complaint. Fernandez ignored the 1st Tracer. In a Resolution dated 5 June 2006, the Court required Fernandez to comment on the affidavit-complaint and to show cause why she should not be administratively dealt with for repeatedly refusing to comment. Fernandez ignored the 5 June 2006 Resolution.

In a Resolution dated 19 March 2007, the Court dispensed with Fernandez's comment and referred the matter to the OCA for evaluation, report, and recommendation.

In a Report dated 25 June 2007, the OCA found Fernandez liable for willful failure to pay a just debt. Considering that this is the third time Fernandez willfully failed to pay a just debt and considering her refusal to comment on the affidavit-complaint, the OCA recommended that she be dismissed from the service. However, since Fernandez was already removed from the service

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[5] *Id*. at 9.

[6] *Id*. at 10.

[7] *Id*. at 11.

[8] *Id*. at 12.

[9] *Id*. at 3-4.

[10] *Id*. at 13.

on 13 December 2005 for unsatisfactory performance, the OCA recommended that she be fined ₱5,000 instead. In a Resolution dated 22 August 2007, the Court re-docketed the case as a regular administrative matter.

The Court finds Fernandez liable for willful failure to pay a just debt and for insubordination.

Willful failure to pay just debts is administratively punishable.[11] It is unbecoming a court employee and a ground for disciplinary action.[12]

Just debts refer to claims the existence and justness of which are admitted by the debtor. [13] Fernandez's failure to comment on the affidavit-complaint implies her admission of the existence and justness of Catungal's claim.[14] Also, Fernandez's letter dated 21 July 2003 clearly shows her admission of the existence of the debt and her repeated failure to pay it:

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[11] Section 52(C) of the Revised Uniform Rules on Administrative Cases in the Civil Service provides:

C. The following are *light offenses* with [the] corresponding penalties:

x x x x x x x x x

10. Willful failure to pay just debts or willful failure to pay taxes due to the government

1st offense – Reprimand

2nd offense – Suspension (1-30 days)

3rd offense – Dismissal

The term "just debts" shall apply only to:

1. Claims adjudicated by a court of law; or

2. Claims the existence and justness of which are admitted by the debtor.

[12] *Re: Willful Failure to Pay Just Debts against Mr. Melquiades A. Briones*, A.M. No. 2007-11-SC, 10 August 2007, 529 SCRA 689, 695.

[13] Section 52(C)(10) of the Revised Uniform Rules on Administrative Cases in the Civil Service.

[14] *Bernal, Jr. v. Fernandez*, A.M. No. P-05-2045, 29 July 2005, 465 SCRA 29, 32.

I'm sorry Manang last Saturday *na* collapse *kasi ako saka sabi ni* Aweng, *wala pa raw pera. Kaya nag*-absent *ako ngayon para magremedyo ng pambayad ko sa iyo*, *punta ako ng* Agoo *para umutang ng pambayad ko sa yo sa* moneyline. *Bukas ka na lang punta ate* last promise *ko na sa yo*.[15]

Fernandez's letters, her refusal to comment on the affidavit-complaint, and the fact that the debt has remained unpaid since 15 March 2003 conclusively show that Fernandez willfully failed to fulfill her obligation to Catungal.

Section 52(C)(10) of the Revised Uniform Rules on Administrative Cases in the Civil Service[16] classifies willful failure to pay just debts as a light offense punishable by a reprimand for the first offense, suspension of one to 30 days for the second offense, and dismissal for the third offense. This is the *third* time the Court has found Fernandez guilty of willful failure to pay a just debt. In *Marata v. Fernandez*,[17] the Court found her liable for willful failure to pay her debt of ₱95,000. In *Bernal, Jr. v. Fernandez*,[18] the Court found her liable for willful failure to pay her debt of ₱20,108.

Aside from failing to pay her debt, Fernandez displayed her indifference by repeatedly refusing to comment on the affidavit-complaint. In its 1st Indorsement dated 8 October 2004 and 1st Tracer dated 18 March 2005, the OCA directed Fernandez to comment on the affidavit-complaint. In its Resolution dated 5 June 2006, the Court directed Fernandez to comment on the affidavit-complaint. Fernandez opted to ignore all these directives. Her disregard of the OCA's and the Court's directives is disrespectful[19] and betrays a recalcitrant streak in character.

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[15] *Rollo*, p. 12.

[16] 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.

[17] A.M. No. P-04-1871, 9 August 2005, 466 SCRA 45, 47.

[18] A.M. No. P-05-2045, 29 July 2005, 465 SCRA 29, 32-33.

[19] *Florendo v. Cadano*, A.M. No. P-05-1983, 20 October 2005, 473 SCRA 448, 454-455.

A resolution of the Court should not be construed as a mere request. It should be complied with promptly and completely.[20]

Refusal to comply with the Court's directives constitutes insubordination,[21] which is a defiance of authority. It is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense. This is the *third* time the Court has found Fernandez guilty of insubordination. In *Marata*[22] and *Bernal, Jr.*,[23] the Court found her liable for insubordination for refusing to comment on the administrative complaint against her.

In *Judge Aquino v. Fernandez*,[24] the Court found Fernandez liable for simple neglect of duty for failing to type a draft order. In all three administrative cases decided against her, the Court sternly warned Fernandez that a repetition of the same or similar offense shall be dealt with more severely.

Indeed, Fernandez is incorrigible and unfit to be a court employee. She should be meted the ultimate penalty of dismissal. However, because she was already removed from the service on 13 December 2005, the Court can no longer impose such penalty. In lieu of dismissal, the Court imposes a fine and disqualifies her for reemployment in the judiciary.

WHEREFORE, the Court finds Jocelyn C. Fernandez, Court Stenographer I, Municipal Trial Court, Caba, La Union, *GUILTY* of *WILLFUL FAILURE TO PAY A JUST DEBT* and *INSUBORDINATION*. Accordingly, the Court *FINES* her ₱5,000. She is also disqualified for reemployment in the judiciary.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[20] *Imbang v. Del Rosario*, A.M. No. 03-1515-MTJ, 19 November 2004, 443 SCRA 79, 83-84.

[21] *Supra* note 18 at 33.

[22] *Supra* note 17 at 48-49.

[23] *Supra* note 18 at 33.

[24] *Judge Aquino v. Fernandez*, 460 Phil. 1, 13 (2003).

FIRST DIVISION

[A.M. No. RTJ-07-2035. June 12, 2008]

CHINA BANKING CORPORATION, represented by Margarita L. San Juan and George C. Yap, *complainant, vs.* **JUDGE LEONCIO M. JANOLO, JR., Regional Trial Court, Br. 264, Pasig City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; JUDICIARY; JUDGES; FAILURE TO ACT ON A CASE FOR A CONSIDERABLE LENGTH OF TIME DEMONSTRATES LACK OF DEDICATION TO ONE'S WORK AND IS ADMINISTRATIVELY SANCTIONABLE.— Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary provides that judges shall perform all judicial duties *efficiently* and *with reasonable promptness*. Judge Janolo, Jr. failed to do so. He left Civil Case No. 68105 dormant for more than one year. The last pleading (China Bank's reply) was filed on 25 October 2004. Since 25 October 2004 until the time China Bank filed the instant complaint on 2 November 2005, Judge Janolo, Jr. unjustifiably failed to act on the case. The Court has repeatedly held that failure to act on a case for a considerable length of time demonstrates lack of dedication to one's work and is administratively sanctionable.

2. ID.; ID.; CIVIL SERVICE; SIMPLE MISCONDUCT; CASE AT BAR.— Judge Janolo, Jr.'s failure to act on Civil Case No. 68105 for a considerable length of time constitutes simple misconduct. Simple misconduct is a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer. It is a less serious offense punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION FOR RECONSIDERATION; PERIOD FOR RESOLVING SAME.— Aside from his failure to act on Civil Case No. 68105 for a considerable length of time, Judge Janolo, Jr. also failed to act on two motions within the

prescribed periods. Section 4, Rule 37 of the Rules of Court provides that a motion for reconsideration shall be resolved within 30 days from the time it is submitted for resolution. China Bank filed its motion for reconsideration on 2 February 2001. SBI and MFII filed their comment and supplemental comment to the motion on 24 April 2001 and 23 October 2001, respectively. Following Section 4, Judge Janolo, Jr. had 30 days from 23 October 2001 to resolve the motion. He issued the order denying the motion only on 10 December 2001 or 18 days after the due date.

4. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; PERIOD FOR RESOLVING MATTERS DEEMED SUBMITTED FOR RESOLUTION.— Section 15(1), Article VIII of the Constitution provides that judges must resolve all matters within three months from the date of submission. A matter is deemed submitted for resolution upon the filing of the last pleading. China Bank filed its motion to dissolve Judge Janolo's 14 December 2000 and 10 December 2001 orders on 24 February 2003. SBI and MFII filed their comment to the motion on 15 April 2003. China Bank filed its reply to the comment on 16 May 2003. Following Section 15(1), Judge Janolo, Jr. had three months from 16 May 2003 to resolve the motion. He issued the order denying the motion only on 10 November 2003 or two months and 25 days after the due date.

5. REMEDIAL LAW; DISCIPLINE OVER JUDGES; DELAY; PENALTY.— Delay in resolving motions violates the norms of judicial conduct and is administratively sanctionable. Judges must decide cases and resolve matters with dispatch because any delay in the administration of justice, no matter how brief, deprives litigants of their right to a speedy disposition of their case and undermines the people's faith in the judiciary. Section 9, Rule 140 of the Rules of Court classifies undue delay in rendering an order as a less serious offense. It is punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000.

6. ID.; ID.; CERTIFICATE OF NON-FORUM SHOPPING; NOT REQUIRED IN ADMINISTRATIVE PROCEEDINGS AGAINST JUDGES.— Section 1, Rule 140 of the Rules of Court does not require the filing of a certificate of non-forum shopping in the institution of administrative proceedings against

judges. In fact, administrative proceedings may be instituted by an anonymous complaint. In *Atty. Villanueva-Fabella v. Judge Lee*, the Court held that a certification of non-forum shopping is not needed in the institution of administrative proceedings against judges because Rule 140 makes no such requirement. Thus, China Bank's complaint is not defective for lack of a certificate of non-forum shopping.

7. ID.; INHIBITION BY JUDGES; CASE AT BAR INVOLVES DISCRETIONARY INHIBITION.— Judge Janolo, Jr.'s inhibition from the two cases is discretionary. The grounds relied upon by China Bank do not fall under the first paragraph of Section 1, Rule 137 of the Rules of Court which enumerates the grounds for compulsory inhibition. In *Santos v. Lacurom*, the Court held that the issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao Alameda & Casiding for complainant.

R E S O L U T I O N

CARPIO, *J.*:

This is a complaint for simple misconduct and undue delay in rendering two orders filed by China Banking Corporation (China Bank) against Judge Leoncio M. Janolo, Jr. (Judge Janolo, Jr.) of the Regional Trial Court, Branch 264, Pasig City.

On 5 October 2000, Solid Builders, Inc. (SBI) and Medina Food Industries, Inc. (MFII) filed a complaint[1] against China Bank praying that the bank be (1) restrained from instituting foreclosure proceedings, (2) restrained from implementing the interest rates stipulated in the mortgage contracts, and (3) made to pay damages. SBI and MFII applied for a writ of preliminary

[1] *Rollo*, pp. 9-24.

injunction against China Bank. The case was docketed as Civil Case No. 68105 and raffled to Judge Janolo, Jr.

On 10 November 2000, China Bank filed its answer[2] praying that the complaint be dismissed and that SBI and MFII be the ones made to pay damages.

In an order[3] dated 14 December 2000, Judge Janolo, Jr. granted SBI and MFII's application for a writ of preliminary injunction. On 2 February 2001, China Bank filed a motion for reconsideration[4] questioning the 14 December 2000 order. On 24 April and 23 October 2001, SBI and MFII filed their comment and supplemental comment to the motion for reconsideration, respectively. In an order[5] dated 10 December 2001, Judge Janolo, Jr. denied the motion for reconsideration.

On 22 March 2002, China Bank asked Judge Janolo, Jr. to set the case for pre-trial. On 24 February 2003, China Bank filed a motion[6] to dissolve the 14 December 2000 and 10 December 2001 orders. In an order[7] dated 10 November 2003, Judge Janolo, Jr. denied the motion to dissolve. On 4 February 2004, China Bank filed a petition for *certiorari*[8] with the Court of Appeals questioning Judge Janolo, Jr.'s 10 November 2003 order.

On 3 September 2004, China Bank filed with Judge Janolo, Jr. a motion[9] to dismiss Civil Case No. 68105 claiming that SBI and MFII failed to prosecute the case for an unreasonable length of time. On 5 October 2004, SBI and MFII filed their comment to the motion to dismiss. On 25 October 2004, China Bank

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[2] *Id*. at 88-103.

[3] *Id*. at 115-117.

[4] *Id*. at 118-126.

[5] *Id*. at 319.

[6] *Id*. at 310-317.

[7] *Id*. at 159-163.

[8] *Id*. at 132-154.

[9] *Id*. at 333-334.

filed its reply to SBI and MFII's comment. In an order[10] dated 17 January 2005, Judge Janolo, Jr. denied the motion to dismiss.

After Judge Janolo, Jr. denied China Bank's motion to dismiss, he failed to act on Civil Case No. 68105 for a considerable length of time. This prompted China Bank to file with the Office of the Court Administrator (OCA) a complaint[11] dated 2 November 2005 charging Judge Janolo, Jr. with simple misconduct and undue delay in rendering two orders. In its 1st Indorsement[12] dated 24 January 2006, the OCA directed Judge Janolo, Jr. to comment on the complaint. In his comment[13] dated 27 March 2006, Judge Janolo, Jr. stated that the complaint was defective because it lacked a certificate of non-forum shopping and that China Bank was the one to blame for some of the delays.

In a Report[14] dated 21 September 2006, the OCA found Judge Janolo, Jr. guilty of undue delay in resolving two motions — China Bank's motion for reconsideration and its motion to dissolve. The OCA recommended that the case be re-docketed as a regular administrative matter and that Judge Janolo, Jr. be fined ₱15,000.

In a Resolution[15] dated 28 February 2007, the Court re-docketed the case as a regular administrative matter and required the parties to manifest if they were willing to submit the case for decision based on the pleadings already filed. In his manifestation[16] dated 10 April 2007, Judge Janolo, Jr. manifested his willingness to submit the case for decision. In its manifestation[17] dated 11 April 2007, China Bank stated that Judge Janolo, Jr. discontinued the proceedings in Civil Case

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[10] *Id*. at 337-339.

[11] *Id*. at 1-7.

[12] *Id*. at 340.

[13] *Id*. at 345-357.

[14] *Id*. at 362-369.

[15] *Id*. at 370-371.

[16] *Id*. at 372-373.

[17] *Id*. at 376-379.

No. 68105 without justifiable cause and prayed that the Court ask Judge Janolo, Jr. to inhibit himself in Civil Case No. 68105 and in another case involving China Bank, which is also pending before Judge Janolo, Jr.

The Court finds Judge Janolo, Jr. liable for simple misconduct and for undue delay in rendering two orders. Due to the fact that this is Judge Janolo, Jr.'s third offense, the Court finds the OCA's recommended penalty too light.

Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary provides that judges shall perform all judicial duties *efficiently* and *with reasonable promptness*. Judge Janolo, Jr. failed to do so. He left Civil Case No. 68105 dormant for more than one year. The last pleading (China Bank's reply) was filed on 25 October 2004. Since 25 October 2004 until the time China Bank filed the instant complaint on 2 November 2005, Judge Janolo, Jr. unjustifiably failed to act on the case. The Court has repeatedly held that failure to act on a case for a considerable length of time demonstrates lack of dedication to one's work and is administratively sanctionable.[18]

Judge Janolo, Jr.'s failure to act on Civil Case No. 68105 for a considerable length of time constitutes simple misconduct. Simple misconduct is a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer.[19] It is a less serious offense[20] punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000.[21]

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[18] *Office of the Court Administrator v. Laron*, A.M. No. RTJ-04-1870, 9 July 2007, 527 SCRA 45, 54-56; *Office of the Court Administrator v. Gaudiel, Jr.*, A.M. No. RTJ-04-1825, 27 January 2006, 480 SCRA 266, 272-274; *Office of the Court Administrator v. Avelino*, A.M. No. MTJ-05-1606, 9 December 2005, 477 SCRA 9, 14-15.

[19] *Jacinto v. Layosa*, A.M. No. RTJ-02-1743, 11 July 2006, 494 SCRA 456, 464.

[20] RULES OF COURT, Rule 140, Sec. 9.

[21] RULES OF COURT, Rule 140, Sec. 11(B).

Aside from his failure to act on Civil Case No. 68105 for a considerable length of time, Judge Janolo, Jr. also failed to act on two motions within the prescribed periods. Section 4, Rule 37 of the Rules of Court provides that a motion for reconsideration shall be resolved within 30 days from the time it is submitted for resolution. China Bank filed its motion for reconsideration on 2 February 2001. SBI and MFII filed their comment and supplemental comment to the motion on 24 April 2001 and 23 October 2001, respectively. Following Section 4, Judge Janolo, Jr. had 30 days from 23 October 2001 to resolve the motion. He issued the order denying the motion only on 10 December 2001 or 18 days after the due date.

Section 15(1), Article VIII of the Constitution provides that judges must resolve all matters within three months from the date of submission. A matter is deemed submitted for resolution upon the filing of the last pleading.[22] China Bank filed its motion to dissolve Judge Janolo's 14 December 2000 and 10 December 2001 orders on 24 February 2003. SBI and MFII filed their comment to the motion on 15 April 2003. China Bank filed its reply to the comment on 16 May 2003. Following Section 15(1), Judge Janolo, Jr. had three months from 16 May 2003 to resolve the motion. He issued the order denying the motion only on 10 November 2003 or two months and 25 days after the due date.

Delay in resolving motions violates the norms of judicial conduct[23] and is administratively sanctionable.[24] Judges must decide cases and resolve matters with dispatch because any delay in the administration of justice, no matter how brief, deprives litigants of their right to a speedy disposition of their case and undermines the people's faith in the judiciary.[25]

Section 9, Rule 140 of the Rules of Court classifies undue delay in rendering an order as a less serious offense. It is

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[22] CONSTITUTION, Art. VIII, Sec. 15(2).

[23] *Sianghio, Jr. v. Judge Reyes*, 416 Phil. 215, 224 (2001).

[24] *Custodio v. Quitain*, 450 Phil. 70, 72 (2003).

[25] *Visbal v. Sescon*, A.M. No. RTJ-04-1890, 11 October 2005, 472 SCRA 233, 238.

punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000.[26]

This is not the first time Judge Janolo, Jr. has been found inefficient. In *Office of the Court Administrator v. Janolo, Jr.*,[27] the Court found him guilty of undue delay in rendering numerous decisions. In that case, Judge Janolo, Jr. failed to (1) decide 15 cases within the prescribed period; (2) resolve 23 matters within the prescribed period; and (3) act on 98 cases for a considerable length of time. In *Gil v. Judge Janolo, Jr.*,[28] the Court found him guilty of gross inefficiency for delay in rendering a decision. In both cases, the Court sternly warned him that the commission of the same offense shall be dealt with more severely.

Section 1, Rule 140 of the Rules of Court does not require the filing of a certificate of non-forum shopping in the institution of administrative proceedings against judges. In fact, administrative proceedings may be instituted by an anonymous complaint.[29] In *Atty. Villanueva-Fabella v. Judge Lee*,[30] the Court held that a certification of non-forum shopping is not needed in the institution of administrative proceedings against judges because Rule 140 makes no such requirement. Thus, China Bank's complaint is not defective for lack of a certificate of non-forum shopping.

In its 11 April 2007 manifestation, China Bank prayed that the Court ask Judge Janolo, Jr. to voluntarily inhibit himself in Civil Case No. 68105 and in another case involving China Bank, which is also pending before Judge Janolo, Jr. China Bank claimed that Judge Janolo, Jr. is partial: (1) he described the banking industry as adept solely in making profits; (2) he

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[26] RULES OF COURT, Rule 140, Sec. 11(B).

[27] A.M. No. RTJ-06-1994, 28 September 2007, 534 SCRA 262, 268.

[28] 400 Phil. 768, 771 (2000).

[29] RULES OF COURT, Rule 140, Sec. 1.

[30] 464 Phil. 548, 566 (2004).

discontinued the proceedings in Civil Case No. 68105 without justifiable cause; (3) he stated that he would not be surprised if China Bank charges the justices of the Court of Appeals with undue delay in rendering a decision or order; and (4) he declared in open court that he will challenge the instant administrative case.

Judge Janolo, Jr.'s inhibition from the two cases is discretionary. The grounds relied upon by China Bank do not fall under the first paragraph of Section 1, Rule 137 of the Rules of Court[31] which enumerates the grounds for compulsory inhibition. In *Santos v. Lacurom*,[32] the Court held that the issue of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge. Nevertheless, the Court reminds Judge Janolo, Jr. to (1) perform his judicial duties without bias or prejudice; (2) ensure that his conduct, both in and out of court, maintains and enhances the confidence of the litigants in the impartiality of the judge and of the judiciary; and (3) disqualify himself from participating in any proceeding in which he is unable to decide the matter impartially or in which it may appear to a reasonable observer that he is unable to decide the matter impartially.[33]

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[31] Section 1, Rule 137 of the Rules of Court provides:

SECTION 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[32] A.M. No. RTJ-04-1823, 28 August 2006, 499 SCRA 639, 650.

[33] Sections 1, 2, and 5, New Code of Judicial Conduct for the Philippine Judiciary, A.M. No. 03-05-01-SC.

WHEREFORE, the Court finds Judge Leoncio M. Janolo, Jr. of the Regional Trial Court, Branch 264, Pasig City, *GUILTY* of *SIMPLE MISCONDUCT* and of *UNDUE DELAY IN RENDERING ORDERS*. Accordingly, the Court *FINES* him ₱20,000 and *STERNLY WARNS* him that the repetition of the same or similar offense shall be dealt with more severely.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 137869. June 12, 2008]

SPOUSES MARCIAL VARGAS and ELIZABETH VARGAS, *petitioners, vs.* **SPOUSES VISITACION and JOSE CAMINAS, SPOUSES JESUS and LORELEI GARCIA, and SPOUSES RODOLFO and ROSARIO ANGELES DE GUZMAN,** *respondents*.

[G.R. No. 137940. June 12, 2008]

SPOUSES RODOLFO and ROSARIO ANGELES DE GUZMAN, *petitioners*, *vs.* **SPOUSES VISITACION and JOSE CAMINAS, and SPOUSES MARCIAL and ELIZABETH VARGAS,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINSTRATIVE LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB); JURISDICTION; CASES WHICH HLURB HAS JURISDICTION.— The HLURB has jurisdiction over cases arising from (1) unsound real estate business practices; (2) claims for refund or other claims filed by subdivision lot or condominium unit buyers against the project owner, developer,

dealer, broker or salesman; and (3) demands for specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, broker, or salesman.

2. ID.; ID.; ID.; ID.; INCLUDED ARE CASES INVOLVING THE ANNULMENT OF REAL ESTATE MORTGAGES CONSTITUTED BY PROJECT OWNERS WITHOUT THE CONSENT OF THE BUYERS AND WITHOUT THE PRIOR WRITTEN APPROVAL OF THE NHA.— On spouses De Guzman's claim that Section 18 of PD 957 does not grant the HLURB the authority to invalidate the mortgage contract if the requisite authority from the NHA is not obtained, this Court has previously ruled that the HLURB has jurisdiction over cases involving the annulment of a real estate mortgage constituted by the project owner without the consent of the buyer and without the prior written approval of the NHA. In *Union Bank of the Philippines v. HLURB*, the Court held that a realty company's act of mortgaging a condominium project without the knowledge and consent of the buyer of one of the condominium units, and without obtaining the prior approval of the NHA, constitutes unsound real estate business practice. Accordingly, the action for the annulment of such mortgage and mortgage foreclosure sale falls within the exclusive jurisdiction of the HLURB, thus: Clearly, FRDC's act of mortgaging the condominium project to Bancom and FEBTC, without the knowledge and consent of David as buyer of a unit therein, and without the approval of the NHA (now HLURB) as required by P.D. No. 957, was not only an unsound real estate business practice but also highly prejudicial to the buyer. David, who has a cause of action for annulment of the mortgage, the mortgage foreclosure sale, and the condominium certificate of title that was issued to the UBP and FEBTC as [the] highest bidders at the sale. The case falls within the exclusive jurisdiction of the NHA (now HLURB) as provided in P.D. No. 957 of 1976 and P.D. No. 1344 of 1978. The Court reiterated this ruling in *Home Bankers Savings and Trust Co. v. Court of Appeals* which involves a mortgage entered into by the same Trans-American Sales and Exposition that is a party in this case, thus: The CA did not err in affirming the decision of the Office of the President that HLURB has jurisdiction to declare invalid the mortgage contract executed between Garcia/TransAmerican and petitioner over the subject lots insofar as private respondents are concerned. It correctly

relied on *Union Bank of the Philippines vs. HLURB, et al.* where we squarely ruled on the question of HLURB's jurisdiction to hear and decide a condominium buyer's complaint for: (a) **annulment of a real estate mortgage constituted by the project owner without the consent of the buyer and without the prior written approval of the NHA; (b) annulment of the foreclosure sale;** and (c) annulment of the condominium certificate of title that was issued to the highest bidder at the foreclosure sale, x x x.

3. REMEDIAL LAW; COURTS; JURISDICTION; WELL-SETTLED IS THE RULE THAT THE JURISDICTION OF A COURT MAY BE QUESTIONED AT ANY STAGE OF THE PROCEEDINGS.— On the contention that spouses Vargas are estopped from raising the issue of jurisdiction, the well-settled rule is that the jurisdiction of a court may be questioned at any stage of the proceedings. An examination of the records of the trial court will reveal that in its Rejoinder dated 27 February 1993, spouses Vargas raised the issue of lack of jurisdiction of the trial court since the case properly falls within the jurisdiction of the HLURB.

4. ID.; ID.; ID.; IT IS THE DUTY OF THE COURT TO DISMISS AN ACTION WHENEVER IT APPEARS THAT THE COURT HAS NO JURISDICTION OVER THE SUBJECT MATTER.— However, the trial court failed to address the issue of jurisdiction in its decision as well as in its order granting the motion for reconsideration of spouses De Guzman. Clearly, the trial court erred in not dismissing the case before it. Under the Rules of Court, it is the duty of the court to dismiss an action whenever it appears that the court has no jurisdiction over the subject matter.

5. ID.; ID.; ID.; *TIJAM* IS INAPPLICABLE AS IT INVOLVES LACHES, WHICH IS NOT PRESENT IN CASE AT BAR.— In *Tijam*, the lack of jurisdiction was raised for the first time in a motion to dismiss filed almost **fifteen (15) years** after the questioned ruling had been rendered. Hence, the Court ruled that the issue of jurisdiction may no longer be raised for being barred by laches. The circumstances of the present case are different from *Tijam*. Spouses Vargas raised the issue of jurisdiction before the trial court rendered its decision. They continued to raise the issue in their appeal before the Court of Appeals and this Court. Hence, it cannot be said that laches

has set in. The exception in *Tijam* finds no application in this case and the general rule must apply, that the question of jurisdiction of a court may be raised at any stage of the proceedings. Spouses Vargas are therefore not estopped from questioning the jurisdiction of the trial court.

APPEARANCES OF COUNSEL

Rexie Efren A. Bugaring, Vladimir R. Bugaring and Associates Law Offices for Sps. Vargas.

Manuel P. Roxas, Jr. for Sps. Caminas, *et al*.

Perlas De Guzman Antonio & Herbosa Law Firm for Sps. De Guzman.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision dated 2 September 1998 of the Court of Appeals in CA-G.R. CV No. 45050.[2] The Court of Appeals set aside the Order dated 10 February 1994 of the Regional Trial Court of Quezon City, Branch 101 in Civil Case Nos. Q-90-7224 and 90-7439.

The Facts

On 6 August 1988, spouses Jose and Visitacion Caminas (spouses Caminas) bought a 54-square meter lot with a two-storey townhouse, designated as townhouse No. 8, from Trans-American Sales and Exposition represented by its developer Jesus Garcia (Garcia). Townhouse No. 8 is located at No. 65 General Lim Street, Heroes Hill, Quezon City and is on a portion

[1] G.R. Nos. 137869 and 137940 were consolidated by the Court in its resolution in G.R. No. 137869 dated 9 August 1999.

[2] Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Salome A. Montoya and Ruben T. Reyes.

of the land covered by TCT No. 195187. Spouses Caminas paid Garcia ₱850,000 as evidenced by a contract of sale[3] and provisional receipt.[4] According to spouses Caminas, they took possession of townhouse No. 8 upon completion of its construction.

In December of 1988, Garcia bought from Marcial and Elizabeth Vargas (spouses Vargas) various construction materials. As payment to spouses Vargas, Garcia executed an absolute Deed of Sale over townhouse No. 12.[5] However, on 1 March 1990, spouses Vargas and Garcia executed a Deed of Exchange with Addendum[6] whereby spouses Vargas transferred to Garcia townhouse No. 12, and in exchange Garcia transferred to spouses Vargas townhouse No. 8.

The contracts executed by Garcia with spouses Caminas and spouses Vargas were not registered with the Register of Deeds. This was because TCT No. 195187 was still being reconstituted and it was only on 17 August 1989 that TCT No. 7285 was issued in its stead.

On 10 May 1990, Garcia and his wife Lorelei (spouses Garcia) executed a Deed of Real Estate Mortgage[7] over townhouse No. 8 in favor of spouses Rodolfo and Rosario Angeles De Guzman (spouses De Guzman) as security for a loan. The mortgage was annotated at the back of TCT No. 7285. As spouses Garcia failed to pay their indebtedness, spouses De Guzman foreclosed the mortgage on 12 October 1990. At the public auction, spouses De Guzman were the highest bidder.

On 13 November 1990, spouses Caminas filed a complaint[8] against spouses Garcia, spouses De Guzman, and spouses Vargas

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[3] Records, Vol. I, pp. 7-9.

[4] *Id*. at 163.

[5] *Id*. at 38-40.

[6] *Id*. at 41-42.

[7] *Id*. at 10-14.

[8] *Id*. at 1-6.

before the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-90-7224 for the declaration of nullity of deed of mortgage and deed of sale, for the declaration of absolute ownership, for the delivery of title or in the alternative for refund of purchase price and damages.

On 6 December 1990, spouses Vargas filed a case against spouses Garcia and spouses De Guzman, also before the Regional Trial Court of Quezon City, for specific performance, declaration of nullity of the mortgage contract, damages or in the alternative for sum of money and damages, docketed as Civil Case No. Q-90-7439.[9]

The two cases were consolidated before the Regional Trial Court, Branch 101, as they involved interrelated issues.[10]

In their Rejoinder dated 27 February 1993, spouses Vargas raised the lack of jurisdiction of the trial court on the ground that the subject matter falls within the exclusive jurisdiction of the Housing and Land Use Regulatory Board (HLURB).[11] Spouses Vargas further stated that the HLURB had already rendered a decision in HLURB Case No. REM-021291-4730 dated 28 June 1991 awarding the property in their favor.[12]

The Ruling of the Trial Court

On 20 April 1993, the trial court rendered a decision upholding the rights of the spouses Caminas as the first buyer of the property:

WHEREFORE, premises above considered, judgment is hereby rendered in favor of plaintiffs Visitacion Caminas and Jose V. Caminas against defendants Sps. Jesus Garcia and Lorelei A. Garcia, Sps.

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[9] Records, Vol II, pp. 1-15.

[10] *Id*. at 77.

[11] Records, Vol. I, pp. 301-305.

[12] HLURB Case No. REM-021291-4730 involved only spouses Marcial and Elizabeth Vargas as complainants and Jesus Garcia and/or Trans-American Sales and Exposition as respondent. Spouses Jose and Visitacion Caminas and spouses Rodolfo and Rosario Angeles De Guzman were not impleaded in said case.

Rosario Angeles K. de Guzman and Rodolfo de Guzman and Sps. Elizabeth and Marcial Vargas, declaring said plaintiffs as the absolute owners of the subject property and ordering the Register of Deeds of Quezon City to divest defendants spouses Rosario Angeles K. de Guzman and Rodolfo P. de Guzman and spouses Elizabeth Vargas and Marcial Vargas of the title to the subject property and to cancel Transfer Certificate of Title No. 72646 issued in the name of spouses Rosario Angeles K. de Guzman and Rodolfo de Guzman and to invest title thereto in favor of plaintiffs Visitacion Caminas and Jose V. Caminas by issuing another transfer certificate of title in their names.

Ordering defendants Jesus Garcia and Lorelei A. Garcia to pay defendants Elizabeth Vargas and Marcial Vargas the amount of ₱700,000.00 and defendants Rosario Angeles K. de Guzman the amount of ₱562,500.00 with legal rate of interest thereof.

SO ORDERED.[13]

Spouses De Guzman filed a Motion for Reconsideration. The trial court granted the motion for reconsideration and issued an order[14] dated 10 February 1994, this time awarding ownership of the property to spouses De Guzman:

IN VIEW OF THE FOREGOING, the decision of this Court dated April 20, 1993 is hereby reconsidered and set aside and in lieu thereof, judgment is hereby rendered in favor of defendants spouses Rosario Angeles K. de Guzman and Rodolfo de Guzman against plaintiffs spouses Visitacion Caminas and Jose V. Caminas and plaintiffs spouses Elizabeth and Marcial Vargas, declaring said defendants as the absolute owners of the subject property embraced in TCT No. 72646.

Ordering defendants Jesus Garcia and Lorelei A. Garcia to pay plantiffs spouses Visitacion Caminas and Jose V. Caminas the amount of ₱850,000.00 and plaintiffs Elizabeth Vargas and Marcial Vargas the amount of ₱700,000.00 with legal interest thereof.

SO ORDERED.

Spouses Caminas and spouses Vargas filed an appeal before the Court of Appeals.

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[13] Records, Vol. II, pp. 409-414.

[14] *Id.* at 464-465.

The Ruling of the Court of Appeals

In its decision dated 2 September 1998, the Court of Appeals set aside the order of the trial court dated 10 February 1994. The appellate court reinstated the trial court's original decision dated 20 April 1993 upholding the ownership of spouses Caminas:

> Premises Considered, the Order of the Regional Trial Court dated February 10, 1994 is REVERSED AND SET ASIDE, and the original decision dated April 20, 1993 is REINSTATED.
>
> SO ORDERED.[15]

The appellate court stated that as between spouses Caminas and spouses Vargas, spouses Caminas have a better right to the property. The appellate court ruled that as neither of the sales were registered, spouses Caminas have a better right being the first possessor in good faith. The appellate court likewise ruled that spouses Caminas have a better right than spouses De Guzman over the property. According to the appellate court, the registration of the mortgage cannot defeat the right of spouses Caminas since the mortgage was executed by one who was no longer owner of the property. The appellate court further noted that spouses De Guzman failed to prove that they were mortgagees in good faith.

On the issue of jurisdiction, the appellate court ruled that spouses Vargas are estopped from raising the issue of jurisdiction since they filed the complaint and they took active part during the trial of the case.

Hence, this appeal.

The Issues

The issues raised by the parties may be summarized as follows:

I. Whether the Court of Appeals committed reversible error in not setting aside the decision and order of the Regional Trial Court since the case is within the exclusive jurisdiction of the HLURB;

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[15] *Rollo* (G.R. No. 137940), p. 19.

II. Whether the Court of Appeals committed reversible error in finding that spouses Caminas have a superior right, over spouses Vargas, to the property being the first possessors in good faith; and

III. Whether the Court of Appeals committed reversible error in finding that spouses Caminas have a superior right over spouses De Guzman despite the registration of the mortgage since the property was mortgaged by one who was no longer the owner of the property.

The Ruling of the Court

We find the appeal meritorious.

Presidential Decree No. 1344 dated 2 April 1978 expanded the jurisdiction of the National Housing Authority (NHA), the precursor of the HLURB, to include adjudication of the following cases:

> Sec. 1. In the exercise of its function to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the **National Housing Authority shall have exclusive jurisdiction** to hear and decide cases of the following nature:
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims ***filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman;*** and
>
> C. Cases involving ***specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, broker or salesman.*** (Emphasis ours)

Executive Order No. 648 created the Human Settlements Regulatory Commission (HSRC) to assume the regulatory and adjudicatory functions of the NHA, among other purposes. Executive Order No. 90 later renamed the HSRC the HLURB.

The HLURB has jurisdiction over cases arising from (1) unsound real estate business practices; (2) claims for refund or other

claims filed by subdivision lot or condominium unit buyers against the project owner, developer, dealer, broker or salesman; and (3) demands for specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, broker, or salesman.[16]

The controversies in this case revolve around the following transactions:

1. The sale of townhouse No. 8 by spouses Garcia to spouses Caminas;
2. The sale of townhouse No. 8 by spouses Garcia to spouses Vargas; and
3. The mortgage of townhouse No. 8 by spouses Garcia to spouses De Guzman.

There is no dispute that spouses Garcia are in the real estate business under the name Trans-American Sales and Exposition and that townhouse No. 8 is part of its Trans-American Sales and Exposition II project. Clearly, the validity of the questioned transactions entered into by spouses Garcia, as the owner and developer of Trans-American Sales and Exposition, falls within the jurisdiction of the HLURB.

However, spouses De Guzman argue that (1) the HLURB has no jurisdiction over cases involving the declaration of nullity of a mortgage contract filed **against the mortgagee alone**; and (2) Section 18 of Presidential Decree No. 957 (PD 957) merely requires the project owner or developer to seek prior authority from NHA before mortgaging the subdivision lot or condominium unit but the law does not grant the HLURB the authority to invalidate the mortgage contract if the requisite authority from the NHA is not obtained.

On the other hand, spouses Caminas contend that spouses Vargas are (1) estopped from raising the issue of jurisdiction of the trial court since spouses Vargas filed the case and actively

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[16] *Delos Santos v. Sarmiento*, G.R. No. 154877, 27 March 2007, 519 SCRA 62.

participated in the proceedings before the trial court, and (2) guilty of forum shopping.

The Court finds no merit in the arguments raised by spouses De Guzman and spouses Caminas.

The complaints filed before the trial court by spouses Caminas and spouses Vargas clearly show that the cases are against spouses Garcia, the developer of townhouse No. 8. Hence, the case filed before the trial court was not against the mortgagee alone. The mere fact that spouses Garcia were declared in default does not change the parties to the case or the nature of the action.

On spouses De Guzman's claim that Section 18 of PD 957 does not grant the HLURB the authority to invalidate the mortgage contract if the requisite authority from the NHA is not obtained, this Court has previously ruled that the HLURB has jurisdiction over cases involving the annulment of a real estate mortgage constituted by the project owner without the consent of the buyer and without the prior written approval of the NHA.

In *Union Bank of the Philippines v. HLURB*,[17] the Court held that a realty company's act of mortgaging a condominium project without the knowledge and consent of the buyer of one of the condominium units, and without obtaining the prior approval of the NHA, constitutes unsound real estate business practice. Accordingly, the action for the annulment of such mortgage and mortgage foreclosure sale falls within the exclusive jurisdiction of the HLURB, thus:

Clearly, FRDC's act of mortgaging the condominium project to Bancom and FEBTC, without the knowledge and consent of David as buyer of a unit therein, and without the approval of the NHA (now HLURB) as required by P.D. No. 957, was not only an unsound real estate business practice but also highly prejudicial to the buyer. David, who has a cause of action for annulment of the mortgage, the mortgage foreclosure sale, and the condominium certificate of title

[17] G.R. No. 95364, 29 June 1992, 210 SCRA 558, 564.

that was issued to the UBP and FEBTC as [the] highest bidders at the sale. The case falls within the exclusive jurisdiction of the NHA (now HLURB) as provided in P.D. No. 957 of 1976 and P.D. No. 1344 of 1978.

The Court reiterated this ruling in *Home Bankers Savings and Trust Co. v. Court of Appeals*[18] which involves a mortgage entered into by the same Trans-American Sales and Exposition that is a party in this case, thus:

> The CA did not err in affirming the decision of the Office of the President that HLURB has jurisdiction to declare invalid the mortgage contract executed between Garcia/TransAmerican and petitioner over the subject lots insofar as private respondents are concerned. It correctly relied on *Union Bank of the Philippines vs. HLURB, et al.* where we squarely ruled on the question of HLURB's jurisdiction to hear and decide a condominium buyer's complaint for: (a) **annulment of a real estate mortgage constituted by the project owner without the consent of the buyer and without the prior written approval of the NHA; (b) annulment of the foreclosure sale**; and (c) annulment of the condominium certificate of title that was issued to the highest bidder at the foreclosure sale, x x x

On the contention that spouses Vargas are estopped from raising the issue of jurisdiction, the well-settled rule is that the jurisdiction of a court may be questioned at any stage of the proceedings. An examination of the records of the trial court will reveal that in its Rejoinder dated 27 February 1993, spouses Vargas raised the issue of lack of jurisdiction of the trial court since the case properly falls within the jurisdiction of the HLURB.

However, the trial court failed to address the issue of jurisdiction in its decision as well as in its order granting the motion for reconsideration of spouses De Guzman.

Clearly, the trial court erred in not dismissing the case before it. Under the Rules of Court, it is the duty of the court to dismiss an action whenever it appears that the court has no jurisdiction over the subject matter.[19]

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[18] G.R. No. 128354, 26 April 2005, 457 SCRA 167, 177-178.

[19] Section 2, Rule 9.

In *De Rossi v. NLRC*,[20] citing *La Naval Drug Corporation v. Court of Appeals*,[21] the Court stated:

> Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside.

In *Mangaliag v. Catubig-Pastoral*,[22] the Court ruled that a party who files a suit before a court that lacks jurisdiction is not necessarily estopped from raising the issue of jurisdiction, thus:

> It is neither fair nor legal to bind a party by the result of a suit or proceeding which was taken cognizance of in a court which lacks jurisdiction over the same irrespective of the attendant circumstances. **The equitable defense of estoppel requires knowledge or consciousness of the facts upon which it is based. The same thing is true with estoppel by conduct which may be asserted only when it is shown, among others, that the representation must have been made with knowledge of the facts and that the party to whom it was made is ignorant of the truth of the matter** (*De Castro vs. Gineta*, 27 SCRA 623)**. The filing of an action or suit in a court that does not possess jurisdiction to entertain the same may not be presumed to be deliberate and intended to secure a ruling which could later be annulled if not favorable to the party who filed such suit or proceeding. Instituting such an action is not a one-sided affair. It can just as well be prejudicial to the one who file the action or suit in the event that he obtains a favorable judgment therein which could also be attacked for having been rendered without jurisdiction.** The determination of the correct jurisdiction of a court is not a simple

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[20] 373 Phil. 17, 26-27 (1999).

[21] G.R. No. 103200, 31 August 1994, 236 SCRA 78.

[22] G.R. No. 143951, 25 October 2005, 474 SCRA 153, 163-164 citing *Calimlim v. Ramirez*, G.R. No. L-34362, 19 November 1982, 118 SCRA 399.

matter. It can raise highly debatable issues of such importance that the highest tribunal of the land is given the exclusive appellate jurisdiction to entertain the same. **The point simply is that when a party commits error in filing his suit or proceeding in a court that lacks jurisdiction to take cognizance of the same, such act may not at once be deemed sufficient basis of estoppel.** It could have been the result of an honest mistake or of divergent interpretations of doubtful legal provisions. If any fault is to be imputed to a party taking such course of action, part of the blame should be placed on the court which shall entertain the suit, thereby lulling the parties into believing that they pursued their remedies in the correct forum. Under the rules, it is the duty of the court to dismiss an action whenever it appears that court has no jurisdiction over the subject matter. (Section 2, Rule 9, Rules of Court) Should the Court render a judgment without jurisdiction, such judgment may be impeached or annulled for lack of jurisdiction (Sec. 30, Rule 132, *Ibid*.), within ten (10) years from the finality of the same (Art. 1144, par. 3, Civil Code). (Emphasis supplied)

In *Metromedia Times Corporation v. Pastorin*,[23] the Court expounded on the issue of estoppel on the question of jurisdiction:

> The rulings in *Lozon v. NLRC* addresses the issue at hand. This Court came up with a **clear rule as to when jurisdiction by estoppel applies and when it does not:**
>
> Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). This defense may be interposed at any time, during appeal (*Roxas vs. Rafferty*, 37 Phil. 957) or even after final judgment (*Cruzcosa vs. Judge Concepcion, et al.*, 101 Phil. 146). Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In *People vs. Casiano* (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held:
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> > The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court

[23] G.R. 154295, 29 July 2005, 465 SCRA 320, 335-336 citing *Lozon v. NLRC*, 310 Phil.1 (1995) and *People v. Casiano*, 111 Phil. 73 (1961).

> actually had jurisdiction or not. **If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel'** (5 C.J.S., 861-863). **However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position that the lower court had jurisdiction.** Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon.

Verily, *Lozon, Union Motors, Dy and De Rossi* aptly resolve the jurisdictional issue obtaining in this case. **Applying the guidelines in *Lozon*, the labor arbiter assumed jurisdiction when he should not. In fact, the NLRC correctly reversed the labor arbiter's decision x x x.** (Emphasis supplied)

In this case, the trial court clearly had no jurisdiction over the subject matter. Hence, spouses Vargas are not barred from assailing the jurisdiction of the trial court and the principle of estoppel does not apply.

The appellate court, however, ruled that spouses Vargas are estopped from raising the issue of jurisdiction based on the doctrine in *Tijam v. Sibonghanoy*.[24]

The Court finds that *Tijam* is not applicable in the present case. The general rule is that lack of jurisdiction of a court may be raised at any stage of the proceedings. In *Calimlim v. Ramirez*,[25] the Court stated that *Tijam* is an **exception** to the general rule because of the presence of **laches**:

> A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court

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[24] 131 Phil. 556 (1968).

[25] 204 Phil. 25, 34-35 (1982).

over the subject matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of [Tijam]. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstance involved in [Tijam] which justified the departure from the accepted concept of non-waivability of objection to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in [Tijam] not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by *estoppel*.

In *Tijam*, the lack of jurisdiction was raised for the first time in a motion to dismiss filed almost **fifteen (15) years** after the questioned ruling had been rendered. Hence, the Court ruled that the issue of jurisdiction may no longer be raised for being barred by laches.

The circumstances of the present case are different from *Tijam*. Spouses Vargas raised the issue of jurisdiction before the trial court rendered its decision. They continued to raise the issue in their appeal before the Court of Appeals and this Court. Hence, it cannot be said that laches has set in. The exception in *Tijam* finds no application in this case and the general rule must apply, that the question of jurisdiction of a court may be raised at any stage of the proceedings. Spouses Vargas are therefore not estopped from questioning the jurisdiction of the trial court.

In any case, spouses Caminas cannot invoke the principle of estoppel to prevent the Court from taking up the issue of jurisdiction.[26] In *Dy v. NLRC*,[27] the Court held:

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[26] *Union Motors Corporation v. NLRC*, 373 Phil. 310 (1999).

[27] 229 Phil. 234, 244 (1986) citing *Free Telephone Workers Union v. PLDT*, 199 Phil. 137 (1982).

The failure of the appellees to invoke anew the aforementioned solid ground of want of jurisdiction of the lower court in this appeal should not prevent this Tribunal to take up that issue as the lack of jurisdiction of the lower court is apparent upon the face of the record and it is fundamental that a court of justice could only validly act upon a cause of action or subject matter of a case over which it has jurisdiction and said jurisdiction is one conferred only by law; and cannot be acquired through, or waived by, any act or omission of the parties; hence may be considered by this court *motu proprio*. (citations omitted)

The Court shall no longer dwell on the issue of forum shopping. Even if spouses Vargas were guilty of forum shopping, the fact remains that the trial court had no jurisdiction over the case. Spouses Caminas only raised the issue of forum shopping in their opposition to the Motion for Reconsideration (filed by the spouses Vargas) dated 22 October 1998 before the Court of Appeals.[28] In *Young v. Keng Seng*,[29] the Court ruled that the violation of the rule on forum shopping should be raised at the earliest opportunity in a motion to dismiss or a similar pleading. The fact that spouses Vargas filed a case before the HLURB was made known to the spouses Caminas before the trial court rendered its decision. Yet, spouses Caminas failed to question the alleged forum shopping before the trial court or in their appeal brief before the Court of Appeals.

Having concluded that it is the HLURB and not the trial court which has jurisdiction over the present controversy, the Court deems it unnecessary to discuss the other issues raised by the parties.

WHEREFORE, we *SET ASIDE* the Decision of the Court of Appeals dated 2 September 1998 in CA-G.R. CV No. 45050. We **DISMISS** Civil Case Nos. Q-90-7224 and 90-7439 without prejudice to the parties seeking relief, if so minded, in the proper forum.

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[28] CA *rollo*, pp. 193-196.

[29] 446 Phil. 823 (2003).

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 141020. June 12, 2008]

CASINO LABOR ASSOCIATION, *petitioner, vs.* **COURT OF APPEALS, PHIL. CASINO OPERATORS CORPORATION (PCOC) and PHIL. SPECIAL SERVICES CORPORATION (PSSC),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A COURT DECISION MUST BE READ AS A WHOLE; INTERPRETATION OF JUDGMENTS, CONSTRUED.— A court decision must be read as a whole. With regard to interpretation of judgments, ***Republic v. De Los Angeles*** stated: As a general rule, judgments are to be construed like other written instruments. The determinative factor is the intention of the court, as gathered from all parts of the judgment itself. In applying this rule, effect must be given to that which is unavoidably and necessarily implied in a judgment, as well as to that which is expressed in the most appropriate language. Such construction should be given to a judgment as will give force and effect to every word of it, if possible, and make it as a whole consistent, effective and reasonable.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— Thus, in resolving the issue of whether or not the NLRC has jurisdiction over employer-employee relations in PAGCOR, PCOC and PSSC, the Third Division made the definitive ruling that "there appears to be no question from the petition and its annexes that the respondent corporations were created by an original charter." The Court

collectively referred to all respondent corporations, including PCOC and PSSC, and held that in accordance with the Constitution and jurisprudence, corporations with original charter "fall under the jurisdiction of the Civil Service Commission and not the Labor Department." The Court stated further that P.D. 1869 exempts casino employees from the coverage of Labor Code provisions and although the employees are empowered by the Constitution to form unions, these are "subject to the laws passed to regulate unions in offices and corporations governed by the Civil Service Law." Thus, in dismissing the petition, the ruling of the Third Division was clear - - - it is the Civil Service Commission, and not the NLRC, that has jurisdiction over the employer-employee problems in PAGCOR, PCOC and PSSC. The 23 January 1989 Resolution already ruled on the NLRC's lack of jurisdiction over all the respondents in the case – PAGCOR, PCOC and PSSC. The Third Division neither veered away nor reversed such ruling in its 15 March 1989 Resolution to petitioner's motion for reconsideration. A reading of the two aforementioned resolutions clearly shows that the phrase "private companies" could not have referred to PCOC and PSSC for that would substantially alter the Court's ruling that petitioner's labor cases against the respondents are cognizable by the Civil Service Commission, and not by the NLRC.

3. ID.; ID.; SUPREME COURT; NOT A TRIER OF FACTS.— In its memorandum, petitioner presents a second issue not otherwise raised in its petition for *certiorari,* contending that respondents waived their rights to controvert petitioner's valid and just claims when they filed a motion to dismiss the consolidated cases with the labor arbiter on the ground of lack of jurisdiction. However, in our 20 August 2003 Resolution requiring the parties to submit their respective memoranda, we specifically stated that "no new issues may be raised by a party in his/its Memorandum." Moreover, petitioner, in support of this additional issue, presents its arguments on the merits of the consolidated labor cases. This Court is not a trier of facts.

APPEARANCES OF COUNSEL

George L. Howard for petitioner.
Henry A. Reyes for respondents.

D E C I S I O N

PUNO, *C.J.*:

This petition for *certiorari*[1] assails the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 50826. The CA dismissed the petition for *certiorari* filed by the petitioner against the First Division of the National Labor Relations Commission (NLRC) and denied petitioner's motion for reconsideration.

The series of events which ultimately led to the filing of the petition at bar started with the consolidated cases[4] filed by the petitioner labor union with the Arbitration Branch of the NLRC. In an Order[5] dated 20 July 1987, the Labor Arbiter dismissed the consolidated cases for lack of jurisdiction over the respondents therein, Philippine Amusement and Gaming Corporation (PAGCOR) and Philippine Casino Operators Corporation (PCOC).

On appeal to the NLRC, the Commission *en banc* issued a Resolution[6] dated 15 November 1988, which dismissed the separate appeals filed by the petitioner on the ground that the NLRC has no jurisdiction over PAGCOR.

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[1] Under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 88-93. Promulgated on 22 June 1999. Penned by Associate Justice Romeo A. Brawner, concurred in by Associate Justices Angelina Sandoval-Gutierrez and Martin S. Villarama, Jr.

[3] *Id*. at 100. Promulgated on 6 December 1999.

[4] NLRC-NCR-6-2331-86 entitled "*Casino Labor Association (CALAS) v. Philippine Amusement and Gaming Corp. (PAGCOR) and Philippine Casino Operators Corporation (PCOC)*"; NCR-NS-11-539-86 entitled "*In re: Notice of Strike filed by CALAS v. PAGCOR and/or PCOC*"; NCR-00-03-00824-87 entitled "*CALAS v. PCOC, Philippine Special Services Corporation (PSSC) and PAGCOR*."

[5] *Rollo*, pp. 26-33. Penned by Labor Arbiter Isabel P. Ortiguerra.

[6] *Id*. at 34.

Petitioner then elevated the case to this Court, via a petition for review on *certiorari*,[7] entitled ***Casino Labor Association v. National Labor Relations Commission, Philippine Amusement & Gaming Corporation, Philippine Casino Operators Corporation and Philippine Special Services Corporation*** and docketed as **G.R. No. 85922**. In a Resolution[8] dated 23 January 1989, the Third Division of the Court dismissed the petition for failure of the petitioner to show grave abuse of discretion on the part of the NLRC.

Petitioner filed a motion for reconsideration, but the same was denied with finality in a 15 March 1989 Resolution.[9] The Resolution states, in part:

> x x x Any petitions brought against private companies will have to be brought before the appropriate agency or office of the Department of Labor and Employment.

Based solely on that statement, petitioner filed a Manifestation/Motion[10] with the NLRC praying that the records of the consolidated cases be "remanded to the Arbitration Branch for proper prosecution and/or disposition thereof against private respondents Philippine Casino Operators Corporation (PCOC) and Philippine Special Services Corporation (PSSC)."

Acting on the Manifestation/Motion, the NLRC First Division issued an Order[11] dated 30 June 1989, which granted the motion and ordered that the records of the cases be forwarded to the Arbitration Branch for further proceedings.

Respondents PCOC and PSSC filed a motion for reconsideration. In an Order[12] dated 22 July 1994, the NLRC

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[7] Treated as a special civil action for *certiorari*.

[8] *Rollo*, pp. 48-49.

[9] *Id*. at 52.

[10] *Id*. at 53-54.

[11] *Id*. at 55-57.

[12] *Id*. at 59-62.

First Division granted the motion, set aside the 30 June 1989 Order for having been issued without legal basis, and denied with finality the petitioner's Manifestation/Motion. Petitioner's motion for reconsideration was likewise denied in a Resolution[13] dated 28 November 1997.

Petitioner filed a petition for *certiorari*[14] with this Court asserting that the NLRC First Division committed grave abuse of discretion in ignoring the mandate of G.R. No. 85922. Petitioner argued that, with the statement "(a)ny petitions brought against private companies will have to be brought before the appropriate agency or office of the Department of Labor and Employment," this Court laid down the law of the case and mandated that petitions against respondents PCOC and PSSC should be brought before the NLRC. By way of resolution,[15] this Court referred the case to the CA in accordance with the ruling in ***St. Martin Funeral Homes v. NLRC***.[16]

On 22 June 1999, the CA rendered its Decision dismissing the petition for *certiorari*. The CA found no grave abuse of discretion on the part of the NLRC First Division when it issued: (a) the 22 July 1994 Order, which set aside its 30 June 1989 Order remanding the case to the Arbitration Branch for further proceedings; and (b) the 28 November 1998 Resolution, which denied petitioner's motion for reconsideration. Petitioner filed a motion for reconsideration, which the CA denied in its 6 December 1999 Resolution.

Hence, the instant petition for *certiorari* in which the petitioner raises this sole issue:

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[13] *Id*. at 72-73.

[14] Docketed as G.R. No. 131963.

[15] *Rollo*, p. 85. Dated 18 November 1998.

[16] G.R. No. 130866, September 16, 1998, 295 SCRA 494. The Court *En Banc* declared that all appeals from the NLRC to the Supreme Court [petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure] should henceforth be initially filed in the Court of Appeals as the appropriate forum for the relief desired in strict observance of the doctrine on the hierarchy of courts.

CAN THE COURT OF APPEALS IGNORE THE MANDATE OF THE HONORABLE SUPREME COURT'S RESOLUTION IN G.R. 85922, THAT PETITIONS AGAINST PRIVATE RESPONDENTS PCOC AND PSSC SHOULD BE TRIED BY THE COMMISSION (NLRC) THRU ITS ARBITRATION BRANCH?

To determine whether the CA acted with grave abuse of discretion correctable by *certiorari*, it is necessary to resolve one core issue: whether the Supreme Court, in G.R. No. 85922, mandated that the NLRC assume jurisdiction over the cases filed against PCOC and PSSC.

The resolution of the case at bar hinges on the intended meaning of the Third Division of the Court when it stated in its 15 March 1989 Resolution in G.R. No. 85922, *viz*:

> x x x Any petitions brought against private companies will have to be brought before the appropriate agency or office of the Department of Labor and Employment.

Petitioner considers the foregoing statement as a legal mandate warranting the remand of the consolidated labor cases to the Arbitration Branch of the NLRC for further proceedings against respondents PCOC and PSSC.

We do not agree.

A court decision must be read as a whole. With regard to interpretation of judgments, ***Republic v. De Los Angeles*** stated:

> As a general rule, judgments are to be construed like other written instruments. The determinative factor is the intention of the court, as gathered from all parts of the judgment itself. In applying this rule, effect must be given to that which is unavoidably and necessarily implied in a judgment, as well as to that which is expressed in the most appropriate language. Such construction should be given to a judgment as will give force and effect to every word of it, if possible, and make it as a whole consistent, effective and reasonable.[17]

Hence, a close scrutiny of the full text of the 23 January and 15 March 1989 Resolutions in G.R. No. 85922 sheds much

[17] G.R. No. L-26112, October 4, 1971, 41 SCRA 422, 443-444.

needed light. In the first Resolution, the Third Division of this Court dismissed the petitioner's case in this wise:

> The issue in this case is whether or not the National Labor Relations Commission has jurisdiction over employee-employer problems in the Philippine Amusement and Gaming Corporation (PAGCOR), the Philippine Casino Operators Corporation (PCOC), and the Philippine Special Services Corporation (PSSC).
>
> The present Constitution specifically provides in Article IX B, Section 2(1) that "the civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." (Emphasis supplied)
>
> There appears to be no question from the petition and its annexes that the respondent corporations were created by an original charter, P.D. No. 1869 in relation to P.D. Nos. 1067-A, 1067-C, 1399 and 1632.
>
> In the recent case of *National Service Corporation, et al. v. Honorable Third Division, National Labor Relations Commission, et al.* (G.R. No. 69870, November 29, 1988), this Court ruled that subsidiary corporations owned by government corporations like the Philippine National Bank but which have been organized under the General Corporation Code are not governed by Civil Service Law. They fall under the jurisdiction of the Department of Labor and Employment and its various agencies. Conversely, it follows that government corporations created under an original charter fall under the jurisdiction of the Civil Service Commission and not the Labor Department.
>
> Moreover, P.D. 1869, Section 18, specifically prohibits formation of unions among casino employees and exempts them from the coverage of Labor Code provisions. Under the new Constitution, they may now form unions but subject to the laws passed to regulate unions in offices and corporations governed by the Civil Service Law.
>
> CONSIDERING the failure of the petitioner to show grave abuse of discretion on the part of the public respondent, the COURT RESOLVED to DISMISS the petition.

Thus, in resolving the issue of whether or not the NLRC has jurisdiction over employer-employee relations in PAGCOR, PCOC

and PSSC, the Third Division made the definitive ruling that "there appears to be no question from the petition and its annexes that the respondent corporations were created by an original charter." The Court collectively referred to all respondent corporations, including PCOC and PSSC, and held that in accordance with the Constitution and jurisprudence, corporations with original charter "fall under the jurisdiction of the Civil Service Commission and not the Labor Department." The Court stated further that P.D. 1869 exempts casino employees from the coverage of Labor Code provisions and although the employees are empowered by the Constitution to form unions, these are "subject to the laws passed to regulate unions in offices and corporations governed by the Civil Service Law." Thus, in dismissing the petition, the ruling of the Third Division was clear - - - it is the Civil Service Commission, and not the NLRC, that has jurisdiction over the employer-employee problems in PAGCOR, PCOC and PSSC.

In its motion for reconsideration, petitioner lamented that its complaint might be treated as a "pingpong ball" by the Department of Labor and Employment and the Civil Service Commission. It argued:

> x x x the petitioner will now be in a dilemna (sic) for the reason, that the charter creating PAGCOR expressly exempts it from the coverage of the Civil Service Laws and therefore the petitioner, will now be in a quandary whether it will be allowed to prosecute its case against PAGCOR before the Civil Service Commission while its own charter expressly exempts it from the coverage of the Civil Service Law x x x[18]

The Third Division denied the motion for reconsideration in a Resolution dated 15 March 1989, which contained the statement upon which the petitioner's whole case relies. The Court stated:

> The petitioner states in its motion for reconsideration that the PAGCOR charter expressly exempts it from the coverage of the Civil Service Laws and, consequently, even if it has an original charter, its disputes with management should be brought to the Department

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[18] *Rollo* (G.R. No. 85922), p. 32.

of Labor and Employment. This argument has no merit. Assuming that there may be some exemptions from the coverage of Civil Service Laws insofar as eligibility requirements and other rules regarding entry into the service are concerned, a law or charter cannot supersede a provision of the Constitution. The fear that the petitioner's complaint will be rejected by the Civil Service Commission is unfounded as the Commission must act in accordance with its coverage as provided by the Constitution. **Any petitions brought against private companies will have to be brought before the appropriate agency or office of the Department of Labor and Employment.**

CONSIDERING THE FOREGOING, the COURT RESOLVED to DENY the motion for reconsideration. This DENIAL is FINAL. (emphasis added)

Petitioner contends that the "private companies" referred to therein pertain to respondents PCOC and PSSC, and consequently, this Court has laid down the law of the case in G.R. No. 85922 and has directed that the cases against PCOC and PSSC should be prosecuted before the Department of Labor and Employment or NLRC.

Petitioner's contention is untenable. It is well-settled that to determine the true intent and meaning of a decision, no specific portion thereof should be resorted to, but the same must be considered in its entirety.[19] Hence, petitioner cannot merely view a portion of the 15 March 1989 Resolution in isolation for the purpose of asserting its position. The 23 January 1989 Resolution already ruled on the NLRC's lack of jurisdiction over all the respondents in the case — PAGCOR, PCOC and PSSC. The Third Division neither veered away nor reversed such ruling in its 15 March 1989 Resolution to petitioner's motion for reconsideration. A reading of the two aforementioned resolutions clearly shows that the phrase "private companies" could not have referred to PCOC and PSSC for that would substantially alter the Court's ruling that petitioner's labor cases against the respondents are cognizable by the Civil Service Commission, and not by the NLRC. In its assailed decision, the Court of Appeals ratiocinated:

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[19] *Policarpio v. Philippine Veterans Board*, 106 Phil. 125 (1959).

Evidently, the [March 15] Resolution containing the questioned pronouncement did not give legal mandate to petitioner to file its Petition with the Department of Labor and Employment or any of its agencies. On the contrary, the Resolution decided with finality that petitions brought against the PAGCOR or similar agencies/ instrumentalities of the government must be filed with the Civil Service Commission which has jurisdiction on the matter. The questioned pronouncement, to Our mind, was made only to illustrate the instance when jurisdiction is instead conferred on the Department of Labor *vis-à-vis* the Civil Service Commission; that is, when the petitions are filed [against] private companies.

Finally, as pointed out by the Office of the Solicitor General, the subject matter of the pronouncement in question is "any petition" not the petition filed by petitioners. Likewise, the petition must be one which is brought against "private companies" not against private respondents. Apparently, the abovequoted pronouncement is intended to be a general rule that will govern petitions filed against private companies. It is not intended to be a specific rule that will apply only to the petition filed by herein petitioners. Where the law makes no distinctions, one does not distinguish. *A fortiori*, where the questioned pronouncement makes no distinctions, one does not distinguish.

We agree with the CA. The statement that "(a)ny petitions brought against private companies will have to be brought before the appropriate agency or office of the Department of Labor and Employment," upon which petitioner's entire case relies, is of no consequence. It is *obiter dictum*.

In its memorandum,[20] petitioner presents a second issue not otherwise raised in its petition for *certiorari*, contending that respondents waived their rights to controvert petitioner's valid and just claims when they filed a motion to dismiss the consolidated cases with the labor arbiter on the ground of lack of jurisdiction. However, in our 20 August 2003 Resolution requiring the parties to submit their respective memoranda, we specifically stated that "no new issues may be raised by a party in his/its Memorandum." Moreover, petitioner, in support of this additional issue, presents its arguments on the merits of the consolidated

[20] *Rollo*, pp. 235-247.

labor cases. This Court is not a trier of facts. In ***Santiago v. Vasquez***, we reiterated:

> We discern in the proceedings in this case a propensity on the part of petitioner, and, for that matter, the same may be said of a number of litigants who initiate recourses before us, to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court despite the fact that the same is available in the lower courts in the exercise of their original or concurrent jurisdiction, or is even mandated by law to be sought therein. This practice must be stopped, not only because of the imposition upon the precious time of this Court but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We, therefore, reiterate the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.[21]

In this case, the Civil Service Commission is the proper venue for petitioner to ventilate its claims.

The Court is not oblivious to petitioner's plea for justice after waiting numerous years for relief since it first filed its claims with the labor arbiter in 1986. However, petitioner is not completely without fault. The 23 January 1989 Resolution in G.R. No. 85922, declaring the lack of jurisdiction by the NLRC over PAGCOR, PCOC and PSSC, became final and executory on March 27, 1989. The petitioner did not file a second motion for reconsideration nor did it file a motion for clarification of any statement by the Court which petitioner might have thought was ambiguous. Neither did petitioner take the proper course of action, as laid down in G.R. No. 85922, to file its claims before the Civil Service Commission. Instead, petitioner pursued a protracted course of action based solely

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[21] G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

on its erroneous understanding of a single sentence in the Court's resolution to a motion for reconsideration.

IN VIEW WHEREOF, the instant petition for *certiorari* is DISMISSED. The assailed 22 June 1999 Decision and 6 December 1999 Resolution of the Court of Appeals in CA-G.R. SP No. 50826 are AFFIRMED.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 145044. June 12, 2008]

PHILIPPINE CHARTER INSURANCE CORPORATION, *petitioner, vs.* **NEPTUNE ORIENT LINES/OVERSEAS AGENCY SERVICES, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE RTC AND CA ARE BINDING ON THE SUPREME COURT; CASE AT BAR.— Moreover, the same Survey Report cited by petitioner stated: From the investigation conducted, we noted that Capt. S.L. Halloway, Master of MV "BALTIMAR ORION" filed a Note of Protest in the City of Manila, and was notarized on 06 October 1993. Based on Note of Protest, copy attached hereto for your reference, carrier vessel sailed from Hongkong on 1st October 1993 carrying containers bound for Manila. Apparently, at the time the vessel [was] sailing at about 2400 hours of 2nd October 1993, she encountered winds and seas such as to cause occasional moderate to heavy pitching and rolling deeply at times. At 0154 hours, same day, while in position Lat. 20

degrees, 29 minutes North, Long. 115 degrees, 49 minutes East, four (4) x 40 ft. **containers were lost/fell overboard**. The numbers of these containers are NUSU-3100789, TPHU-5262138, IEAU-4592750, NUSU-4515404. xxx xxx xxx Furthermore, during the course of voyage, high winds and heavy seas were encountered causing the ship to roll and pitch heavily. The course and speed was altered to ease motion of the vessel, causing delay and loss of time on the voyage. xxx xxx xxx SURVEYORS REMARKS: In view of the foregoing incident, we are of the opinion that the shipment of 3 cases of Various Warp Yarn on Returnable Beams which were containerized onto 40 feet LCL (no. IEAU-4592750) and **fell overboard** the subject vessel during heavy weather is an "Actual Total Loss." The records show that the subject cargoes fell overboard the ship and petitioner should not vary the facts of the case on appeal. This Court is not a trier of facts, and, in this case, the factual finding of the RTC and the CA, which is supported by the evidence on record, is conclusive upon this Court.

2. COMMERCIAL LAW; TRANSPORTATION; CONTRACTS FOR CARRIAGE OF GOODS BY SEA; STIPULATION IN THE BILL OF LADING LIMITING COMMON CARRIER'S LIABILITY FOR LOSS OF CARGOES, ALLOWED UNDER CIVIL CODE AND CARRIAGE OF GOODS BY SEA ACT (COGSA).— The bill of lading submitted in evidence by petitioner did not show that the shipper in Hong Kong declared the actual value of the goods as insured by Fukuyama before shipment and that the said value was inserted in the Bill of Lading, and so no additional charges were paid. Hence, the stipulation in the bill of lading that the carrier's liability shall not exceed US$500 per package applies. Such stipulation in the bill of lading limiting respondents' liability for the loss of the subject cargoes is allowed under Art. 1749 of the Civil Code, and Sec. 4, paragraph (5) of the COGSA. *Everett Steamship Corporation v. Court of Appeals* held: A stipulation in the bill of lading limiting the common carrier's liability for loss or destruction of a cargo to a certain sum, unless the shipper or owner declares a greater value, is sanctioned by law, particularly Articles 1749 and 1750 of the Civil Code which provide: 'Art. 1749. A stipulation that the common carrier's liability is limited to the value of the goods

appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.' 'Art. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.' Such limited-liability clause has also been consistently upheld by this court in a number of cases. Thus, in *Sea-Land Service, Inc. vs. Intermediate Appellate Court*, we ruled: 'It seems clear that even if said Section 4 (5) of the Carriage of Goods by Sea Act did not exist, the validity and binding effect of the liability limitation clause in the bill of lading here are nevertheless fully sustainable on the basis alone of the cited Civil Code Provisions. That said stipulation is just and reasonable is arguable from the fact that it echoes Art. 1750 itself in providing a limit to liability only if a greater value is not declared for the shipment in the bill of lading. To hold otherwise would amount to questioning the justness and fairness of the law itself.... But over and above that consideration, the just and reasonable character of such stipulation is implicit in it giving the shipper or owner the option of avoiding accrual of liability limitation by the simple and surely far from onerous expedient of declaring the nature and value of the shipment in the bill of lading.'

APPEARANCES OF COUNSEL

Fajardo Law Offices for petitioner.
Del Rosario & Del Rosario Law Offices for respondents.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari*[1] of the Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 52855 promulgated on April 13, 2000 granting respondents' motion for reconsideration dated March 9, 2000. The Resolution held respondents liable for damages to petitioner subject to the limited-liability provision in the bill of lading.

[1] Under Rule 45 of the Rules of Court.

The facts are as follows:

On September 30, 1993, L.T. Garments Manufacturing Corp. Ltd. shipped from Hong Kong three sets of warp yarn on returnable beams aboard respondent Neptune Orient Lines' vessel, M/V Baltimar Orion, for transport and delivery to Fukuyama Manufacturing Corporation (Fukuyama) of No. 7 Jasmin Street, AUV Subdivision, Metro Manila.

The said cargoes were loaded in Container No. IEAU-4592750 in good condition under Bill of Lading No. HKG-0396180. Fukuyama insured the shipment against all risks with petitioner Philippine Charter Insurance Corporation (PCIC) under Marine Cargo Policy No. RN55581 in the amount of ₱228,085.

During the course of the voyage, the container with the cargoes fell overboard and was lost.

Thus, Fukuyama wrote a letter to respondent Overseas Agency Services, Inc. (Overseas Agency), the agent of Neptune Orient Lines in Manila, and claimed for the value of the lost cargoes. However, Overseas Agency ignored the claim. Hence, Fukuyama sought payment from its insurer, PCIC, for the insured value of the cargoes in the amount of ₱228,085, which claim was fully satisfied by PCIC.

On February 17, 1994, Fukuyama issued a Subrogation Receipt to petitioner PCIC for the latter to be subrogated in its right to recover its losses from respondents.

PCIC demanded from respondents reimbursement of the entire amount it paid to Fukuyama, but respondents refused payment.

On March 21, 1994, PCIC filed a complaint for damages against respondents with the Regional Trial Court (RTC) of Manila, Branch 35.

Respondents filed an Answer with Compulsory Counterclaim denying liability. They alleged that during the voyage, the vessel encountered strong winds and heavy seas making the vessel pitch and roll, which caused the subject container with the cargoes to fall overboard. Respondents contended that the occurrence

was a fortuitous event which exempted them from any liability, and that their liability, if any, should not exceed US$500 or the limit of liability in the bill of lading, whichever is lower.

In a Decision dated January 12, 1996, the RTC held that respondents, as common carrier,[2] failed to prove that they observed the required extraordinary diligence to prevent loss of the subject cargoes in accordance with the pertinent provisions of the Civil Code.[3] The dispositive portion of the Decision reads:

> WHEREFORE, judgment is rendered ordering the defendants, jointly and severally, to pay the plaintiff the Peso equivalent as of February 17, 1994 of HK$55,000.00 or the sum of ₱228,085.00, whichever is lower, with costs against the defendants.[4]

Respondents' motion for reconsideration was denied by the RTC in an Order dated February 19, 1996.

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[2] Civil Code, Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

[3] Pertinent provisions of the Civil Code:

Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
(2) Act of the public enemy in war, whether international or civil;
(3) Act of omission of the shipper or owner of the goods;
(4) The character of the goods or defects in the packing or in the containers;
(5) Order or act of competent public authority.

Art. 1735. In all cases other than those mentioned in Nos. 1,2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733.

[4] *Records*, p. 186.

Respondents appealed the RTC Decision to the CA.

In a Decision promulgated on February 15, 2000, the CA affirmed the RTC Decision with modification, thus:

> WHEREFORE, the assailed decision is hereby MODIFIED. Appellants Neptune and Overseas are hereby ordered to pay jointly and severally appellee PCIC ₱228,085.00, representing the amount it paid Fukuyama. Costs against the appellants.[5]

Respondents moved for reconsideration of the Decision of the CA arguing, among others, that their liability was only US$1,500 or US$500 per package under the limited liability provision of the Carriage of Goods by Sea Act (COGSA).

In its Resolution dated April 13, 2000, the CA found the said argument of respondents to be meritorious. The dispositive portion of the Resolution reads:

> WHEREFORE, the motion is partly granted in the sense that appellants shall be liable to pay appellee PCIC the value of the three packages lost computed at the rate of US$500 per package or a total of US$1,500.00.[6]

Hence, this petition raising this lone issue:

> THE COURT OF APPEALS ERRED IN AWARDING RESPONDENTS DAMAGES SUBJECT TO THE US$500 PER PACKAGE LIMITATION.

Petitioner contends that the CA erred in awarding damages to respondents subject to the US$500 per package limitation since the vessel committed a "quasi deviation" which is a breach of the contract of carriage when it **intentionally** threw overboard the container with the subject shipment during the voyage to Manila for its own benefit or preservation based on a Survey Report[7] conducted by Mariner's Adjustment Corporation, which firm was tasked by petitioner to investigate the loss of the

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[5] *Rollo*, p. 35.

[6] *Id*. at 40.

[7] Exh. E, E-1, *records*, pp. 120-121.

subject cargoes. According to petitioner, the breach of contract resulted in the abrogation of respondents' rights under the contract and COGSA including the US$500 per package limitation. Hence, respondents cannot invoke the benefit of the US$500 per package limitation and the CA erred in considering the limitation and modifying its decision accordingly.

The contention lacks merit.

The facts as found by the RTC do not support the new allegation of facts by petitioner regarding the intentional throwing overboard of the subject cargoes and quasi deviation. The Court notes that in petitioner's Complaint before the RTC, petitioner alleged as follows:

x x x x x x x x x

2.03 In the course of the maritime voyage from Hongkong to Manila **subject shipment fell overboard** while in the custody of the defendants and were never recovered; it was part of the LCL cargoes packed by defendants in container IEAU-4592750 that fell overboard during the voyage.[8]

Moreover, the same Survey Report cited by petitioner stated:

From the investigation conducted, we noted that Capt. S.L. Halloway, Master of MV "BALTIMAR ORION" filed a Note of Protest in the City of Manila, and was notarized on 06 October 1993.

Based on Note of Protest, copy attached hereto for your reference, carrier vessel sailed from Hongkong on 1st October 1993 carrying containers bound for Manila.

Apparently, at the time the vessel [was] sailing at about 2400 hours of 2nd October 1993, she encountered winds and seas such as to cause occasional moderate to heavy pitching and rolling deeply at times. At 0154 hours, same day, while in position Lat. 20 degrees, 29 minutes North, Long. 115 degrees, 49 minutes East, four (4) x 40 ft. **containers were lost/fell overboard**. The numbers of these containers are NUSU-3100789, TPHU-5262138, IEAU-4592750, NUSU-4515404.

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[8] *Records*, pp. 2-3.

x x x x x x x x x

Furthermore, during the course of voyage, high winds and heavy seas were encountered causing the ship to roll and pitch heavily. The course and speed was altered to ease motion of the vessel, causing delay and loss of time on the voyage.

x x x x x x x x x

SURVEYORS REMARKS:

In view of the foregoing incident, we are of the opinion that the shipment of 3 cases of Various Warp Yarn on Returnable Beams which were containerized onto 40 feet LCL (no. IEAU-4592750) and **fell overboard** the subject vessel during heavy weather is an "Actual Total Loss."[9]

The records show that the subject cargoes fell overboard the ship and petitioner should not vary the facts of the case on appeal. This Court is not a trier of facts, and, in this case, the factual finding of the RTC and the CA, which is supported by the evidence on record, is conclusive upon this Court.

As regards the issue on the limited liability of respondents, the Court upholds the decision of the CA.

Since the subject cargoes were lost while being transported by respondent common carrier from Hong Kong to the Philippines, Philippine law applies pursuant to the Civil Code which provides:

Art. 1753. The law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration.

Art. 1766. In all matters not regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws.

The rights and obligations of respondent common carrier are thus governed by the provisions of the Civil Code, and the COGSA,[10] which is a special law, applies suppletorily.

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[9] Exhs. E, E-2, and E-3, *records*, pp. 122-123.

[10] The Carriage of Goods by Sea Act (COGSA), Public Act No. 521 of the 74th Congress of the United States, which was made applicable to all

The pertinent provisions of the Civil Code applicable to this case are as follows:

Art. 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.

Art. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.

In addition, Sec. 4, paragraph (5) of the COGSA, which is applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade, provides:

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading shall be *prima facie* evidence, but shall be conclusive on the carrier.

In this case, Bill of Lading No. 0396180 stipulates:

Neither the Carrier nor the vessel shall in any event become liable for any loss of or damage to or in connection with the transportation of Goods in an amount exceeding US$500 (which is the package or shipping unit limitation under U.S. COGSA) per package or in the case of Goods not shipped in packages per shipping unit or customary freight, **unless the nature and value of such Goods have been declared by the Shipper before shipment and inserted in this Bill of Lading and the Shipper has paid additional charges on such declared value**. . . .

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contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by Commonwealth Act No. 65, was approved on October 22, 1936.

The bill of lading[11] submitted in evidence by petitioner did not show that the shipper in Hong Kong declared the actual value of the goods as insured by Fukuyama before shipment and that the said value was inserted in the Bill of Lading, and so no additional charges were paid. Hence, the stipulation in the bill of lading that the carrier's liability shall not exceed US$500 per package applies.

Such stipulation in the bill of lading limiting respondents' liability for the loss of the subject cargoes is allowed under Art. 1749 of the Civil Code, and Sec. 4, paragraph (5) of the COGSA. *Everett Steamship Corporation v. Court of Appeals*[12] held:

> A stipulation in the bill of lading limiting the common carrier's liability for loss or destruction of a cargo to a certain sum, unless the shipper or owner declares a greater value, is sanctioned by law, particularly Articles 1749 and 1750 of the Civil Code which provide:
>
> 'Art. 1749. A stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding.'
>
> 'Art. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.'
>
> Such limited-liability clause has also been consistently upheld by this court in a number of cases. Thus, in *Sea-Land Service, Inc. vs. Intermediate Appellate Court*, we ruled:
>
> 'It seems clear that even if said Section 4 (5) of the Carriage of Goods by Sea Act did not exist, the validity and binding effect of the liability limitation clause in the bill of lading here are nevertheless fully sustainable on the basis alone of the cited Civil Code Provisions. That said stipulation is just and reasonable is arguable from the fact that it echoes Art. 1750 itself in providing a limit to liability only if a greater value is not declared for the shipment in the bill of lading.

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[11] Exh. "A", *records*, p. 116.

[12] G.R. No. 122494, October 8, 1998, 297 SCRA 496, 501-502.

To hold otherwise would amount to questioning the justness and fairness of the law itself.... But over and above that consideration, the just and reasonable character of such stipulation is implicit in it giving the shipper or owner the option of avoiding accrual of liability limitation by the simple and surely far from onerous expedient of declaring the nature and value of the shipment in the bill of lading.'

The CA, therefore, did not err in holding respondents liable for damages to petitioner subject to the US$500 per package limited-liability provision in the bill of lading.

WHEREFORE, the petition is *DENIED*. The Resolution of the Court of Appeals in CA-G.R. CV No. 52855 promulgated on April 13, 2000 is hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 150684. June 12, 2008]

ANDRES T. MELENCION, *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; JURISDICTION.— Melencion filed his Appellant's Brief before the Court of Appeals on 1 April 1999. Republic Act No. 8249 (RA 8249), which further defined the jurisdiction of the Sandiganbayan, took effect in 1997. Paragraph 3, Section 4(c) of RA 8249 reads: The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments,

resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. Paragraph 3, Section 4(c) of RA 8249 is clear. There is nothing in said paragraph which can conceivably justify the filing of Melencion's appeal before the Court of Appeals instead of the Sandiganbayan.

2. ID.; CRIMINAL PROCEDURE; APPEALS; MERE INVOCATION OF SUBSTANTIAL JUSTICE AS A GROUND FOR RELAXATION OF THE RULE DOES NOT SUFFICE TO COVER UP PETITIONER MELENCION'S FATAL ERROR.— The Court of Appeals' hesitance to dismiss Melencion's appeal, as evidenced by the issuance of its resolutions to transfer Melencion's appeal to the Sandiganbayan, compounded Melencion's erroneous filing. Mere invocation of substantial justice as a ground for relaxation of the rules does not suffice to cover up Melencion's fatal error. Section 18, Rule 124 of the 1985 Rules on Criminal Procedure reads as follows: *Application of certain rules in civil to criminal cases.* — The provisions of Rule 46 to 56 relating to procedure in the Court of Appeals in original as well as appealed civil cases shall, insofar as they are applicable and not inconsistent with the provisions of this Rule, be applied to criminal cases.

3. ID.; CIVIL PROCEDURE; APPEALS; ERROR IN DESIGNATING APPELLATE COURT; CORRECTION SHOULD BE MADE WITHIN THE 15-DAY PERIOD TO APPEAL.— Melencion cannot rely on our ruling in *Moll v. Hon. Buban*, where we held that the rule requiring a party to specify the court where the appeal is being taken is merely directory. An error in designating the appellate court is not fatal to the appeal. However, the correction in designating the proper appellate court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, the second paragraph of Section 2, Rule 50 of the Rules of Court would apply. The second paragraph of Section 2, Rule 50 of the Rules of Court reads: An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

APPEARANCES OF COUNSEL

Batiquin & Batiquin Law Office for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

CARPIO, *J.*:

This petition for review[1] assails the 2 October 2001[2] Minute Resolution of the Sandiganbayan in A/R No. 042. The Sandiganbayan returned to the First Division of the Court of Appeals the matter under A/R No. 042. The Sandiganbayan stated that an appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

On 16 August 1989, 13 secondary school teachers and the librarian of the Cebu State College of Science and Technology-College of Fisheries in Moalboal, Cebu filed a complaint against Andres T. Melencion (Melencion) before the Office of the Ombudsman-Visayas. In a resolution dated 9 July 1990, the Graft Investigation Officers[3] assigned to the case recommended that an information for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act be filed against Melencion.

In an Information dated 24 November 1995, the Assistant Provincial Prosecutor of Cebu, upon the direction of the Office

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 77-78. The Minute Resolution on A/R No. 042 was adopted by the First Division of the Sandiganbayan composed of Presiding Justice Francis E. Garchitorena and Associate Justices Catalino R. Castañeda, Jr. and Gregory S. Ong.

[3] Records, p. 33. Graft Investigation Officer II Carlos A. Marcos, Graft Investigation Officer I Felicito C. Latoja, and Graft Investigation Officer I Ricardo A. Rebollido made the recommendation to file an information against Melencion. Director and Chief Investigator Vicente Y. Varela, Jr. recommended the approval of the recommendation. Deputy Ombudsman for Visayas Juan M. Hagad and Ombudsman Conrado M. Vasquez approved the recommendation.

of the Ombudsman–Visayas, charged Melencion with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act before Branch 60 of the Regional Trial Court of Barili, Cebu (trial court). The Information[4] against Melencion reads as follows:

That on or about the period comprised from 01 January, 1985 to July 1989 and/or for sometime thereafter, in the Municipality of Moalboal, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the School Superintendent of the Cebu State College of Science and Technology-College of Fisheries, Moalboal Campus, Cebu, while in the discharge of his official/administrative functions as such public officer, thru evident bad faith or manifest partiality, did then and there willfully, unlawfully and criminally cause undue injury to Olympia Geraldino, Visitacion Gocotano, Elvira Joyohoy, Hideliza Tabanao, Angelito Pableo, Frisco Canumay, Lucia Gako, Vivencia Evelyn Lauron, Zenaida Mantos, Emma T. Pableo, Zosimo Villalino, Primitivo Kimeno and Melecisima de los Angeles, all Secondary school teachers, and [Cirila] Sabanal, Librarian, all of the Cebu State College of Science and Technology-College of Fisheries, Moalboal, Cebu, a government educational institution, by deliberately withholding and failing to inform or furnish said persons copies of their respective appointments duly approved by the College President, Dr. Atanacio Elma effective 01 January 1985 which reflected their promotions to salary grade of 58 or a ₱13,824.00 annual salary fixed by Batas Pambansa Blg. 866 thus making the aforesaid complaining witnesses believe that their salary was still that corresponding to grade 56 which they were receiving, and thereafter, accused knowing fully well that complaining witnesses were entitled to salary adjustments, did then and there willfully and intentionally fail to implement the actual salary commensurate to the complaining witnesses' salary range 58 and/or withhold the salary differentials of the teachers from 01 January 1985 to July 1989 in the following amount:

Hideliza Tabanao
Elvira Joyohoy
Angelito Pableo
Lucia Gako

[4] *Id*. at 1-4.

Zosimo Villalino		
Cirila Sabanal		
Vivencia Evelyn Lauron		
Zenaida Mantos		
Olympia Geraldino and		
Emma Pableo	₱ 6,978.00 each,	more or less
or a total of	69,780.00	
Primitivo Jimeno	4,336.00	more or less
Visitacion Gocotano	10,424.00	
Frisco Canumay	6,834.00	
TOTAL	₱91,374.00	

to the damage and prejudice of the complainant-teachers in the sum of ₱91,374.00, Philippine Currency.

CONTRARY TO LAW.

During his arraignment on 17 January 1996, Melencion entered a plea of not guilty. Trial followed soon after. On 27 February 1996, Melencion filed a Motion for Inhibition of Presiding Judge Ildefonso B. Suerte (Judge Suerte) because Mrs. Emma T. Pableo (Mrs. Pableo), one of the complainants, is Judge Suerte's niece. Mrs. Pableo's mother is a first degree cousin of Judge Suerte. The next day, Judge Suerte stated in open court that "the motion is admitted by the Court to have been filed but not exactly recognized, this Court, for this moment, would just like to study the motion for inhibition and will issue the order within a short period of time..."[5]

On 8 July 1998, Judge Suerte found Melencion guilty of violating Section 3(e) of Republic Act No. 3019. The pertinent portions of the decision read as follows:

The elements of the crime punishable by Section 3(e) of R.A. 3019 which are:

1. That the accused is a public officer discharging judicial and administrative or official functions or private persons charged in conspiracy with them;

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[5] TSN, 28 February 1996, pp. 2-3.

2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;

3. The public officer acted with manifest partiality, evident bad faith or gross or inexcusable negligence, and

4. His action caused undue injury to the government or any private party or gave any party unwarranted benefit, advantage or preference, were sufficiently proved by the prosecution with clear and convincing evidence.

WHEREFORE, premises considered, the Court finds accused, Andres T. Melencion, GUILTY beyond reasonable doubt, for Violation of Section 3, paragraph e of R.A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, in relation to Section 9(a), therefore, and applying Act No. 4103, as amended, otherwise known as the Indeterminate Sentence Law, the Court imposes upon accused the penalty of imprisonment ranging from 6 years and one month as minimum to ten years and one day as maximum, to further suffer perpetual disqualification from public office, and to indemnify the complainants: Hideliza Tabanao, Elvira Joyohoy, Angelito Pableo, Lucia Gako, Zosimo Villarino, Cirila Sabanal, Vivencia Evelyn Lauron, Zenaida Mantos, Olympia Gelardino and Emma Pableo the sum of ₱6,978.00 each; Primitivo Jimeno the sum of ₱4,336.00; Visitacion Gocotano the sum of ₱10,424.00 and Frisco Canumay the sum of ₱6,834.00 or a total of ₱91,374.00 plus 12% legal interest per annum from January 1985 to July 1989 or in the amount of ₱49,341.96.

SO ORDERED.[6]

Melencion filed his Notice of Appeal[7] on the same day as the promulgation of the trial court's decision. Melencion indicated that he will file an appeal before the Court of Appeals. On 1 April 1999, Melencion filed his Appellant's Brief before the Court of Appeals where the appealed case was docketed as CA-G.R. CR No. 22519.

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[6] Records, pp. 336-337.

[7] *Id*. at 339-340.

In a resolution[8] dated 30 May 2001, the Court of Appeals declared that it had no jurisdiction to act on the appealed case and directed the Office of the Solicitor General (OSG) to submit a comment or a manifestation that the OSG would not object to the transfer of the appeal to the Sandiganbayan. In its comment[9] dated 16 July 2001, the OSG signified that it had no objection to the transfer. The Court of Appeals issued a resolution[10] dated 6 August 2001 transferring the records of the case to the Sandiganbayan.

On 2 October 2001, the Sandiganbayan resolved to return the transferred records to the Court of Appeals. The pertinent portions of the minute resolution read as follows:

> Further to the referral of the Honorable Court of Appeals in CA G.R. No. CR 22519 for proper exercise of jurisdiction by this Court, the instant matter is respectfully returned to the First Division of the Court of Appeals pursuant to Par. 2, Sec. 2 of Rule 50 of the Revised Rules of Civil Procedure thus:
>
> > "An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright."
>
> as well as Sec. 4 of Supreme Court Circular 2-90 dated March 9, 1990 which reads as follows:
>
> > "An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed."
>
> This is further to the Minute Resolution of the Supreme Court in *Murillo v. Consul*, 183 SCRA XI, p. XVIII.
>
> This ruling was also reiterated in the case of *Atlas Consolidated Mining and Development Corporation vs. Court of Appeals*, 201 SCRA 51 as well as in *PNB/NIDC vs. Court of Appeals,*

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[8] *Rollo*, pp. 72-73. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Fermin A. Martin, Jr. and Alicia L. Santos, concurring.

[9] *Id*. at 74-75.

[10] *Id*. at 78.

China Banking Corporation in CA G.R. No. 128661 promulgated on August 8, 2000.[11]

Melencion filed his present petition before this Court on 6 December 2001 where he raised the following issues:

> Whether the return of the records of CA-G.R. No. CR 22519 is valid and justifiable and if not, whether it is within the power and prerogative of the Honorable Supreme Court to have this case resolved nonetheless by the Sandiganbayan.
>
> Whether [Melencion] was deprived of his right to due process when the trial judge ignored [Melencion's] MOTION FOR INHIBITION by proceeding with the trial and rendering a judgment infirmed by bias and partiality, hence a matter within the competence of the Court of Appeals to pass upon.[12]

The petition has no merit.

The Sandiganbayan's act of returning the records of the present case to the Court of Appeals can be justified by Melencion's earlier erroneous filing of his appeal before the Court of Appeals. The Sandiganbayan merely accorded the Court of Appeals with the courtesy due to a co-equal judicial body when the Sandiganbayan returned the records of Melencion's case. The Sandiganbayan gave the Court of Appeals the opportunity to rectify its error in transferring the case to the Sandiganbayan instead of dismissing the case outright.

The Court of Appeals committed a grave error in issuing its resolution to transfer Melencion's case to the Sandiganbayan. Melencion filed his Appellant's Brief before the Court of Appeals on 1 April 1999. Republic Act No. 8249 (RA 8249), which further defined the jurisdiction of the Sandiganbayan, took effect in 1997. Paragraph 3, Section 4(c) of RA 8249 reads:

> The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts

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[11] *Id*. at 81.

[12] *Id*. at 21.

whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

Paragraph 3, Section 4(c) of RA 8249 is clear. There is nothing in said paragraph which can conceivably justify the filing of Melencion's appeal before the Court of Appeals instead of the Sandiganbayan. The Court of Appeals' hesitance to dismiss Melencion's appeal, as evidenced by the issuance of its resolutions to transfer Melencion's appeal to the Sandiganbayan, compounded Melencion's erroneous filing. Mere invocation of substantial justice as a ground for relaxation of the rules does not suffice to cover up Melencion's fatal error. Section 18, Rule 124 of the 1985 Rules on Criminal Procedure reads as follows:

Application of certain rules in civil to criminal cases. — The provisions of Rule 46 to 56 relating to procedure in the Court of Appeals in original as well as appealed civil cases shall, insofar as they are applicable and not inconsistent with the provisions of this Rule, be applied to criminal cases.

Melencion cannot rely on our ruling in *Moll v. Hon. Buban*,[13] where we held that the rule requiring a party to specify the court where the appeal is being taken is merely directory. An error in designating the appellate court is not fatal to the appeal. However, the correction in designating the proper appellate court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, the second paragraph of Section 2, Rule 50 of the Rules of Court would apply. The second paragraph of Section 2, Rule 50 of the Rules of Court reads:

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

In the present case, the supposed correction of the error in filing the appeal came from the Court of Appeals after the

[13] 436 Phil. 627 (2002).

expiration of the period to appeal. The trial court promulgated its decision on 8 July 1998. Melencion filed his notice of appeal on the same day. The Court of Appeals issued a resolution declaring its lack of jurisdiction on 30 May 2001, clearly beyond the 15-day period to appeal.

Finally, the issue raised by Melencion's allegation of deprivation of due process because of the non-issuance by Judge Suerte of a ruling on Melencion's motion for inhibition should likewise be dismissed because of his erroneous filing.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Minute Resolution of the Sandiganbayan in A/R No. 042 dated 2 October 2001. Costs against the petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 150741. June 12, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPS. VICENTE LAGRAMADA and BONIFACIA LAGRAMADA,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF LAND TITLES; SOURCES OF RECONSTITUTION, ENUMERATED. — Sections 2 and 3 of RA 26, as amended, provide: Sec. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued; (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title. Sec. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order: (a) The owner's duplicate of the certificate of title; (b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title; (c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof; (d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed certificate of title was issued; (e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and (f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

2. ID.; ID.; ID.; ID.; "ANY OTHER DOCUMENT," CONSTRUED. — In *Republic v. Intermediate Appellate Court*, the Court ruled that "any other document" refers to documents similar to those enumerated. Thus: Republic Act No. 26 entitled, "An Act Providing A Special Procedure For The Reconstitution Of Torrens Certificates of Title Lost Or Destroyed," enumerates the sources on which the reconstituted certificate of title may be based. It should be noted that both Sections 2 and 3 thereof list sources that evidence title or transactions affecting title to property. When Republic Act No. 26 [Sec. 2(f)] therefore speaks of "[a]ny other document," it must refer to similar documents previously enumerated therein. The statutes relied upon by the private respondent, so we hold, are not *ejusdem generis* as the documents earlier referred to. Furthermore,

they do not contain the specifics required by Section 12(a) and (b) of the title reconstitution law. The Court reiterated this ruling in *Heirs of Dizon v. Hon. Discaya* where the Court declared that "when Section 2(f) of Republic Act No. 26 speaks of 'any other document,' the same must refer to similar documents previously enumerated therein, that is, those mentioned in Sections (a), (b), (c), and (d)," and in *Republic v. El Gobierno de las Islas Filipinas*.

3. ID.; ID.; ID.; ID.; IT IS THE DUTY OF THE COURT TO SCRUTINIZE AND VERIFY ALL SUPPORTING DOCUMENTS, DEEDS AND CERTIFICATIONS. — We reiterate our admonition in *Tahanan Development Corp. v. Court of Appeals, et al*.: The courts must be cautious and careful in granting reconstitution of lost or destroyed certificates of title, both original and duplicate owner's, based on documents and decrees made to appear authentic from mere xerox copies and certifications of officials supposedly signed with seals of their office affixed thereon, considering the ease and facility with which documents are made to appear as official and authentic. It is the duty of the courts to scrutinize and verify carefully all supporting documents, deeds and certifications. Each and every fact, circumstance or incident which corroborates or relates to the existence and loss of the title should be examined.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Felipe M. Alpajora for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review [1] assailing the Decision[2] of the Court of Appeals promulgated on 7 November 2001 in

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 24-28. Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Eubulo G. Verzola and Eliezer R. De los Santos, concurring.

CA-G.R. CV No. 59377. The Court of Appeals affirmed the Decision[3] dated 11 March 1998 of the Regional Trial Court of Quezon City, Branch 216 (trial court) in LRC Case No. 9178 (97).

The Antecedent Facts

Lot 8 of Subdivision Plan (LRC) Psd-28958, with an area of 500 square meters and located at Banlat, Tandang Sora, Quezon City, was allegedly covered by Transfer Certificate of Title (TCT) No. 118717 in the name of Reynaldo Pangilinan (Pangilinan). The original copy of TCT No. 118717 was allegedly destroyed when a fire razed the office of the Register of Deeds of Quezon City on 11 June 1988.

On 25 June 1996, Pangilinan sold Lot 8 to the spouses Vicente and Bonifacia Lagramada (respondents). Respondents paid all the taxes on the land from 1976 to 1997 under Tax Declaration No. C-122-01735. On 16 April 1997, respondents filed a petition for reconstitution of the original copy of TCT No. 118717 and for the issuance of a second owner's duplicate copy of the title. Pangilinan allegedly misplaced the owner's duplicate copy and it could no longer be found despite diligent efforts to find it.

After complying with the required publication and notice to all parties, the trial court heard the petition on 7 January 1998. No oppositors appeared. However, the trial court did not issue any default order. Bonifacia Lagramada appeared as the lone witness.

The following documents were submitted as evidentiary bases for the reconstitution:

1. Certification from the Office of the Acting Deputy Register of Deeds of Quezon City respecting the destruction of TCT No. 118717;
2. Affidavit of Loss of TCT No. 118717 executed by Pangilinan;

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[3] CA *rollo*, pp. 19-20. Penned by Judge Marciano L. Bacalla.

3. Deed of Sale executed by Pangilinan in favor of respondents;
4. Tax payment receipts from 1976 to 1997;
5. Tax Declaration No. C-122-01735 in the name of Pangilinan; and
6. Certified true copy of the technical description, verified and approved for the administrator by Apolinar R. Lucido of the Subdivision and Consolidation Division; and
7. The plan prepared and verified as correct by Geodetic Engineer Eligio L. Cruz and approved for the Land Registration Authority (LRA).[4]

The Ruling of the Trial Court

In its 11 March 1998 Decision, the trial court found the petition meritorious and ruled in favor of respondents. The dispositive portion of the trial court's Decision reads:

> WHEREFORE, judgment is hereby rendered declaring the original and owner's duplicate copies of Transfer Certificate of Title No. 118717 to have been burned, destroyed and/or lost. The Register of Deeds of this City is hereby directed, upon payment of the prescribed fees, to issue and reconstitute the original and duplicate copies of said Transfer Certificate of Title No. 118717 based on the technical description and survey plan, provided that no title covering the same parcel of land exists in the said registry; that the encumbrance subsisting shall be annotated on the reconstituted title and provided further that the fact of reconstitution shall be noted on the certificate of title.
>
> SO ORDERED.[5]

Petitioner, through the Office of the Solicitor General, filed an appeal on the ground that respondents' pieces of evidence are not sufficient to warrant reconstitution of TCT No. 118717. Petitioner alleged that:

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[4] *Id*. at 20.

[5] *Id*.

1. The documents presented by respondents did not originate from official documents which recognize respondents' ownership of the land or that of their predecessors;
2. The plan and technical description and the blue print do not indicate the ownership of the land described; and
3. The unregistered deed of sale between Pangilinan and respondents may not be considered proof of ownership.

The Ruling of the Court of Appeals

In its 7 November 2001 Decision, the Court of Appeals affirmed the trial court's Decision.

The Court of Appeals ruled that respondents sought the reconstitution of TCT No. 118717 not in their capacity as owners but as persons who have an interest in the property. The Court of Appeals ruled that respondents were asking for reconstitution not in their names but in the name of Pangilinan.

The Court of Appeals ruled that nowhere in Republic Act No. 26[6] (RA 26) was it provided that the term "any other document" refers to similar documents enumerated under Sections 2(f) and 3(f). The Court of Appeals ruled that the only requirement was that the "other document" must be "in the judgment of the court" proper and sufficient, and accompanied with a plan and technical description of the property approved by the Commissioner of Land Registration. The Court of Appeals ruled that, in this case, the proofs presented by respondents were, "in the judgment of the court," proper and sufficient bases to support the application for reconstitution of TCT No. 118717.

Hence, the petition before the Court.

The Issue

The sole issue in this case is whether the documents presented by respondents are sufficient bases for the reconstitution of TCT No. 118717.

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[6] An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed.

The Ruling of this Court

The petition has merit.

In this case, two certificates of title were allegedly lost — the original copy of the transfer certificate of title in the Register of Deeds of Quezon City which was destroyed in a fire, and the owner's duplicate copy of the certificate of title which Pangilinan misplaced. Hence, respondents were asking for the reconstitution of the original copy of the transfer certificate of title and the issuance of a second owner's duplicate copy of the certificate of title.

Meaning of "any other document" in Paragraph (f) of Sections 2 and 3 of RA 26

Sections 2 and 3 of RA 26, as amended, provide:

Sec. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;
(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;
(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;
(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;
(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and
(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

Sec. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;
(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

The requirements of Sections 2 and 3 are almost identical. We agree with petitioner that the enumerated requirements are documents from official sources which recognize the ownership of the owner and his predecessors-in-interest. We likewise agree that "any other document" in paragraph (f) of Sections 2 and 3 refers to documents similar to those enumerated. This issue is already a settled matter.

In *Republic v. Intermediate Appellate Court*,[7] the Court ruled that "any other document" refers to documents similar to those enumerated. Thus:

> Republic Act No. 26 entitled, "An Act Providing A Special Procedure For The Reconstitution Of Torrens Certificates of Title Lost Or Destroyed," enumerates the sources on which the reconstituted certificate of title may be based. It should be noted that both Sections 2 and 3 thereof list sources that evidence title or transactions affecting title to property. When Republic Act No. 26 [Sec. 2(f)] therefore speaks of "[a]ny other document," it must refer to similar documents previously enumerated therein. The statutes relied upon by the private respondent, so we hold, are not *ejusdem generis* as the documents earlier referred to. Furthermore, they do not contain the specifics required by Section 12(a) and (b) of the title reconstitution law.[8]

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[7] No. 68303, 15 January 1988, 157 SCRA 62.

[8] *Id*. at 67-69.

The Court reiterated this ruling in *Heirs of Dizon v. Hon. Discaya*[9] where the Court declared that "when Section 2(f) of Republic Act No. 26 speaks of 'any other document,' the same must refer to similar documents previously enumerated therein, that is, those mentioned in Sections (a), (b), (c), and (d),"[10] and in *Republic v. El Gobierno de las Islas Filipinas*.[11]

Documents Submitted by Respondents are Not Sufficient Bases for Reconstitution

We find that the documents submitted by respondents are not sufficient bases for reconstitution.

Among the documents relied upon by the trial court was Tax Declaration No. D-122-13529 issued for the year beginning 1996.[12] Tax Declaration No. D-122-13529 was issued in the name of Pangilinan at the instance of respondents who paid the realty taxes from 1976 to 1996. It supposedly cancelled Tax Declaration No. C-122-01735. However, an annotation in Tax Declaration No. C-122-01735 indicated that it was already cancelled on 21 February 1993.[13] In addition, both Tax Declaration Nos. D-122-13529 and C-122-01735 do not even indicate the boundaries of the lot. A tax declaration by itself is not sufficient to prove ownership.[14]

The Certification[15] of the alleged loss of TCT No. 118717 due to fire, issued by the Register of Deeds of Quezon City on 28 February 1996 upon the request of respondents' counsel, was a form document where the name of Pangilinan and the

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[9] 362 Phil. 536 (1999).

[10] *Id*. at 545.

[11] G.R. No. 142284, 8 June 2005, 459 SCRA 533.

[12] Records, p. 52.

[13] *Id*. at 45.

[14] See *Republic v. Manna Properties, Inc.*, G.R. No. 146527, 31 January 2005, 450 SCRA 247.

[15] Records, p. 7.

TCT No. were typed on the blanks provided. The one-page deed of sale, denominated "*Kasulatan ng Biling Lampasan ng Isang Lupang Residencial,*"[16] where Pangilinan allegedly sold the 500-square meter lot to respondents for ₱15,000, did not even indicate the TCT No. of the lot sold. The tax payment receipts from 1976 to 1996 presented were all paid by respondents in 1995 in the name of Pangilinan. They likewise did not indicate the title of the lot covered.

The technical description and blue print plan, prepared at the instance of Vicente Lagramada, are additional requirements under Section 12 of RA 26 and are not on their own sufficient bases for reconstitution. Thus:

> Sec. 12. x x x: *Provided*, That in case the reconstitution is to be made exclusively from sources enumerated in Sections 2(f) [and] 3(f) of this Act, the petition **shall be further accompanied with a plan and technical description of the property** duly approved by the Commissioner of Land Registration, or with a certified copy of the description taken from a prior certificate of title covering the same property. (Emphasis supplied)

The plan[17] was certified true and correct by Engineer Eligio L. Cruz, the Geodetic Engineer who prepared it for respondent Vicente Lagramada, based on the certified technical descriptions issued by the LRA. It was verified by Land Registration Examiner Emil S. Pugongan on 20 January 1998, after the filing of the petition, and approved under Section 12 of RA 26 "For the Administrator" by Acting Chief Alberto H. Lingayo of the Ordinary and Cadastral Division.[18] The technical description[19] was verified by someone who signed the document but did not indicate his full name or position and then approved "For The Administrator" by Apolinar R. Lucido, Engineer II of the Subdivision and Consolidation Division. The trial court should have been more

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[16] *Id*. at 6.

[17] *Id*. at 57.

[18] *Id*.

[19] *Id*. at 8.

circumspect in admitting the plan prepared for one of the respondents. The officials who verified and certified the plan were not presented as witnesses to confirm their action. Pangilinan, the alleged owner of the land, was also not presented as a witness. Only Bonifacia Lagramada testified and her testimony did not sufficiently establish Pangilinan's ownership of the lot.

We reiterate our admonition in *Tahanan Development Corp. v. Court of Appeals, et al.*:[20]

> The courts must be cautious and careful in granting reconstitution of lost or destroyed certificates of title, both original and duplicate owner's, based on documents and decrees made to appear authentic from mere xerox copies and certifications of officials supposedly signed with seals of their office affixed thereon, considering the ease and facility with which documents are made to appear as official and authentic. It is the duty of the courts to scrutinize and verify carefully all supporting documents, deeds and certifications. Each and every fact, circumstance or incident which corroborates or relates to the existence and loss of the title should be examined.[21]

WHEREFORE, we *SET ASIDE* the 7 November 2001 Decision of the Court of Appeals in CA-G.R. CV No. 59377 and the 11 March 1998 Decision of the Regional Trial Court of Quezon City, Branch 216 in LRC Case No. 9178 (97). We *DISMISS* the petition for reconstitution filed by the spouses Vicente and Bonifacia Lagramada.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[20] 203 Phil. 652 (1982).

[21] *Id.* at 691-692.

FIRST DIVISION

[G.R. No. 158182. June 12, 2008]

SESINANDO MERIDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 705 (PD 705); WHEN ACT OF CUTTING, GATHERING, AND/OR COLLECTING TIMBER OR OTHER FOREST PRODUCTS WITHOUT LICENSE IS PENALIZED. — Section 68, as amended, one of the 12 acts penalized under PD 705, provides: SECTION 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License*. — Any person who shall **cut**, gather, collect, remove timber or other forest products from any forest land, or **timber** from alienable or disposable public land, or **from private land**, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. Section 68 penalizes three categories of acts: (1) the cutting, gathering, collecting, or removing of timber or other forest products from any forest land without any authority; (2) the **cutting**, gathering, collecting, or removing **of timber** from alienable or disposable public land, or from **private land without any authority**; and (3) the possession of timber or other forest products without the legal documents as required under existing forest laws and regulations.

2. ID.; ID.; ID.; TIMBER INCLUDES "LUMBER" OR "PROCESSED LOG"; EXPLAINED. — We further hold that the lone narra tree petitioner cut from the Mayod Property constitutes "timber" under Section 68 of PD 705, as amended. PD 705 does not define "timber," only "forest product" (which circuitously includes "timber.") Does the narra tree in question constitute "timber" under Section 68? The closest this Court came to defining the term "timber" in Section 68 was to provide that "timber," **includes** "lumber" or "processed log." In other jurisdictions, timber is determined by compliance with specified dimensions or certain "stand age" or "rotation age." In *Mustang Lumber, Inc. v. Court of Appeals*, this Court was faced with a similar task of having to define a term in Section 68 of PD 705 — "lumber" — to determine whether possession of lumber is punishable under that provision. In ruling in the affirmative, we held that "lumber" should be taken in its ordinary or common usage meaning to refer to "processed log or timber," thus: The Revised Forestry Code contains no definition of either timber or lumber. While the former is included in forest products as defined in paragraph (q) of Section 3, the latter is found in paragraph (aa) of the same section in the definition of "Processing plant," which reads: (aa) Processing plant is any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into *lumber*, veneer, plywood, wallboard, blackboard, paper board, pulp, paper or other finished wood products. This simply means that *lumber* is a processed log or processed forest raw material. Clearly, the Code uses the term *lumber* in its ordinary or common usage. In the 1993 copyright edition of Webster's Third New International Dictionary, *lumber* is defined, *inter alia*, as "timber or logs after being prepared for the market." Simply put, lumber is a *processed* log or timber. **It is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning.** And in so far as possession of *timber* without the required legal documents is concerned, Section 68 of PD No. 705, as amended, makes no distinction between raw and processed timber. Neither should we. x x x We see no reason why, as in *Mustang*, the term "timber" under Section 68 cannot be taken in its common acceptation as referring to "wood used for or suitable for building or for carpentry or joinery." Indeed, tree saplings or tiny tree stems that are too small for use as posts, panelling, beams, tables, or chairs cannot be considered timber.

3. ID.; ID.; VIOLATION OF SECTION 68 THEREOF, IMPOSABLE PENALTY. — To prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the RPC, the prosecution must present more than a mere uncorroborated "estimate" of such fact. In the absence of independent and reliable corroboration of such estimate, courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case. In *People v. Dator* where, as here, the accused was charged with violation of Section 68 of PD 705, as amended, for possession of lumber without permit, the prosecution's evidence for the lumber's value consisted of an estimate made by the apprehending authorities whose apparent lack of corroboration was compounded by the fact that the transmittal letter for the estimate was not presented in evidence. Accordingly, we imposed on the accused the minimum penalty under Article 309(6) of the RPC. Applying *Dator* in relation to Article 310 of the RPC and taking into account the Indeterminate Sentence Law, we find it proper to impose on petitioner, under the circumstances obtaining here, the penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, four (4) months and twenty-one (21) days of *prision correcional*, as maximum.

APPEARANCES OF COUNSEL

Arias Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 28 June 2002 and the Resolution dated 14 May 2003 of the Court of

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Eliezer R. De Los Santos with Associate Justices Cancio C. Garcia (a retired member of this Court) and Marina L. Buzon, concurring.

Appeals. The 28 June 2002 Decision affirmed the conviction of petitioner Sesinando Merida (petitioner) for violation of Section 68,[3] Presidential Decree No. 705 (PD 705),[4] as amended by Executive Order No. 277. The Resolution dated 14 May 2003 denied admission of petitioner's motion for reconsideration.[5]

The Facts

Petitioner was charged in the Regional Trial Court of Romblon, Romblon, Branch 81 (trial court) with violation of Section 68 of PD 705, as amended, for "cut[ting], gather[ing], collect[ing] and remov[ing]" a lone narra tree inside a private land in Mayod, Ipil, Magdiwang, Romblon (Mayod Property) over which private complainant Oscar M. Tansiongco (Tansiongco) claims ownership.[6]

The prosecution evidence showed that on 23 December 1998, Tansiongco learned that petitioner cut a narra tree in the Mayod Property. Tansiongco reported the matter to Florencio Royo (Royo), the *punong barangay* of Ipil. On 24 December 1998,[7]

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[3] Re-numbered as Section 77 under Section 7, Republic Act No. 7161.

[4] The Revised Forestry Code.

[5] Filed by petitioner's new counsel, Atty. Marcelino P. Arias.

[6] The Information alleged (CA *rollo*, p. 10):

> That on or about the 23rd day of December 1998, in barangay Ipil, municipality of Magdiwang, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to gain, did then and there willfully, unlawfully, feloniously cut, gather, collect, remove and/or caused to be cut, gathered and removed one (1) narra tree [from] the private land owned by OSCAR M. TANSIONGCO and converted the same into several pieces of sawn lumber, about three (3) pcs. 2x16x6 and three (3) pcs. 2x18x7 narra sawn lumber were confiscated by the elements of the DENR personnel consisting of 111 board feet, valued in the sum of ₱3,330.00, Philippine currency, including the remaining felled narra tree showing the total amount of ₱20,930.40 due to the government, without having first secured and obtained the necessary permit or license and/or legal supporting documents from the proper authorities.

[7] Other parts of the records place this date on 26 December 1998.

Royo summoned petitioner to a meeting with Tansiongco. When confronted during the meeting about the felled narra tree, petitioner admitted cutting the tree but claimed that he did so with the permission of one Vicar Calix (Calix) who, according to petitioner, bought the Mayod Property from Tansiongco in October 1987 under a *pacto de retro* sale. Petitioner showed to Royo Calix's written authorization signed by Calix's wife.[8]

On 11 January 1999, Tansiongco reported the tree-cutting to the Department of Environment and Natural Resources (DENR) forester Thelmo S. Hernandez (Hernandez) in Sibuyan, Romblon. When Hernandez confronted petitioner about the felled tree, petitioner reiterated his earlier claim to Royo that he cut the tree with Calix's permission. Hernandez ordered petitioner not to convert the felled tree trunk into lumber.

On 26 January 1999, Tansiongco informed Hernandez that petitioner had converted the narra trunk into lumber. Hernandez, with other DENR employees and enforcement officers, went to the Mayod Property and saw that the narra tree had been cut into six smaller pieces of lumber. Hernandez took custody of the lumber,[9] deposited them for safekeeping with Royo, and issued an apprehension receipt to petitioner. A larger portion of the felled tree remained at the Mayod Property. The DENR subsequently conducted an investigation on the matter.[10]

Tansiongco filed a complaint with the Office of the Provincial Prosecutor of Romblon (Provincial Prosecutor) charging petitioner with violation of Section 68 of PD 705, as amended. During the preliminary investigation, petitioner submitted a counter-affidavit reiterating his claim that he cut the narra tree with Calix's permission. The Provincial Prosecutor[11] found probable

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[8] Imelda Muros.

[9] Valued at ₱3,330.00. If a larger part of the narra tree, left at the Mayod Property, is included in the valuation, the total amount is ₱20,930.40. The Information filed against petitioner alleged the higher amount.

[10] The records do not contain the results of the investigation.

[11] Senior State Prosecutor-OIC PPO Francisco F. Benedicto, Jr.

cause to indict petitioner and filed the Information with the trial court (docketed as Criminal Case No. 2207).

During the trial, the prosecution presented six witnesses including Tansiongco, Royo, and Hernandez who testified on the events leading to the discovery of and investigation on the tree-cutting. Petitioner testified as the lone defense witness and claimed, for the first time, that he had no part in the tree-cutting.

The Ruling of the Trial Court

In its Decision dated 24 November 2000, the trial court found petitioner guilty as charged, sentenced him to fourteen (14) years, eight (8) months and one (1) day to twenty (20) years of *reclusion temporal* and ordered the seized lumber forfeited in Tansiongco's favor.[12] The trial court dismissed petitioner's defense of denial in view of his repeated extrajudicial admissions that he cut the narra tree in the Mayod Property with Calix's permission. With this finding and petitioner's lack of DENR permit to cut the tree, the trial court held petitioner liable for violation of Section 68 of PD 705, as amended.

Petitioner appealed to the Court of Appeals reiterating his defense of denial. Petitioner also contended that (1) the trial court did not acquire jurisdiction over the case because it was based on a complaint filed by Tansiongco and not by a forest officer as provided under Section 80 of PD 705 and (2) the penalty imposed by the trial court is excessive.

The Ruling of the Court of Appeals

In its Decision dated 28 June 2002, the Court of Appeals affirmed the trial court's ruling but ordered the seized lumber

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[12] The dispositive portion of the ruling provides (*rollo*, p. 31):

> WHEREFORE, this Court finds the accused SESINANDO MERIDA GUILTY beyond reasonable doubt of the crime charged in the aforementioned Information, dated January 28, 2000, and hereby sentences him to an indeterminate sentence of from fourteen (14) years, eight (8) months and one (1) day to twenty (20) years of *reclusion temporal*, and to pay the costs.

confiscated in the government's favor.[13] The Court of Appeals sustained the trial court's finding that petitioner is bound by his extrajudicial admissions of cutting the narra tree in the Mayod Property without any DENR permit. The Court of Appeals also found nothing irregular in the filing of the complaint by Tansiongco instead of a DENR forest officer considering that the case underwent preliminary investigation by the proper officer who filed the Information with the trial court.

On the imposable penalty, the Court of Appeals, in the dispositive portion of its ruling, sentenced petitioner to 14 years, 8 months and 1 day to 17 years of *reclusion temporal*. However, in the body of its ruling, the Court of Appeals held that "the penalty to be imposed on [petitioner] should be (14) years, eight (8) months and one (1) day to twenty (20) years of *reclusion temporal*,"[14] the same penalty the trial court imposed.

Petitioner sought reconsideration but the Court of Appeals, in its Resolution dated 14 May 2003, did not admit his motion for having been filed late.[15]

Hence, this petition. Petitioner raises the following issues:

I. WHETHER x x x SECTION 68 OF P.D. 705 AS AMENDED PROHIBITING THE CUTTING, GATHERING, COLLECTING AND REMOVING TIMBER OR OTHER FOREST PRODUCTS FROM ANY FOREST LAND APPLIES TO PETITIONER.

II. WHETHER x x x POSSESSION OF THE NARRA TREE CUT IN PRIVATE LAND CONTESTED BY VICAR CALIX AND PRIVATE-

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[13] The dispositive portion of the ruling provides (*id*. at 51):

> WHEREFORE, premises considered, the 24 November 2000 trial court decision is AFFIRMED with MODIFICATION. Defendant-appellant is sentenced to an indeterminate penalty of 14 years, 8 months and 1 day of *reclusion temporal* as minimum to 17 years of *reclusion temporal* as maximum. The forest products derived from the narra tree, including the 6 pieces of lumber, are confiscated in favor of the government.

[14] *Id*. at 51.

[15] The Court of Appeals entered judgment on 27 August 2002.

COMPLAINANT OSCAR TANSIONGCO IS COVERED BY SECTION 80 OF P.D. 705 AS AMENDED.

III. WHETHER PRIVATE-COMPLAINANT CAN INITIATE THE CHARGE EVEN WITHOUT THE STANDING AUTHORITY COMING FROM THE INVESTIGATING FOREST OFFICER OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AS MANDATED BY SECTION 80 OF P.D. 705 AS AMENDED.

[IV.] WHETHER x x x THE TRIAL COURT ERRED IN TAKING COGNIZANCE OF THE CASE FILED BY PRIVATE-COMPLAINANT BECAUSE IT WAS NOT THE INVESTIGATING OFFICER AS REQUIRED BY SECTION 80 OF P.D. 705 AS AMENDED WHO MUST BE THE ONE TO INSTITUTE THE FILING OF THE SAME.[16]

In its Comment to the petition, the Office of the Solicitor General (OSG) countered that (1) the trial court acquired jurisdiction over the case even though Tansiongco, and not a DENR forest officer, filed the complaint against petitioner and (2) petitioner is liable for violation of Section 68 of PD 705, as amended.

The Issues

The petition raises the following issues:[17]

1) Whether the trial court acquired jurisdiction over Criminal Case No. 2207 even though it was based on a complaint filed by Tansiongco and not by a DENR forest officer; and

2) Whether petitioner is liable for violation of Section 68 of PD 705, as amended.

The Ruling of the Court

The petition has no merit.

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[16] *Rollo*, p. 14.

[17] The OSG does not claim that this Court is precluded from reviewing the Court of Appeals' rulings for having attained finality. At any rate, the Court resolved to give due course to the petition in the interest of justice taking into account the nature of the case and the issues raised for resolution.

The Trial Court Acquired Jurisdiction Over Criminal Case No. 2207

We sustain the OSG's claim that the trial court acquired jurisdiction over Criminal Case No. 2207. The Revised Rules of Criminal Procedure (Revised Rules) list the cases which must be initiated by a complaint filed by specified individuals,[18] non-compliance of which ousts the trial court of jurisdiction from trying such cases.[19] However, these cases concern only defamation and other crimes against chastity[20] and not to cases concerning Section 68 of PD 705, as amended. Further, Section 80 of PD 705 does not prohibit an interested person from filing a complaint before any qualified officer for violation of Section 68 of PD 705, as amended. Section 80 of PD 705 provides in relevant parts:

SECTION 80. Arrest; Institution of criminal actions. — x x x

Reports and complaints regarding the commission of any of the offenses defined in this Chapter, not committed in the presence of any forest officer or employee, or any of the deputized officers or officials, **shall immediately be investigated by the forest officer** assigned in the area where the offense was allegedly committed, who shall thereupon receive the evidence supporting the report or complaint.

If there is *prima facie* evidence to support the complaint or report, the investigating forest officer shall file the necessary complaint with the appropriate official authorized by law to conduct a preliminary investigation of criminal cases and file an information in Court. (Emphasis supplied)

We held in *People v. CFI of Quezon*[21] that the phrase "reports and complaints" in Section 80 refers to "reports and complaints as might be brought to the forest officer assigned to the area **by**

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[18] Section 5, Rule 110.

[19] See *People v. Mandia*, 60 Phil. 372 (1934); *People v. Trinidad*, 58 Phil. 163 (1933).

[20] Adultery, Concubinage, Seduction, Abduction, and Acts of Lasciviousness.

[21] G.R. No. 46772, 13 February 1992, 206 SCRA 187.

other forest officers or employees of the Bureau of Forest Development or any of the deputized officers or officials, for violations of forest laws not committed in their presence."[22]

Here, it was not "forest officers or employees of the Bureau of Forest Development or any of the deputized officers or officials" who reported to Hernandez the tree-cutting in the Mayod Property but Tansiongco, a private citizen who claims ownership over the Mayod Property. Thus, Hernandez cannot be faulted for not conducting an investigation to determine "if there is *prima facie* evidence to support the complaint or report."[23] At any rate, Tansiongco was not precluded, either under Section 80 of PD 705 or the Revised Rules, from filing a complaint before the Provincial Prosecutor for petitioner's alleged violation of Section 68 of PD 705, as amended. For its part, the trial court correctly took cognizance of Criminal Case No. 2207 as the case falls within its exclusive original jurisdiction.[24]

Petitioner is Liable for Cutting Timber in Private Property Without Permit

Section 68, as amended, one of the 12 acts[25] penalized under PD 705, provides:

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[22] *Id*. at 194.

[23] It cannot be said, however, that Hernandez failed to act on Tansiongco's report as Hernandez conducted field investigation, oversaw the confiscation of the lumber, and took part in the subsequent DENR investigation.

[24] Under Section 20 in relation to Section 32(2) of Batas Pambansa Blg. 129 as amended by Republic Act No. 7691, Regional Trial Courts are vested with exclusive original jurisdiction over offenses punishable with imprisonment exceeding six years. Here, the offense for which petitioner was charged is punishable by *reclusion temporal* in its medium and maximum periods (that is, 14 years, 8 months and 1 day to 20 years) and thus falls under the RTC Romblon's exclusive original jurisdiction.

[25] The other acts penalized under PD 705, as amended by Presidential Decree No. 1559 and re-numbered by RA 7161, are: cutting, gathering and/or collecting timber or other products without license (Section 77); unlawful occupation or destruction of forest lands (Section 78); pasturing livestock (Section 79); illegal occupation of national parks system and recreation areas and vandalism therein (Section 80); destruction of wildlife resources

SECTION 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License*. — Any person who shall **cut**, gather, collect, remove timber or other forest products from any forest land, or **timber** from alienable or disposable public land, or **from private land**, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. (Emphasis supplied)

Section 68 penalizes three categories of acts: (1) the cutting, gathering, collecting, or removing of timber or other forest products from any forest land without any authority; (2) the **cutting**, gathering, collecting, or removing **of timber** from alienable or disposable public land, or from **private land without any authority**;[26] and (3) the possession of timber or other forest products without the legal documents as required under existing forest laws and regulations.[27] Petitioner stands charged of having

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(Section 81); survey by unauthorized person (Section 82); misclassification and survey by government official or employee (Section 83); tax declaration on real property (Section 84); coercion and influence (Section 85); unlawful possession of implements and devices used by forest officers (Section 86); payment, collection and remittance of forest charges (Section 87); and sale of wood products (Section 88).

[26] Thus, there is no merit in petitioner's claim that Section 68 of PD 705 does not penalize the cutting of timber in private land.

[27] In *Mustang Lumber, Inc. v. Court of Appeals*, (G.R. No. 104988, 18 June 1996, 257 SCRA 430), the acts falling under the first and second groups were lumped together. The elements for the criminal acts under the first and second groups are: (1) that the accused cut, gathered, collected, or

"cut, gathered, collected and removed timber or other forest products from a private land[28] without x x x the necessary permit x x x" thus his liablity, if ever, should be limited only for "cut[ting], gather[ing], collect[ing] and remov[ing] timber," under the second category. Further, the prosecution evidence showed that petitioner did not perform any acts of "gathering, collecting, or removing" but only the act of "cutting" a lone narra tree. Hence, this case hinges on the question of whether petitioner **"cut** x x x **timber" in the Mayod Property without a DENR permit.**[29]

We answer in the affirmative and thus affirm the lower courts' rulings.

On the question of whether petitioner cut a narra tree in the Mayod Property without a DENR permit, petitioner adopted conflicting positions. Before his trial, petitioner consistently represented to the authorities that he cut a narra tree in the Mayod Property and that he did so only with Calix's permission. However, when he testified, petitioner denied cutting the tree in question. We sustain the lower courts' rulings that petitioner's extrajudicial admissions bind him.[30] Petitioner does not explain why Royo and Hernandez, public officials who testified under oath in their official capacities, would lie on the stand to implicate petitioner in a serious criminal offense, not to mention that the acts of these public officers enjoy the presumption of regularity.

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removed timber of other forest products; (2) that the timber or other forest products cut, gathered, collected, or removed belong to the government or to any private individual; and (3) that the cutting, gathering, collecting, or removing was without authority under a license agreement, lease, license, or permit granted by the state (*People v. CFI of Quezon,* G.R. No. 46772, 13 February 1992, 206 SCRA 187).

[28] It cannot be determined from the records if the Mayod Property is registered.

[29] Under DENR Administrative Order No. 2000-21, dated 28 February 2000, private land owners are required to obtain a Special Private Land Timber Permit (SPLTP) from the DENR to cut, gather and utilize premium hardwood species, whether planted or naturally-grown.

[30] Section 26, Rule 130 of the Rules of Court provides: "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him."

Further, petitioner does not deny presenting Calix's authorization to Royo and Hernandez as his basis for cutting the narra tree in the Mayod Property. Petitioner has no use of Calix's authorization if, as he claimed during the trial, he did not cut any tree in the Mayod Property.

We further hold that the lone narre tree petitioner cut from the Mayod Property constitutes "timber" under Section 68 of PD 705, as amended. PD 705 does not define "timber," only "forest product" (which circuitously includes "timber.")[31] Does the narra tree in question constitute "timber" under Section 68? The closest this Court came to defining the term "timber" in Section 68 was to provide that "timber," **includes** "lumber" or "processed log."[32] In other jurisdictions, timber is determined by compliance with specified dimensions[33] or certain "stand age" or "rotation age."[34] In *Mustang Lumber, Inc. v. Court of Appeals*,[35] this Court was faced with a similar task of having to define a term in Section 68 of PD 705 — "lumber" — to determine whether possession of lumber is punishable under that provision.

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[31] Section 3(q), PD 705 provides: "Forest product means **timber,** pulpwood, firewood, bark, tree top, resin, gum, wood, oil, honey, beeswax, nipa, rattan, or other forest growth such as grass, shrub, and flowering plant, the associated water, fish, game, scenic, historical, recreational and geologic resources in forest lands." (Emphasis supplied)

[32] *Mustang Lumber, Inc. v. Court of Appeals*, G.R. No. 104988, 18 June 1996, 257 SCRA 430.

[33] In the Pacific and Northwestern Region (Region 6) of the United States Forest Service, timber utilization limits are set as follows: length – 8 feet; diameter (breast-height) – 9 inches; and top diameter – 4 inches (see *A Review of the Forest Practices Code of British Columbia and Fourteen other Jurisdictions Background Report - 1995* at http://www.for.gov.bc.ca/tasb/legsregs/westland /report/2-3.htm [*British Columbia Report*]).

[34] In the Baden-Wurttemberg State of the Federal Republic of Germany, the "stand ages" are: 50 years for coniferous stands and 70 years for deciduous stands (Section 16 of the Forest Law). In Sweden, the following are the minimum rotation age: conifer stands — 45 years to 100 years (depending on the quality of the site); hardwood stands — 35 years; and oak and beech trees – 100 years (see *British Columbia Report*).

[35] *Supra*.

In ruling in the affirmative, we held that "lumber" should be taken in its ordinary or common usage meaning to refer to "processed log or timber," thus:

> The Revised Forestry Code contains no definition of either timber or lumber. While the former is included in forest products as defined in paragraph (q) of Section 3, the latter is found in paragraph (aa) of the same section in the definition of "Processing plant," which reads:
>
> > (aa) Processing plant is any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into *lumber*, veneer, plywood, wallboard, blackboard, paper board, pulp, paper or other finished wood products.
>
> This simply means that *lumber* is a processed log or processed forest raw material. Clearly, the Code uses the term *lumber* in its ordinary or common usage. In the 1993 copyright edition of Webster's Third New International Dictionary, *lumber* is defined, *inter alia*, as "timber or logs after being prepared for the market." Simply put, lumber is a *processed* log or timber.
>
> **It is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning**. And in so far as possession of *timber* without the required legal documents is concerned, Section 68 of PD No. 705, as amended, makes no distinction between raw and processed timber. Neither should we.[36]
> x x x (Italicization in the original; boldfacing supplied)

We see no reason why, as in *Mustang*, the term "timber" under Section 68 cannot be taken in its common acceptation as referring to "wood used for or suitable for building or for carpentry or joinery."[37] Indeed, tree saplings or tiny tree stems that are too small for use as posts, panelling, beams, tables, or chairs cannot be considered timber.[38]

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[36] *Supra* at 448.

[37] Webster's *Third New International Dictionary* (1996 *ed*.).

[38] Wood pulps from timber can also be used for paper production.

Here, petitioner was charged with having felled a narra tree and converted the same into "several pieces of sawn lumber, about three (3) pcs. 2x16x6 and three (3) pcs. 2x18x7 x x x consisting of 111 board feet x x x." These measurements were indicated in the apprehension receipt Hernandez issued to petitioner on 26 January 1999 which the prosecution introduced in evidence.[39] Further, Hernandez testified that the larger portion of the felled log left in the Mayod Property "measured 76 something centimeters [at the big end] while the smaller end measured 65 centimeters and the length was 2.8 meters."[40] Undoubtedly, the narra tree petitioner felled and converted to lumber was "timber" fit "for building or for carpentry or joinery" and thus falls under the ambit of Section 68 of PD 705, as amended.

The Penalty Imposable on Petitioner

Violation of Section 68 of PD 705, as amended, is punishable as Qualified Theft under Article 310 in relation to Article 309 of the Revised Penal Code (RPC), thus:

> Art. 310. Qualified theft. — The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article x x x.
>
> Art. 309. Penalties. — Any person guilty of theft shall be punished by:
>
> 1. The penalty of *prisión mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusión temporal*, as the case may be.

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[39] Exh. "E".

[40] RTC Decision, p. 4; *Rollo*, p. 25.

2. The penalty of *prisión correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

The Information filed against petitioner alleged that the six pieces of lumber measuring 111 board feet were valued at ₱3,330. However, if the value of the log left at the Mayod Property is included, the amount increases to ₱20,930.40. To prove this allegation, the prosecution relied on Hernandez's testimony that these amounts, as stated in the apprehension receipt he issued, are his "estimates" based on "prevailing local price."[41]

This evidence does not suffice. To prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the RPC, the prosecution must present more than a mere uncorroborated "estimate" of such fact.[42]

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[41] CA Decision, p. 8; *Rollo*, p. 42.

[42] *Lucas v. Court of Appeals*, 438 Phil. 530 (2002). See also *People v. Elizaga*, 86 Phil. 364 (1950).

In the absence of independent and reliable corroboration of such estimate, courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.[43] In *People v. Dator*[44] where, as here, the accused was charged with violation of Section 68 of PD 705, as amended, for possession of lumber without permit, the prosecution's evidence for the lumber's value consisted of an estimate made by the apprehending authorities whose apparent lack of corroboration was compounded by the fact that the transmittal letter for the estimate was not presented in evidence. Accordingly, we imposed on the accused the minimum penalty under Article 309(6)[45] of the RPC.[46]

Applying *Dator* in relation to Article 310 of the RPC and taking into account the Indeterminate Sentence Law, we find it proper to impose on petitioner, under the circumstances obtaining here, the penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, four (4) months and twenty-one (21) days of *prision correcional*, as maximum.

WHEREFORE, we *AFFIRM* the Decision dated 28 June 2002 and the Resolution dated 14 May 2003 of the Court of Appeals with the modification that petitioner Sesinando Merida is sentenced to four (4) months and one (1) day of *arresto mayor*, as minimum, to three (3) years, four (4) months and twenty-one (21) days of *prision correcional*, as maximum.

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[43] *People v. Dator*, 398 Phil. 109 (2000). The Court deems it improper to take judicial notice of the selling price of narra at the time of the commission of the offense in this case. Such evidence would both be unreliable and inconclusive considering the lack of independent and competent source of such information.

[44] *Supra.*

[45] *Arresto mayor* in its minimum and medium periods.

[46] The Court also took into account the following circumstances: (1) the accused, a janitor, cut the pieces of soft lumber from his mother's landholding for use in renovating his house and (2) the accused had no prior record for violation of PD 705. Here, petitioner also appears to have no record for violation of PD 705.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 158384. June 12, 2008]

JUAN OLIVARES and DOLORES ROBLES, *petitioners, vs.* **ESPERANZA DE LA CRUZ SARMIENTO,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; ELEMENTS. —** As found by the trial court, the essential requisites for a valid contract were present: (1) consent of the parties, as evidenced by their signatures; (2) object certain which is the subject property; and (3) the consideration which is ₱25,000. Furthermore, the notarized Deed of Absolute Sale is a public document which has the presumption of regularity and whose validity should be upheld absent any clear and convincing evidence to contradict its validity.

2. **ID.; ID.; THERE IS NO ROOM FOR CONSTRUCTION WHEN THE WORDS OF THE CONTRACTS ARE CLEAR AND CAN BE EASILY UNDERSTOOD. —** Where the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. The contract is the law between the parties and when the words of the contract are clear and can be easily understood, there is no room for construction.

3. **ID.; SPECIAL CONTRACTS; SALES; EQUITABLE MORTGAGE; DEFINED. —** An equitable mortgage is defined as one that, although lacking some formality or form, nevertheless reveals the intention of the parties to charge a

real property as security for a debt. A contract of sale is considered an equitable mortgage when the real intention of the parties was to secure an existing debt by way of mortgage.

4. ID.; ID.; ID.; ID.; WHEN CONTRACT IS PRESUMED AN EQUITABLE MORTGAGE. — Article 1602 of the Civil Code enumerates the instances where a contract is presumed to be an equitable mortgage. Article 1602 reads: Article 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases: 1. When the price of a sale with right to repurchase is unusually inadequate; 2. When the vendor remains in possession as lessee or otherwise; 3. When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed; 4. When the purchaser retains for himself a part of the purchase price; 5. When the vendor binds himself to pay the taxes on the thing sold; 6. In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. The foregoing provisions also apply to a contract purporting to be an absolute sale.

APPEARANCES OF COUNSEL

Stevenson G. Conlu for petitioners.
Darrill P. Venus for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 30 October 2002 and the Resolution dated 8 May 2003 of the Court of Appeals in CA-G.R. CV No. 48949. The Court of Appeals

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong, concurring.

reversed the Decision dated 1 March 1993 of the Regional Trial Court of Iloilo, Branch 36.

The Facts

Respondent Esperanza de la Cruz Sarmiento (respondent) was the owner of a 230-square meter parcel of residential land located at Barangay San Antonio, Oton, Iloilo, covered by TCT No. T-86397. On 18 August 1976, respondent and her husband Manuel Sarmiento (Manuel) obtained a ₱12,000 loan from the Development Bank of the Philippines (DBP) for the construction of a residential house on the land. Respondent mortgaged the land to DBP as security for the payment of the loan. Respondent and Manuel failed to pay the monthly amortizations on the loan. In 1979, respondent allegedly obtained a loan of ₱35,000 from Luis Boteros (Boteros) so she could pay her obligation with the DBP and to prevent the foreclosure of the mortgaged land. Boteros was respondent's neighbor and the godfather of her eldest son. Respondent alleged that instead of getting the amount she loaned from Boteros, she authorized Boteros and his niece Segunda Planta (Planta) to pay her loan with the DBP. Respondent accused Boteros and Planta of forging her signatures in two deeds of sale, making it appear that respondent and her husband Manuel sold the land and the house (property) constructed thereon to Boteros.

Boteros, on the other hand, alleged that in 1979, respondent offered to sell the property to him, provided Boteros would pay respondent's loan with the DBP plus the interest due thereon. Boteros accepted the offer and paid respondent's loan plus interest with the DBP, totaling ₱21,009.62.[3] Boteros made a final payment of the loan on 26 June 1979 and the DBP thereafter issued a certification of cancellation of mortgage[4] dated 28 June 1979. Meanwhile, the agreement between Boteros and respondent was put in writing through a notarized Deed of Definite Sale[5] dated May 1979, signed by both respondent and Boteros.

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[3] *See* DBP certification dated 8 January 1985; Exh. "8", Records, p. 246.

[4] Exh. "16", *id*. at 260.

[5] *Id*. at 22.

Under the terms of the Deed of Definite Sale, respondent sold the property to Boteros for ₱2,000 in cash, with the condition that Boteros will assume respondent's ₱12,000 loan from the DBP, together with the interest due thereon. After Boteros fully paid respondent's loan with the DBP, respondent and Boteros executed another document, a Deed of Absolute Sale dated 2 July 1979, stating that spouses respondent and Manuel were selling the property to Boteros for ₱25,000. The Deed of Absolute Sale was signed by both respondent and her husband Manuel. On 24 July 1979, the Register of Deeds cancelled TCT No. T-86397 and issued a new title, TCT No. T-99121 in the name of Boteros. On 7 January 1984, Boteros sold the property to spouses Juan Olivares (Olivares) and Dolores Robles (Robles) for ₱27,000.[6] Boteros alleged that respondent was aware of the sale of the property to Olivares and Robles (petitioners) since respondent was among those who looked for interested buyers of the property.

Olivares testified that before buying the property from Boteros, he approached respondent who confirmed to him that she already sold the property to Boteros. On 7 January 1984, petitioners bought the property from Boteros. On 3 April 1985, the Register of Deeds cancelled TCT No. T-99121 and issued a new title, TCT No. T-115,672 in petitioners' name. After the title was transferred to petitioners' name, Olivares demanded that respondent vacate the property. Respondent allegedly requested that she be given some time to find a place where her family could transfer. Petitioners eventually filed with the Municipal Trial Court of Oton an illegal detainer case[7] against respondent and Manuel when they continued to stay on the property despite repeated demands from petitioners for them to vacate the property. On 14 October 1988, the Municipal Trial Court rendered a decision[8] in the illegal detainer case and ordered respondent and Manuel to vacate the property and deliver the possession thereof to petitioners.

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[6] *See* notarized Deed of Definite Sale dated 7 January 1984; *id*. at 254.

[7] Civil Case No. 555, filed in the MTC of Oton, Iloilo.

[8] Records, pp. 262-273.

Meanwhile, on 7 December 1984, respondent filed a civil case for recovery of possession, ownership, annulment of title, and damages against Boteros and Planta, which was docketed as Civil Case No. 16177. On 23 April 1986, Civil Case No. 16177 was dismissed without prejudice.

On 26 September 1986, respondent filed with the Regional Trial Court of Iloilo a complaint[9] for recovery of ownership, annulment of title, and damages against Boteros, Planta, and petitioners, which was docketed as Civil Case No. 17242.

On 1 March 1993, the Regional Trial Court of Iloilo, Branch 36 rendered a decision, the dispositive portion of which reads:

> WHEREFORE, viewed from the foregoing considerations, judgment is hereby rendered DISMISSING the complaint and ordering the plaintiff [Esperanza de la Cruz Sarmiento] to pay herein defendants [Luis Boteros, Segunda Planta, Juan Olivares, and Dolores Robles]:
>
> 1. The amount of ₱3,000.00 for moral damages;
> 2. The amount of ₱5,000.00 for attorney's fees; and
> 3. The amount of ₱2,000.00 as litigation expenses.
>
> SO ORDERED.[10]

On appeal, the Court of Appeals rendered its Decision dated 30 October 2002, the dispositive portion of which reads:

> WHEREFORE, the appealed judgment is hereby REVERSED and SET ASIDE and a new one entered declaring the following deeds of sale as NULL and VOID:
>
> (a) Deed of Definite Sale from Esperanza de la Cruz to Luis Boteros, dated May 1979;
> (b) Deed of Absolute Sale from Manuel Sarmiento and Esperanza de la Cruz to Luis Boteros, dated July 2, 1979, and
> (c) Definite Sale from Luis Boteros to Juan Olivares and Dolores Robles dated January 7, 1984.

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[9] *Id*. at 1-5.

[10] CA *rollo*, p. 13.

The plaintiff-appellant [Esperanza de la Cruz] shall be restored in possession of the subject property.

However, the plaintiff-appellant is ordered to pay defendants-appellees Juan and Dolores within thirty (30) days from the finality of this Decision the following:

1. ₱21,009.62, the amount paid by defendant-appellee Luis to DBP.
2. Interest thereon at the legal rate computed from the date of the subject transaction up to the time that the plaintiff-appellant was ejected from the said property in 1989, and
3. The costs.

In case of default on the part of the plaintiff-appellant to settle her obligation within the period herein set forth, the property shall be sold at public auction and the proceeds applied to the mortgage debts and the costs.

SO ORDERED.[11]

Petitioners moved for reconsideration, which the Court of Appeals denied for lack of merit.

Hence, this petition for review.

The Ruling of the Trial Court

The trial court upheld the validity and genuineness of the Deed of Absolute Sale executed by respondent in favor of Boteros, who subsequently sold it to petitioners. The trial court held that respondent's mere denial of entering into a contract of sale with Boteros, which was not corroborated by any other evidence, cannot be given evidentiary weight against the notarized deed of sale.

On the validity of the Deed of Absolute Sale, the trial court ruled:

The validity of the Deed of Sale in favor of the defendant [Boteros] must likewise be upheld, since all the requisites for a valid contract were present, namely, consent, object certain and consideration. Consent is evident from the signature of the defendant on the document

[11] *Rollo*, pp. 33-34.

(which signature was confirmed to be genuine by the National Bureau of Investigation) made in the presence of two witnesses and before Notary Public Manuel C. Roa, (Exhibit "9" and "9-A" for the defendant). The object of the contract is likewise certain, that is lot No. 2328-B covered by TCT No. T-86397. The cause or consideration is also duly established, that is, for the sum of ₱25,000.00.[12]

The Ruling of the Court of Appeals

The Court of Appeals held that the transaction between respondent and Boteros was not a contract of sale but merely an equitable mortgage. The Court of Appeals ruled that the ₱25,000 consideration indicated on the Deed of Absolute Sale dated 2 July 1979 was unusually inadequate for the sale of the property.

Considering that respondent's educational level was only grade 3 and she could not understand English, the Court of Appeals held that the contents of the deed of sale should have been fully explained to respondent, in accordance with Article 1332[13] of the Civil Code. Because Boteros failed to explain the contents of the deed of sale, respondent could not have fully understood the import and consequence of her signing the deed of sale.

The Court of Appeals further noted that respondent and her family stayed on the property even after the alleged sale to Boteros, which under Article 1602 of the Civil Code is one of the cases where a contract can be presumed to be an equitable mortgage.

Since the contract is merely an equitable mortgage and not an absolute sale, the Court of Appeals ruled that respondent can still recover the property from petitioners who were not buyers in good faith. The Court of Appeals noted that petitioners, who were neighbors of respondent, were aware that respondent

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[12] CA *rollo*, p. 12.

[13] Article 1332 of the Civil Code provides that "[w]hen one of the parties is unable to read or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former."

still occupied the property. Thus, petitioners should have made inquiries before buying the property from Boteros. Since Boteros was not the owner of the property, he had no right to sell the property to petitioners.

The Issues

Petitioners raise the following issues:

1. WHETHER THE APPELLATE COURT CAN DISREGARD THE FACTS ESTABLISHED BY THE TRIAL COURT BY UPHOLDING THE UNCORROBORATED TESTIMONY/ DENIAL OF THE RESPONDENT OVER AND ABOVE THE AFFIRMATIVE TESTIMONIES OF WITNESSES AND NOTARY PUBLIC.
2. WHETHER THE FINDINGS OF FACTS AND CONCLUSION REACHED BY THE APPELLATE COURT WERE ENTIRELY GROUNDED ON SPECULATION, WITHOUT CITATION OF THE SPECIFIC EVIDENCE ON WHICH THEY ARE BASED.
3. WHETHER THE SUBJECT DEED OF DEFINITE SALE CAN BE CONSTRUED AS AN EQUITABLE MORTGAGE, AND THEREAFTER BE DECLARED NULL AND VOID INSTEAD OF BEING REFORMED.
4. WHETHER THE APPELLATE COURT CAN LEGALLY ORDER A MORTGAGEE TO REDEEM THE PROPERTY MORTGAGED.
5. WHETHER THE PETITIONER[S] IN RELYING ON THE CLEAN TITLE OF LUIS BOTEROS AND DEED OF SALE EXECUTED BY RESPONDENT CAN BE ADJUDGED BUYER[S] IN GOOD FAITH.[14]

The resolution of the issues requires the determination of the real nature of the transaction between respondent and Boteros concerning the subject property.

The Ruling of the Court

We find merit in the petition.

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[14] *Rollo*, p. 11.

Deed of Absolute Sale is Valid

Respondent denies that she signed the Deed of Definite Sale dated May 1979 and the Deed of Absolute Sale dated 2 July 1979. However, respondent failed to prove that her signatures on the Deed of Definite Sale and the Deed of Absolute Sale were indeed forged. In fact, the Office of the Provincial Fiscal of Iloilo dismissed the complaint for falsification of public document filed by respondent against Boteros and Planta for insufficiency of evidence.[15] Furthermore, the NBI Report[16] dated 25 February 1985 on the handwriting examination on the signatures of respondent and Manuel on the Deed of Absolute Sale dated 2 July 1979 stated that the respondent's signature on the Deed of Absolute Sale and respondent's sample signatures on other documents submitted for comparative examination were written by one and the same person. However, the NBI could not render a definite finding on whether Manuel's signature on the Deed of Absolute Sale and his sample signatures were written by one and the same person because of lack of sufficient and appropriate basis for comparative examination.

On the other hand, Planta, who was one of the witnesses who signed the Deed of Absolute Sale, testified that she saw respondent and Manuel sign the Deed of Absolute Sale.[17] Atty. Manuel Roa, a retired judge who notarized the Deed of Definite Sale and the Deed of Absolute Sale, likewise testified that he was present when respondent signed the Deed of Definite Sale and the Deed of Absolute Sale.[18]

As found by the trial court, the essential requisites for a valid contract were present: (1) consent of the parties, as evidenced by their signatures; (2) object certain which is the subject property; and (3) the consideration which is ₱25,000. Furthermore, the

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[15] *See* Resolution dated 5 August 1985 of the Office of the Provincial Fiscal of Iloilo; Records, pp. 250-253.

[16] Exh. "9", *id*. at 247-248.

[17] TSN, 8 February 1989, p. 7; TSN, 15 March 1989, p. 6.

[18] TSN, 17 April 1989, pp. 4-7.

notarized Deed of Absolute Sale is a public document which has the presumption of regularity and whose validity should be upheld absent any clear and convincing evidence to contradict its validity.[19]

Contract of Loan Not Proven

We cannot subscribe to respondent's bare allegation that the agreement between her and Boteros was merely a loan for ₱35,000 and not the sale of the property. Respondent failed to substantiate her claim that the transaction was merely a loan. In fact, there was no written document evidencing the alleged loan transaction. It is quite improbable that Boteros, who knew that respondent was unable to pay her ₱12,000 loan from the DBP, would agree to grant respondent a ₱35,000 loan which is almost thrice as much as the DBP loan, without insisting that the loan be embodied in a written document. Furthermore, respondent admitted that she has never paid a single centavo of her alleged loan with Boteros.

On the other hand, the notarized Deed of Definite Sale and the notarized Deed of Absolute Sale signed by respondent and Manuel clearly bely respondent's claim that the agreement was merely a loan transaction. These circumstances clearly indicate that the agreement was indeed a sale of real property and not merely a loan.

Where the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[20] The contract is the law between the parties and when the words of the contract are clear and can be easily understood, there is no room for construction.[21]

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[19] *Ceballos v. Intestate Estate of the Late Emigdio Mercado*, G.R. No. 155856, 28 May 2004, 430 SCRA 323.

[20] Article 1370 of the Civil Code.

[21] *Heirs of the Late Spouses Aurelio and Esperanza Balite v. Lim*, G.R. No. 152168, 10 December 2004, 446 SCRA 56; *Tuazon v. Court of Appeals*, 396 Phil. 32 (2000).

Contract was not an Equitable Mortgage

An equitable mortgage is defined as one that, although lacking some formality or form, nevertheless reveals the intention of the parties to charge a real property as security for a debt.[22] A contract of sale is considered an equitable mortgage when the real intention of the parties was to secure an existing debt by way of mortgage.[23] In this case, the land which was the subject of the Deed of Absolute Sale was already mortgaged not to the buyer but to another entity who was not a party to the contract. The land was already mortgaged to DBP by the sellers (respondent and her husband Manuel), who were unable to pay their loan. The records show that the property was about to be foreclosed so respondent and Manuel decided to sell the property to Boteros. Under the terms of the Deed of Definite Sale dated May 1979, the consideration for the sale was ₱2,000 plus the assumption of Boteros of the sellers' loan from the DBP, including all interests. Prior to their sale transaction, there is no evidence that respondent had an existing debt with Boteros. There is likewise no substantial evidence on the records that the parties to the contract agreed upon a different transaction other than the sale of real property.

Article 1602 of the Civil Code enumerates the instances where a contract is presumed to be an equitable mortgage. Article 1602 reads:

Article 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

1. When the price of a sale with right to repurchase is unusually inadequate;
2. When the vendor remains in possession as lessee or otherwise;

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[22] *Lumayag v. Heirs of Jacinto Nemeño*, G.R. No. 162112, 3 July 2007, 526 SCRA 315; *Roberts v. Papio*, G.R. No. 166714, 9 February 2007, 515 SCRA 346.

[23] *Raymundo v. Bandong*, G.R. No. 171250, 4 July 2007, 526 SCRA 514; *Roberts v. Papio*, G.R. No. 166714, 9 February 2007, 515 SCRA 346.

3. When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
4. When the purchaser retains for himself a part of the purchase price;
5. When the vendor binds himself to pay the taxes on the thing sold;
6. In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

The foregoing provisions also apply to a contract purporting to be an absolute sale.[24]

In this case, the appellate court held that the contract should be presumed an equitable mortgage because the sale price of the property was unusually inadequate and the vendor remained in possession of the property.

The records of the case are bereft of any evidence which could lead to the conclusion that the sale price was unusually inadequate. No evidence was presented on the market value of real estate in the area where the property was located at the time of the sale. Neither was there testimony of any alleged disparity on the price and the market value of the property. There was no testimony nor evidence presented on the inadequacy of the sale price. Besides, the property which respondent sold to Boteros for ₱25,000 in 1979 was subsequently sold by Boteros to petitioners in 1984 for ₱27,000. If the price indicated on the Deed of Absolute Sale dated 2 July 1979 was indeed grossly inadequate, then Boteros could have sold the property five years later at a much higher price than ₱27,000. To presume that a contract is an equitable mortgage based on gross inadequacy of price, it must be clearly shown from the evidence presented that the consideration was in fact grossly inadequate at the time the sale was executed. In fact, mere inadequacy of price is not sufficient.[25]

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[24] Article 1604 of the Civil Code.

[25] *San Pedro v. Lee*, G.R. No. 156522, 28 May 2004, 430 SCRA 338.

Respondent's continuous possession of the property even after the property was sold to Boteros does not automatically mean that the transaction was an equitable mortgage and not an absolute sale. In this case, Boteros merely tolerated respondent's continued possession of the property until Boteros sold the property and the new buyers, petitioners herein, demanded respondent to vacate the property.

Based on the records of the case, we hold that the transaction between Boteros and respondent and Manuel was a contract of absolute sale of real property and not merely an equitable mortgage. Boteros can therefore validly sell the property to petitioners. In view of the conclusion we have reached, it is unnecessary to pass upon the last two issues raised by petitioners.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 30 October 2002 and the Resolution dated 8 May 2003 of the Court of Appeals in CA-G.R. CV No. 48949. We *REINSTATE* the Decision dated 1 March 1993 of the Regional Trial Court of Iloilo, Branch 36.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159610. June 12, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CENTRAL LUZON DRUG CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; TAX CREDIT; DEFINED AND CONSTRUED. — Tax credit is defined as a peso-for-peso reduction from a taxpayer's tax liability. It is a direct subtraction from the tax payable to the government. On the other hand, RR 2-94 treated the amount of senior citizens' discount as a tax deduction which is only a subtraction from gross income resulting to a lower taxable income. RR 2-94 treats the senior citizens' discount in the same manner as the allowable deductions provided in Section 34, Chapter VII of the National Internal Revenue Code. RR 2-94 affords merely a fractional reduction in the taxes payable to the government depending on the applicable tax rate. In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, the Court ruled that petitioner's definition in RR 2-94 of a tax credit is clearly erroneous. To deny the tax credit, despite the plain mandate of the law, is indefensible. In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* the Court declared, "When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple." The Court further stated that the law cannot be amended by a mere regulation because "administrative agencies in issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature." Hence, there being a dichotomy in the law and the revenue regulation, the definition provided in Section 2(i) of RR 2-94 cannot be given effect.

2. ID.; ID.; TAX CREDIT MAY STILL BE DEDUCTIBLE FROM A FUTURE TAX LIABILITY; SUSTAINED. — In the petition filed before this Court, petitioner alleged that respondent incurred a net loss from its business operations in 1997; hence, it did not pay any income tax. Since no tax payment was made, it follows that no tax credit can also be claimed because tax credits are usually applied against a tax liability. In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, the Court stressed that prior payment of tax liability is not a pre-condition before a taxable entity can avail of the tax credit. The Court declared, "Where there is no tax liability or where a private establishment reports a net loss

for the period, the tax credit can be availed of and carried over to the next taxable year." It is irrefutable that under RA 7432, Congress has granted the tax credit benefit to all covered establishments without conditions. Therefore, neither a tax liability nor a prior tax payment is required for the existence or grant of a tax credit. The applicable law on this point is clear and without any qualifications. Hence, respondent is entitled to claim the amount of ₱2,376,805.63 as tax credit despite incurring net loss from business operations for the taxable year 1997.

3. ID.; ID.; SENIOR CITIZENS' DISCOUNT MAY BE CLAIMED AS TAX CREDIT BUT NOT A REFUND. — Section 4(a) of RA 7432 expressly provides that private establishments may claim the cost as a tax credit. A tax credit can only be utilized as payment for future internal revenue tax liabilities of the taxpayer while a tax refund, issued as a check or a warrant, can be encashed. A tax refund can be availed of immediately while a tax credit can only be utilized if the taxpayer has existing or future tax liabilities. If the words of the law are clear, plain, and free of ambiguity, it must be given its literal meaning and applied without any interpretation. Hence, the senior citizens' discount may be claimed as a tax credit and not as a refund.

4. ID.; ID.; EXPANDED SENIOR CITIZENS ACT OF 2003; SENIOR CITIZENS' DISCOUNT SHOULD BE TREATED AS A TAX DEDUCTION. — On 26 February 2004, RA 9257, otherwise known as the "Expanded Senior Citizens Act of 2003," was signed into law and became effective on 21 March 2004. x x x Contrary to the provision in RA 7432 where the senior citizens' discount granted by all covered establishments can be claimed as tax credit, RA 9257 now specifically provides that this discount should be treated as tax deduction. With the effectivity of RA 9257 on 21 March 2004, there is now a new tax treatment for senior citizens' discount granted by all covered establishments. This discount should be considered as a deductible expense from gross income and no longer as tax credit.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Joy Ann Marie G. Nolasco for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on *certiorari*[1] assails the 13 August 2003 Decision[2] of the Court of Appeals in CA-G.R. SP No. 70480. The Court of Appeals dismissed the appeal filed by the Commissioner of Internal Revenue (petitioner) questioning the 15 April 2002 Decision[3] of the Court of Tax Appeals (CTA) in CTA Case No. 6054 ordering petitioner to issue, in favor of Central Luzon Drug Corporation (respondent), a tax credit certificate in the amount of ₱2,376,805.63, arising from the alleged erroneous interpretation of the term "tax credit" used in Section 4(a) of Republic Act No. (RA) 7432.[4]

The Facts

Respondent is a domestic corporation engaged in the retail of medicines and other pharmaceutical products.[5] In 1997, it operated eight drugstores under the business name and style "Mercury Drug."[6]

Pursuant to the provisions of RA 7432 and Revenue Regulations No. (RR) 2-94[7] issued by the Bureau of Internal Revenue (BIR), respondent granted 20% sales discount to qualified senior citizens

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 33-39. Penned by Associate Justice Rebecca De Guia-Salvador, concurred in by Associate Justices Roberto A. Barrios and Arsenio J. Magpale.

[3] *Id*. at 40-61. Penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judge Juanito C. Castañeda, Jr.

[4] RA 7432 is otherwise known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes." The law was passed on 23 April 1992.

[5] *Rollo*, p. 10.

[6] *Id*. at 33, 63.

[7] RR 2-94 was issued on 23 August 1993.

on their purchases of medicines covering the calendar year 1997. The sales discount granted to senior citizens totaled ₱2,798,508.00.

On 15 April 1998, respondent filed its 1997 Corporate Annual Income Tax Return reflecting a nil income tax liability due to net loss incurred from business operations of ₱2,405,140.00.[8] Respondent filed its 1997 Income Tax Return under protest.[9]

On 19 March 1999, respondent filed with the petitioner a claim for refund or credit of overpaid income tax for the taxable year 1997 in the amount of ₱2,660,829.00.[10] Respondent alleged that the overpaid tax was the result of the wrongful implementation of RA 7432. Respondent treated the 20% sales discount as a deduction from gross sales in compliance with RR 2-94 instead of treating it as a tax credit as provided under Section 4(a) of RA 7432.

On 6 April 2000, respondent filed a Petition for Review with the CTA in order to toll the running of the two-year statutory period within which to file a judicial claim. Respondent reasoned that RR 2-94, which is a mere implementing administrative regulation, cannot modify, alter or amend the clear mandate of RA 7432. Consequently, Section 2(i) of RR 2-94 is without force and effect for being inconsistent with the law it seeks to implement.[11]

In his Answer, petitioner stated that the construction given to a statute by a specialized administrative agency like the BIR is entitled to great respect and should be accorded great weight. When RA 7432 allowed senior citizens' discounts to be claimed as tax credit, it was silent as to the mechanics of availing the same. For clarification, the BIR issued RR 2-94 and defined the term "tax credit" as a deduction from the establishment's

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[8] CTA *rollo*, pp. 6-8.

[9] *Id*. at 10.

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

[11] *Id*. at 1-5.

gross income and not from its tax liability in order to avoid an absurdity that is not intended by the law.[12]

The Ruling of the Court of Tax Appeals

On 15 April 2002, the CTA rendered a Decision ordering petitioner to issue a tax credit certificate in the amount of ₱2,376,805.63 in favor of respondent.

The CTA stated that in a number of analogous cases, it has consistently ruled that the 20% senior citizens' discount should be treated as tax credit instead of a mere deduction from gross income.[13] In quoting its previous decisions, the CTA ruled that RR 2-94 engraved a new meaning to the phrase "tax credit" as deductible from gross income which is a deviation from the plain intendment of the law. An administrative regulation must not contravene but should conform to the standards that the law prescribes.[14]

The CTA also ruled that respondent has properly substantiated its claim for tax credit by documentary evidence. However, based on the examination conducted by the commissioned independent certified public accountant (CPA), there were some material discrepancies due to missing cash slips, lack of senior citizen's ID number, failure to include the cash slips in the summary report and vice versa. Therefore, between the Summary Report presented by respondent and the audited amount presented by the independent CPA, the CTA deemed it proper to consider the lesser of two amounts.

The re-computation of the overpaid income tax[15] for the year 1997 is as follows:

Sales, Net	₱176,742,607.00
Add: 20% Sales Discount to Senior Citizens	2,798,508.00
Sales, Gross	₱179,541,115.00

[12] *Id.* at 26-29.

[13] *Id.* at 275.

[14] *Id.* at 278.

[15] *Id.* at 281.

Less: Cost of Sales		
Merchandise inventory, beg.	₱ 20,905,489.00	
Purchases	168,762,950.00	
Merchandise inventory, end	(27,281,439.00)	162,387,000.00
Gross Profit		₱ 17,154,115.00
Add: Miscellaneous income		402,124.00
Total Income		₱ 17,556,239.00
Less: Operating expenses		16,913,699.00
Net Income		₱ 642,540.00
Less: Income subjected to final tax (Interest Income[16])		249,172.00
Net Taxable Income		₱ 393,368.00
Income Tax Due (35%)		₱ 137,679.00
Less: Tax Credit (Cost of 20% discount as adjusted[17])		2,514,484.63
Income Tax Payable		(₱ 2,376,805.63)
Income Tax Actually Paid		0.00
Income Tax Refundable		(₱ 2,376,805.63)

Aggrieved by the CTA's decision, petitioner elevated the case before the Court of Appeals.

The Ruling of the Appellate Court

On 13 August 2003, the Court of Appeals affirmed the CTA's decision *in toto*.

The Court of Appeals disagreed with petitioner's contention that the CTA's decision applied a literal interpretation of the law. It reasoned that under the *verba legis* rule, if the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without interpretation. This principle

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[16] *Id*. at 15.

[17] *Id*. at 283-292.

rests on the presumption that the words used by the legislature in a statute correctly express its intent and preclude the court from construing it differently.[18]

The Court of Appeals distinguished "tax credit" as an amount subtracted from a taxpayer's total tax liability to arrive at the tax due while a "tax deduction" reduces the taxpayer's taxable income upon which the tax liability is computed. "A credit differs from deduction in that the former is subtracted from tax while the latter is subtracted from income before the tax is computed."[19]

The Court of Appeals found no legal basis to support petitioner's opinion that actual payment by the taxpayer or actual receipt by the government of the tax sought to be credited or refunded is a condition *sine qua non* for the availment of tax credit as enunciated in Section 229[20] of the Tax Code. The Court of Appeals stressed that Section 229 of the Tax Code pertains to illegally collected or erroneously paid taxes while RA 7432 is a special law which uses the method of tax credit in the context of just compensation. Further, RA 7432 does not require prior tax payment as a condition for claiming the cost of the sales discount as tax credit.

Hence, this petition.

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[18] CA *rollo*, p. 126.

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

[20] Sec. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The Issues

Petitioner raises two issues[21] in this Petition:

1. Whether the appellate court erred in holding that respondent may claim the 20% senior citizens' sales discount as a tax credit deductible from future income tax liabilities instead of a mere deduction from gross income or gross sales; and

2. Whether the appellate court erred in holding that respondent is entitled to a refund.

The Ruling of the Court

The petition lacks merit.

The issues presented are not novel. In two similar cases involving the same parties where respondent lodged its claim for tax credit on the senior citizens' discount granted in 1995[22] and 1996,[23] this Court has squarely ruled that the 20% senior citizens' discount required by RA 7432 may be claimed as a tax credit and not merely a tax deduction from gross sales or gross income. Under RA 7432, Congress granted the tax credit benefit to all covered establishments without conditions. The net loss incurred in a taxable year does not preclude the grant of tax credit because by its nature, the tax credit may still be deducted from a future, not a present, tax liability. However, the senior citizens' discount granted as a tax credit cannot be refunded.

RA 7432 expressly allows private establishments to claim the amount of discounts they grant to senior citizens as tax credit.

Section 4(a) of RA 7432 states:

SECTION 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

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[21] *Rollo*, p. 12.

[22] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 148512, 26 June 2006, 492 SCRA 575.

[23] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*, G.R. No. 159647, 15 April 2005, 456 SCRA 414.

a) **the grant of twenty percent (20%) discount from** all establishments relative to the utilization of transportation services, hotels and similar lodging establishments, restaurants and recreation centers and **purchase of medicines** anywhere in the country: Provided, That **private establishments may claim the cost as tax credit**; (Emphasis supplied)

However, RR 2-94 interpreted the tax credit provision of RA 7432 in this wise:

Sec. 2. DEFINITIONS. — For purposes of these regulations:

x x x x x x x x x

i. Tax Credit — refers to the **amount representing 20% discount granted to a qualified senior citizen** by all establishments relative to their utilization of transportation services, hotels and similar lodging establishments, restaurants, drugstores, recreation centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, which **discount shall be deducted by the said establishments from their gross income for income tax purposes** and from their gross sales for value-added tax or other percentage tax purposes. (Emphasis supplied).

x x x x x x x x x

Sec. 4. Recording/Bookkeeping Requirement for Private Establishments

x x x x x x x x x

The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes. (Emphasis supplied)

Tax credit is defined as a peso-for-peso reduction from a taxpayer's tax liability. It is a direct subtraction from the tax payable to the government. On the other hand, RR 2-94 treated the amount of senior citizens' discount as a tax deduction which is only a subtraction from gross income resulting to a lower taxable income. RR 2-94 treats the senior citizens' discount in

the same manner as the allowable deductions provided in Section 34, Chapter VII of the National Internal Revenue Code. RR 2-94 affords merely a fractional reduction in the taxes payable to the government depending on the applicable tax rate.

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[24] the Court ruled that petitioner's definition in RR 2-94 of a tax credit is clearly erroneous. To deny the tax credit, despite the plain mandate of the law, is indefensible. In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* the Court declared, "When the law says that the cost of the discount may be claimed as a *tax credit*, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple." The Court further stated that the law cannot be amended by a mere regulation because "administrative agencies in issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature." Hence, there being a dichotomy in the law and the revenue regulation, the definition provided in Section 2(i) of RR 2-94 cannot be given effect.

The tax credit may still be deducted from a future, not a present, tax liability.

In the petition filed before this Court, petitioner alleged that respondent incurred a net loss from its business operations in 1997; hence, it did not pay any income tax. Since no tax payment was made, it follows that no tax credit can also be claimed because tax credits are usually applied against a tax liability.[25]

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[26] the Court stressed that prior payment of tax liability is not a pre-condition before a taxable entity can avail of the tax credit. The Court declared, "Where there is no tax

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[24] *Supra* note 23 at 434.

[25] *Rollo*, p. 23.

[26] *Supra* note 23 at 430.

liability or where a private establishment reports a net loss for the period, the tax credit can be availed of and carried over to the next taxable year."[27] It is irrefutable that under RA 7432, Congress has granted the tax credit benefit to all covered establishments without conditions. Therefore, neither a tax liability nor a prior tax payment is required for the existence or grant of a tax credit.[28] The applicable law on this point is clear and without any qualifications.[29]

Hence, respondent is entitled to claim the amount of ₱2,376,805.63 as tax credit despite incurring net loss from business operations for the taxable year 1997.

The senior citizens' discount may be claimed as a tax credit and not a refund.

Section 4(a) of RA 7432 expressly provides that private establishments may claim the cost as a tax credit. A tax credit can only be utilized as payment for future internal revenue tax liabilities of the taxpayer while a tax refund, issued as a check or a warrant, can be encashed. A tax refund can be availed of immediately while a tax credit can only be utilized if the taxpayer has existing or future tax liabilities.

If the words of the law are clear, plain, and free of ambiguity, it must be given its literal meaning and applied without any interpretation. Hence, the senior citizens' discount may be claimed as a tax credit and not as a refund.[30]

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[27] *Supra* note 22 at 583.

[28] *Supra* note 23 at 429-430.

[29] *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, G.R. No. 151413, 13 February 2008.

[30] *Bicolandia Drug Corporation (Formerly Elmas Drug Corporation) v. Commissioner of Internal Revenue*, G.R. No. 142299, 22 June 2006, 492 SCRA 159, 168.

RA 9257 now specifically provides that all covered establishments may claim the senior citizens' discount as tax deduction.

On 26 February 2004, RA 9257, otherwise known as the "Expanded Senior Citizens Act of 2003," was signed into law and became effective on 21 March 2004.[31]

RA 9257 has amended RA 7432. Section 4(a) of RA 9257 reads:

"Sec. 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and **purchase of medicines** in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x x x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as **tax deduction** based on the net cost of the goods sold or services rendered: *Provided*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided*, *further*, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended." (Emphasis supplied)

Contrary to the provision in RA 7432 where the senior citizens' discount granted by all covered establishments can be claimed as tax credit, RA 9257 now specifically provides that this discount should be treated as tax deduction.

With the effectivity of RA 9257 on 21 March 2004, there is now a new tax treatment for senior citizens' discount granted

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[31] *Carlos Superdrug Corp. v. Department of Social Welfare and Development (DSWD)*, G.R. No.166494, 29 June 2007, 526 SCRA 130, 134-135.

by all covered establishments. This discount should be considered as a deductible expense from gross income and no longer as tax credit.[32] The present case, however, covers the taxable year 1997 and is thus governed by the old law, RA 7432.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the assailed Decision of the Court of Appeals dated 13 August 2003 in CA-G.R. SP No. 70480.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 167330. June 12, 2008]

PHILIPPINE HEALTH CARE PROVIDERS, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; DOCUMENTARY STAMP TAX; NATURE THEREOF, EXPLAINED. — The DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. It is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. In particular, **the DST under**

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[32] *M.E. Holding Corporation v. Hon. Court of Appeals, Court of Tax Appeals and the Commissioner of Internal Revenue*, G.R. No. 160193, 3 March 2008.

Section 185 of the 1997 Tax Code is imposed on the privilege of making or renewing any policy of insurance (except life, marine, inland and fire insurance), bond or obligation **in the nature of indemnity** for loss, damage, or liability. x x x DST is not a tax on the business transacted but an excise on the privilege, opportunity, or facility offered at exchanges for the transaction of the business. **It is an excise on the facilities used** in the transaction of the business, **separate and apart from the business itself**.

2. **MERCANTILE LAW; INSURANCE; CONTRACT OF INSURANCE; DEFINED AND CONSTRUED. —** Under the law, a contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. The event insured against must be designated in the contract and must either be unknown or contingent. Petitioner's health care agreement is primarily a contract of indemnity. And in the recent case of *Blue Cross Healthcare, Inc. v. Olivares*, this Court ruled that a health care agreement is in the nature of a non-life insurance policy. Contrary to petitioner's claim, its health care agreement is not a contract for the provision of medical services. Petitioner does not actually provide medical or hospital services but merely arranges for the same and pays for them up to the stipulated maximum amount of coverage. It is also incorrect to say that the health care agreement is not based on loss or damage because, under the said agreement, petitioner assumes the liability and indemnifies its member for hospital, medical and related expenses (such as professional fees of physicians). The term "loss or damage" is broad enough to cover the monetary expense or liability a member will incur in case of illness or injury.

3. **ID.; ID.; HEALTH CARE AGREEMENT CONSIDERED AN INSURANCE; RATIONALE. —** Under the health care agreement, the rendition of hospital, medical and professional services to the member in case of sickness, injury or emergency or his availment of so-called "out-patient services" (including physical examination, x-ray and laboratory tests, medical consultations, vaccine administration and family planning counseling) is the contingent event which gives rise to liability on the part of the member. In case of exposure of the member to liability, he would be entitled to indemnification by petitioner.

> Furthermore, the fact that petitioner must relieve its member from liability by paying for expenses arising from the stipulated contingencies belies its claim that its services are prepaid. The expenses to be incurred by each member cannot be predicted beforehand, if they can be predicted at all. Petitioner assumes the risk of paying for the costs of the services even if they are significantly and substantially more than what the member has "prepaid." Petitioner does not bear the costs alone but distributes or spreads them out among a large group of persons bearing a similar risk, that is, among all the other members of the health care program. This is insurance. x x x Similarly, the insurable interest of every member of petitioner's health care program in obtaining the health care agreement is his own health. Under the agreement, petitioner is bound to indemnify any member who incurs hospital, medical or any other expense arising from sickness, injury or other stipulated contingency to the extent agreed upon under the contract. x x x Contracts between companies like petitioner and the beneficiaries under their plans are treated as insurance contracts.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & de Los Angeles for petitioner.

Litigation and Prosecution (BIR) for respondent.

D E C I S I O N

CORONA, *J.*:

Is a health care agreement in the nature of an insurance contract and therefore subject to the documentary stamp tax (DST) imposed under Section 185 of Republic Act 8424 (Tax Code of 1997)?

This is an issue of first impression. The Court of Appeals (CA) answered it affirmatively in its August 16, 2004 decision[1]

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[1] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada (retired) of the Twelfth Division of the Court of Appeals. *Rollo*, pp. 49-55.

in CA-G.R. SP No. 70479. Petitioner Philippine Health Care Providers, Inc. believes otherwise and assails the CA decision in this petition for review under Rule 45 of the Rules of Court.

Petitioner is a domestic corporation whose primary purpose is "[t]o establish, maintain, conduct and operate a prepaid group practice health care delivery system or a health maintenance organization to take care of the sick and disabled persons enrolled in the health care plan and to provide for the administrative, legal, and financial responsibilities of the organization."[2] Individuals enrolled in its health care programs pay an annual membership fee and are entitled to various preventive, diagnostic and curative medical services provided by its duly licensed physicians, specialists and other professional technical staff participating in the group practice health delivery system at a hospital or clinic owned, operated or accredited by it.[3]

The pertinent part of petitioner's membership or health care agreement[4] provides:

VII BENEFITS

Subject to paragraphs VIII [on pre-existing medical condition] and X [on claims for reimbursement] of this Agreement, Members shall have the following Benefits under this Agreement:

In-Patient Services. In the event that a Member contract[s] sickness or suffers injury which requires confinement in a participating Hospital[,] the services or benefits stated below shall be provided to the Member free of charge, but in no case shall [petitioner] be liable to pay more than ₱75,000.00 in benefits with respect to anyone sickness, injury or related causes. If a member has exhausted such maximum benefits with respect to a particular sickness, injury or related causes, all accounts in excess of ₱75,000.00 shall be borne by the enrollee. It is[,] however, understood that the payment by [petitioner] of the said maximum in In-Patient Benefits to any one member shall preclude a subsequent payment of benefits to such

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[2] Paragraph 14, Petition for Review on *Certiorari*. *Id*., p. 17.

[3] Paragraph 15, *id*.

[4] *Id*., pp. 132-137.

member in respect of an unrelated sickness, injury or related causes happening during the remainder of his membership term.

(a) Room and Board
(b) Services of physician and/or surgeon or specialist
(c) Use of operating room and recovery room
(d) Standard Nursing Services
(e) Drugs and Medication for use in the hospital except those which are used to dissolve blood clots in the vascular systems (*i.e.*, trombolytic agents)
(f) Anesthesia and its administration
(g) Dressings, plaster casts and other miscellaneous supplies
(h) Laboratory tests, x-rays and other necessary diagnostic services
(i) Transfusion of blood and other blood elements

Condition for in-Patient Care. The provision of the services or benefits mentioned in the immediately preceding paragraph shall be subject to the following conditions:

(a) The Hospital Confinement must be approved by [petitioner's] Physician, Participating Physician or [petitioner's] Medical Coordinator in that Hospital prior to confinement.
(b) The confinement shall be in a Participating Hospital and the accommodation shall be in accordance with the Member[']s benefit classification.
(c) Professional services shall be provided only by the [petitioner's] Physicians or Participating Physicians.
(d) If discharge from the Hospital has been authorized by [petitioner's] attending Physician or Participating Physician and the Member shall fail or refuse to do so, [petitioner] shall not be responsible for any charges incurred after discharge has been authorized.

Out-Patient Services. A Member is entitled free of charge to the following services or benefits which shall be rendered or administered either in [petitioner's] Clinic or in a Participating Hospital under the direction or supervision of [petitioner's] Physician, Participating Physician or [petitioner's] Medical Coordinator.

(a) Gold Plan Standard Annual Physical Examination on the anniversary date of membership, to be done at [petitioner's] designated hospital/clinic, to wit:
    (i) Taking a medical history
    (ii) Physical examination

(iii) Chest x-ray
(iv) Stool examination
(v) Complete Blood Count
(vi) Urinalysis
(vii) Fasting Blood Sugar (FBS)
(viii) SGPT
(ix) Creatinine
(x) Uric Acid
(xi) Resting Electrocardiogram
(xii) Pap Smear (Optional for women 40 years and above)

(b) Platinum Family Plan/Gold Family Plan and Silver Annual Physical Examination.
The following tests are to be done as part of the Member[']s Annual check-up program at [petitioner's] designated clinic, to wit:
1) Routine Physical Examination
2) CBC (Complete Blood Count)
* Hemoglobin * Hematocrit
* Differential * RBC/WBC
3) Chest X-ray
4) Urinalysis
5) Fecalysis

(c) Preventive Health Care, which shall include:
(i) Periodic Monitoring of Health Problems
(ii) Family planning counseling
(iii) Consultation and advices on diet, exercise and other healthy habits
(iv) Immunization but excluding drugs for vaccines used

(d) Out-Patient Care, which shall include:
(i) Consultation, including specialist evaluation
(ii) Treatment of injury or illness
(iii) Necessary x-ray and laboratory examination
(iv) Emergency medicines needed for the immediate relief of symptoms
(v) Minor surgery not requiring confinement

Emergency Care. Subject to the conditions and limitations in this Agreement and those specified below, a Member is entitled to receive emergency care [in case of emergency. For this purpose, all hospitals and all attending physician(s) in the Emergency Room automatically become accredited. In participating hospitals, the member shall be

entitled to the following services free of charge: (a) doctor's fees, (b) emergency room fees, (c) medicines used for immediate relief and during treatment, (d) oxygen, intravenous fluids and whole blood and human blood products, (e) dressings, casts and sutures and (f) x-rays, laboratory and diagnostic examinations and other medical services related to the emergency treatment of the patient.][5] Provided, however, that in no case shall the total amount payable by [petitioner] for said Emergency, inclusive of hospital bill and professional fees, exceed ₱75,000.00. If the Member received care in a non-participating hospital, [petitioner] shall reimburse [him][6] 80% of the hospital bill or the amount of ₱5,000.00[,] whichever is lesser, and 50% of the professional fees of non-participating physicians based on [petitioner's] schedule of fees provided that the total amount[,] inclusive of hospital bills and professional fee shall not exceed ₱5,000.00.

On January 27, 2000, respondent Commissioner of Internal Revenue sent petitioner a formal demand letter and the corresponding assessment notices demanding the payment of deficiency taxes, including surcharges and interest, for the taxable years 1996 and 1997 in the total amount of ₱224,702,641.18. The assessment represented the following:

	Value Added Tax (VAT)	DST
1996	₱ 45,767,596.23	₱ 55,746,352.19
1997	54,738,434.03	68,450,258.73
	₱ 100,506,030.26	₱ 124,196,610.92

The deficiency DST assessment was imposed on petitioner's health care agreement with the members of its health care program pursuant to Section 185 of the 1997 Tax Code which provides:

Section 185. *Stamp tax on fidelity bonds and other insurance policies*. — **On all policies of insurance** or bonds or obligations

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[5] The copy of the membership/health care agreement attached to the petition had been cut in this portion. Reference was therefore made to petitioner's description of its member's rights and privileges under the health care agreement as stated in paragraph 20 of the petition. *Id*., p. 11.

[6] The copy of the membership/health care agreement attached to the petition is blurred in this portion.

of the nature of indemnity for loss, damage, or liability made or renewed by any person, association or company or corporation transacting the business of accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, **or other branch of insurance (except life, marine, inland, and fire insurance)**, and all bonds, undertakings, or recognizances, conditioned for the performance of the duties of any office or position, for the doing or not doing of anything therein specified, and on all obligations guaranteeing the validity or legality of any bond or other obligations issued by any province, city, municipality, or other public body or organization, and on all obligations guaranteeing the title to any real estate, or guaranteeing any mercantile credits, which may be made or renewed by any such person, company or corporation, there shall be collected a documentary stamp tax of fifty centavos (₱0.50) on each four pesos (₱4.00), or fractional part thereof, of the premium charged. (emphasis supplied)

Petitioner protested the assessment in a letter dated February 23, 2000. As respondent did not act on the protest, petitioner filed a petition for review in the Court of Tax Appeals (CTA) seeking the cancellation of the deficiency VAT and DST assessments.

On April 5, 2002, the CTA rendered a decision,[7] the dispositive portion of which read:

WHEREFORE, in view of the foregoing, the instant Petition for Review is PARTIALLY GRANTED. Petitioner is hereby ORDERED to PAY the deficiency VAT amounting to ₱22,054,831.75 inclusive of 25% surcharge plus 20% interest from January 20, 1997 until fully paid for the 1996 VAT deficiency and ₱31,094,163.87 inclusive of 25% surcharge plus 20% interest from January 20, 1998 until fully paid for the 1997 VAT deficiency. Accordingly, VAT Ruling No. [231]-88 is declared void and without force and effect. The 1996 and 1997 deficiency DST assessment against petitioner is hereby

[7] Penned by Associate Judge (now Associate Justice) Juanito C. Castañeda, Jr. with Associate Judge Amancio Q. Saga (retired) concurring. Presiding Judge (now Presiding Justice) Ernesto D. Acosta submitted a concurring and dissenting opinion wherein he concurred with the cancellation of the deficiency DST assessment and dissented with the affirmation of the deficiency VAT assessment. *Rollo*, pp. 107-131.

CANCELLED AND SET ASIDE. Respondent is ORDERED to DESIST from collecting the said DST deficiency tax.

SO ORDERED.[8]

Respondent appealed the CTA decision to the CA[9] insofar as it cancelled the DST assessment. He claimed that petitioner's health care agreement was a contract of insurance subject to DST under Section 185 of the 1997 Tax Code.

On August 16, 2004, the CA rendered its decision.[10] It held that petitioner's health care agreement was in the nature of a non-life insurance contract subject to DST:

WHEREFORE, the petition for review is GRANTED. The Decision of the Court of Tax Appeals, insofar as it cancelled and set aside the 1996 and 1997 deficiency documentary stamp tax assessment and ordered petitioner to desist from collecting the same is REVERSED and SET ASIDE.

Respondent is ordered to pay the amounts of ₱55,746,352.19 and ₱68,450,258.73 as deficiency Documentary Stamp Tax for 1996 and 1997, respectively, plus 25% surcharge for late payment and 20% interest per annum from January 27, 2000, pursuant to Sections 248 and 249 of the Tax Code, until the same shall have been fully paid.

SO ORDERED.[11]

Petitioner moved for reconsideration but the CA denied it. Hence, this petition.

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[8] *Id*. On motion for reconsideration, the CTA set aside the deficiency VAT assessment. On appeal, the CA affirmed the CTA resolution on the motion for reconsideration. When the case was elevated to this Court, we affirmed the CA decision. (*See Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, G.R. No. 168129, 24 April 2007.)

[9] Under RA 9282 which took effect on April 23, 2004, decisions of the CTA are now appealable to the Supreme Court instead of the Court of Appeals.

[10] *Supra* note 1.

[11] *Id*.

Petitioner essentially argues that its health care agreement is not a contract of insurance but a contract for the provision on a prepaid basis of medical services, including medical check-up, that are not based on loss or damage. Petitioner also insists that it is not engaged in the insurance business. It is a health maintenance organization regulated by the Department of Health, not an insurance company under the jurisdiction of the Insurance Commission. For these reasons, petitioner asserts that the health care agreement is not subject to DST.

We do not agree.

The DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[12] It is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business.[13] In particular, **the DST under Section 185 of the 1997 Tax Code is imposed on the privilege of making or renewing any policy of insurance (except life, marine, inland and fire insurance)**, bond or obligation **in the nature of indemnity** for loss, damage, or liability.

Under the law, a contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.[14] The event insured against must be designated in the contract and must either be unknown or contingent.[15]

Petitioner's health care agreement is primarily a contract of indemnity. And in the recent case of *Blue Cross Healthcare,*

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[12] *International Exchange Bank v. Commissioner of Internal Revenue*, G.R. No. 171266, 04 April 4, 2007.

[13] *Philippine Home Assurance Corporation v. CA*, 361 Phil. 368 (1999).

[14] Section 2(1), Insurance Code.

[15] An unknown event is something which is certain to happen but the time of its happening is not known, while a contingent event is something which is not certain to take place. Campos, Maria Clara L., *INSURANCE*, 1983 edition, U.P. Law Center, p. 15.

Inc. v. Olivares,[16] this Court ruled that a health care agreement is in the nature of a non-life insurance policy.

Contrary to petitioner's claim, its health care agreement is not a contract for the provision of medical services. Petitioner does not actually provide medical or hospital services but merely arranges for the same[17] and pays for them up to the stipulated maximum amount of coverage. It is also incorrect to say that the health care agreement is not based on loss or damage because, under the said agreement, petitioner assumes the liability and indemnifies its member for hospital, medical and related expenses (such as professional fees of physicians). The term "loss or damage" is broad enough to cover the monetary expense or liability a member will incur in case of illness or injury.

Under the health care agreement, the rendition of hospital, medical and professional services to the member in case of sickness, injury or emergency or his availment of so-called "out-patient services" (including physical examination, x-ray and laboratory tests, medical consultations, vaccine administration and family planning counseling) is the contingent event which gives rise to liability on the part of the member. In case of exposure of the member to liability, he would be entitled to indemnification by petitioner.

Furthermore, the fact that petitioner must relieve its member from liability by paying for expenses arising from the stipulated contingencies belies its claim that its services are prepaid. The expenses to be incurred by each member cannot be predicted beforehand, if they can be predicted at all. Petitioner assumes the risk of paying for the costs of the services even if they are significantly and substantially more than what the member has "prepaid." Petitioner does not bear the costs alone but distributes or spreads them out among a large group of persons bearing a similar risk, that is, among all the other members of the health care program. This is insurance.

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[16] G.R. No. 169737, 12 February 2008.

[17] *Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, *supra* note 8.

Petitioner's health care agreement is substantially similar to that involved in *Philamcare Health Systems, Inc. v. CA*.[18] The health care agreement in that case entitled the subscriber to avail of the hospitalization benefits, whether ordinary or emergency, listed therein. It also provided for "out-patient benefits" such as annual physical examinations, preventive health care and other out-patient services. This Court ruled in *Philamcare Health Systems, Inc.*:

> [T]he insurable interest of [the subscriber] in obtaining the health care agreement was his own health. **The health care agreement was in the nature of non-life insurance, which is primarily a contract of indemnity**. Once the member incurs hospital, medical or any other expense arising from sickness, injury or other stipulated contingency, the health care provider must pay for the same to the extent agreed upon under the contract.[19] (emphasis supplied)

Similarly, the insurable interest of every member of petitioner's health care program in obtaining the health care agreement is his own health. Under the agreement, petitioner is bound to indemnify any member who incurs hospital, medical or any other expense arising from sickness, injury or other stipulated contingency to the extent agreed upon under the contract.

Petitioner's contention that it is a health maintenance organization and not an insurance company is irrelevant. Contracts between companies like petitioner and the beneficiaries under their plans are treated as insurance contracts.[20]

Moreover, DST is not a tax on the business transacted but an excise on the privilege, opportunity, or facility offered at exchanges for the transaction of the business.[21] **It is an excise**

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[18] 429 Phil. 82 (2002).

[19] *Id*.

[20] *Lutsky v. Blue Cross Hosp. Service, Inc. of Missouri*, 695 S.W.2d 870 (1985); *North Kansas City Memorial Hospital v. Wiley*, 385 S.W.2d 218 (Mo.App.1964); *Myers v. Kitsip Physicians Service*, 78 Wash.2d 286, 474 P.2d 109 (1970).

[21] *Philippine Home Assurance Corporation v. CA*, *supra* note 13.

on the facilities used in the transaction of the business, **separate and apart from the business itself**.[22]

WHEREFORE, the petition is hereby *DENIED*. The August 16, 2004 decision of the Court of Appeals in CA-G.R. SP No. 70479 is *AFFIRMED*.

Petitioner is ordered to pay the amounts of ₱55,746,352.19 and ₱68,450,258.73 as deficiency documentary stamp tax for 1996 and 1997, respectively, plus 25% surcharge for late payment and 20% interest per annum from January 27, 2000 until full payment thereof.

Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 179030. June 12, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARCELINO RAMOS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; PRINCIPLES GUIDING THE COURT IN RESOLVING RAPE CASES. — In resolving rape cases, the Court is guided by three principles: (a) an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and

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[22] *Id*.

(c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; ID.; STATUTORY RAPE; ELEMENTS. — The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. The age of the victim is an essential element of statutory rape; thus, it must be proved by clear and convincing evidence.

3. ID.; ID.; ID.; NOT PRESENT SINCE THE PROSECUTION FAILED TO PROVE THE AGE OF THE VICTIM; CASE AT BAR. — Since the prosecution failed to prove the age of AAA at the time of the first rape, appellant cannot be convicted of statutory rape. However, appellant may still be convicted of rape under Article 335(1) of the Revised Penal Code in Criminal Case No. MC98-311-H. The gravamen of this crime is carnal knowledge of a woman by using force, violence, intimidation, or threat which was properly alleged in the information. In several cases, the Court ruled that the element of force or intimidation is not essential in cases of rape committed by a father against his own daughter, as the father's moral ascendancy or influence substitutes for violence and intimidation. That ascendancy or influence necessarily flows from the father's parental authority, such that a father can control his daughter's will forcing her to follow his biddings. Regarding the first rape, AAA unequivocally testified that appellant touched her private part, then forced his private part into her private part causing her pain. Afterwards, appellant threatened to kill her if she would tell anyone about the incident.

4. ID.; ID.; PENALTY. — As the qualifying circumstances of minority and relationship were alleged and proved, the death penalty imposed by the trial court 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, the appellate court correctly reduced the penalty to *reclusion perpetua* without eligibility for parole.

5. ID.; CIVIL LIABILITY; AWARDS FOR RAPE CASES, PROPER. — We sustain the awards of ₱75,000 and ₱25,000 as civil indemnity and exemplary damages, respectively, for each count of rape but increase the award of moral damages from ₱50,000 to ₱75,000 for each count in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an appeal from the 15 May 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02403 which affirmed the Decision of the Regional Trial Court of Mandaluyong City, Branch 211, in Criminal Case Nos. MC98-311-H to 314-H, entitled "*People of the Philippines v. Marcelino Ramos*," finding the appellant guilty of four counts of Rape.

The Facts

The prosecution charged appellant with raping his minor daughter AAA on four separate occasions taking place over the years 1991 to 1996.

In Criminal Case No. MC98-311-H, the prosecution charged appellant with the crime of statutory rape:

Criminal Case No. MC98-311-H:

"That sometime in the middle part of 1991 up to April, 1993, in Mandaluyong City, and within the jurisdiction of this Honorable Court, accused MARCELINO RAMOS, by taking advantage of his moral ascendancy over his then ten (10) year old biological daughter, AAA, and with lewd design, and by means of threat, violence and intimidation employed upon the person of said victim, AAA, did then and there unlawfully, willfully and feloniously lie and succeeded in having sexual intercourse with his minor-daughter, against the latter's will."[2]

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[1] Penned by Justice Conrado M. Vasquez, Jr. and concurred in by Justices Jose C. Mendoza and Celia C. Librea-Leagogo.

[2] Records, Vol. I, p. 1.

The prosecution likewise charged appellant with three counts of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, in relation to Republic Act No. 7610:

Criminal Case No. MC98-312-H:

"That sometime in April, 1993 up to the middle part of 1994, in Mandaluyong City, and within the jurisdiction of this Honorable Court, accused MARCELINO RAMOS, by taking advantage of his moral ascendancy over his then twelve (12) year old biological daughter, AAA and with lewd design, and by means of threat, violence and intimidation, did then and there, unlawfully, willfully, and feloniously lie and succeeded in having sexual intercourse with his minor-daughter AAA, against the latter's will."[3]

Criminal Case No. MC98-313-H:

"That sometime in the middle part of 1994 up to June, 1996, in Mandaluyong City and within the jurisdiction of this Honorable Court, accused MARCELINO RAMOS, by taking advantage of his moral ascendancy over his then thirteen (13) year old biological daughter AAA, and with lewd design, and by means of threat, violence and intimidation employed upon the person of said victim, AAA did then and there unlawfully, willfully and feloniously lie and succeeded in having sexual intercourse with his minor-daughter, against the latter's will."[4]

Criminal Case No. MC98-314-H:

"That sometime in July, 1996, up to the middle part of November, 1996, in Mandaluyong City, and within the jurisdiction of this Honorable Court, accused MARCELINO RAMOS, by taking advantage of his moral ascendancy over his the (sic) fifteen (15) year old biological daughter, AAA, and with lewd design, and by means of threat, violence and intimidation, did then and there unlawfully, willfully and feloniously lie and succeeded in having sexual intercourse with his minor-daughter, AAA causing the latter to get pregnant."[5]

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[3] Records, Vol. II, p. 24.

[4] Records, Vol. III, p. 42.

[5] Records, Vol. IV, p. 52.

Upon arraignment, appellant pleaded not guilty.[6] Thereafter, trial ensued.

Version of the Prosecution

During the trial, AAA testified that her father, the appellant, first raped her when she was 10 years old at their home in Mandaluyong City. According to AAA, one morning, appellant called her to their room to give him a back massage. After the massage, appellant asked AAA to step down, removed AAA's shorts and touched her private parts. Appellant then forced his penis into AAA's vagina. Afterwards, appellant told her that he would kill her if she tells anyone of the incident. Appellant then told her to leave the room.

According to AAA, her father continued to sexually molest her from 1991 up to 1996. This would take place around two to three times a week. The last time appellant raped her was in November of 1996.

AAA further testified that on 3 December 1996, her mother brought her to a "*manghihilot*" because she observed that AAA's stomach was getting bigger. There it was discovered that AAA was several months pregnant. She then confessed to her mother that it was her father who impregnated her.

Dr. Lolita Largado-Reyes, the physician who conducted a pelvic ultrasound examination of AAA at the Medical Center Muntinlupa, also testified for the prosecution. Dr. Reyes stated on the witness stand that when she examined the victim on 15 January 1997, AAA was in the second trimester of her pregnancy.[7]

Version of the Defense

For his defense, appellant merely denied raping his daughter. He surmised that AAA filed charges against him because she was pregnant with her boyfriend's child and was afraid that appellant would beat her up when he learns of her pregnancy.

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[6] *Id*. at 90.

[7] *Id*. at 245-254.

DDD and EEE, both sisters of the victim, took the witness stand in defense of their father. DDD, AAA's eldest sister, testified that AAA fabricated the charges against their father to avoid being punished when he finds out that she was pregnant with her boyfriend's child. EEE, on the other hand, testified that she was at home practically 24 hours a day and she would have been aware if in fact their father raped AAA.

Ruling of the Trial Court

In its Decision[8] of 25 April 2003, the trial court found appellant guilty of all four counts of rape. The dispositive portion of the trial court's decision reads:

> WHEREFORE, the court, after having overwhelmingly found the accused, MARCELINO RAMOS *y* BERNABE, GUILTY beyond reasonable doubt of having committed the offenses of two (2) counts of rape under Article 335 of the Revised Penal Code and two (2) other counts of rape under the circumstances prescribed in Article 335 of the Revised Penal Code, as amended by R.A. 7659 upon the person of his minor child, AAA, hereby sentences the above-named accused as follows:
>
> 1) In Criminal Cases Nos. MC98-311-H to MC98-312-H, he is hereby ordered to suffer the penalty of *reclusion perpetua* in each case;
>
> 2) In Criminal Cases Nos. MC98-313-H to MC98-314-H, he is hereby ordered to suffer the mandatory/extreme penalty of death in each case;
>
> 3) To pay the offended party, AAA, in Criminal Cases Nos. MC-98-311-H to MC-98-314-H the amount of Php75,000.00 as civil indemnity for each count of rape or a total of Php300,000.00; Php50,000.00 for each count of rape as moral damages or a total of Php200,000.00; and Php25,000.00 for each count of rape as exemplary damages or a total of Php100,000.00 in the grand total amount of Php600,000.00 and to pay the costs.
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> SO ORDERED.

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[8] CA *rollo*, pp. 22-39.

On appeal, appellant questioned the sufficiency of the informations for failure to state with particularity the dates of the commission of the alleged rapes rendering the informations void. Further, appellant argued that the prosecution failed to prove his guilt beyond reasonable doubt and questioned the credibility of AAA.

Ruling of the Appellate Court

In its 15 May 2007 Decision, the Court of Appeals affirmed the trial court's decision but reduced the two death sentences to *reclusion perpetua* without eligibility for parole in view of the passage of Republic Act No. 9346.

Hence, this appeal.

The Issues

Appellant raises the following errors:[9]

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING THE INFORMATIONS IN CRIMINAL CASES NOS. MC98-311-H, MC98-312-H, MC98-313-H AND MC98-314-H CHARGING THE ACCUSED OF THE CRIME OF RAPE INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT AND NOT CONSIDERING THE DEFENSE INTERPOSED BY THE ACCUSED.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED OF FOUR (4) COUNTS OF RAPE DESPITE FAILURE OF PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The Ruling of the Court

An appeal in a criminal case opens the entire case for review such that the Court can correct errors unassigned in the appeal.[10]

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[9] CA *rollo*, p. 69.

[10] *Manaban v. Court of Appeals,* G.R. No. 150723, 11 July 2006, 494 SCRA 503, 516.

In resolving rape cases, the Court is guided by three principles: (a) an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (c) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[11]

The Court finds that both the trial court and appellate court erred in convicting appellant of statutory rape in Criminal Case No. MC98-311-H.

As provided for in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age.[12]

The age of the victim is an essential element of statutory rape; thus, it must be proved by clear and convincing evidence.[13]

In *People v. Pruna*,[14] the Court laid down the following guidelines in determining the age of the victim:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

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[11] *People v. Marahay*, 444 Phil. 136, 146 (2003).

[12] *People v. Arango,* G.R. No. 168442, 30 August 2006, 500 SCRA 259, 280-281.

[13] *People v. Vargas,* G.R. No. 116513, 26 June 1996, 257 SCRA 603, 611.

[14] 439 Phil. 440, 470-471 (2002).

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
    a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
    b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
    c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
6. The trial court should always make a categorical finding as to the age of the victim.

Despite the trial court's conclusion that "AAA was born on 15 April 1981" we find that the records of the case do not support such finding.

The prosecution failed to present the birth certificate or any other document to prove the age of AAA. The only evidence presented was the bare testimony of AAA that she was 10 years old when she was first raped by her father.

Since the prosecution failed to prove the age of AAA at the time of the first rape, appellant cannot be convicted of statutory rape. However, appellant may still be convicted of rape under Article 335(1) of the Revised Penal Code in Criminal Case No. MC98-311-H. The gravamen of this crime is carnal knowledge of a woman by using force, violence, intimidation, or threat which was properly alleged in the information. In several cases, the Court ruled that the element of force or intimidation is not essential in cases of rape committed by a father against his own daughter, as the father's moral ascendancy or influence substitutes for violence and intimidation.[15] That ascendancy or influence necessarily flows from the father's parental authority, such that a father can control his daughter's will forcing her to follow his biddings.[16] Regarding the first rape, AAA unequivocally testified that appellant touched her private part, then forced his private part into her private part causing her pain. Afterwards, appellant threatened to kill her if she would tell anyone about the incident.[17]

In Criminal Case Nos. MC98-312-H to MC98-314-H, the Court finds that the prosecution presented sufficient evidence to show that appellant raped AAA during the periods alleged in the informations to warrant conviction. This is especially so since AAA stated on the witness stand that appellant raped her two to three times a week after the commission of the first rape:

Q	-	How many times if you can recall that your father inserted his penis to your vagina? Except in 1991 when you were ten (10) years old?
A	-	Many times.
Q	-	Many times. Can you quantify that?
A	-	In one week it maybe two or three times.

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[15] *People v. Buban*, G.R. No. 166895, 24 January 2007, 512 SCRA 500.

[16] *People v. Pioquinto*, G.R. No. 168326, 11 April 2007, 520 SCRA 712.

[17] Records, Vol. IV, pp. 270-275.

Q - You mean twice or thrice a week your father inserted his penis into your vagina?
A - Yes.

Q - Where did these all happened?
A - In our house in Mandaluyong.

Q - Usually, what time of the day did your father insert his penis into your vagina?
A - If there is a chance.

Q - How old are you now?
A - I am 20 years old.

Q - Do you know when was the last time your father inserted his penis into your vagina?
A - Yes.

Q - When was the last time.
A - Middle of November 1996.

Q - Where did that happen?
A - Here in Mandaluyong.

Q - How did that happen?
A - "*Hinalay po ako ng tatay ko*."

Q - What you mean by *hinal[a]y*?
A - "*Ginahasa po*."

Q - How did that happen?
A - I was called by him at the room.

Q - Did you comply?
A - Yes, I did.

Q - Where was your father then when you entered the room?
A - He was also inside the house.

Q - You entered into the room?
A - Yes, I do.

Q - How about your father? Where was he at that time?
A - He entered into the room.

Q - How many persons inside the room at that time aside from you and your father?
A - My sisters are in the sala.

Q - When you were alone together with your father inside your room, what happened?
A - I was used by my father.
Q - When you said I was used by my father, what do you exactly mean?
A - He inserted his private part to my private part.
Q - So, as far as you can recollect, that started in 1991 and the last of which according to you middle of November 1996. So, how many times more or less if you can recollect between that period of 1991 and 1996 that your father raped you?
A - Many times.[18]

Thus, the Court finds that the prosecution was able to prove beyond reasonable doubt that appellant raped AAA repeatedly between the periods 1991 to 1996.

Appellant, however, claims that AAA merely concocted the charges against him and raises the following points in his brief:

1. During the times AAA claimed she was raped, her sisters were at home. Considering the size of their home, it would be highly unlikely that the rapes would have taken place without AAA's sisters knowing about it.
2. AAA's sisters testified that appellant never sexually molested them. Thus, it would seem incredible that AAA was the only one raped by their father.
3. AAA had a boyfriend and it was possible that he was the father of her child. Since no paternity test was conducted, it would be unfair to conclude that appellant was the father of AAA's child.[19]

The Court finds that the points raised by appellant are but desperate attempts to obtain a reversal of the convictions and are of no merit.

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[18] TSN, 15 August 2001, pp. 6-8.

[19] CA *rollo*, pp. 67-94.

The Court has in the past ruled that rape may be committed even when rapist and victim are not alone. In fact, rape was held to have been committed in the same room while the rapist's spouse was asleep, or in a small room where other family members also slept.[20] As AAA stated in her testimony, her father molested her during times when they were alone in the room. This explains why the other members of the family were not aware that appellant was sexually abusing AAA.

That appellant never sexually molested his other daughters and that AAA had a boyfriend are inconsequential facts that do not cast a doubt on AAA's claim that appellant raped her several times.

In sum, the prosecution had established by clear and convincing evidence that appellant had carnal knowledge of AAA, his minor daughter, on at least four occasions.

In Criminal Case Nos. MC98-311-H and 312-H, appellant is guilty of rape under Article 335(1) of the Revised Penal Code with the aggravating circumstance that the offender is the parent of the victim.

In Criminal Case Nos. MC98-313-H and 314-H, appellant is guilty of rape qualified by the circumstances that the victim is under 18 years of age and the offender is the parent of the victim.

As the qualifying circumstances of minority and relationship were alleged and proved, the death penalty imposed by the trial court 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, the appellate court correctly reduced the penalty to *reclusion perpetua* without eligibility for parole.

We sustain the awards of ₱75,000 and ₱25,000 as civil indemnity and exemplary damages, respectively, for each count

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[20] *People v. Manuel,* G.R. Nos. 107732-33, 19 September 1994, 236 SCRA 545, 554.

of rape but increase the award of moral damages from ₱50,000 to ₱75,000 for each count in line with prevailing jurisprudence.[21]

WHEREFORE, the Decisions of the Regional Trial Court, Branch 211, Mandaluyong City in Criminal Case Nos. MC98-311-H to MC98-314-H and the Court of Appeals in CA-G.R. CR-H.C. No. 02403 are *AFFIRMED WITH MODIFICATION*. Appellant Marcelino Ramos is found guilty of two counts of rape under Article 335(1) of the Revised Penal Code and two counts of rape under Article 335 of the Revised Penal Code in relation to Republic Act Nos. 7659 and 9346. Appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count of rape and to pay the victim, AAA, ₱300,000 as civil indemnity, ₱300,000 as moral damages and ₱100,000 as exemplary damages.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

THIRD DIVISION

[G.R. No. 161188. June 13, 2008]

Heirs of PURISIMA NALA, represented by their attorney-in-fact EFEGENIA DIGNA DUYAN, *petitioners, vs.* **ARTEMIO CABANSAG,** *respondent.*

SYLLABUS

1. CIVIL LAW; HUMAN RELATIONS; ABUSE OF RIGHT; WHEN PRESENT. — Article 19 of the Civil Code sets the

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[21] *People v. Bidoc*, G.R. No. 169430, 31 October 2006, 506 SCRA 481.

standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But a right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right; that is, when he acts with prudence and in good faith, but not when he acts with negligence or abuse. There is an abuse of right when it is exercised only for the purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.

2. ID.; DAMAGES; AWARD OF DAMAGES UNDER THE ABUSE OF RIGHT PRINCIPLE; REQUISITES. — In order to be liable for damages under the abuse of rights principle, the following requisites must concur: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another. It should be stressed that malice or bad faith is at the core of Article 19 of the Civil Code. Good faith is presumed, and he who alleges bad faith has the duty to prove the same. Bad faith, on the other hand, does not simply connote bad judgment to simple negligence, dishonest purpose or some moral obloquy and conscious doing of a wrong, or a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm.

3. ID.; ID.; DISTINGUISHED FROM INJURY. — It may be true that respondent suffered mental anguish, serious anxiety and sleepless nights when he received the demand letters; however, there is a material distinction between damages and injury. Injury is the legal invasion of a legal right while damage is the hurt, loss or harm which results from the injury. 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. 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. These situations are often called *damnum absque injuria.* Nala was acting well within her rights when she instructed Atty. Del Prado to send the demand letters. She had to take all the necessary legal steps to enforce her legal/equitable rights over the property occupied by respondent. One who makes use of his own legal right does no injury. Thus, whatever damages are suffered by respondent should be borne solely by him.

APPEARANCES OF COUNSEL

Jose Manuel, Jr. for petitioners.
Cielito Martinez for private respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[1] dated December 19, 2002 and Resolution[2] dated October 28, 2003, dismissing petitioners' appeal and affirming with modification the Regional Trial Court (RTC) Decision dated August 10, 1994 rendered in Civil Case No. Q-91-10541.

The facts of the case are as follows:

Artemio Cabansag (respondent) filed Civil Case No. Q-91-10541 for damages in October 1991. According to respondent, he bought a 50-square meter property from spouses Eugenio Gomez, Jr. and Felisa Duyan Gomez on July 23, 1990. Said property is part of a 400-square meter lot registered in the name of the Gomez spouses. In October 1991, he received a demand letter from Atty. Alexander del Prado (Atty. Del Prado), in behalf of Purisima Nala (Nala), asking for the payment of rentals

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Rebecca de Guia-Salvador and Regalado E. Maambong, concurring; *rollo*, pp. 23-30.

[2] *Id*. at 32-33.

from 1987 to 1991 until he leaves the premises, as said property is owned by Nala, failing which criminal and civil actions will be filed against him. Another demand letter was sent on May 14, 1991. Because of such demands, respondent suffered damages and was constrained to file the case against Nala and Atty. Del Prado.[3]

Atty. Del Prado claimed that he sent the demand letters in good faith and that he was merely acting in behalf of his client, Nala, who disputed respondent's claim of ownership. Nala alleged that said property is part of an 800-square meter property owned by her late husband, Eulogio Duyan, which was subsequently divided into two parts. The 400-square meter property was conveyed to spouses Gomez in a fictitious deed of sale, with the agreement that it will be merely held by them in trust for the Duyan's children. Said property is covered by Transfer Certificate of Title (TCT) No. 281115 in the name of spouses Gomez. Nala also claimed that respondent is only renting the property which he occupies.[4]

After trial, the RTC of Quezon City, Branch 93, rendered its Decision on August 10, 1994, in favor of respondent. The dispositive portion of the Decision provides:

> WHEREFORE, premises considered, by preponderance of evidence, the Court finds in favor of the plaintiff and hereby orders the defendants, jointly and severally, to pay plaintiff the following:
>
> 1. ₱150,000.00 by way of moral damages;
> 2. ₱30,000.00 by way of exemplary damages;
> 3. ₱20,000.00 as and for reasonable attorney's fees and other litigation expenses; and
> 4. to pay the costs.
>
> SO ORDERED.[5]

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[3] *Rollo*, pp. 35-37.

[4] *Id*. at 41-47.

[5] CA *rollo*, p. 55.

Nala and Atty. Del Prado appealed to the CA. The herein assailed CA Decision dated December 19, 2002 affirmed the RTC Decision with modification, thus:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED. The assailed decision of the Regional Trial Court, Branch 93, Quezon City, in Civil Case No. Q-91-10541 is heretofore AFFIRMED with MODIFICATION. Defendants-appellants are ordered to pay, jointly and severally, plaintiff-appellee the amount of ₱30,000.00 by way of moral damages. It is further ordered to pay him exemplary damages in the amount of ₱10,000.00 and ₱10,000.00, attorney's fees.
>
> SO ORDERED.[6]

In affirming the RTC Decision, the CA took note of the Decision dated September 5, 1994 rendered by the RTC of Quezon City, Branch 80, dismissing Civil Case No. 91-8821, an action for reconveyance of real property and cancellation of TCT No. 281115 with damages, filed by Nala against spouses Gomez.[7]

Hence, herein petition by the heirs of Nala (petitioners)[8] with the following assignment of errors:

a) Respondent Court of Appeals erred in not considering the right of Purisima Nala to assert her rights and interest over the property.

b) Respondent Court of Appeals erred in not considering the Decision rendered by the Court of Appeals in the case for reconveyance which upheld the rights and interest of Purisima Nala and her children over a certain parcel of land, a portion of which is subject of the present case.

c) Respondent Court of Appeals erred in awarding damages and attorney's fees without any basis.[9]

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[6] *Id*. at 146-147.

[7] *Id*. at 144-145.

[8] Nala was substituted by petitioners after her death on January 28, 2002.

[9] *Rollo*, p. 10.

Atty. Del Prado filed a motion for extension of time to file his separate petition but it was denied by the Court per its Resolution dated January 19, 2004 issued in G.R. No. 160829.

Petitioners argue that their predecessor-in-interest had every right to protect and assert her interests over the property. Nala had no knowledge that the property was sold by spouses Gomez to respondent when the demand letters were sent. What she was aware of was the fact that spouses Gomez were managing the rentals on the property by virtue of the implied trust created between them and Eulogio Duyan. When spouses Gomez failed to remit the rentals and claimed ownership of the property, it was then that Nala decided to procure the services of legal counsel to protect their rights over the property.

Petitioners also contend that it was error for the CA to take note of the RTC Decision in Civil Case No. 91-8821 without further noting that the CA had already reversed and set aside said RTC Decision and ordered reconveyance of the property to Nala and her children in a Decision dated March 8, 2000 rendered in CA-G.R. CV No. 49163. Petitioners also argue that respondent did not substantiate his claim for damages.

Preliminarily, the Court notes that both the RTC and the CA failed to indicate the particular provision of law under which it held petitioners liable for damages. Nevertheless, based on the allegations in respondent's complaint, it may be gathered that the basis for his claim for damages is Article 19 of the Civil Code, which provides:

> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

The foregoing provision sets the standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But a right, though by itself legal because recognized

or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right; that is, when he acts with prudence and in good faith, but not when he acts with negligence or abuse. There is an abuse of right when it is exercised only for the purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.[10]

In order to be liable for damages under the abuse of rights principle, the following requisites must concur: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.[11]

It should be stressed that malice or bad faith is at the core of Article 19 of the Civil Code. Good faith is presumed, and he who alleges bad faith has the duty to prove the same.[12] Bad faith, on the other hand, does not simply connote bad judgment to simple negligence, dishonest purpose or some moral obloquy and conscious doing of a wrong, or a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm.[13]

In the present case, there is nothing on record which will prove that Nala and her counsel, Atty. Del Prado, acted in bad faith or malice in sending the demand letters to respondent. In the first place, there was ground for Nala's actions since she believed that the property was owned by her husband Eulogio

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[10] *Hongkong and Shanghai Banking Corporation Limited v. Catalan*, G.R. No. 159590, October 18, 2004, 440 SCRA 498, 511.

[11] *Far East Bank and Trust Company v. Pacilan, Jr.,* G.R. No. 157314, July 29, 2005, 465 SCRA 372, 382.

[12] *Saber v. Court of Appeals*, G.R. No. 132981, August 31, 2004, 437 SCRA 259, 278.

[13] *Id*. at 278-279.

Duyan and that respondent was illegally occupying the same. She had no knowledge that spouses Gomez violated the trust imposed on them by Eulogio and surreptitiously sold a portion of the property to respondent. **It was only after respondent filed the case for damages against Nala that she learned of such sale.** The bare fact that respondent claims ownership over the property does not give rise to the conclusion that the sending of the demand letters by Nala was done in bad faith. Absent any evidence presented by respondent, bad faith or malice could not be attributed to petitioner since Nala was only trying to protect their interests over the property.

Moreover, respondent failed to show that Nala and Atty. Del Prado's acts were done with the sole intention of prejudicing and injuring him. It may be true that respondent suffered mental anguish, serious anxiety and sleepless nights when he received the demand letters; however, there is a material distinction between damages and injury. Injury is the legal invasion of a legal right while damage is the hurt, loss or harm which results from the injury.[14] 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. 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. These situations are often called *damnum absque injuria.*[15]

Nala was acting well within her rights when she instructed Atty. Del Prado to send the demand letters. She had to take all the necessary legal steps to enforce her legal/equitable rights over the property occupied by respondent. One who makes use of his own legal right does no injury.[16] Thus, whatever

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[14] *Lagon v. Court of Appeals*, G.R. No. 119107, March 18, 2005, 453 SCRA 616, 627-628.

[15] *Diaz v. Davao Light and Power Co., Inc.*, G.R. No. 160959, April 4, 2007, 520 SCRA 481, 509-510.

[16] *Pro Line Sports Center, Inc. v. Court of Appeals*, 346 Phil. 143, 154 (1997).

damages are suffered by respondent should be borne solely by him.

Nala's acts in protecting her rights over the property find further solid ground in the fact that the property has already been ordered reconveyed to her and her heirs. In its Decision dated March 8, 2000 in CA-G.R. CV No. 49163, the CA reversed and set aside the RTC's Decision and ordered the reconveyance of the property to petitioners, and TCT No. 281115 was declared canceled. Said CA Decision was affirmed by this Court in its Decision dated March 18, 2005 in G.R. No. 144148, which became final and executory on July 27, 2005.

WHEREFORE, the petition is *GRANTED*. The Decision dated December 19, 2002 and Resolution dated October 28, 2003 rendered by the Court of Appeals in CA-G.R. CV No. 48580 are *NULLIFIED*. Civil Case No. Q-91-10541 is *DISMISSED* for lack of merit.

Costs against respondent.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

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[*] In lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 507 dated May 28, 2008.

THIRD DIVISION

[G.R. No. 161416. June 13, 2008]

MAUNLAD TRANSPORT, INC., and/or NIPPON MERCHANT MARINE COMPANY, LTD., INC., *petitioners, vs.* **FLAVIANO MANIGO, JR.,** *respondent.*[*]

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; HEALTH, SAFETY, AND SOCIAL WELFARE BENEFITS; CLAIMS FOR DISABILITY BENEFITS, *ETC*.; IT IS MANDATORY FOR A CLAIMANT TO BE EXAMINED BY THE COMPANY-DESIGNATED PHYSICIAN WITHIN THREE DAYS FROM HIS REPATRIATION; SUSTAINED. — In *Cadornigara v. National Labor Relations Commission*, the Court held that an assessment of a private doctor consulted by the claimant six months after he was declared fit to work by the company-designated physician has no evidentiary value, for the claimant's health condition may have drastically changed in the interregnum. The Court's ruling in *Sarocam,* which petitioners cited, was of the same tenor. The Court rejected the medical report procured by the claimant from a private doctor, 11 months after he was declared fit to work by the company-designated physician. In *Rivera,* also cited by petitioners, the Court held that no medical report issued by any physician appointed by a claimant can be considered in evidence if the latter, without reason, omitted to consult a company-designated physician within three days from his repatriation. Of course, if the claimant does not dispute the medical report issued by the company-designated physician, which was the case in *German Marine, Inc.*, the same ought to be adopted in the evaluation of the claimant's disability. All told, **the rule is that under Section 20-B(3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this**

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[*] The Court of Appeals having been included as a co-respondent, is deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Romulo P. Valmores for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

By Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, Maunlad Transport, Inc. and/or Nippon Merchant Marine Company, Ltd., Inc. (petitioners) assail before the Court the September 30, 2003 Decision[1] of the Court of Appeals (CA) which affirmed the June 28, 2002 and November 22, 2002 Resolutions of the National Labor Relations Commission (NLRC) and September 29, 2000 Order of the Labor Arbiter (LA), allowing Flaviano Manigo, Jr. (respondent) to be examined by a physician designated by the Employees' Compensation Commission (ECC); and the December 22, 2003 CA Resolution[2] which denied petitioners' motion for reconsideration.

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[1] Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Cancio C. Garcia (now a retired member of the Supreme Court) and Danilo B. Pine, *rollo*, p. 12.

[2] *Rollo*, p. 23.

The relevant facts are culled from the records:

On October 27, 1998, respondent was hired by petitioner Nippon Merchant Marine Company, Ltd., Inc., through petitioner Maunlad Transport Inc., as Third Mate on board *MV Saltlake* for a period of 10 months and at a basic monthly salary of US$650.00.[3] Four months into his contract, respondent suffered from chest pains and was diagnosed with acute myocardial infarction. After undergoing operation on February 16, 1999, he was repatriated to the Philippines on February 24, 1999.[4]

From February 25, 1999 to June 21, 1999, respondent was examined and treated by company-designated physician Dr. Nicomedes Cruz.[5] On June 21, 1999, Dr. Cruz issued the following medical report:

> The patient is asymptomatic. The operative wound is healed. The blood uric acid, cholesterol and triglycerides level were all normal. The rest of the findings are essentially normal.
>
> DIAGNOSIS:
>
> Acute Myocardial Infarction
> Coronary Artery Disease
> S/P Percutaneous transfemoral coronary angioplasty
>
> ***He is fit to work effective June 21, 1999***.[6] (Emphasis supplied.)

Seven months later or on February 11, 2000, respondent filed with the LA a complaint for disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees.[7] To establish his disability, respondent consulted a physician of his choice, Dr. Efren Vicaldo, who issued the following medical report dated February 17, 2000:

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[3] Contract of Employment, *id*. at 84.

[4] *Id*. at 132.

[5] *Id*. at 132-138.

[6] *Id*. at 138.

[7] *Id*. at 92.

This is to certify that Flaviano Manigo, Jr., 46 years of age, of West Crame, San Juan, M. Manila, was examined and treated as out patient xxx [on] 17 Feb. xxx with the following findings and/or diagnosis/diagnoses:

Coronary Artery Disease
2-Vessel Involvement
S/P Angioplasty with Stinting of the Right Coronary Artery
Impediment Grade III (78.36%).

x x x x x x x x x

Patient has significant 2 coronary vessel involvement, only one of w/c (RCA) anglioplastind.

He is still at risk for complications such as acute myocardial infarction or heart attack.

His illness impairs his quality of life since he cannot be as physically active as before.

x x x x x x x x x

His illness also prevents him from gainfull employment here or abroad.

He needs regular consultation with his cardiologist.

His medication is a lifetime affair. (Emphasis supplied.)[8]

However, during a conference before the LA, respondent agreed to be re-examined by Dr. Cruz. And in a report dated August 14, 2000, Dr. Cruz reiterated his earlier opinion that respondent is fit to work, thus:

The patient is presently asymptomatic. He has no nuchal pain, chest pain, shortness of breath and easy fatigability. His blood pressure is within normal limits at 120/80. His physical examination is essentially normal. He was re-evaluated by our cardiologist who allowed him to resume his previous activities.

x x x x x x x x x

He is fit to work effective today, August 14, 2000.[9]

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[8] Annexes "2", "3", and "3-A", Comment, *rollo*, pp. 374-376.

[9] *Id*. at 139.

In view of the conflicting opinions of Dr. Cruz and Dr. Vicaldo, respondent filed with the LA a Motion to allow him to get a third opinion from a physician of the ECC.[10]

Petitioners opposed the motion but the LA issued an Order dated September 29, 2000,[11] allowing respondent to be re-examined by an ECC physician. The re-examination of respondent was conducted by Dr. Francisco Estacio, Chief, Medical & Rehabilitation Division, ECC, who issued the following medical report:

INJURIES/AILMENT:	Coronary Artery Disease S/P Angioplasty with stinting of the Right Coronary Artery
DATE OF OCCURRENCE:	February 1999
DISABILITY:	Coronary Insufficiency
NATURE OF DISABILITY:	***Permanent Disability***

RECOMMENDED DISABILITY RATING: There is no specific rating in the POEA [Philippine Overseas Employment Agency] Schedule of disabilities for the [respondent's] ailment, Coronary Artery Disease, but upon thorough evaluation, we are of the opinion that it falls under Grade 3 (three) of the said schedule.[12] (Emphasis supplied.)

The LA admitted the report of Dr. Estacio.[13]

Petitioners appealed to the NLRC.[14] In its June 28, 2002 Resolution, the NLRC dismissed the appeal for being the wrong mode of review, and remanded the case to the LA for continuation of the proceedings.[15] It also denied petitioners' motion for reconsideration.[16]

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[10] *Id*. at 140.

[11] *Rollo,* p. 379.

[12] *Id*. at 380.

[13] *Id*. at 108.

[14] CA *rollo*, p. 49.

[15] *Rollo*, p. 172.

[16] *Id*. at 185.

Petitioners filed a Petition for *Certiorari*[17] with the CA.

While the CA disagreed with the NLRC on the propriety of the appeal taken by petitioners from an interlocutory order of the LA, the appellate court nonetheless affirmed the NLRC in dismissing the appeal for lack of merit. Petitioners filed a motion for reconsideration with the CA, but the latter denied it.

And so, the present recourse by petitioners who ascribe the following errors to the CA:

1. The Court of Appeals seriously erred in holding that the POEA Contract does not suggest that it is only the company-designated physician who must determine the fitness or disability of the repatriated seaman.
2. The Court of Appeals seriously erred in holding that to interpret the provisions of the POEA Contract to mean that the determination of the disability of a seaman is limited to the company-designated physician would be contrary to public policy.
3. The ruling of the Court of Appeals is contrary to the jurisprudence laid down in the case of *German Marine vs. NLRC* decided by this Honorable Court.
4. The Court of Appeals seriously erred in ignoring the basic rules of Statutory construction in interpreting the provisions of the POEA Contract.[18]

Everything actually comes down to just one issue: whether in deciding the claim for disability benefits filed by respondent against petitioners under their POEA Standard Employment Contract (POEA-SEC), the LA is bound by the assessment of the company-designated physician, Dr. Cruz, on the fitness or unfitness to work of respondent, and is precluded from allowing respondent to be re-examined by Dr. Estacio and admitting into evidence the latter's medical report.

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[17] CA *rollo*, p. 2.

[18] Petition, *rollo*, pp. 39-40.

The CA sustained the LA in allowing Dr. Estacio to re-examine respondent and in admitting Dr. Estacio's medical report. Citing its own ruling in *Veritas Maritime Corp. v. National Labor Relations Commission*,[19] which is in turn based on *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*[20] and *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,[21] the CA held that the POEA-SEC is generally worded as it does not employ such qualifying terms as "only," "solely" or "exclusively" in reference to how the claimant is to be medically assessed; thus, nothing therein dictates the LA to rely solely on the assessment of Dr. Cruz in deciding the disability claim of respondent; rather, the POEA-SEC gives the LA discretion to elicit the opinion of a doctor not designated by petitioners or chosen by respondent. The CA further pointed out that a contrary interpretation of the POEA-SEC will only lead to absurdity for then respondent's claim against petitioners will virtually be decided, not by the LA, but by Dr. Cruz and petitioners. Such inequity could not have been intended by the POEA and Department of Labor and Employment (DOLE) when they sought to protect the rights and welfare of Filipino seafarers by regulating the terms and conditions of the latter's overseas employment.

In their Memorandum[22] and Supplemental Memorandum,[23] petitioners insist that the more binding interpretation on the provisions of the POEA-SEC was that rendered by the Court in *German Marine, Inc. v. National Labor Relations Commission*;[24] and, more recently, *Rivera v. Wallem*[25] and *Sarocam v. Interorient Maritime Ent., Inc*.[26] — which

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[19] CA-G.R. SP No. 65639, February 27, 2003.

[20] 405 Phil. 487 (2001).

[21] 376 Phil. 738 (1999).

[22] *Rollo*, p. 495.

[23] *Id*. at 548.

[24] 403 Phil. 572 (2001).

[25] G.R. No. 160315, November 11, 2005, 474 SCRA 714.

[26] G.R. No. 167813, June 27, 2006, 493 SCRA 502.

interpretation, petitioner claims, "support[s their] contention that under the pertinent POEA Contract applicable at the time respondent's cause of action accrued, it is only the company-designated physician who has the sole and exclusive right to determine and assess whether a seafarer is entitled to disability benefits or not."[27] To their mind, no other medical assessment of the claimant should be allowed, much less one rendered by a physician of the ECC, as said agency is without jurisdiction over disability claims filed under the POEA-SEC.[28]

The Court disagrees with the contentions of petitioners.

At the time the parties entered into a contract of overseas employment on October 27, 1998, the provisions of the POEA-SEC, which were deemed incorporated into their contract,[29] were those prescribed in POEA Memorandum Circular No. 055-96,[30] dated December 16, 1996, and DOLE Department Order No. 33, series of 1996.

Section 20-B of the 1996 POEA-SEC prescribed the following requirements for claims for disability benefits, thus:

Section 20-B. *Compensation and Benefits for Injury or Illness*. —

The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel.

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment

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[27] Supplemental Memorandum, *rollo*, pp. 541-542.

[28] Petition, *id*. at 41-44.

[29] Contract of Employment, *rollo*, p. 84. See also *Delos Santos v. Jebsen Maritime, Inc.,* G.R. No. 154185, November 22, 2005, 475 SCRA 656.

[30] Revised Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessel; effective January 1, 1997.

as well as board and lodging until the seafarer is declared fit to work or to be repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.[31] (Emphasis added.)

DOLE Department Order No. 4, series of 2000, amended Section 20-B(3) of the POEA-SEC, to read as follows:

Section 20-B. *Compensation and Benefits for Injury and Illness.* —

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency

[31] The 1989 POEA-SEC contained a similar provision under Section 7(d).

within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis added.)

The 2000 POEA-SEC took effect only on June 25, 2000.[32] By then, respondent's employment with petitioners had already been terminated by his repatriation on February 15, 1999.[33] Thus, it is the 1999 POEA-SEC, and not the 2000 POEA-SEC, which should govern respondent's claim for disability benefits.

However, even prior to its amendment, Section 20-B(3) of the 1996 POEA had long been liberally construed by the Court to mean that **while it is a condition *sine qua non* to the filing of claim for disability benefit that, within three working days from his repatriation, the claimant submits himself to medical examination by a company-designated physician, the assessment of said physician is not final, binding or conclusive on the claimant, the labor tribunal or the courts.**

In *Crystal Shipping, Inc. v. Natividad*,[34] where the 1996 POEA-SEC was controlling, the Court upheld the medical report issued by the claimant's doctor of choice and disregarded that of the company-designated physician in view of the glaring

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[32] See *Linsangan v. Laguesma*, G.R. No. 143476, September 10, 2001.

[33] Section 18. *Termination of employment*. x x x B. The employment of the seafarer is also terminated when the seafarer arrives at the point of hire for any of the following reasons: 1. when the seafarer signs-off and is disembarked for medical reasons pursuant to Section 20-B(4) of this Contract x x x. See also *Prudential Shipping and Management Corporation v. Sta. Rita,* G.R. No. 166580, February 8, 2007, 515 SCRA 157, 169, citing *Hermogenes v. Osco Shipping Services, Inc.,* G.R. No. 141505, August 18, 2005, 467 SCRA 301, 307. *Cf. Philippine Transmarine Carriers, Inc. v. Laurente*, G. R. No. 158883, April 19, 2006, 487 SCRA 452, 457.

[34] G.R. No. 154798, October 20, 2005, 473 SCRA 559. See also the Resolution in G.R. No. 154798 dated February 12, 2007.

apparent inconsistency in the latter's medical report between the classification of claimant's disability as Grade 9 and the fact stated that said claimant had been unable to work for three years, which condition makes his disability permanent and total.

Likewise, in *Seagull Maritime Corp. v. Dee,*[35] involving a 1999 overseas contract, the Court sustained the NLRC and CA that the medical reports issued by the physicians of choice of the claimant were more in accord with the evidence, and rejected the one issued by the company-designated physician for inconsistency between the recommendation that the disability of the claimant is at Grade 11 only and the finding explicitly stated therein that "there is no guarantee that [claimant] will be able to return to his previous strenuous work." There the Court categorically ruled that "nowhere x x x did we hold that the company-designated phyisician's assessment of the nature and extent of a seaman's disability is final and conclusive on the employer company and the seafarer-claimant x x x while it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer the right to seek a second opinion." The Court emphasized this view in *Micronesia Resources v. Cantomayor*.[36]

Then too, in *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*,[37] the Court affirmed the grant by the CA and NLRC of disability benefits to a claimant based on the recommendation of a physician not designated by the employer. Said claimant consulted a physician of his choice when the company-designated physician refused to examine him.

There have been several other cases where the Court also rejected the medical report issued by the physician appointed by a claimant. In *Cadornigara v. National Labor Relations*

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[35] G.R. No. 165156, April 2, 2007, 520 SCRA 109.

[36] G.R. No. 156573, June 19, 2007, 525 SCRA 42.

[37] *Supra* note 20; see also *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, *supra* note 21.

Commission,[38] the Court held that an assessment of a private doctor consulted by the claimant six months after he was declared fit to work by the company-designated physician has no evidentiary value, for the claimant's health condition may have drastically changed in the interregnum. The Court's ruling in *Sarocam,* which petitioners cited, was of the same tenor. The Court rejected the medical report procured by the claimant from a private doctor, 11 months after he was declared fit to work by the company-designated physician. In *Rivera,* also cited by petitioners, the Court held that no medical report issued by any physician appointed by a claimant can be considered in evidence if the latter, without reason, omitted to consult a company-designated physician within three days from his repatriation. Of course, if the claimant does not dispute the medical report issued by the company-designated physician, which was the case in *German Marine, Inc.*, the same ought to be adopted in the evaluation of the claimant's disability.

All told, **the rule is that under Section 20-B(3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.**

The CA therefore did not err in affirming the dismissal by the NLRC of the appeal of petitioners from the September 29,

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[38] G.R. No. 158073, November 23, 2007.

2000 Order of the LA which allowed respondent to consult Dr. Estacio.

That said, however, it is entirely another matter whether the medical report of Dr. Estacio, as well as the medical report of Dr. Vicaldo, are of any credence and substance when weighed against the June 21, 1999 and August 14, 2000 medical reports of Dr. Cruz. That is for the LA to resolve when it decides the main case still pending before it.

WHEREFORE, the petition is *DENIED*. The Labor Arbiter is directed to resolve with dispatch the pending complaint of respondent Flaviano Manigo, Jr. against petitioners Maunlad Transport, Inc. and/or Nippon Merchant Marine Company, Ltd., Inc.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 162787. June 13, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LOURDES F. ALONTE,** *respondent.*

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[*] In lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 507 dated May 28, 2008.

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT; GENERALLY BINDING AND CONCLUSIVE UPON THE SUPREME COURT. — The Court emphasizes its ruling in *Republic of the Philippines v. Casimiro*, to wit: The **findings of fact of the RTC, affirmed by the Court of Appeals, cannot be disturbed by this Court**, since — As a rule, only questions of law may be appealed to the Court by *certiorari*. **The Court is not a trier of facts, its jurisdiction being limited to errors of law.** Moreover, where as in this case the Court of Appeals affirms **the factual findings of the trial court, such findings generally become conclusive and binding upon the Court**. The Court will not disturb the factual findings of the trial and appellate courts unless there are compelling or exceptional reasons, and there is none in the instant petition. Petitioner failed to present before this Court any compelling or exceptional argument or evidence that would justify a departure from the foregoing general rule. **This Court defers to the findings of both the RTC and the Court of Appeals as to the weight accorded to respondent's evidence and the sufficiency thereof to substantiate his right to a reconstitution** of the original copy of TCT No. 305917. In the present case, the RTC declared the petition to be sufficient in form and substance in its Order dated August 29, 2001. Both the RTC and the CA found the evidence presented by petitioner as adequate to order the reconstitution of TCT No. 335986. Akin to *Casimiro,* herein petitioner also failed to convince the Court that there are compelling reasons for it to deviate from the general rule that the findings of fact of the RTC, affirmed by the CA, are binding on this Court.

2. CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF LAND TITLE; REQUIREMENTS; COMPLIED WITH IN CASE AT BAR. — A thorough examination of the record reveals that there is no factual basis for petitioner's claim that respondent failed to comply with the requirements for a petition for reconstitution as enumerated in Sections 12 and 13 of R.A. No. 26, to wit: Section 12. Petitions for reconstitution from sources enumerated in Section x x x 3(f) of this Act, shall be

filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Sections 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property. Section 13. The Court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the

occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein, must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court. The petition for reconstitution alleged that respondent is in possession of the subject lot and it listed the names and addresses of adjoining owners enumerated in the Certification from the Office of the City Assessor dated August 1, 2001; it stated that the title is free from any and all liens and encumbrances; and it stated that a copy of TCT No. 335986 is attached to the petition and made an integral part of the petition, hence, the restrictions and liabilities appearing at the back of the copy of the TCT are deemed part of the petition for reconstitution. Said petition was also accompanied by a technical description of the property approved by the Commissioner of the National Land Titles and Deeds Registration Administration, the predecessor of the LRA, as prescribed under the last condition of Section 12 of R.A. No. 26. Thus, the petition clearly complied with the requirements of Section 12, R.A. No. 26. The fact that Editha Alonte, respondent's attorney-in-fact, testified that it is she and her family who are residing on the subject lot does not negate the statement in the petition for reconstitution that it is respondent who is in possession of the lot. After all, Article 524 of the New Civil Code provides that possession may be exercised in one's own name or in that of another. Obviously, Editha Alonte was exercising possession over the land in the name of respondent Lourdes Alonte. This is supported by the Certification from the Office of the City Treasurer of Quezon City which states that the real property taxes on said property, **declared in the name of Lourdes Alonte**, had been paid.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Imelda F. Aquino for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated February 26, 2004 which affirmed the Decision of the Regional Trial Court of Quezon City, Branch 82 (RTC) granting respondent's petition for reconstitution, be reversed and set aside.

The CA accurately summarized the facts as culled from the records, thus:

> On August 10, 2001, the petitioner-appellee [herein respondent] Lourdes F. Alonte filed a Petition for the Reconstitution of the Original of Transfer Certificate of Title No. 335986 and Issuance of the Corresponding Owner's Duplicate thereof supposedly over lot 18-B of the subd. Plan (LRC) Psd-328326 containing an area of Eighty Square Meters and Ninety-Five Square Decimeters (80.95) situated in the Municipality of Caloocan (now Quezon City).
>
> The petitioner-appellee alleged in its [sic] petition that she is the owner in fee simple of a parcel of land with its improvement situated in Quezon City, bounded and described as follows:
>
> x x x x x x x x x
>
> It is further alleged that the original copy of the aforesaid title which used to be kept in the Office of the Register of Deeds of Quezon City was among those declared either destroyed or burned during the fire which razed the said office on June 11, 1988 (Annex "E", Certification From the Register of Deeds, Records, p. 9).
>
> Likewise, the petitioner-appellee alleged that the owner's Duplicate copy thereof was lost and an affidavit to that effect was executed and accordingly filed in the Office of the Registry of Deeds for Quezon City (Annex "F").
>
> At the ex-parte hearing conducted on January 4, 2002, the petitioner-appellee was represented by her attorney-in-fact, Editha

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Conrado M. Vasquez, Jr., and Arsenio J. Magpale, concurring; *rollo*, pp. 35-43.

Alonte as evidenced by a Special Power of Attorney (Exh. "H"). The petitioner-appellee is presently in the United States and the witness and her family together with her sisters-in-law are the ones presently occupying the house erected thereon.

The following documents were presented to prove the jurisdictional facts:

- Exhibit "A" - copy of the Petition dated July 27, 2001.
- Exhibit "B" - Order dated August 29, 2001.
- Exhibit "C", "C-1" to "C-5" - the proof of service of the said Order to the City Prosecutor's Office, the Registry of Deeds of Quezon City, the Quezon City Legal Department, the Land Registration Authority, the Office of the Solicitor General, and the Land Management Bureau of the DENR;
- Exhibit "D" - Certificate of Publication dated October 26, 2001 issued by the National Printing Office;
- Exhibit "E" - Volume 97 No. 43, October 22, 2001 issue of the Official Gazette;
- Exhibit "E-1" - Volume 97 No. 44, October 29, 2001 issue of the Official Gazette;
- Exhibit "F" - Certificate of Posting and Service dated November 19, 2001 by the Deputy Sheriff of this Court.

In addition to the abovementioned documents, the petitioner-appellee presented the following:

- Annex "A" - Photocopy of TCT No. 335986;
- Annex "B" - Tax Declaration No. D-074-00504 for 1996;
- Annex "C" - Tax Declaration No. D-074-00921 for 1997;
- Annex "D" - Certification from the Office of the City Treasurer dated July 25, 2001;
- Annex "E" - Certification from the Register of Deeds of Quezon City dated February 4, 2000;
- Annex "F" - Affidavit of Loss dated July 9, 2001;
- Annex "G" - Technical Description;
- Annex "H" - Certification from the Office of the City Assessor dated August 1, 2001 (Records, pp. 5-12).[2]

The CA further adopted the following factual findings of the RTC, to wit:

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[2] *Rollo*, pp. 35-38.

The **adjoining owners of the subject property were also furnished with copies of the Order dated August 29, 2001 by registered mail**, as evidenced by the registry return cards (Exhibits "G", "G-1" and "G-2") attached to the records. There being no opposition thereto, the petitioner was allowed to present her evidence *ex-parte* before a Hearing Officer designated by the Court.

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In its Report dated August 2, 2002, the Land Registration Authority submitted its findings as follows:

(1) The present petition seeks the reconstitution of Transfer Certificate of Title No. 335986, allegedly lost or destroyed and supposedly covering Lot 18-B of the subdivision plan (LRC) Psd-328326, situated in the Municipality of Caloocan (now Quezon City).

(2) **The plan and technical description of Lot 18-B of the subdivision plan (LRC) Psd – 328326, were verified correct by this Authority to represent the aforesaid lot and the same have been approved under (LRA) PR-19193 pursuant to the provision of Section 12 of Republic Act No. 26**.[3] (Emphasis supplied)

On August 13, 2002, the RTC promulgated its Decision, the dispositive portion of which reads as follows:

WHEREFORE, the Petition dated July 27, 2001 is hereby GRANTED and the Register of Deeds of Quezon City is hereby directed to reconstitute in the files of his Office the original copy of TCT No. 335986 based on the corresponding technical description and survey plan of the property in question in the name of petitioner Lourdes F. Alonte.

The owner's duplicate copy of TCT No. 335986 which was lost is hereby declared null and void and the Register of Deeds of Quezon City is hereby directed to issue a new owner's duplicate copy of the reconstituted title to the petitioner, after payment of the prescribed fees and after their Order shall have become final.

SO ORDERED.[4]

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[3] RTC Decision, records, pp. 48-49.

[4] *Id.* at 49.

Thereafter, the RTC Branch Clerk of Court issued a Certificate of Finality dated September 3, 2002.[5]

However, on September 10, 2002, the RTC issued an Order reading as follows:

> It appearing from the records that the Notice of Appeal filed by the Office of the Solicitor General thru registered mail on August 29, 2002 and received by this Court on September 4, 2002, was within the reglementary period, the Certificate of Finality earlier issued on September 3, 2002 is hereby **REVOKED** and/or otherwise **RECALLED**.
>
> ACCORDINGLY, the Notice of Appeal is hereby given due course. Let, therefore, the records hereof be elevated to the Court of Appeals for appropriate proceedings and disposition.
>
> SO ORDERED.[6]

On February 26, 2004, the CA then issued the assailed Decision affirming the RTC judgment. The CA held that the RTC did not err in ordering the reconstitution of the original copy of Transfer Certificate of Title (TCT) No. 335986 based on a photocopy because the court applied Section 3(f) of Republic Act (R.A.) No. 26, entitled "An Act Providing a Special Procedure for the Reconstitution of Torrens Certificate of Title Lost or Destroyed", which took effect on September 26, 1946. Said provision states that "transfer certificates of title shall be reconstituted from x x x any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title."

Hence, the present petition for review on *certiorari* on the following grounds:

I

The Court of Appeals erred in finding that there is sufficient and proper basis for reconstitution of TCT No. 335986.

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[5] Records, p. 50.

[6] *Id.* at 61.

II

The Court of Appeals erred in affirming the lower court's decision granting the petition for reconstitution despite respondent's failure to comply with the mandatory requirements prescribed under Republic Act No. 26.[7]

Petitioner alleges that the trial court did not acquire jurisdiction to hear the petition for respondent's failure to allege the following mandatory and jurisdictional facts in her petition:

1. the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property;
2. a detailed description of the encumbrance appearing on the title; and
3. the restrictions and liabilities allegedly appearing on the subject title as referred to in paragraph 8 of the Petition.[8]

Petitioner also pointed out other supposed defects in the petition, *i.e.*, it was not accompanied by a plan and technical description of the property duly approved by the Chief of the General Land Registration Office (now Land Registration Authority [LRA]) or by a certified copy of the description taken from a prior certificate of title covering the same property as prescribed under the last condition under Section 12 of R.A. No. 26; there was no tracing cloth plan attached to the petition as prescribed by Section 5 (a) of LRC Circular No. 35; and there is no showing that the Affidavit of Loss executed on July 9, 2001 by the petitioner stating the alleged fact of loss of the owner's duplicate copy of TCT No. T-335986 had been sent or registered with the Office of the Registry of Deeds of Quezon City.[9]

The petition is unmeritorious.

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[7] *Rollo*, p. 21.

[8] *Rollo*, pp. 28-29.

[9] *Id*. at 29-30.

The Court emphasizes its ruling in *Republic of the Philippines v. Casimiro*,[10] to wit:

> The **findings of fact of the RTC, affirmed by the Court of Appeals, cannot be disturbed by this Court**, since —
>
> As a rule, only questions of law may be appealed to the Court by *certiorari*. **The Court is not a trier of facts, its jurisdiction being limited to errors of law.** Moreover, where as in this case the Court of Appeals affirms **the factual findings of the trial court, such findings generally become conclusive and binding upon the Court**. The Court will not disturb the factual findings of the trial and appellate courts unless there are compelling or exceptional reasons, and there is none in the instant petition.
>
> Petitioner failed to present before this Court any compelling or exceptional argument or evidence that would justify a departure from the foregoing general rule. **This Court defers to the findings of both the RTC and the Court of Appeals as to the weight accorded to respondent's evidence and the sufficiency thereof to substantiate his right to a reconstitution** of the original copy of TCT No. 305917.[11] (Emphasis supplied)

In the present case, the RTC declared the petition to be sufficient in form and substance in its Order[12] dated August 29, 2001. Both the RTC and the CA found the evidence presented by petitioner as adequate to order the reconstitution of TCT No. 335986. Akin to *Casimiro,*[13] herein petitioner also failed to convince the Court that there are compelling reasons for it to deviate from the general rule that the findings of fact of the RTC, affirmed by the CA, are binding on this Court.

A thorough examination of the record reveals that there is no factual basis for petitioner's claim that respondent failed to comply with the requirements for a petition for reconstitution as enumerated in Sections 12 and 13 of R.A. No. 26, to wit:

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[10] G.R. No. 166139, June 20, 2006, 491 SCRA 499.

[11] *Id.* at 523.

[12] Records, pp. 13-14.

[13] *Supra* note 10.

Section 12. Petitions for reconstitution from sources enumerated in Section x x x 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Sections 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office, or with a certified copy of the description taken from a prior certificate of title covering the same property.

Section 13. The Court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of

the property, and the date on which all persons having any interest therein, must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

The petition for reconstitution alleged that respondent is in possession of the subject lot and it listed the names and addresses of adjoining owners enumerated in the Certification from the Office of the City Assessor dated August 1, 2001; it stated that the title is free from any and all liens and encumbrances; and it stated that a copy of TCT No. 335986 is attached to the petition and made an integral part of the petition, hence, the restrictions and liabilities appearing at the back of the copy of the TCT are deemed part of the petition for reconstitution. Said petition was also accompanied by a technical description of the property approved by the Commissioner of the National Land Titles and Deeds Registration Administration, the predecessor of the LRA, as prescribed under the last condition of Section 12 of R.A. No. 26. Thus, the petition clearly complied with the requirements of Section 12, R.A. No. 26.

The fact that Editha Alonte, respondent's attorney-in-fact, testified that it is she and her family who are residing on the subject lot does not negate the statement in the petition for reconstitution that it is respondent who is in possession of the lot. After all, Article 524 of the New Civil Code provides that possession may be exercised in one's own name or in that of another. Obviously, Editha Alonte was exercising possession over the land in the name of respondent Lourdes Alonte. This is supported by the Certification[14] from the Office of the City Treasurer of Quezon City which states that the real property taxes on said property, **declared in the name of Lourdes Alonte**, had been paid.

Furthermore, as stated above, the LRA submitted to the trial court a Report[15] dated August 2, 2002 stating that "[t]he plan and technical description of Lot 18-B of the subdivision plan

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[14] Records, p. 8.

[15] *Id.* at 52.

(LRC) Psd-328326, were verified correct by this Authority to represent the aforesaid lot and the same have been approved under (LRA) PR-19193 pursuant to the provisions of Section 12 of R.A. No. 26." Attached to said Report were the print copy of plan (LRA) PR-19193[16] and the corresponding technical description.[17] Since the LRA issued a Report that is highly favorable to respondent, and considering further the presumption that official duty has been regularly performed,[18] the only conclusion would be that respondent has fully complied with the requirements of LRC Circular No. 35.

It also appears that the Affidavit of Loss dated July 9, 2001 executed by respondent has indeed been submitted to the Register of Deeds as the photocopy of TCT No. 335986 bears an inscription at the back regarding the submission of such document to the Register of Deeds.

In fine, petitioner miserably failed to present any matter that would warrant the reversal or modification of the factual findings of the RTC, as affirmed by the CA.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals is *AFFIRMED*.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

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[16] *Id.* at 55.

[17] *Id.* at 54.

[18] RULES OF COURT, Rule 131, Sec. 3.

[*] In lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 507 dated May 28, 2008.

THIRD DIVISION

[G.R. No. 164640. June 13, 2008]

CYNTHIA GANA, *petitioner, vs.* **THE NATIONAL LABOR RELATIONS COMMISSION, ABOITIZ HAULERS, INC., and CARL[*] WOZNIAK,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL; REQUIREMENTS OF DUE PROCESS ARE SATISFIED WHERE THE PARTIES ARE AFFORDED FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN THEIR SIDE OF THE CONTROVERSY. — The LA Decision failed to cite any evidence or factual circumstance which would support the conclusion that petitioner was not accorded procedural due process. The NLRC aptly found that there is sufficient proof to show that respondent company complied with the requirements of procedural due process. The Court quotes with approval the following disquisition of the NLRC: As with procedural due process requirements, We find complainant to have been accorded with the same. It is undisputed that on April 21, 1998, respondent company sent complainant a show cause letter due to her various violations. On April 24, 1998, complainant through her counsel, Atty. Franco Loyola, submitted an explanation letter denying the charges against her. On May 22, 1998, after investigation hearing, respondent company found her guilty of willful breach of trust and confidence and gross misconduct and dismissed her from employment. The foregoing show that respondent company complied with the procedural due process requirements. x x x Settled is the rule that the requirements of due process are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. In the present case, petitioner, as shown above, was given this opportunity.

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[*] Spelled as "Karl" in other parts of the SC and CA *rollos*.

2. ID.; ID.; ID.; ID.; FOR MANAGERIAL EMPLOYEE, BREACH OF TRUST JUSTIFIES DISMISSAL; PRESENT IN CASE AT BAR. — The settled rule is that the mere existence of a basis for believing that a managerial employee has breached the trust of the employer justifies dismissal. The Court agrees with the CA that petitioner is tasked to perform key functions and, unlike ordinary employees, she is bound by a more exacting work ethic. In sending e-mails to Trans-America, she unnecessarily and prematurely exposed the company's shortcomings in handling the business of its clients when the company could have possibly rectified or remedied the matter before any damage was done. Hence, respondent company cannot be faulted for having lost its trust and confidence in petitioner and in refusing to retain her as its employee considering that her continued employment is patently inimical to respondent company's interest. The law, in protecting the rights of labor, authorizes neither oppression nor self-destruction of an employer company which itself is possessed of rights that must be entitled to recognition and respect.

APPEARANCES OF COUNSEL

Franco L. Loyola for petitioner.

Cadiz Tabayoyong and *Valmores Law Office* for private respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Assailed in the present Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 71318 promulgated on April 30, 2004 affirming the Decision[2] of October 31, 2000 and the Order[3]

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[1] Penned by Justice Delilah Vidallon-Magtolis with the concurrence of Justices Edgardo P. Cruz and Noel G. Tijam, *rollo*, pp. 98-106.

[2] *Id.* at 49.

[3] *Id.* at 93.

dated May 3, 2002 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 020479-99 (NLRC NCR Case No. 06-04712-98); and the CA Resolution[4] dated July 26, 2004, denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

Aboitiz Transport System (Aboitiz Transport), Aboitiz Container Services, Inc. (Aboitiz Container) and Aboitiz Haulers, Inc. (respondent company) are sister corporations belonging to the Aboitiz Group of Companies. Sometime in 1996, Aboitiz Transport entered into a marketing agency contract with another corporation, Trans-America Leasing (Trans-America). During that time, Trans-America had an existing contract with Aboitiz Container wherein the latter served as Trans-America's container depot. Subsequently, herein respondent company entered into a contract with Trans-America wherein the former took over the obligations of Aboitiz Transport to Trans-America.

On December 1, 1996, Cynthia Gana (petitioner) commenced her employment as marketing manager of Total Distribution and Logistics System, Inc. (TDLSI),[5] another sister company of Aboitiz Transport, Aboitiz Container and respondent company. As marketing manager, petitioner received a monthly salary of ₱20,000.00 plus a monthly allowance of ₱15,000.00; and she availed herself of the company car plan.

On August 15, 1997, petitioner was transferred from TDLSI to respondent company retaining the same position as marketing manager.

On April 21, 1998, petitioner was required by private respondent Carl Wozniak (Wozniak), the Senior Vice-President and General Manager of Aboitiz Haulers, to explain in writing why she should not be penalized for having violated company rules on offenses against company interest. Wozniak directed her to appear in an investigation to be conducted by the company

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[4] *Id.* at 128.

[5] Also referred to as Total Distributors and Logistic Services, Inc. in other parts of the SC and CA *rollos*.

and defend herself with respect to the electronic mails (e-mails) she sent to an official of Trans-America, divulging various confidential information about the business operations and transactions of Aboitiz Container which are detrimental to the said company.[6]

On April 24, 1998, petitioner, through her counsel, sent a letter to Wozniak denying the charges against her.[7]

In a letter dated May 22, 1998, Wozniak informed petitioner that her explanations during the investigation with respect to the charges leveled against her were found to be unacceptable; that she was found guilty of Betrayal of Confidential Information which constitutes sufficient reason for the company to lose the high degree of trust and confidence which it reposed upon her as its manager; and that as a result, her employment with respondent company has been terminated.[8]

Petitioner then filed a Complaint for illegal dismissal with the National Labor Relations Commission (NLRC) in Quezon City.[9]

On June 14, 1999, the Labor Arbiter (LA) rendered a Decision[10] finding respondent company guilty of illegally dismissing petitioner.

On appeal, the NLRC set aside the Decision of the LA. The dispositive portion of the NLRC Decision reads:

WHEREFORE, the appealed decision dated June 19, 1999 is **SET ASIDE** and a new one is **ENTERED** dismissing the instant complaint for lack of merit. Respondent company is however ordered to return to complainant her paid equity on the car amounting to One Hundred Eighty One Thousand Three Hundred Nine and 05/100 (₱181,309.05), as well as to pay complainant financial assistance in the amount of Seventy Thousand Pesos (₱70,000.00).

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[6] Annex "18" of private respondents' Position Paper, CA *rollo*, p. 496.

[7] Annex "19", *id*. at 497.

[8] Annex "20", *id*. at 499.

[9] Annex "A" of Memorandum for the Petitioner, *rollo*, p. 302.

[10] *Id*. at 34.

SO ORDERED.[11]

Petitioner filed a Motion for Reconsideration[12] but the same was denied by the NLRC in its Order[13] promulgated on May 3, 2002.

Petitioner then filed a petition for *certiorari* with the CA questioning the above-mentioned Decision and Order of the NLRC.

On April 30, 2004, the CA promulgated its presently assailed Decision[14] dismissing the petition for *certiorari* and affirming the questioned Decision and Order of the NLRC.

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its Resolution[15] dated July 26, 2004.

Hence, the present petition raising the following issues:

1. WHETHER SHE [PETITIONER] WAS ILLEGALLY DISMISSED AND OR HER DISMISSAL WAS IN VIOLATION OF DUE PROCESS;
2. WHETHER SHE [PETITIONER] IS ENTITLED TO REINSTATEMENT AND BACKWAGES AS WELL AS MONETARY CLAIM AND POSITIVE RELIEF FOR AWARD OF DAMAGES AND ATTORNEY'S FEES;
3. WHETHER THE APPEAL OF PRIVATE RESPONDENT WAS FILED OUT OF TIME.[16]

Petitioner posits that the marketing agency contract between respondent company and Trans-America requires transparency; that any information considered significant to the conduct of Trans-America's business should be forwarded to it considering

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[11] *Id.* at 59.

[12] *Rollo*, p. 61.

[13] *Id.* at 93.

[14] CA *rollo*, p. 651.

[15] *Id.* at 709.

[16] *Rollo*, p. 19.

that both companies are actually business partners; and that petitioner's e-mails sent to Trans-America may not be considered disclosure of confidential information regarding the business operations and transactions of respondent company or of Aboitiz Container as, in fact, there is nothing confidential contained in said e-mails. As such, petitioner claims that there is no factual and legal basis in dismissing petitioner from her employment.

Petitioner also avers that there was a violation of her right to due process as there was no just cause for termination and that respondent company failed to comply with the requirements of procedural due process. Petitioner claims that she was forced to submit to the investigation conducted by respondent company.

Private respondents, on the other hand, contend that petitioner failed to show any palpable error or grave abuse of discretion on the part of the CA or the NLRC and that the present petition is a mere reproduction of the arguments and assertions which were already passed upon by the CA and the NLRC in their assailed decisions.

Private respondents also assert that, contrary to petitioner's contention, their appeal with the NLRC was timely filed; and that the delay, if any, in the filing of the said appeal was justified when government offices were closed and government workers were sent home early due to inclement weather conditions on the supposed last day of filing of their appeal.

Private respondents contend that petitioner was not denied due process because she was given the requisite notices as well as ample opportunity to explain her side as required by the Labor Code.

The Court finds the petition devoid of merit.

As to the first assigned error, petitioner alludes to the LA's conclusion that she was denied procedural due process, to wit:

> We could not likewise lend credence to respondent's contention that complainant was afforded due process before effecting his [sic] dismissal, if at all, the alleged due process granted the complainant was more farcical than real.

We find the aforesaid legal requirements absolutely disregarded by the respondents in the case at bar, and certainly, the complainant could not be faulted for having challenged her severance from employment as an unreasonable infringement of her constitutional right to security of tenure and due process.[17]

The Court agrees with the NLRC and to the CA that this conclusion has no basis. The LA Decision failed to cite any evidence or factual circumstance which would support the conclusion that petitioner was not accorded procedural due process. The NLRC aptly found that there is sufficient proof to show that respondent company complied with the requirements of procedural due process. The Court quotes with approval the following disquisition of the NLRC:

As with procedural due process requirements, We find complainant to have been accorded with the same. It is undisputed that on April 21, 1998, respondent company sent complainant a show cause letter due to her various violations. On April 24, 1998, complainant through her counsel, Atty. Franco Loyola, submitted an explanation letter denying the charges against her. On May 22, 1998, after investigation hearing, respondent company found her guilty of willful breach of trust and confidence and gross misconduct and dismissed her from employment. The foregoing show that respondent company complied with the procedural due process requirements. x x x[18]

Settled is the rule that the requirements of due process are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand.[19] In the present case, petitioner, as shown above, was given this opportunity.

Anent the second issue, petitioner relies on the conclusion of the LA that there is no sufficient evidence to justify petitioner's termination from employment on the ground of loss of trust and confidence. However, evidence shows otherwise. The

[17] *Rollo*, p. 45.

[18] *Id.* at 58.

[19] *Filipino v. Macabuhay*, G.R. No. 158960, November 24, 2006, 508 SCRA 50, 58.

LA cited private respondent's letter terminating petitioner from her employment to prove that respondent company failed to show sufficient evidence to establish the charges against petitioner. Contrary to the conclusion of the LA, it is very clear in the said letter that respondent company enumerated the facts and circumstances upon which petitioner's termination was based. Pertinent portions of the letter are as follows:

> Last April 22, 1998, an investigation was conducted in order to give you the chance to present your side of matters that were contained in the letter to explain dated April 21, 1998 that was sent to you and which you received last April 21, 1998 also.
>
> During the said investigation, it was established that:
>
> a) You sent email messages/reports to Leslie Leow of Transamerica last March 9, 1998 and March 25, 1998 regarding the company's internal problems with the truckers, depot and special permit to load (spl) and the rates charge[d] by ACSI to its customers.
>
> b) You sent again email message last April 16, 1998 to Leslie Leow concerning the complaints of Mr. Carmelo Garcia regarding the company's poor services which puts the company's credibility to deliver good service in question.
>
> c) You have literally provided Transamerica information about the inefficiencies and inflexibility of the company in catering to the needs of the customer.
>
> d) The Officers of the company only learned of the complaints of Mr. Carmelo Garcia because of your email messages to Transamerica.
>
> e) You declared that your loyalty is to Transamerica and not to your employer, AHI.[20]

The settled rule is that the mere existence of a basis for believing that a managerial employee has breached the trust of the employer justifies dismissal.[21]

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[20] Annex "20" of respondent's Position Paper, CA *rollo*, p. 499.

[21] *Sim v. National Labor Relations Comission*, G.R. No. 157376, October 2, 2007, 534 SCRA 515, 524.

Petitioner does not deny having sent the subject e-mails to Trans-America. The Court finds no error in the conclusion of the CA that petitioner's intention in sending these e-mails was to inform Trans-America of the supposed inefficiency in the operations of respondent company as well as the company's poor services to its clients. These pieces of information necessarily diminish the credibility of respondent company and besmirch its reputation. In fact, Trans-America wrote Wozniak expressing its disappointment in the services that the Aboitiz companies were rendering.

Even if petitioner had no other intention but to improve the business of respondent company, the Court agrees with the CA and NLRC in ruling that she should have first coursed the said information to her superiors instead of hastily sending correspondence to their client, considering that the information she possessed was prejudicial to her employer's business. Petitioner should have confined her grievance or complaint regarding the conduct of her employer's business within the company. As a managerial employee, she is expected to exercise her judgment and discretion with utmost care and concern for her employer's business. The Court agrees with the CA that petitioner is tasked to perform key functions and, unlike ordinary employees, she is bound by a more exacting work ethic.[22] In sending e-mails to Trans-America, she unnecessarily and prematurely exposed the company's shortcomings in handling the business of its clients when the company could have possibly rectified or remedied the matter before any damage was done.

Hence, respondent company cannot be faulted for having lost its trust and confidence in petitioner and in refusing to retain her as its employee considering that her continued employment is patently inimical to respondent company's interest. The law, in protecting the rights of labor, authorizes neither oppression nor self-destruction of an employer company which itself is

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[22] *Molina v. Pacific Plans, Inc*., G.R. No. 165476, March 10, 2006, 484 SCRA 498, 520.

possessed of rights that must be entitled to recognition and respect.[23]

As to the third issue, the Court finds its ruling in *Chronicle Securities Corporation v. National Labor Relations Commission*[24] *apropos* to the present case, pertinent portions of which read as follows:

> The right to appeal is a purely statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor. Failure to bring an appeal within the period prescribed by the rules renders the judgment appealed from final and executory. However, it is always within the power of this Court to suspend its own rules, or to except a particular case from its operations, whenever the purposes of justice require it.
>
> In not a few instances, we relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfections should thus not serve as bases of decisions. In that way, the ends of justice would be better served. For indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.
>
> In *Philippine National Bank, et al. v. Court of Appeals,*[25] we allowed, in the higher interest of justice, an appeal filed three days late.
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> In *Republic v. Court of Appeals,*[26] we ordered the Court of Appeals to entertain an appeal filed six days after the expiration of the reglementary period; while in *Siguenza v. Court of Appeals,*[27] we

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[23] *Dayan v. Bank of the Philippine Islands,* 421 Phil. 620, 630 (2001).

[24] G.R. No. 157907, November 25, 2004, 444 SCRA 342.

[25] 316 Phil. 371 (1995).

[26] 172 Phil. 741 (1978).

[27] G.R. No. L-44050, July 16, 1985, 137 SCRA 570.

accepted an appeal filed thirteen days late. Likewise, in *Olacao v. NLRC,*[28] we affirmed the respondent Commission's order giving due course to a tardy appeal "to forestall the grant of separation pay twice" since the issue of separation pay had been judicially settled with finality in another case. All of the aforequoted rulings were reiterated in our 2001 decision in the case of *Equitable PCI Bank v. Ku.*[29]

Moreover, the facts herein are akin to the case of *Surigao del Norte Electric Cooperative v. NLRC,*[30] where we upheld the NLRC's order taking cognizance of an appeal filed one day late since the delay in filing was caused by the onslaught of typhoon *Besing*, resulting in the closure of the Surigao Post Office on the last day for the appellant to file her appeal.[31]

In the instant case, considering that private respondents' petition is unequivocally meritorious, the Court upholds the CA ruling that the one-day delay in the filing of private respondents' appeal is justified.

Having been established that the twin requirements of just cause and procedural due process had been complied with by private respondents in dismissing petitioner from her employment, the NLRC and the CA correctly denied her prayer for the award of exemplary and moral damages as well as attorney's fees.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated April 30, 2004 and its Resolution of July 26, 2004 in CA-G.R. SP No. 71318 are *AFFIRMED*.

No pronouncement as to costs.

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[28] G.R. No. 81390, August 29, 1989, 177 SCRA 38.

[29] 407 Phil. 609 (2001).

[30] 368 Phil. 537 (1999).

[31] *Chronicle Securities Corp. v. National Labor Relations Commission*, *supra* note 24, at 348-350.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 178770. June 13, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERNANDO BUCAYO *y* MOJICA** *a.k.a.* **FERNANDO CUNANAN** *a.k.a.* **"BUCAYO," HECTOR BUCAYO *y* MOJICA** *a.k.a.* **RYAN CUNANAN, CESAR ORTIZ** *a.k.a.* **"GONGONG," and JAYSON ORTIZ** *a.k.a.* **"JAYJAY,"** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DETERMINATION OF CREDIBILITY IS PROPERLY WITHIN THE DOMAIN OF THE TRIAL COURT; RATIONALE. — Time and again, we said that the findings by the RTC should be respected as the trial court judge was in the best position to determine the witness' credibility. It is well-settled in our jurisdiction that the determination of credibility of witnesses is properly within the domain of the trial court as it is in the best position to observe their demeanor. This conclusion becomes all the more pressing when the appellate court affirms the findings of the trial court.

2. ID.; ID.; ID.; THERE IS NO STANDARD HUMAN RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE AND FRIGHTFUL EXPERIENCE. — It also bears remembering

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[*] In lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 507 dated May 28, 2008.

that people react differently in different situations and there is no standard human response when one is confronted with a strange and frightful experience. Even if a witness is himself attacked, he is still in a position to later on describe what has transpired. In some situations, when under siege, one's power of observation becomes even more acute and heightened. Recall that at that time Edison was being mauled to death with a steel chair, Jonathan was not himself under siege and even testified that at that time, he was even hurling stones at Edison's maulers.

3. ID.; ID.; ID.; ALIBI IS THE WEAKEST DEFENSE AS AGAINST POSITIVE IDENTIFICATION BY PROSECUTION WITNESSES. — As against Jonathan's straightforward and convincing testimony, the alibi of Fernando that he was asleep in his house and the denial of Hector that they confronted and assaulted Jonathan and Edison miserably fail. Alibi is the weakest of all defenses and as against positive identification by prosecution witnesses, alibi is worthless. Just as alibi is an inherently weak defense, so is denial since these are self-serving negative evidence that cannot be accorded much evidentiary weight than the positive declaration of a credible witness.

4. CRIMINAL LAW; CONSPIRACY; DEFINED; PRESENT IN CASE AT BAR. — There is conspiracy when the separate acts committed, taken collectively, emanate from a concerted and associated action, albeit each circumstance, if considered separately, may not show confabulation. In this case, to reiterate, the CA observed that (1) Fernando and his group blocked Jonathan and Edison as the two were on their way home; (2) they all participated in the attack on Jonathan and Edison; (3) when Jonathan had a chance to flee, Hector dragged him back; and (4) Hector and Jayson exchanged blows with Jonathan and Edison as Fernando viciously hit Edison with a steel chair causing the demise of Edison. All these constitute circumstances that lead to the conclusion that all the accused conspired to harm their prey. These, taken with the eyewitness testimonies and the physical evidence supported by the medico-legal's findings, establish without doubt the guilt of the accused-appellants.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the Decision of the Court of Appeals (CA) in CA-G.R. CR No. 01089, entitled *People of the Philippines v. Fernando Bucayo y Mojica a.k.a. Fernando Cunanan a.k.a. "Bucayo," Hector Bucayo y Mojica a.k.a. Ryan Cunanan, Cesar Ortiz a.k.a. "Gongong" and Jayson Ortiz a.k.a. "Jayjay."* The CA affirmed with modification the decision of the Regional Trial Court (RTC), Branch 27 in Manila, finding the accused-appellants guilty beyond reasonable doubt of the crime of murder qualified by the use of superior strength. The CA likewise ordered the archiving of the cases against co-accused Cesar and Jayson Ortiz, to be revived upon their arrest.

The facts, as found by the CA, are as follows:

Jonathan Perez and childhood friend Edison Buencillo, Jr. were on their way to visit Jonathan's common-law wife, Princess, who lived in Tondo. As they were walking along A. Rivera St., they passed by the group of Fernando and Hector Bucayo and Cesar and Jayson Ortiz, all of whom Jonathan recognized. The group asked Jonathan and Edison to join them but the two declined the invitation and proceeded to Princess' house where they stayed for 15 minutes. They took the same route home and on their way, the group, joined by a certain Pamboy, Fortune, and some others, surrounded and blocked them. As the group taunted and shouted invectives at Jonathan and Edison, a rumble ensued. Jonathan attempted to flee but was dragged back to the melee by Hector. Jonathan saw Hector and Jayson gang up on Edison, as Fernando struck Jonathan repeatedly with a steel chair. As Jonathan was trying to escape, he got hold of a barbecue stick and stabbed Hector with it. Jonathan said he witnessed the assault on Edison and threw stones at the group to make them stop but his attempts were futile. Neither was his call for help heard. He asked for police assistance, and ran to Edison's house to inform the latter's mother of the melee. Edison expired at the Jose Reyes Memorial Medical Hospital.

On July 23, 2002, Fernando, Hector, Cesar, and Jayson were charged with the murder of Edison. Only Fernando and Hector were arrested as Jayson and Cesar remained at large.

The Information filed against the accused is quoted below:

> That on or about April 11, 2002, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one whose true name, real identity and present whereabouts [are] still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and taking advantage of their superior strength, attack, assault and use personal violence upon the person of EDISON BUENCILLO, JR., by then and there mauling and hammering him several times with steel metal chair, thereby inflicting upon said EDISON BUENCILLO, JR. head injuries which are necessarily fatal and mortal, which were the direct cause of his death immediately thereafter.[1]

After arraignment of Fernando and Hector, who both pleaded not guilty, the RTC heard the testimonies of Jonathan, SPO3 Reynaldo Mira, the investigating officer, Dr. Ravell Ronald Baluyot, the medico-legal who testified that Edison sustained skull fracture and intracranial hemorrhaging caused by a blunt object resulting in his death, and Amparo Rosales-Buencillo who testified on the expenses incurred in connection with the death of Edison.

For its part, the defense presented Hector who claimed that, at around 2 p.m. on the day of the incident, as he was securing his pedicab, he heard shouts of "*magnanakaw!* (a thief!)." Thinking that Jonathan and Edison were the thieves, he grabbed one by the arm only to be stabbed with a barbecue stick below his armpit by the man who managed to flee. He was brought to the Jose Reyes Memorial Hospital for treatment.

Fernando denied any involvement and said he was sleeping at home and learned later that his brother, Hector, had been stabbed. His wife corroborated his story. One Ricardo Brazil testified that he was asleep in a jeepney when he heard there

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[1] CA *rollo*, p. 12.

was a riot among the youngsters. He witnessed one of them escape but he testified that he did not see the accused during the commotion. He did testify that Hector asked for his help and he also saw Fernando milling around the area after the incident. One Romeo Lay *y* Abadey corroborated Ricardo's story. He informed Fernando and Hector's family of the fight.

After trial, on March 16, 2005, the RTC rendered its decision finding the accused Fernando and Hector guilty beyond reasonable doubt of the crime of murder qualified by superior strength for the death of Edison. The case against Cesar and Jayson were archived to be revived upon their arrest.

Following *People v. Mateo*,[2] the case was reviewed by the CA.

On April 30, 2007, the CA affirmed with modification the decision of the RTC. The *fallo* of the CA Decision reads:

> WHEREFORE, premises considered, finding no error committed by the trial court in arriving at the assailed decision, the same is hereby AFFIRMED with MODIFICATION directing accused-appellants to pay the heirs of EDISON the sum of ₱50.000.00 as moral damages, and ₱25,000.00 as exemplary damages, in light with current jurisprudence.[3]

On accused-appellants' assertion that the testimony of Jonathan was not credible because he could not have witnessed everything that was happening because he was himself under attack, the CA observed that, although Jonathan was himself under attack and was terrified, it was not impossible that he had opportunity to see the attack on Edison. The CA also opined that there was no reason why Jonathan should lie about what he saw. Taken into account the fact that the trial court had been convinced of the testimony of Jonathan and having observed the demeanor of the witness, the CA was not inclined to disturb the RTC's

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[2] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[3] *Rollo*, p. 13. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Jose C. Mendoza and Ramon M. Bato, Jr.

findings on the credibility of Jonathan. Against the positive and categorical testimony of an eyewitness, the CA said, the denial by the accused of their involvement on the crime must fail.

As to the argument that conspiracy among the accused had not been proven, the CA further observed that direct proof of conspiracy is not essential to establish the conspiracy. It said that the existence of the assent of minds of the co-conspirators may be inferred from proof of facts and circumstances which, taken together, indicate that they are parts of the complete plan to commit the crime. The CA cited the following chain of events which tend to establish that there was a community of design among the accused to perpetrate the crime: (1) Fernando and his group blocked the path of Jonathan and Edison as the two were on their way home; (2) they all participated in the attack on Jonathan and Edison; (3) when Jonathan had a chance to flee, Hector dragged him back; and (4) Hector and Jayson exchanged blows with Jonathan and Edison as Fernando kept hitting Edison with a steel chair causing the death of Edison.

After having filed their Notice of Appeal, accused-appellants manifested that they were re-pleading and adopting their Brief for Accused-Appellants as their Supplemental Brief. The lone issue presented before this Court is:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

The appeal has no merit.

Essentially, accused-appellants' claim, that the testimony of Jonathan ought not to be believed simply because Jonathan could not have witnessed the mauling of Edison since he himself was under attack, has no basis. Both the trial and appellate courts found Jonathan's testimony credible and their findings should be given full faith and credit. Time and again, we said that the findings by the RTC should be respected as the trial court judge was in the best position to determine the witness' credibility. It is well-settled in our jurisdiction that the

determination of credibility of witnesses is properly within the domain of the trial court as it is in the best position to observe their demeanor.[4] This conclusion becomes all the more pressing when the appellate court affirms the findings of the trial court.

It also bears remembering that people react differently in different situations and there is no standard human response when one is confronted with a strange and frightful experience.[5] Even if a witness is himself attacked, he is still in a position to later on describe what has transpired. In some situations, when under siege, one's power of observation becomes even more acute and heightened. Recall that at that time Edison was being mauled to death with a steel chair, Jonathan was not himself under siege and even testified that at that time, he was even hurling stones at Edison's maulers.

Lastly, the CA found that Jonathan had no reason to fabricate what he witnessed. As against Jonathan's straightforward and convincing testimony, the alibi of Fernando that he was asleep in his house and the denial of Hector that they confronted and assaulted Jonathan and Edison miserably fail. Alibi is the weakest of all defenses and as against positive identification by prosecution witnesses, alibi is worthless. Just as alibi is an inherently weak defense, so is denial since these are self-serving negative evidence that cannot be accorded much evidentiary weight than the positive declaration of a credible witness.

The testimonies of Ricardo Brazil and Romeo Lay, that they heard the commotion and witnessed one chasing another youngster, heard Hector asking for their help, and saw Fernando milling around after the incident, are of no consequence. These accounts do not in anyway establish that Fernando and Hector had not participated in the death of Edison. Brazil and Lay did not identify who attacked whom; and what and who exactly they saw. At

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[4] *Llanto v. Alzona*, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295.

[5] *People v. Quirol*, G.R. No. 149259, October 20, 2005, 473 SCRA 509, 516.

most, what the two testified to was that there was a rumble, a chase, and Hector had been stabbed.

Altogether, the incidents prior to the melee, the simultaneous active participation of the accused and use of their superior strength and number, and the flight of the Ortiz brothers undoubtedly establish a conspiracy to assault and harm Jonathan and Edison, leading to Edison's death. There is conspiracy when the separate acts committed, taken collectively, emanate from a concerted and associated action, albeit each circumstance, if considered separately, may not show confabulation.[6] In this case, to reiterate, the CA observed that (1) Fernando and his group blocked Jonathan and Edison as the two were on their way home; (2) they all participated in the attack on Jonathan and Edison; (3) when Jonathan had a chance to flee, Hector dragged him back; and (4) Hector and Jayson exchanged blows with Jonathan and Edison as Fernando viciously hit Edison with a steel chair causing the demise of Edison. All these constitute circumstances that lead to the conclusion that all the accused conspired to harm their prey. These, taken with the eyewitness testimonies and the physical evidence supported by the medico-legal's findings, establish without doubt the guilt of the accused-appellants.

WHEREFORE, the instant appeal of accused-appellants Fernando and Hector Bucayo is *DISMISSED*. The April 30, 2007 Decision of the CA is *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Tinga, and *Brion, JJ.,* concur.

Carpio Morales, J., on leave.

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[6] *Nierva v. People*, G.R. No. 153133, September 26, 2006, 503 SCRA 114, 127.

EN BANC

[A.M. No. MTJ-08-1703. June 17, 2008]
(Formerly A.M. OCA I.P.I. No. 07-1875-MTJ)

RICKY GARAY, ARSENIO PALAGANA, FERNANDO MEJES, SONNY LOGRONIO, FELIPE ONGY, WENCESLAO BAYANI, RANDY RAPA, JUANITO STA. ANA, FABIAN MENDOZA, and VIOLETO BEDONA, JR., *complainants, vs.* **JUDGE NICASIO V. BARTOLOME, MTC, Br. 1, Sta. Maria, Bulacan,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDGES; WHEN GUILTY OF GROSS IGNORANCE OF THE LAW; PRESENT IN CASE AT BAR. — As can be gleaned from his Joint Resolution, Judge Bartolome made no determination on whether or not there was sufficient ground to hold complainants for trial. He did not recommend the dismissal of the criminal complaints nor the filing of the appropriate informations against complainants. Neither did he state the law upon which he based his order. Judge Bartolome's failure to follow the procedures outlined in Secs. 3 and 5 of Rule 112 of the *Revised Rules of Criminal Procedure* is a clear indication of his gross ignorance of the rules on preliminary investigation, and his delay of more than three months in resolving the investigation only to order that it be re-investigated specially when the accused are detention prisoners deserves serious sanction from this Court. When a judge shows utter unfamiliarity with fundamental rules and procedures, he contributes to the erosion of public confidence in the judicial system. Ignorance of the law is a mainspring of injustice. When judges show professional incompetence, and are ignorant of basic and fundamental rules, they are guilty of gross ignorance of the law and procedures, a serious charge under Sec. 8, Rule 140 of the *Rules of Court*. x x x Judges are not common individuals whose gross errors "men forgive and time forgets." For when they display an utter lack of familiarity with the rules they erode the confidence of the public in the competence of our courts. Such lack is gross

ignorance of the law. Verily, failure to follow basic legal commands and rules constitutes gross ignorance of the law, of which no one is excused, and surely is not an embodiment of a judge.

2. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY. — Sec. 11(A) of Rule 140 punishes the offense, as follows: 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 and controlled corporations. *Provided, however,* That the forfeiture of 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 ₱40,000.00. The OCA observed that this is not the first time Judge Bartolome is being administratively sanctioned, and it recommends that Judge Bartolome be imposed a fine of PhP 25,000. Under the circumstances, we find the OCA's findings and recommendations in order.

APPEARANCES OF COUNSEL

Patricio Balao Ga for complainants.

D E C I S I O N

VELASCO, JR., *J.*:

Complainants are the accused in Criminal Case Nos. 4-227-05 and 4-228-05 entitled *People v. Ricky Garay, et al*. In this administrative complaint, they ask that respondent Judge Nicasio V. Bartolome of the Municipal Trial Court, Branch 1 in Sta. Maria, Bulacan be investigated and a corresponding penalty be meted against him for violation of the rules on criminal procedure.

Below are the facts found by the Office of the Court Administrator (OCA) pertinent to this administrative complaint:

On April 28, 2005, the day the complaints for qualified theft of bus starters and different tools amounting to PhP 187,000 were filed against complainants, Judge Bartolome issued a warrant of arrest against them. On the strength of the warrant, the complainants were detained in the provincial jail. Thereafter, Judge Bartolome conducted a preliminary investigation and the complainants filed their counter-affidavits. On August 12, 2005, Judge Bartolome conducted a clarificatory hearing where only accused Garay and his counsel attended. After the said hearing, Judge Bartolome issued an order submitting the case for resolution. On December 27, 2005, three months after the clarificatory hearing, he issued a Joint Resolution that was mailed only on March 8, 2006. The pertinent portion of the Joint Resolution is hereunder quoted:

> In view thereof, and for lack of jurisdiction having found probable cause, let the records of these two (2) cases be forwarded to the Office of the PROVINCIAL prosecutor for lack of jurisdiction and for further Preliminary Investigation together with the bodies of the accused Fabian Mendoza, Juanito Sta. Ana and Violeto Bedona, Jr., and with the information that the other accused named Arsenio Palaganas, Randy Rapa and Sonny Logronio are still at large. Therefore, Sonny Logronio is still not qualified to submit counter-affidavits who [remains] beyond the jurisdiction of this Court.
>
> SO ORDERED.

In its investigation and evaluation of the instant complaint against Judge Bartolome, the OCA noted that the criminal case for qualified theft involving PhP 187,000 falls clearly within the jurisdiction of the Regional Trial Court. According to the OCA, based on the foregoing facts, it was apparent that Judge Bartolome was grossly ignorant of the procedure to be observed during a preliminary investigation as outlined in Sections 3 and 5, Rule 112 of the *Revised Rules of Criminal Procedure*. Sec. 3 of the rule requires, among others, that:

> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

x x x x x x x x x

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-**affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.**

(e) The investigating officer may set a hearing but without the right to examine or cross-examine. They may however, submit to the investigating officers questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) **Within ten (10) days after the investigation,** the investigating officer **shall determine whether or not there is sufficient ground to hold the respondent for trial.** (Emphasis ours.)

Sec. 5 of the same rule provides:

SEC. 5 *Resolution of the investigating judge and its review.*— **Within ten (10) days after the preliminary investigation, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor,** or to the Ombudsman or his

deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction, for appropriate action. **The resolution shall state the findings of facts and the law supporting his action,** together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his release; (d) the transcript of the proceedings during the preliminary investigations; and (e) the order of cancellation of the bail bond, if the resolution is for the dismissal of the complaint.[1] (Emphasis ours.)

Note that Judge Bartolome issued the Order submitting the cases for resolution on September 23, 2005. It was only on December 27, 2005, more than three months after, when he issued the Joint Resolution ordering the return of the cases to the provincial prosecutor for further preliminary investigation. Sec. 5 requires that Judge Bartolome submit his resolution of the case within 10 days after the preliminary investigation and transmit the resolution of the case to the provincial or city prosecutor. There is no question that Judge Bartolome took inordinate delay of three months in submitting his resolution of the preliminary investigation.

Sec. 5 also requires that Judge Bartolome state the findings of facts and the law supporting his action. He did not. We quote the Joint Resolution:

JOINT RESOLUTION

These cases were controverted by the accused by means of counter-affidavit. The accused Ricky Garay. Juanito Sta. Maria. Sonny Logronio. Violeto Bedona. Jr., Fabian Mendoza alleged that this is only harassment by Rene Valimento in conspiracy with the undisclosed member of the Philippine National Police; That the complainant is

[1] Sec. 2, Rule 112 of the Revised Rules of Criminal Procedure was amended on October 3, 2005. First level court judges no longer conduct preliminary investigations of criminal complaints which fall under the exclusive jurisdiction of courts of other levels. A.M. No. 05-8-26-SC instructs all first level courts to continue with the preliminary investigation of cases pending with them and terminate them not later than December 31, 2005.

the operator of GLOREN R.O.V. TRANSPORT; That the three (3) criminal cases [have] been filed by Mr. Rene Valimento as a leverage to the Labor case and therefore, has no merit whatsoever.

In view thereof, and for lack of jurisdiction having found probable cause, let the records of these two (2) cases be forwarded to the Office of the PROVINCIAL prosecutor for lack of jurisdiction and for further Preliminary Investigation together with the bodies of the accused Fabian Mendoza, Juanito Sta. Ana and Violeto Bedona, Jr., and with the information that the other accused named Arsenio Palaganas, Randy Rapa and Sonny Logronio are still at large. Therefore, Sonny Logronio is still not qualified to submit counter-affidavits who [remains] beyond the jurisdiction of this Court.

SO ORDERED.

As can be gleaned from his Joint Resolution, Judge Bartolome made no determination on whether or not there was sufficient ground to hold complainants for trial. He did not recommend the dismissal of the criminal complaints nor the filing of the appropriate informations against complainants. Neither did he state the law upon which he based his order. Judge Bartolome's failure to follow the procedures outlined in Secs. 3 and 5 of Rule 112 of the *Revised Rules of Criminal Procedure* is a clear indication of his gross ignorance of the rules on preliminary investigation, and his delay of more than three months in resolving the investigation only to order that it be re-investigated specially when the accused are detention prisoners deserves serious sanction from this Court.

When a judge shows utter unfamiliarity with fundamental rules and procedures, he contributes to the erosion of public confidence in the judicial system. Ignorance of the law is a mainspring of injustice.[2] When judges show professional incompetence, and are ignorant of basic and fundamental rules, they are guilty of gross ignorance of the law and procedures, a serious charge under Sec. 8, Rule 140 of the *Rules of Court*. Sec. 11(A) of Rule 140 punishes the offense, as follows:

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[2] *Abbariao v. Beltran*, A.M. No. RTJ-04-1839, August 31, 2005, 468 SCRA 419, 426.

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 and controlled corporations. *Provided, however,* That the forfeiture of 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 ₱40,000.00.

The OCA observed that this is not the first time Judge Bartolome is being administratively sanctioned, and it recommends that Judge Bartolome be imposed a fine of PhP 25,000. Under the circumstances, we find the OCA's findings and recommendations in order.

Judges are not common individuals whose gross errors "men forgive and time forgets."[3] For when they display an utter lack of familiarity with the rules they erode the confidence of the public in the competence of our courts.[4] Such lack is gross ignorance of the law. Verily, failure to follow basic legal commands and rules constitutes gross ignorance of the law, of which no one is excused, and surely is not an embodiment of a judge.[5]

WHEREFORE, we find Judge Nicasio V. Bartolome *GUILTY* of *GROSS IGNORANCE OF THE LAW*. He is *FINED* twenty five thousand pesos (PhP 25,000) with stern warning that a repetition of the same offense will be dealt with more severely.

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[3] *Community Rural Bank of Guimba v. Talavera*, A.M. No. RTJ-05-1909, April 6, 2005, 455 SCRA 34.

[4] *Lim v. Dumlao*, A.M. No. MTJ-04-1556, March 31, 2005, 454 SCRA 196.

[5] *Mina v. Vianzon*, A.M. No. RTJ-02-1682, March 23, 2004, 426 SCRA 56.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161910. June 17, 2008]

DEPARTMENT OF AGRARIAN REFORM, rep. by OIC SECRETARY JOSE MARI B. PONCE, *petitioner, vs.* **MA. REGINA I. SAMSON, J. DOMINIC SAMSON, ANNE-MARIE SAMSON and LIESL MARIE EUGENIE SAMSON,** *respondents.*

[G.R. No. 161930. June 17, 2008]

LEOLITO EDA, MARCELO DE CLARO, TORIBIO BENZUELA, DONATA MENDOZA, ARSENIO MACASADIA, FELICIANO DE CLARO, FELICIDAD C. DE CLARO, SALVACION BALONDO, PETRA LEZARDO, CONSOLACION L. DE CLARO, LEONARDO C. DE CLARO, AGRIPINO DE CLARO, VIRGILIO ESTRECOMIN, ELVIE GALANO, EVARESTO DE CLARO, represented by LEOLITO EDA as their attorney-in-fact, REGISTRY OF DEEDS, CALAMBA, LAGUNA PROVINCE and HON. HORACIO R. MORALES, JR., in his capacity as Secretary of Agrarian Reform, *petitioners, vs.* **MA. REGINA I. SAMSON, J. DOMINIC SAMSON, ANNE-MARIE SAMSON and LIESL MARIE EUGENIE SAMSON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE RULES OF PROCEDURE ARE CONSTRUED LIBERALLY IN PROCEEDINGS BEFORE ADMINISTRATIVE BODIES AND ARE NOT TO BE APPLIED IN A VERY RIGID AND TECHNICAL MANNER. — It is important to reiterate that administrative agencies are not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. It is well-settled that rules of procedure are construed liberally in proceedings before administrative bodies and are not to be applied in a very rigid and technical manner, as these are used only to help secure and not to override substantial justice. Besides, we find that respondents were not denied due process. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.

2. ID.; ID.; PROCEDURAL DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS, CLARIFIED. — In *Casimiro v. Tandog*, the Court held: The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process. In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.

3. REMEDIAL LAW; RULES OF COURT; PROCEDURAL DUE PROCESS; WHEN DEFECT THEREOF IS CURED; PRESENT IN CASE AT BAR. — In the instant case, it was not shown that farmers-petitioners sent notices or copies of their Opposition/Petition to respondents. However, as correctly ruled by the Office of the President, there is no denial of due process because the DAR Secretary, in issuing the assailed Order, considered all available records of the case at the DAR Regional Office, including respondents' application for exemption and its supporting documents, as well as the farmers-petitioners' petition/opposition. Neither can the DAR be faulted for sending its notices to respondents' predecessor's previous address in Quezon City as it was the same address appearing in the undated Order of Director Dalugdug. Thus, it was proper for the said agency to rely on the last known address appearing in their records. In any event, the Court agrees with petitioners that any procedural defect in the proceedings before the DAR was cured when Samson appealed before the Office of the President. In *Gonzales v. Civil Service Commission*, the Court ruled that any seeming defect in the observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard thereon. Likewise, in *Autencio v. City Administrator Mañara and the City of Cotabato*, the Court ruled that where the party has the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured. It should be noted that although the March 4, 1998 ruling of the DAR had attained finality, the Office of the President still entertained respondents' appeal thus giving them the opportunity to be heard.

4. ID.; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES; ACCORDED RESPECT AND EVEN FINALITY; APPLICATION IN CASE AT BAR. — Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. Administrative agencies are given wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence. As to whether the subject properties are exempt

from CARP coverage, the Court of Appeals did not make any findings inasmuch as it limited its discussion in resolving the procedural issues raised before it. Considering that these issues involve an evaluation of the DAR's findings of facts, this Court is constrained to accord respect to such findings. It is settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence. The factual findings of the Secretary of DAR who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.

APPEARANCES OF COUNSEL

Beatriz Teves De Guzman for petitioners in G.R. No. 161930.
Delfin B. Samson for petitioner DAR in G.R. No. 61910.
Maria Lethel C. Alburo for respondents in G. R. No. 161910 & 161930.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

These consolidated petitions assail the October 10, 2003 Decision[1] of the Court of Appeals in CA-G.R. SP No. 60036, reversing and setting aside the June 29, 2000[2] Decision of the Office of the President and enjoining the Secretary of the Department of Agrarian Reform (DAR) and the Register of Deeds of Calamba, Laguna from implementing the same. Also assailed is the January 27, 2004[3] Resolution denying the motion for reconsideration.

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[1] *Rollo* of G.R. No. 161910, pp. 24-34; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Arsenio J. Magpale.

[2] *Rollo* of G.R. No. 161930, pp. 57-60; penned by Executive Secretary Ronaldo B. Zamora.

[3] *Rollo* of G.R. No. 161910, pp. 36-37.

During his lifetime, Enrique T. Samson[4] applied for exemption from the coverage of the Comprehensive Agrarian Reform Program (CARP) over nine (9) parcels of land with an aggregate area of 27.7359 hectares, located in Barangays Pansol and Sukol, Calamba, Laguna, and covered by Transfer Certificate of Title Nos. T-151979, T-151980, T-94607, T-94605, T-94606, T-60653, T-203493, T-203494, T-203495 issued by the Register of Deeds for Calamba, Laguna in the name of Samson.

In an undated Order issued sometime in **1995**, the subject lots were declared exempt from CARP coverage by DAR Regional Director Percival C. Dalugdug.[5] The dispositive portion of said Order reads:

> WHEREFORE, premises considered and pursuant to AO No. 10, Series of 1994, Order is hereby issued approving the exclusion from CARP Coverage of the subject nine (9) parcels of land provided, however, that their disposition or any project to be implemented therein shall be subject to DENR's clearance and to the Moratorium contained in Section 5 of Executive Order 121 dated August 24, 1993.
>
> SO ORDERED.[6]

On March 19, 1997, petitioners-farmers filed an Opposition/ Petition alleging that they received the undated Order of DAR only on January 27, 1997. They prayed that the same be set aside and nullified because although the lands covered by the Order have a slope of more than 18%, the same were fully developed and planted with variety of plants, and to which some of them have their farm houses built.[7]

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[4] Substituted by his spouse Ma. Regina I. Samson and their children J. Dominic, Anne-Marie and Liesl Marie Eugenie when he died during the pendency of the case.

[5] *Rollo* of G.R. No. 161930, pp. 61-62.

[6] *Id*.

[7] *Id*. at 99-100.

In an Order[8] dated March 4, 1998, DAR considered the Opposition/Petition filed as an appeal and disposed of the same as follows:

> WHEREFORE, premises considered order is hereby issued, ordering the Regional Office No. IV to segregate the areas with agricultural developments and cover the same (under) the Comprehensive Agrarian Reform Program (CARP) and exempting the balance.
>
> SO ORDERED.[9]

DAR found no evidence that the subject lots are within the Makiling Forest Reserve Area; and the fact that these are titled lands supports the contention that these are neither public lands nor within the reservation area. It also noted that the ocular inspection report submitted by their team confirms the presence of agriculturally developed portions in the area. Hence, portions of the subject landholding even with a slope of more than 18% may still be covered by CARP due to the presence of agriculturally developed areas.

On **July 12, 1999**, Samson learned that a group of surveyors inspected the subject properties for the purpose of determining which portions should be distributed to his tenants. When he sought clarification from the DAR Provincial Agrarian Reform Officer, Felixberto Kagahastian, as to the purpose of the survey, he was informed for the first time about the "Appeal" filed by the farmers which was subsequently granted by DAR. Samson was able to secure a copy of the March 4, 1998 Order only on July 16, 1999.

On August 9, 1999, Samson assailed the Order before the Office of the President arguing that he was not notified of the appeal; that had he been properly apprised, he could have presented evidence to prove that the properties have a slope of 18% or over and are not developed; and that petitioner-farmers are not qualified beneficiaries of the CARP. He denied that he

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[8] *Id*. at 65-68.

[9] *Id*. at 67-68; penned by Ernesto D. Garilao.

was represented during the alleged ocular inspection conducted by DAR on February 17, 1998.[10]

On June 29, 2000, the Office of the President rendered a Decision,[11] the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, the assailed DAR order dated March 4, 1998 is hereby AFFIRMED and the instant appeal DISMISSED.
>
> SO ORDERED.[12]

The Office of the President ruled that any alleged procedural lapses committed in the proceedings before the DAR were cured when Samson interposed the appeal before it which gave him an opportunity to present evidence and to substantiate the claim that the subject land is exempt from CARP coverage. Likewise, the DAR Secretary considered all available records including Samson's application for exemption thus, there is no denial of due process.

The Office of the President sustained DAR's ruling that the subject properties were within the coverage of CARP after finding that although the land has a slope of more than 18%, there are portions which are agriculturally developed. These findings were based on the supplemental report submitted by Marino A. Austria, DAR's Senior Agrarian Reform Technologist on August 23, 1994 and the report of the DAR team who conducted the ocular inspection on February 17, 1998. The Office of the President also ruled that the Order granting Samson's application for exemption was not supported by evidence.[13]

Samson appealed to the Court of Appeals which rendered the assailed Decision reversing and setting aside the Decision of the Office of the President and enjoining the DAR Secretary

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[10] *Id*. at 77-78.

[11] *Id*. at 57-60; penned by Executive Secretary Ronaldo B. Zamora.

[12] *Id*. at 60.

[13] *Id*. at 70-60.

and the Register of Deeds for Calamba, Laguna, from implementing the June 29, 2000 Decision of the Office of the President. The dispositive portion of the Decision reads:

> WHEREFORE, the instant petition is given DUE COURSE and GRANTED. The respondent DAR Secretary, his successors, agents and representatives, and the Register of Deeds for Calamba, Laguna are hereby enjoined from implementing the Decision dated June 29, 2000 of the Office of the President in O.P. Case No. 99-D-889 as well as those from which it was derived.
>
> SO ORDERED.[14]

The Court of Appeals ruled that there was a final decree of CARP exemption issued in favor of Samson and its reversal by DAR and the Office of the President is grossly irregular. It ruled that DAR committed grave abuse of discretion in entertaining the belated appeal of the farmers. Though technical rules of procedure and evidence are not strictly applied in administrative proceedings, entertaining an appeal filed after more than a year had lapsed is a total disregard of the rules, an abuse of discretion to favor one party.

Petitioners filed separate motions for reconsideration which were denied by the Court of Appeals in a Resolution[15] dated January 27, 2004. Thereafter, they filed separate petitions for review on *certiorari* which was ordered consolidated by the Court in its Resolution dated March 10, 2004.[16]

In G.R. No. 161910, petitioner DAR alleged that the Court of Appeals erred:

> 1. WHEN IT RULED THAT PETITIONER COMMITTED A *FAUX PAS* WHICH WAS FATAL AND DAMAGING TO THE DEFENSE OF BOTH PUBLIC AND PRIVATE RESPONDENTS AND FAILED TO CONSIDER THE ESTABLISHED FACT, AND EXISTING JURISPRUDENCE,

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[14] *Id*. at 150-151.

[15] *Id*. at 162-163.

[16] *Id*. at 15.

THAT RESPONDENT OR THEIR PREDECESSOR WERE ALLOWED TO BE HEARD AND THERE WAS AVAILMENT THEREOF.

2. WHEN IT REVERSED THE DECISIONS OF THE OFFICE OF THE PRESIDENT AND OF DAR ON THE GROUND THAT PETITIONER COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ENTERTAINED THE 1997 APPEAL OF THE FARMERS.[17]

On the other hand, in G.R. No. 161930, petitioners-farmers raised the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE OFFICE OF THE PRESIDENT AS WELL AS THAT OF THE DEPARTMENT OF AGRARIAN REFORM.

II.

WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENTS WERE DENIED DUE PROCESS OF LAW.[18]

The resolution of these consolidated cases revolves around the propriety of the appeal interposed by farmers-petitioners before the DAR. Petitioners insist there was no grave abuse of discretion when DAR entertained the appeal and that respondents were not denied due process during the proceedings. On the other hand, respondents argue that they were denied due process because they were not able to participate in the proceedings before the DAR and that their appeal with the Office of the President did not cure the said procedural lapse.

Administrative Order No. 13 series of 1990 (A.O. No. 13-90)[19] as revised by Administrative Order No. 10 series of 1994

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[17] *Rollo* of G.R. No. 161910, p. 14.

[18] *Rollo* of G.R. No. 161930, pp. 25-26.

[19] Rules and Procedures Governing Exemption of Lands from Comprehensive Agrarian Reform Program (CARP) Coverage Under Section 10 of R.A. No. 6657.

(A.O. No. 10-94)[20] provides that the Order of the Regional Director approving or denying the application for exemption shall become final 15 days from receipt of the same unless an appeal is made to the Secretary.[21] Though the undated Order of Regional Director Dalugdug appears to have been issued sometime in 1995, the farmers-petitioners alleged that they were notified of said Order only on January 27, 1997. Hence, when petitioners-farmers filed their Opposition/Petition on March 19, 1997, the period to appeal had expired.

However, we find no error on the part of petitioner DAR when it entertained the appeal of farmers-petitioners after finding the same meritorious, consistent with the declared policies of RA 6657 in giving the welfare of the landless farmers and farm workers the highest consideration. In several instances, even the Court entertained and allowed lapsed appeals in the higher interest of justice.[22] Moreover, proceedings before the DAR are summary and pursuant to Section 50 of RA 6657, the department is not bound by technical rules of procedure and evidence, to the end that agrarian reform disputes and other issues will be adjudicated in a just, expeditious and inexpensive action or proceeding.[23]

It is important to reiterate that administrative agencies are not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. It is well-settled that

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[20] Amending Administrative Order (A.O.) No. 13, Series of 1990 Entitled "Rules and Procedures Governing Exemption of Lands from Comprehensive Agrarian Reform Program (CARP) Coverage Under Section 10 of R.A. No. 6657, to Authorize All Regional Directors to Hear and Decide Applications for Exemption for All Land Sizes."

[21] Section II.3., A.O. No. 10-94.

[22] See *Philippine Commercial Industrial Bank v. Cabrera*, G.R. No. 160368, March 31, 2005, 454 SCRA 792, 801; and *Philippine National Construction Corporation v. Matias*, G.R. No. 156283, May 6, 2005, 458 SCRA 148, 157-158.

[23] *Quismundo v. Court of Appeals,* G.R. No. 95664, September 13, 1991, 201 SCRA 609, 615.

rules of procedure are construed liberally in proceedings before administrative bodies and are not to be applied in a very rigid and technical manner, as these are used only to help secure and not to override substantial justice.[24]

Besides, we find that respondents were not denied due process. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[25] In *Casimiro v. Tandog*,[26] the Court held:

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.
>
> In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[27]

In the instant case, it was not shown that farmers-petitioners sent notices or copies of their Opposition/Petition to respondents.

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[24] See *Amadore v. Romulo*, G.R. No. 161608, August 9, 2005, 466 SCRA 397, 412-413.

[25] *Autencio v. City Administrator Mañara and the City of Cotabato*, G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55.

[26] G.R. No. 146137, June 8, 2005, 459 SCRA 624.

[27] *Id*. at 631.

However, as correctly ruled by the Office of the President, there is no denial of due process because the DAR Secretary, in issuing the assailed Order, considered all available records of the case at the DAR Regional Office, including respondents' application for exemption and its supporting documents, as well as the farmers-petitioners' petition/opposition.

Neither can the DAR be faulted for sending its notices to respondents' predecessor's previous address in Quezon City as it was the same address appearing in the undated Order of Director Dalugdug. Thus, it was proper for the said agency to rely on the last known address appearing in their records.

In any event, the Court agrees with petitioners that any procedural defect in the proceedings before the DAR was cured when Samson appealed before the Office of the President. In *Gonzales v. Civil Service Commission*,[28] the Court ruled that any seeming defect in the observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard thereon.[29] Likewise, in *Autencio v. City Administrator Mañara and the City of Cotabato*,[30] the Court ruled that where the party has the opportunity to appeal or seek reconsideration of the action or ruling complained of, defects in procedural due process may be cured.[31] It should be noted that although the March 4, 1998 ruling of the DAR had attained finality, the Office of the President still entertained respondents' appeal thus giving them the opportunity to be heard.

Courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. Administrative agencies are given wide latitude in the evaluation of evidence and in the

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[28] G.R. No. 156253, June 15, 2006, 490 SCRA 741.

[29] *Id*. at 746.

[30] *Supra*

[31] *Id*. at 55-56.

exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence.[32]

As to whether the subject properties are exempt from CARP coverage, the Court of Appeals did not make any findings inasmuch as it limited its discussion in resolving the procedural issues raised before it. Considering that these issues involve an evaluation of the DAR's findings of facts, this Court is constrained to accord respect to such findings. It is settled that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence. The factual findings of the Secretary of DAR who, by reason of his official position, has acquired expertise in specific matters within his jurisdiction, deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.[33]

The DAR and the Office of the President ruled that only certain portions of the subject properties may be placed under the coverage of the CARP due to the agricultural developments they found thereon. Hence, it ordered that these areas be segregated for CARP coverage while the rest of the subject properties shall remain exempt. The Court notes however that there is no final determination yet as to which portions of the properties are to be covered and whether the farmers-petitioners herein are qualified beneficiaries. As such, respondents may still participate in the segregation of these areas and exercise other rights provided for landowners under RA 6657.

WHEREFORE, the instant petitions for review on *certiorari* are *GRANTED*. The assailed Decision of the Court Appeals dated October 10, 2003 and the Resolution dated January 27, 2004, in CA-G.R. SP No. 60036 are *REVERSED and SET ASIDE*. The Order of the Department of Agrarian Reform

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[32] *Quiambao v. Court of Appeals*, G.R. No. 128305, March 28, 2005, 454 SCRA 17, 39.

[33] *Sebastian v. Morales*, 445 Phil. 595, 609 (2003).

dated March 4, 1998, as affirmed by the Office of the President, ordering the Regional Office No. IV (of the DAR) to segregate the areas with agricultural developments and place the same under the CARP coverage and exempting the rest of the subject properties, is hereby *REINSTATED and AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 165016. June 17, 2008]

DOLORES MONTEFALCON & LAURENCE MONTEFALCON, *petitioners, vs.* **RONNIE S. VASQUEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SERVICE OF SUMMONS UPON OVERSEAS FILIPINO SEAFARERS, EXPLAINED. — To acquire jurisdiction over the person of a defendant, service of summons must be personal, or if this is not feasible within a reasonable time, then by substituted service. It is of judicial notice that overseas Filipino seafarers are contractual employees. They go back to the country once their contracts expire, and wait for the signing of another contract with the same or new manning agency and principal if they wish. It is therefore common knowledge that a Filipino

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[*] Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

seaman often has a temporary residence in the urban areas like Metro Manila, where majority of the manning agencies hold offices, aside from his home address in the province where he originates. In this case, respondent Vasquez hails from Camarines Sur but he has lived in Taguig City when the complaint was filed. Notice may then be taken that he has established a residence in either place. Residence is a place where the person named in the summons is living at the time when the service was made, even though he was temporarily abroad at the time. As an overseas seafarer, Vasquez was a Filipino resident temporarily out of the country. Hence, service of summons on him is governed by Rule 14, Section 16 of the Rules of Court: SEC. 16. *Residents temporarily out of the Philippines*. — When any action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service **may**, by leave of court, be **also** effected out of the Philippines, as under the **preceding section**. The preceding section referred to states: SEC. 15. *Extraterritorial service*.— When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer. Because Section 16 of Rule 14 uses the words "may" and "also," it is not mandatory. Other methods of service of summons allowed under the Rules may also be availed of by the serving officer on a defendant-seaman. x x x Obviously, personal service of summons was not practicable since the defendant was temporarily out of the country. To proceed with personal service of summons on a defendant-seaman who went on overseas

contract work — would not only be impractical and futile — it would also be absurd.

2. ID.; ID.; ID.; THE NORMAL METHOD OF SERVICE OF SUMMONS ON ONE TEMPORARILY ABSENT IS BY SUBSTITUTED SERVICE; RATIONALE. — *Montalban v. Maximo* offers a rational and logical solution of the issue. We held in said case that the normal method of service of summons on one temporarily absent is by substituted service because personal service abroad and service by publication are not ordinary means of summoning defendants. Summons in a suit *in personam* against a temporarily absent resident may be by substituted service as domiciliaries of a State are always amenable to suits *in personam* therein. "Residence" is the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. A plaintiff is merely required to know the defendant's residence, office or regular business place. He need not know where a resident defendant actually is at the very moment of filing suit. He is not even duty-bound to ensure that the person upon whom service was actually made delivers the summons to the defendant or informs him about it. The law presumes that for him. It is immaterial that defendant does not receive actual notice. As well said in *Montalban:* . . . A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business associates information as to where he may be contacted in the event a question that affects him crops up. If he does not do what is expected of him, and a case comes up in court against him, he cannot in justice raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business. Not that he cannot be reached within

a reasonable time to enable him to contest a suit against him. There are now advanced facilities of communication. Long distance telephone calls and cablegrams make it easy for one he left behind to communicate with him. Aside from, at present, various forms of texting and short message services by the ubiquitous cellular phones. More importantly, the letter of the law must yield to its spirit. The absence in the final sheriff's return of a statement about the impossibility of personal service does not conclusively prove that the service is invalid. Such failure should not unduly prejudice petitioners if what was undisclosed was in fact done. Proof of prior attempts at personal service may have been submitted by the plaintiff during the hearing of any incident assailing the validity of the substituted service had Vasquez surfaced when the case was heard. In fact, he was declared in default. It was only when a judgment against him was rendered by the trial court that he questioned the validity of service of summons before the appellate court. Such failure to appear, and then later to question the court's jurisdiction over his person, should not be taken against herein petitioners.

3. ID.; ID.; ID.; SERVICE OF SUMMONS; SHERIFF'S RETURN CARRIES A PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY. — Between Vasquez's self-serving assertion that he only came to know of the case when his mother told him about the trial court's decision and the sheriff's return on the substituted service which carries a presumption of regularity, the latter is undoubtedly deserving of more faith and credit. The sheriff's certificate of service of summons is *prima facie* evidence of the facts set out in it. Only clear and convincing evidence may overcome its presumption of regularity. Given the circumstances in the present case, we agree that the presumption of regularity in the performance of duty on the part of the sheriff stands.

4. CIVIL LAW; FAMILY CODE; FILIATION; PROOF OF FILIATION, SPECIFIED. — Article 175 of the Family Code of the Philippines mandates that illegitimate filiation may be established in the same way and on the same evidence as legitimate children. Under Article 172, the filiation of legitimate children is established by any of the following: (1) through record of birth appearing in the civil register or a final order; or (2) by admission of filiation in a public document or private handwritten instrument and signed by the parent concerned;

or in default of these two, by open and continuous possession of the status of a legitimate child or by any other means allowed by the Rules of Court and special laws.

5. ID.; ID.; ID.; SUPPORT, CONSTRUED; APPLICATION IN CASE AT BAR. — Under Article 195 (4) of the Family Code, a parent is obliged to support his illegitimate child. The amount is variable. There is no final judgment thereof as it shall be in proportion to the resources or means of the giver and the necessities of the recipient. It may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. Under the premises, the award of ₱5,000 monthly support to Laurence is reasonable, and not excessive nor exorbitant.

APPEARANCES OF COUNSEL

Eustaquio S. Beltran for petitioners.
Raquel Sirios Payte for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the September 29, 2003 Decision[1] and the July 19, 2004 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 71944, which had reversed the May 28, 2001 Decision[3] of the Regional Trial Court (RTC), Branch 19, of Naga City in Civil Case No. RTC '99-4460.

The facts culled from the records are as follows.

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[1] *Rollo*, pp. 14-19. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Mercedes Gozo-Dadole and Lucas P. Bersamin concurring.

[2] *Id*. at 34.

[3] Records, pp. 37-46. Penned by Pairing Judge Marino O. Bodiao, Sr.

In 1999, petitioner Dolores P. Montefalcon filed a Complaint[4] for acknowledgment and support against respondent Ronnie S. Vasquez before the RTC of Naga City. Alleging that her son Laurence is the illegitimate child of Vasquez, she prayed that Vasquez be obliged to give support to co-petitioner Laurence Montefalcon, whose certificate of live birth he signed as father.[5] According to petitioners, Vasquez only gave a total of ₱19,000 as support for Laurence since Laurence was born in 1993. Vasquez allegedly also refused to give him regular school allowance despite repeated demands. Petitioner Dolores added that she and Vasquez are not legally married, and that Vasquez has his own family.

A sheriff tried to serve the summons and complaint on Vasquez in Aro-aldao, Nabua, Camarines Sur. Vasquez's grandfather received them as Vasquez was in Manila. Vasquez's mother returned the documents to the clerk of court, who informed the court of the non-service of summons.[6]

Petitioners then filed a motion to declare Vasquez in default. The court denied it for lack of proper service of summons.[7]

In 2000, the court issued an *alias* summons on Vasquez at "10 Int. President Garcia St., Zone 6, Signal Village, Taguig, Metro Manila" upon petitioners' motion. Albeit a Taguig deputy sheriff served it by substituted service on Vasquez's caretaker Raquel Bejer, the sheriff's return incorrectly stated "Lazaro" as Vasquez's surname.[8]

Another *alias* summons[9] was issued, also received by Bejer. The second sheriff's return states:

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[4] *Id*. at 1-3.

[5] *Id*. at 32.

[6] *Id*. at 6-7, 14.

[7] *Id*. at 15-16.

[8] *Id*. at 18-22.

[9] *Id*. at 24.

THIS IS TO CERTIFY THAT on the 19th day of July 2000 the undersigned sheriff caused the service of summons issued by the court in the above-entitled case together with the copy of the complaint and annexes attached thereon upon defendant RONNIE S. VASQUEZ, by substituted service, thru his caretaker, RAQUEL BEJER, a person of sufficient discretion, who acknowledged the receipt thereof at No. 10 Int. President Garcia St. Zone 6, Signal Village, Taguig, Metro Manila, as evidenced by her signature appearing at the lower portion of the original copy of summons.

WHEREFORE, said summons is hereby returned to the court of origin DULY SERVED for its records and information.

Taguig for Naga City, July 19, 2000

(SGD.)
ERNESTO G. RAYMUNDO, JR.,
Deputy Sheriff
MTC BR 74
Taguig, Metro Manila[10]

On petitioners' motion, the trial court declared Vasquez in default for failure to file an answer despite the substituted service of summons. Vasquez was furnished with court orders and notices of the proceedings at his last known address, but these were returned as he had allegedly moved to another place and left no new address.[11]

In 2001, the court granted petitioners' prayers, explaining that they had no ill-motive and that Dolores gave a truthful testimony. The court added that Vasquez admitted the truth of the allegations by his silence. It further explained that Laurence's certificate of live birth, being a public document, is irrefutably a *prima facie* evidence of illegitimate filiation. The trial court decreed:

WHEREFORE, by preponderant evidence, judgment is hereby rendered in favor of the plaintiffs Dolores Montefalcon and her minor child Laurence Montefalcon and against defendant Ronnie S. Vasquez who is hereby ordered to:

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[10] *Id*. at 25.

[11] *Id*. at 26-29.

1. Acknowledge plaintiff Laurence Montefalcon as his illegitimate child with Dolores Montefalcon;

2. Give support to the said minor in the amount of FIVE THOUSAND (₱5,000.00) PESOS monthly commencing on June 1, 1993, the past support for eight (8) years in the amount of FOUR HUNDRED EIGHTY THOUSAND (₱480,000.00) PESOS less the amount of NINETEEN THOUSAND (₱19,000.00) PESOS previously given, shall be paid promptly and the monthly support of FIVE THOUSAND (₱5,000.00) PESOS shall be paid not later than the end of each month beginning on July 31, 2001 and every end of the month thereafter as prayed for in the complaint; and

3. Pay the sum of TEN THOUSAND (₱10,000.00) PESOS and THREE THOUSAND (₱3,000.00) PESOS as attorney's and appearance fees, respectively, and litigation expenses of ONE THOUSAND (₱1,000.00) PESOS.

SO ORDERED.[12]

In the same year, Vasquez surfaced. He filed a notice of appeal to which petitioners opposed. Appeal was granted by the court.[13] Before the appellate court, he argued that the trial court erred in trying and deciding the case as it "never" acquired jurisdiction over his person, as well as in awarding ₱5,000-per-month support, which was allegedly "excessive and exorbitant." The appellate court noted that the service of summons on Vasquez was "defective" as there was no explanation of impossibility of personal service and an attempt to effect personal service, and decreed as follows:

WHEREFORE, based on the foregoing premises, the instant appeal is **GRANTED**. The appealed May 28, 2001 Decision of the Regional Trial Court of Naga City in Civil Case No. RTC '99-4460 is hereby **NULLIFIED** and **SET ASIDE.** Accordingly, let this case be **REMANDED** to the court *a quo* for further proceedings.

SO ORDERED.[14]

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[12] *Id.* at 45-46.

[13] *Id.* at 51.

[14] CA *rollo*, p. 68.

Petitioners argued in their motion for reconsideration[15] that any attempt at personal service of summons was needless as Vasquez already left for abroad. The appellate court, however, denied the motion. Hence, this petition.

Petitioners assign two appellate court errors:

I.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT IN THIS CASE WAS NOT VALIDLY SERVED WITH THE SUMMONS AND COMPLAINT IN CIVIL CASE NO. RTC '99-4460; AND THAT

II.

THE COURT OF APPEALS ERRED IN ANNUL[L]ING AND SETTING ASIDE THE TRIAL COURT'S DECISION (ANNEX "B") FOR LACK OF JURISDICTION.[16]

Petitioners justify the validity of substituted service as Vasquez had left as overseas seafarer when the sheriff served the summons on July 19, 2000 in Taguig. Noting that Vasquez's seaman's book indicated that he left the country on January 24, 2000 and came back on October 12, 2000, they criticize the appellate court for anchoring its rulings on mere technicality.

Vasquez counters that because he was abroad, service of summons should have been personal or by publication as substituted service is proper only if a defendant is in the country. Vasquez also added that the sheriff's return did not state that he exerted efforts to personally serve the summons.[17]

In their reply, petitioners insist that a substituted service is the normal method if one is temporarily away from the country as personal service abroad or by publication are not ordinary means of service.[18]

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[15] *Id*. at 69-73.

[16] *Rollo*, pp. 8-9.

[17] CA *rollo*, pp. 56-59.

[18] *Rollo*, pp. 74-76.

Simply put, the issues now for resolution are: (1) whether there is a valid substituted service of summons on Vasquez to clothe the trial court with jurisdiction over his person; and (2) whether he is obliged to give support to co-petitioner Laurence.

To acquire jurisdiction over the person of a defendant, service of summons must be personal,[19] or if this is not feasible within a reasonable time, then by substituted service.[20] It is of judicial notice that overseas Filipino seafarers are contractual employees. They go back to the country once their contracts expire, and wait for the signing of another contract with the same or new manning agency and principal if they wish. It is therefore common knowledge that a Filipino seaman often has a temporary residence in the urban areas like Metro Manila, where majority of the manning agencies hold offices, aside from his home address in the province where he originates. In this case, respondent Vasquez hails from Camarines Sur but he has lived in Taguig City when the complaint was filed. Notice may then be taken that he has established a residence in either place. Residence is a place where the person named in the summons is living at the time when the service was made, even though he was temporarily abroad at the time. As an overseas seafarer, Vasquez was a Filipino resident temporarily out of the country. Hence, service of summons on him is governed by Rule 14, Section 16 of the Rules of Court:

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[19] RULES OF COURT, Rule 14, Sec. 6.

SEC. 6. *Service in person on defendant*. — Whenever practicable, the summons shall be served handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

[20] *Id*. at Sec. 7.

SEC.7. *Substituted service*.— If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

SEC. 16. *Residents temporarily out of the Philippines*. — When any action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service **may**, by leave of court, be **also** effected out of the Philippines, as under the **preceding section**. (Emphasis supplied.)

The preceding section referred to states:

SEC. 15. *Extraterritorial service*.— When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

Because Section 16 of Rule 14 uses the words "may" and "also," it is not mandatory. Other methods of service of summons allowed under the Rules may also be availed of by the serving officer on a defendant-seaman.

Ideally, Vasquez must be personally served summons. But was personal service of summons practicable? Conversely, was substituted service of summons justified?

Obviously, personal service of summons was not practicable since the defendant was temporarily out of the country. To proceed with personal service of summons on a defendant-seaman who went on overseas contract work — would not only be impractical and futile — it would also be absurd.

The impossibility of prompt personal service was shown by the fact that the Naga City-based sheriff purposely went to a

barrio in Camarines Sur to serve the summons personally on Vasquez. When service of summons failed, said sheriff ascertained the whereabouts of Vasquez. Upon being informed that Vasquez was in Manila, the Naga court commissioned a Taguig City-based sheriff to serve the summons. Both the Naga and Taguig sheriffs inquired about Vasquez's whereabouts, signifying that they did not immediately resort to substituted service. There was no undue haste in effecting substituted service. The fact that the Naga court allowed a reasonable time to locate Vasquez to as far as Taguig shows that there was indeed no precipitate haste in serving the summons.

In this case, we agree that the substituted service in Taguig was valid and justified because previous attempts were made by the sheriffs to serve the summons, but to no avail. Diligent efforts were evidently exerted in the conduct of the concerned sheriffs in the performance of their official duty. Also, the person who received the *alias* summons was of suitable age and discretion, then residing at Vasquez's dwelling. There is no quarrel that it was really Vasquez's residence, as evidenced by his employment contract, executed under the supervision and authority of the Philippine Overseas Employment Administration (POEA). Vasquez cannot deny that in his contract of employment and seafarer's information sheet, both bearing POEA's letterhead, his address in Metro Manila was what was correctly mentioned in the *alias* summons that Bejer received. She must have informed Vasquez one way or another of the suit upon his return in October 2000 after finishing his nine-month contract with Fathom Ship Management.

Thus, it is reasonable to conclude that he had enough time to have the default order set aside. The default judgment was rendered on May 28, 2001. He also had enough time to file a motion for reconsideration. But he did nothing. The interregnum between the first but failed attempt at personal service by the RTC of Naga City in Vasquez's place in Camarines Sur to the final substituted service in Metro Manila by a Taguig RTC sheriff was almost eight months, a reasonable time long enough to conclude that personal service had failed and was futile.

Montalban v. Maximo[21] offers a rational and logical solution of the issue. We held in said case that the normal method of service of summons on one temporarily absent is by substituted service because personal service abroad and service by publication are not ordinary means of summoning defendants. Summons in a suit *in personam* against a temporarily absent resident may be by substituted service as domiciliaries of a State are always amenable to suits *in personam* therein.[22]

"Residence" is the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. A plaintiff is merely required to know the defendant's residence, office or regular business place. He need not know where a resident defendant actually is at the very moment of filing suit. He is not even duty-bound to ensure that the person upon whom service was actually made delivers the summons to the defendant or informs him about it. The law presumes that for him. It is immaterial that defendant does not receive actual notice.

As well said in *Montalban:*

. . . A man temporarily absent from this country leaves a definite place of residence, a dwelling where he lives, a local base, so to

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[21] No. L-22997, March 15, 1968, 22 SCRA 1070.

[22] *Id*. at 1075-1078. *Montalban* further explained that the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state. The state which accords him privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties…. The responsibilities of that citizenship arise out of the relationship to the state which domicile creates. That relationship is not dissolved by mere absence from the state. The attendant duties, like the rights and privileges incident to domicile, are not dependent on continuous presence in the state. *One such incident of domicile is amenability to suit within the state even during sojourns without the state, where the state has provided and employed a reasonable method for apprising such an absent party of the proceedings against him*. x x x The constitutional requirement of due process exacts that the service be such as may be reasonably expected to give the notice desired. Once the service provided by the rules reasonably accomplishes that end, the requirement of justice is answered; the traditional notions of fair play are satisfied; due process is served.

speak, to which any inquiry about him may be directed and where he is bound to return. Where one temporarily absents himself, he leaves his affairs in the hands of one who may be reasonably expected to act in his place and stead; to do all that is necessary to protect his interests; and to communicate with him from time to time any incident of importance that may affect him or his business or his affairs. It is usual for such a man to leave at his home or with his business associates information as to where he may be contacted in the event a question that affects him crops up. If he does not do what is expected of him, and a case comes up in court against him, he cannot in justice raise his voice and say that he is not subject to the processes of our courts. He cannot stop a suit from being filed against him upon a claim that he cannot be summoned at his dwelling house or residence or his office or regular place of business.

Not that he cannot be reached within a reasonable time to enable him to contest a suit against him. There are now advanced facilities of communication. Long distance telephone calls and cablegrams make it easy for one he left behind to communicate with him.[23]

Aside from, at present, various forms of texting and short message services by the ubiquitous cellular phones.

More importantly, the letter of the law must yield to its spirit. The absence in the final sheriff's return of a statement about the impossibility of personal service does not conclusively prove that the service is invalid. Such failure should not unduly prejudice petitioners if what was undisclosed was in fact done. Proof of prior attempts at personal service may have been submitted by the plaintiff during the hearing of any incident assailing the validity of the substituted service[24] had Vasquez surfaced when the case was heard. In fact, he was declared in default. It was only when a judgment against him was rendered by the trial court that he questioned the validity of service of summons before the appellate court. Such failure to appear, and then later to question the court's jurisdiction over his person, should not be taken against herein petitioners.

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[23] *Id*. at 1079-1081.

[24] *Mapa v. Court of Appeals*, G.R. Nos. 79374 & 82986, October 2, 1992, 214 SCRA 417, 428.

Between Vasquez's self-serving assertion that he only came to know of the case when his mother told him about the trial court's decision and the sheriff's return on the substituted service which carries a presumption of regularity, the latter is undoubtedly deserving of more faith and credit. The sheriff's certificate of service of summons is *prima facie* evidence of the facts set out in it. Only clear and convincing evidence may overcome its presumption of regularity. Given the circumstances in the present case, we agree that the presumption of regularity in the performance of duty on the part of the sheriff stands.[25]

On the second issue, the trial court's order must also be sustained. Co-petitioner Laurence is legally entitled to support from the respondent, and the amount of ₱5,000 monthly set by the trial court is neither excessive nor unreasonable.

Article 175[26] of the Family Code of the Philippines mandates that illegitimate filiation may be established in the same way and on the same evidence as legitimate children. Under Article 172,[27] the filiation of legitimate children is established by any of the following: (1) through record of birth appearing in the civil register or a final order; or (2) by admission of

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[25] *Madrigal v. Court of Appeals*, G.R. No. 129955, November 26, 1999, 319 SCRA 331, 337.

RULES OF COURT, Rule 131, Sec. 3 (m)

SEC. 3. *Disputable presumptions*.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(m) That official duty has been regularly performed;

x x x x x x x x x

[26] Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

[27] Article 172. The filiation of legitimate children is established by any of the following:

filiation in a public document or private handwritten instrument and signed by the parent concerned; or in default of these two, by open and continuous possession of the status of a legitimate child or by any other means allowed by the Rules of Court and special laws.

Laurence's record of birth is an authentic, relevant and admissible piece of evidence to prove paternity and filiation. Vasquez did not deny that Laurence is his child with Dolores. He signed as father in Laurence's certificate of live birth, a public document. He supplied the data entered in it. Thus, it is a competent evidence of filiation as he had a hand in its preparation. In fact, if the child had been recognized by any of the modes in the first paragraph of Article 172, there is no further need to file any action for acknowledgment because any of said modes is by itself a consummated act.[28]

As filiation is beyond question, support follows as matter of obligation. Petitioners were able to prove that Laurence needs Vasquez's support and that Vasquez is capable of giving such support. Dolores testified that she spent around ₱200,000 for Laurence; she spends ₱8,000 a month for his schooling and their subsistence. She told the lower court Vasquez was earning US$535 monthly based on his January 10, 2000 contract of employment[29] with Fathom Ship Management and his seafarer

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(1) The record of birth appearing in the civil register or a final judgment; or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate filiation shall be proved by:

(1) The open and continuous possession of the status of a legitimate child; or

(2) Any other means allowed by the Rules of Court and special laws.

[28] E. PINEDA, *THE FAMILY CODE OF THE PHILIPPINES ANNOTATED* 324 (1999 ed.), citing *Divinagracia v. Bellosillo*, No. L-47407, August 12, 1986,143 SCRA 356 and *Gono-Javier v. Court of Appeals*, G.R. No. 111994, December 29, 1994, 239 SCRA 593.

[29] Records, p. 33.

information sheet.[30] That income, if converted at the prevailing rate, would be more than sufficient to cover the monthly support for Laurence.

Under Article 195 (4)[31] of the Family Code, a parent is obliged to support his illegitimate child. The amount is variable. There is no final judgment thereof as it shall be in proportion to the resources or means of the giver and the necessities of the recipient.[32] It may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.[33] Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.[34] Under the premises, the award of ₱5,000 monthly support to Laurence is reasonable, and not excessive nor exorbitant.

In sum, we rule that the Court of Appeals erred in invalidating the substituted service of summons and remanding the case. As there was valid substituted service of summons under the circumstances of this case, the lower court acquired jurisdiction over his person and correctly ordered him to pay past and present monthly support to his illegitimate child as well as attorney's fees and litigation expenses to petitioners.

WHEREFORE, the petition is *GRANTED*. The Decision dated September 29, 2003 and Resolution dated July 19, 2004

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[30] *Id*. at 34.

[31] Art. 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

x x x x x x x x x

4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and

x x x x x x x x x

[32] FAMILY CODE OF THE PHILIPPINES, Art. 201.

[33] *Id*. at Art. 202.

[34] *Id*. at Art. 194.

of the Court of Appeals in CA-G.R. CV No. 71944 are *REVERSED* and *SET ASIDE*. The Decision dated May 28, 2001 of the Regional Trial Court, Branch 19, Naga City in Civil Case No. RTC '99-4460 is hereby *REINSTATED*.

Costs against respondent.

SO ORDERED.

Tinga, Reyes,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 165918. June 17, 2008]

QUINTIN LEE, JR., *petitioner, vs.* **HON. COURT OF APPEALS, PEOPLE OF THE PHILIPPINES and AMADO VILLAFANIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; NATURE OF ACTION IS DETERMINED NOT BY CAPTION OF PLEADING BUT BY THE ALLEGATIONS THEREIN. — Our perusal of the petition filed before the Court of Appeals clearly shows that it is a petition for review under Rule 42, and not a special civil action for *certiorari* under Rule 65. We note that in the Court of Appeals' petition, under the heading

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[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

"Nature of the Petition," petitioner stated that it was a "petition for review on *certiorari* to set aside, invalidate and reverse the Decision dated December 14, 2001 of public respondent Judge Victor T. Llamas, Jr." Also, the reversal sought was premised on the ground that the decision was issued in gross error. The statement under the heading "Nature of the Petition" that the trial courts' decisions were issued with grave abuse of discretion amounting to lack of jurisdiction, and even the caption impleading the lower courts, would not automatically bring the petition within the coverage of Rule 65. It is hornbook doctrine that it is not the caption of the pleading but the allegations therein that determine the nature of the action.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW UNDER RULE 42 AND SPECIAL CIVIL ACTION FOR *CERTIORARI*, DISTINGUISHED. — A petition for review under Rule 42 and a special civil action for *certiorari* under Rule 65 are distinct remedies. A petition for review under Rule 42 seeks to review a judgment rendered by the RTC in the exercise of its appellate jurisdiction on questions of law or of fact or both. A special civil action for *certiorari* under Rule 65, on the other hand, is a limited form of review and a remedy of last resort. It will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.

3. ID.; ID.; ID.; DISMISSAL OF APPEAL FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE RULES, PROPER. — The Court of Appeals dismissed petitioner's appeal not only because he purportedly employed the wrong mode of appeal. It likewise found that petitioner failed to comply with the requirements of Section 2(d), Rule 42 of the Rules. In his petition before the appellate court, petitioner attached only plain machine copies of the certified photocopies of the assailed decisions of the lower courts. Neither did he submit the pleadings and other material portions of the record to support his allegations. Hence, the Court of Appeals properly exercised its jurisdiction in dismissing petitioner's appeal. The Court notes that the petitioner erred in invoking the wrong remedy before this Court. He filed this special civil action for *certiorari* under Rule 65, instead of a petition for review on *certiorari* under Rule 45.

APPEARANCES OF COUNSEL

Albino V. Gonzales for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

QUISUMBING, *J.*:

On appeal by *certiorari* is the September 18, 2003 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 74958, which dismissed petitioner's petition for review on the ground that petitioner pursued the wrong mode of appeal. Equally assailed is the appellate court's Resolution[2] of October 7, 2004 denying petitioner's motion for reconsideration.

The facts as gleaned from the records are as follows:

Petitioner Quintin Lee, Jr., was charged with Reckless Imprudence Resulting in Homicide and Damage to Property before the Municipal Trial Court in Cities (MTCC), Branch 2, of Dagupan City in Criminal Case No. 22289. The said offense arose from an accident where the car driven by the petitioner bumped one Amado Villafania causing the latter's death.

The Information dated June 24, 1994 reads:

The undersigned 4th Assistant City Prosecutor accuses QUINTIN LEE, JR., of Q & L Enterprises, A.B. Fernandez Avenue, Dagupan City, of the crime of RECKLESS IMPRUDENCE RESULTING IN HOMICIDE AND DAMAGE TO PROPERTY, committed as follows:

> That on or about the 11th day of March, 1994, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, QUINTIN LEE, JR., being then the driver and person in charge of an owner-

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[1] *Rollo*, p. 51. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Perlita J. Tria-Tirona and Jose C. Mendoza concurring.

[2] *Id*. at 57-58. Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Eubulo G. Verzola and Perlita J. Tria-Tirona concurring.

type jeep bearing Plate No. ACW-293, did then and there, wil[l]fully, unlawfully and criminally, drive, manage and operate the same along Caranglaan Road, this City, at a fast clip and in a negligent, careless and imprudent manner, without due regard to traffic laws, regulations and City ordinances, and to the condition of the road and of the atmosphere and weather, and without taking any reasonable precaution to prevent accident to person and damage to property, causing the said owner-type jeep thru such negligence, carelessness and imprudence to bump one AMADO VILLAFANIA, thereby causing his death shortly thereafter due to "Cardio respiratory arrest, Massive intracranial hemorrhage, Traumatic, Vehicular accident" as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this City, and as a consequence thereof, the said owner-type jeep being driven by QUINTIN LEE, JR. swerved to the left bumping a Nissan Bluebird car bearing Plate No. CVJ-162 being driven by one Meneleo Bañez, which was at that time stationary at the road behind a bus, and causing the said Nissan Bluebird car to sustain damages in the amount of ₱200,792.50 as per Estimate of Repairs issued by Motorcenter Auto Repair Shop, Co., Calasiao, Pangasinan, to the damage and prejudice of the legal heirs of said deceased, AMADO VILLAFANIA, in the amount of not less than ₱50,000.00, and to the owner of the Nissan Bluebird car, SERGIO LAUS, in the aforesaid amount of ₱200,792.50, and other consequential damages.

Contrary to Article 365 in relation to Article 249 of the Revised Penal Code.[3]

After trial, the MTCC rendered judgment convicting the petitioner of the offense charged:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused QUINTIN LEE[,] JR. guilty beyond reasonable doubt of the crime of Reckless Imprudence Resulting In Homicide defined and penalized under Article 365 in relation to Article 249 of the Revised Penal Code, and is hereby sentenced to suffer an indeterminate penalty of four (4) months and one (1) day to two (2) years, seven (7) months and ten (10) days imprisonment and to pay death indemnity to the heirs of the victim in the sum of ₱50,000.00

[3] Records, pp. 1-2.

and moral damages in the sum of ₱50,000.00 and to pay the cost of suit.

SO ORDERED.[4]

On appeal, the Regional Trial Court (RTC), Branch 40, of Dagupan City affirmed the decision of the MTCC.[5] The motion for reconsideration was also denied by the succeeding Presiding Judge, Crispin C. Laron, of the same RTC.[6]

Petitioner appealed the RTC decision on a petition for review before the Court of Appeals. The Court of Appeals thereupon issued the Resolution[7] dated January 30, 2003, dismissing the petition for violation of Section 2(d),[8] Rule 42 of the 1997 Rules of Civil Procedure, citing the failure of the petitioner to furnish the Office of the Solicitor General (OSG) with the requisite copies of the petition; to submit certified photocopies of the assailed decisions of the lower courts; and to attach the pleadings and other material portions of the record to support his allegations.

On motion for reconsideration, the appellate court reinstated the petition, stating thus:

We believe that justice would be best served by resolving this case on the merits instead of strictly applying the Rules of Procedure. In his Petition and Motion for Reconsideration the Petitioner raised

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[4] *Rollo,* p. 28.

[5] *Id*. at 29-33.

[6] CA *rollo,* pp. 31-32.

[7] *Rollo*, pp. 43-44. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Cancio C. Garcia and Eloy R. Bello, Jr. concurring.

[8] **SEC. 2.** *Form and contents.*—The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall…(d) be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.

x x x x x x x x x

several cogent points which would justify Our examination of the December 14, 2001 Decision of the Regional Trial Court of Dagupan City, Branch 40, to wit:

x x x x x x x x x

WHEREFORE, the motion for reconsideration is hereby GRANTED and Our January 30, 2003 Resolution is hereby RECONSIDERED and SET ASIDE and the petition REINSTATED.

SO ORDERED.[9]

On September 18, 2003, however, the Court of Appeals, without going into the merits of the case, dismissed CA-G.R. SP No. 74958 after finding that petitioner pursued the wrong mode of appeal.[10] It said that the petitioner should have filed a Petition for Review under Rule 42[11] of the 1997 Rules of Civil Procedure instead of a petition for *certiorari* under Rule 65[12] as the decision in question was rendered by the RTC in the exercise of its appellate jurisdiction.

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[9] *Rollo*, pp. 49-50.

[10] *Id.* at 51.

[11] **SECTION 1**. *How appeal taken; time for filing.*—A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment….

[12] **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.

x x x x x x x x x

Petitioner timely moved for reconsideration, but the motion was likewise denied.

Hence, this petition anchored on the sole ground that:

THE HONORABLE COURT OF APPEALS, WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION HAD DISMISSED CA[-]G.R. SP NO. 74958 IN A WAY NOT IN ACCORDANCE WITH LAW, THE RULES AND APPLICABLE JURISPRUDENCE OF THE SUPREME COURT.[13]

The only issue raised before us is whether the appellate court committed grave abuse of discretion when it dismissed CA-G.R. SP No. 74958.

Petitioner claims that the Court of Appeals gravely abused its discretion in dismissing the appeal since it had already recognized and declared that the petition was filed under Rule 42 when it quoted the said Rule in its January 30, 2003 Resolution dismissing the petition, to wit:

> Likewise, the record reveals that the copies of the assailed Decisions of the lower courts submitted before this Court were only plain machine copies of the certified photocopies and that petitioner failed to attach the pleadings and other material portions of the record to support his allegations in the petition in violation of Section 2(d) of Rule 42 of the 1997 Rules [of] Civil Procedure ….[14]

The appellate court, according to petitioner, is also estopped from declaring otherwise since it also recognized that the appeal was made under Rule 42 in resolving the petitioner's motion for reconsideration as follows:

> Before Us is the petitioner's Motion for Reconsideration…of Our Resolution…dated January 30, 2003 which dismissed the petitioner's instant Petition for Review for violation of Section 2(d) of Rule 42 of the Revised Rules on Civil Procedure.

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[13] *Rollo,* p. 14.

[14] *Id*. at 43-44.

x x x x x x x x x[15]

Lastly, petitioner contends that he had complied with the requirements as to the form and content of a petition for review. Besides, he argues, the petition sought to set aside the RTC decision on the ground that the RTC committed reversible errors when it affirmed the decision of the MTCC.

The OSG, for its part, counters that there was no grave abuse of discretion on the part of the appellate court since the provisions of Rule 42 is unambiguous and leaves no room for a contrary interpretation.[16] Moreover, the OSG points out that the allegations of grave abuse of discretion under the heading "Nature of the Petition" indicate that the petition is a petition for *certiorari*, contemplated under Rule 65, the sole office of which is the correction of errors of jurisdiction.[17] The OSG hence concludes, the petition is dismissible because it should be a petition for review under Rule 42.

Our perusal of the petition filed before the Court of Appeals clearly shows that it is a petition for review under Rule 42, and not a special civil action for *certiorari* under Rule 65. We note that in the Court of Appeals' petition, under the heading "Nature of the Petition," petitioner stated that it was a "petition for review on *certiorari* to set aside, invalidate and reverse the Decision dated December 14, 2001 of public respondent Judge Victor T. Llamas, Jr."[18] Also, the reversal sought was premised on the ground that the decision was issued in gross error. The statement under the heading "Nature of the Petition" that the trial courts' decisions were issued with grave abuse of discretion amounting to lack of jurisdiction, and even the caption impleading the lower courts, would not automatically bring the petition within the coverage of Rule 65. It is hornbook doctrine that it

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[15] *Id*. at 49.

[16] *Id*. at 82.

[17] *Id*. at 83-84.

[18] CA *rollo*, p. 2.

is not the caption of the pleading but the allegations therein that determine the nature of the action.[19]

Again, in the petition in the Court of Appeals, under the heading "Grounds for Allowance of the Petition," the cited grounds are:

I.

PUBLIC RESPONDENTS COMMITTED GROSS ERROR IN HOLDING THAT ACCUSED WAS THE DRIVER WHO HIT AND BUMPED THE DECEASED AMADO [VILLAFANIA].

II.

PUBLIC RESPONDENTS COMMITTED GROSS ERROR IN CONVICTING THE ACCUSED OF THE OFFENSE CHARGED DESPITE OVERWHELMING EVIDENCE EXCULPATING THE ACCUSED.[20]

These grounds do not address questions of jurisdiction and grave abuse of discretion. The first is an issue on a factual finding and the second issue, one on appreciation of facts. These are pleas for judicial reevaluation of the evidence presented before the MTCC and the RTC.

A petition for review under Rule 42 and a special civil action for *certiorari* under Rule 65 are distinct remedies. A petition for review under Rule 42 seeks to review a judgment rendered by the RTC in the exercise of its appellate jurisdiction on questions of law or of fact or both.[21] A special civil action for *certiorari* under Rule 65, on the other hand, is a limited form of review and a remedy of last resort. It will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.[22]

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[19] *Zafra v. Court of Appeals*, G.R. No. 139013, September 17, 2002, 389 SCRA 200, 206-207.

[20] *Supra* note 18, at 4.

[21] RULES OF COURT, Rule 42, Sec. 2.

[22] *Empire Insurance Company v. NLRC*, G.R. No. 121879, August 14, 1998, 294 SCRA 263, 269.

Nevertheless, we shall dismiss the instant petition. The Court of Appeals dismissed petitioner's appeal not only because he purportedly employed the wrong mode of appeal. It likewise found that petitioner failed to comply with the requirements of Section 2(d), Rule 42 of the Rules. In his petition before the appellate court, petitioner attached only plain machine copies of the certified photocopies of the assailed decisions of the lower courts. Neither did he submit the pleadings and other material portions of the record to support his allegations. Hence, the Court of Appeals properly exercised its jurisdiction in dismissing petitioner's appeal.

The Court notes that the petitioner erred in invoking the wrong remedy before this Court. He filed this special civil action for *certiorari* under Rule 65, instead of a petition for review on *certiorari* under Rule 45.

WHEREFORE, this petition is *DISMISSED*. The Resolutions of the Court of Appeals dated September 18, 2003 and October 7, 2004 in CA-G.R. SP No. 74958 are *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Tinga, Reyes,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

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[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

SECOND DIVISION

[G.R. No. 167041. June 17, 2008]

PROVIDENT INTERNATIONAL RESOURCES CORPORATION, represented by Edward T. Marcelo, Constancio D. Francisco, Anna Melinda Marcelo-Revilla, Lydia J. Chuanico, Daniel T. Pascual, Linda J. Marcelo, John Marcelo, Celia C. Caburnay and Celedonio P. Escaño, Jr., and CELEDONIO ESCAÑO, JR., *petitioners, vs.* **JOAQUIN T. VENUS, JOSE MA. CARLOS L. ZUMEL, ALFREDO D. ROA III, LAZARO L. MADARA and SANTIAGO ALVAREZ, JR.,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); POWERS AND FUNCTIONS PROVIDED FOR UNDER THE SECURITIES REGULATION CODE (REPUBLIC ACT NO. 8799). — The Securities Regulation Code (Republic Act No. 8799) provides: Sec. 5. *Powers and Functions of the Commission*.— 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, ... Pursuant thereto the Commission shall have, among others, the following powers and functions: (a) *Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;* (b) Formulate policies and recommendations in issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto; (c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications; (d) *Regulate, investigate or supervise the activities of persons to ensure compliance;* (e) Supervise, monitor, suspend or take over the activities of exchanges, clearing agencies and other SROs; (f) Impose sanctions for the violation of laws and the rules, regulations and orders issued

pursuant thereto; (g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and order; (h) Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and functions under this Code; (i) Issue cease and desist orders to prevent fraud or injury to the investing public; (j) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court; (k) Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision; (l) Issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Commission and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws; (m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and (n) *Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.* From the above, it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

2. ID.; ID.; DUTY TO ENSURE THAT ONLY ONE SET OF STOCK AND TRANSFER BOOK (STB) IS MAINTAINED FOR EACH CORPORATION, SUSTAINED. — As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents. As the regulatory body, it is the SEC's duty to ensure that there is only one set of STB for each corporation. The determination of whether or not the 1979-registered STB is valid and of whether to cancel and revoke the August 6, 2002 certification and the registration of the 2002 STB on the ground that there already is an existing STB is impliedly and necessarily within the regulatory jurisdiction of the SEC. Under the circumstances of the instant case, we find no error in the exercise of jurisdiction by the SEC. All that the SEC was tasked to do, and which it actually did, was to evaluate the 1979 STB presented to it.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioners.
Rivera Santos & Maranan for respondents.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated December 13, 2004 and Resolution[2] dated February 3, 2005 of the Court

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[1] *Rollo*, pp. 43-50. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Salvador J. Valdez, Jr. and Vicente Q. Roxas concurring.

[2] *Id*. at 52-53.

of Appeals in CA-G.R. SP No. 77672, which set aside the Order[3] dated May 27, 2003, of the Securities and Exchange Commission (SEC) *En Banc* in CRMD-AA-Case No. 04-03-22.

The pertinent facts are as follows:

Petitioner Provident International Resources Corporation (PIRC) is a corporation duly organized under Philippine law. It was registered with the SEC on September 20, 1979. Edward T. Marcelo, Constancio D. Francisco, Lydia J. Chuanico, Daniel T. Pascual, and Jose A. Lazaro, collectively known as the Marcelo group, were its incorporators, original stockholders, and directors.[4]

Another group, known as the Asistio group, composed of Luis A. Asistio, Lazaro L. Madara, Alfredo D. Roa III, Joaquin T. Venus, and Jose Ma. Carlos L. Zumel, claimed that the Marcelo group acquired shares in PIRC as mere trustees for the Asistio group. The Marcelo group allegedly executed a waiver of pre-emptive right, blank deeds of assignment, and blank deeds of transfer; endorsed in blank their respective stock certificates over all of the outstanding capital stock registered in their names; and completed the blank deeds in 2002 to effect transfers to the Asistio group.

On August 6, 2002, the Company Registration and Monitoring Department (CRMD) of the SEC issued a certification[5] stating that verification made on the available records of PIRC showed failure to register its stock and transfer book (STB). It also appears that on April 21, 1998, the Supervision and Monitoring Department of the SEC had issued a show cause letter[6] to PIRC for its supposed failure to register its STB.

On August 7, 2002, the Asistio group registered PIRC's STB. Upon learning of this, PIRC's assistant corporate secretary, Celedonio Escaño, Jr., requested the SEC for a certification of

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[3] *Id*. at 412-415.

[4] *Id*. at 54-60.

[5] *Id*. at 588.

[6] *Id*. at 348.

the registration in 1979 of PIRC's STB. Escaño presented the 1979-registered STB bearing the SEC stamp and the signature of the officer in charge of book registration.

Meanwhile, on October 17, 2002, the Asistio group filed in the Regional Trial Court (RTC) of Muntinlupa City, a complaint[7] docketed as Civil Case No. 02-238 against the Marcelo group. The Asistio group prayed that the Marcelo group be enjoined from acting as directors of PIRC, from physically holding office at PIRC's office, and from taking custody of PIRC's corporate records.

Then, on October 30, 2002, the CRMD of the SEC issued a letter[8] recalling the certification it had issued on August 6, 2002 and canceling the 2002-registered STB. However, one Kennedy B. Sarmiento requested the SEC not to cancel the 2002-registered STB. The SEC thus scheduled a conference to determine which of the two STBs is valid. The parties were ordered to file their respective position papers. On February 12, 2003, the hearing officer ruled:

> WHEREFORE, premises considered and finding the 1979 stock and transfer book authentic and duly executed, the Commission hereby recall the certification issued on 6 August 2002 and cancel the stock and transfer book registered on October 2002. Accordingly, the stock and transfer book registered on 25 September 1979 shall remain valid.
>
> SO ORDERED.[9]

The Asistio group appealed to the SEC Board of Commissioners. They claimed that the issue of which of the two STBs is valid is intra-corporate in nature; hence, the RTC, not the SEC, has jurisdiction.

The SEC, in its assailed order, denied the appeal. The SEC ratiocinated that the determination of which of the two STBs is

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[7] Records, folder 17, pp. 143-149.

[8] *Rollo*, pp. 276-277.

[9] *Id*. at 359.

valid calls for regulatory, not judicial power and is therefore within its exclusive jurisdiction.

The Asistio group elevated the case to the Court of Appeals, which ruled in their favor. The Court of Appeals held that the issue of which of the two STBs is valid is intra-corporate and thus subject to the jurisdiction of the RTC. The appellate court reversed the SEC ruling, to wit:

> WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Order of the Commission *en banc* dated May 27, 2003, is hereby **ANNULLED** and **SET ASIDE**.
>
> SO ORDERED.[10]

The motion for reconsideration of the aforequoted decision was denied for lack of merit. Aggrieved, the Marcelo group filed the instant petition for review on *certiorari* raising the sole issue

> WHETHER OR NOT THE SEC HAS THE JURISDICTION TO RECALL AND CANCEL A STOCK AND TRANSFER BOOK WHICH IT ISSUED IN 2002 BECAUSE OF ITS MISTAKEN ASSUMPTION THAT NO STOCK AND TRANSFER BOOK HAD BEEN PREVIOUSLY ISSUED IN 1979.[11]

Petitioners, consisting of the Marcelo group, contend that the Court of Appeals erred in ruling that the SEC has no jurisdiction over the case. Petitioners insist the issue in this case is not an intra-corporate dispute, but one that calls for the exercise of the SEC's regulatory power over corporations. Petitioners maintain that the recall and cancellation of the 2002-registered STB does not conflict with the proceedings in the civil case so as to violate the *sub judice* rule. Petitioners point out that a judgment has, in fact, been promulgated in the said civil case.

Respondents, composed of the Asistio group, counter that in resolving the question of which of the two STBs is valid, the issues of (1) falsification by corporate officers of corporate

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[10] *Id*. at 50.

[11] *Id*. at 660.

records and (2) the acquisition of shares by the Asistio group, must first be settled. Respondents thus claim that the real issue is intra-corporate and that whether the 2002-registered STB should be recalled is a mere consequence of the real controversies that should be heard by a regular court.

To resolve the issue of jurisdiction, it would be good to look at the powers and functions of the SEC.

The Securities Regulation Code (Republic Act No. 8799) provides:

> Sec. 5. *Powers and Functions of the Commission*.— 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, ... Pursuant thereto the Commission shall have, among others, the following powers and functions:
>
> (a) *Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and /or a license or permit issued by the Government;*
>
> (b) Formulate policies and recommendations in issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto;
>
> (c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;
>
> (d) *Regulate, investigate or supervise the activities of persons to ensure compliance;*
>
> (e) Supervise, monitor, suspend or take over the activities of exchanges, clearing agencies and other SROs;
>
> (f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;
>
> (g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and order;
>
> (h) Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and functions under this Code;

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

(j) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;

(k) Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;

(l) Issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Commission and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws;

(m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and

(n) *Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.* (Italics supplied.)

From the above, it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns.[12] This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state.[13] Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and

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[12] *Philippine Stock Exchange, Inc. v. The Honorable Court of Appeals*, G.R. No. 125469, October 27, 1997, 281 SCRA 232, 246.

[13] *Id*.

regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.[14]

Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise — from which a corporation owes its legal existence — the SEC must likewise have the lesser power of merely recalling and canceling a STB that was erroneously registered.

Going to the particular facts of the instant case, we find that the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC as early as September 1979. As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents.

As the regulatory body, it is the SEC's duty to ensure that there is only one set of STB for each corporation. The determination of whether or not the 1979-registered STB is valid and of whether to cancel and revoke the August 6, 2002 certification and the registration of the 2002 STB on the ground that there already is an existing STB is impliedly and necessarily within the regulatory jurisdiction of the SEC.

Under the circumstances of the instant case, we find no error in the exercise of jurisdiction by the SEC. All that the SEC was

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[14] *Securities and Exchange Commission v. Court of Appeals*, G.R. Nos. 106425 & 106431-32, July 21, 1995, 246 SCRA 738, 740.

tasked to do, and which it actually did, was to evaluate the 1979 STB presented to it. In ruling that the 1979 STB was validly registered the SEC Hearing Officer explained and ruled thus:

> After careful examination of the 1979 stock and transfer book, it has been observed that subject book was properly presented and stamped received by the then SEC employee in charge of registration. It is worthy to note that the signature of Ms. Nelly C. Gabriel appears to be genuine and validly executed on 25 September 1979 after comparing with Ms. Gabriel's signature on the available records on file with the Commission, existing stock and transfer books and other public documents.
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> This fact was further certified and attested by Ms. Angeli G. Villanueva, daughter of Ms. Nelly C. Gabriel, who is currently working with the Commission that the signature appearing in the 1979 stock and transfer book is unquestionably the signature of Ms. Gabriel.
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> x x x x x x x x x
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> WHEREFORE, premises considered and finding the 1979 stock and transfer book authentic and duly executed, the Commission hereby recall the certification issued on 6 August 2002 and cancel the stock and transfer book registered on October 2002. Accordingly, the stock and transfer book registered on 25 September 1979 shall remain valid.
>
> SO ORDERED.[15]

We find the above ruling proper and within the SEC's jurisdiction to make.

Noteworthy, during the pendency of the instant petition, a decision[16] in the civil case was rendered by the RTC. On April 23, 2005, the RTC of Muntinlupa City, Branch 276, dismissed the claim of the Asistio group and declared the Marcelo group the duly constituted officers of PIRC, thus upholding the validity of the 1979-registered STB.

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[15] *Rollo*, pp. 358-359.

[16] Records, folder 17, pp. 44-80.

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated December 13, 2004 and Resolution dated February 3, 2005 of the Court of Appeals in CA-G.R. SP No. 77672, are *REVERSED* and *SET ASIDE*; the Order dated May 27, 2003, of the Securities and Exchange Commission (SEC) *En Banc* in CRMD-AA-Case No. 04-03-22 is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Tinga, Reyes,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167310. June 17, 2008]

THE PENINSULA MANILA, ROLF PFISTERER and BENILDA QUEVEDO-SANTOS, *petitioners, vs.* **ELAINE M. ALIPIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES GENERALLY ACCORDED RESPECT AND FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTION. — It is doctrinal that the factual findings of quasi-judicial agencies like the NLRC are generally accorded respect and finality if such are supported

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[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

by substantial evidence. In some instances, however, the Court may be compelled to deviate from this general rule if the Labor Arbiter and the NLRC misappreciated the facts, thereby resulting in the impairment of the worker's constitutional and statutory right to security of tenure.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYMENT; WHEN PRESENT. — The conclusions reached by the NLRC and the Labor Arbiter, that Alipio was not a regular employee of the hotel and that she was validly dismissed, are not supported by law and evidence on record. x x x Thus, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business of the employer. However, any employee who has rendered at least one year of service, even though intermittent, is deemed regular with respect to the activity performed and while such activity actually exists. In this case, records show that Alipio's services were engaged by the hotel intermittently from 1993 up to 1998. Her services as a reliever nurse were undoubtedly necessary and desirable in the hotel's business of providing comfortable accommodation to its guests. In any case, since she had rendered more than one year of intermittent service as a reliever nurse at the hotel, she had become a regular employee as early as December 12, 1994. Lastly, per the hotel's own Certification dated April 22, 1997, she was already a "regular staff nurse" until her dismissal.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; REQUISITES FOR A VALID DISMISSAL. — Being a regular employee, Alipio enjoys security of tenure. Her services may be terminated only upon compliance with the substantive and procedural requisites for a valid dismissal: (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.

4. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT AS A GROUND; NOT PRESENT IN CASE AT BAR. — We have defined misconduct as any forbidden act or dereliction of duty. It is willful in character and implies a wrongful intent, not a mere error in judgment. The misconduct, to be serious, must be

grave and not merely trivial. In this case, Alipio's act of obtaining copies of her payslips cannot be characterized as a misconduct, much less a grave misconduct. On the contrary, we find it absurd that she had to resort to her own resourcefulness to get hold of these documents since it was incumbent upon Peninsula, as her employer, to give her copies of her payslips as a matter of course. We are thus convinced that Alipio's dismissal was not based on a just cause.

5. ID.; ID.; ID.; ILLEGAL DISMISSAL; REMEDIES. — Alipio was illegally dismissed because petitioners failed on both counts to comply with the twin requisites for a valid termination. She is thus entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and to other benefits, or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement. Should reinstatement be no longer feasible, Alipio is entitled to separation pay equivalent to one month pay for her every year of service in lieu of reinstatement. Furthermore, as a rule, moral damages are recoverable where the dismissal of the employee was attended with bad faith or was done in a manner contrary to good customs. Exemplary damages may also be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner. In this case, while the petitioners issued a Certification dated April 22, 1997 and recognized Alipio as a regular employee, they deprived her of copies of her own payslips. Moreover, her dismissal was effected in a manner whereby she was deprived of due process. Under these circumstances, she is also entitled to moral damages in the amount of ₱15,000 and exemplary damages in the amount of ₱10,000. Lastly, the award of attorney's fees equivalent to ten percent (10%) of the total monetary award is consistent with prevailing jurisprudence and thus ought to be affirmed.

APPEARANCES OF COUNSEL

Inocentes De leon Leogardo Atienza Magnaye & Azucena (IDLAMA) Law Offices for petitioners.

Sentra Alternatibong Lingap Panligal for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated August 23, 2004 and Resolution[2] dated March 11, 2005 of the Court of Appeals in CA-G.R. SP No. 67007, which reversed the Decision[3] dated December 29, 2000 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 023890-00. The NLRC had earlier affirmed with modification the Labor Arbiter's Decision,[4] dismissing the complaint for illegal dismissal against herein petitioners, but awarding respondent herein separation pay amounting to ₱20,000.

The pertinent facts are as follows:

Petitioner, The Peninsula Manila, is a corporation engaged in the hotel business. Co-petitioners Rolf Pfisterer and Benilda Quevedo-Santos were the general manager and human resources manager, respectively, of the hotel at the time of the controversy.

The hotel operates a clinic 24 hours a day and employs three regular nurses who work eight hours each day on three separate shifts. The hotel also engages the services of reliever nurses who substitute for the regular nurses who are either off-duty or absent.

Respondent Elaine M. Alipio was hired merely as a reliever nurse. However, she had been performing the usual tasks and functions of a regular nurse since the start of her employment on December 11, 1993. Hence, after about four years of employment in the hotel, she inquired why she was not receiving her 13th month pay.

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[1] *Rollo*, pp. 34-52. Penned by Associate Justice Marina L. Buzon, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada concurring.

[2] *Id*. at 53-57.

[3] *Id*. at 74-82.

[4] *Id*. at 62-72 (Dated March 15, 2000).

In response, petitioners required her to submit a summary of her tour of duty for 1997. After she had submitted the said summary, Alipio was paid ₱8,000 as her 13th month pay for 1997. Alipio likewise requested for the payment of her 13th month pay for 1993 to 1996, but her request was denied.

On December 18, 1998, Alipio was informed by a fellow nurse that she can only report for work after meeting up with petitioner Santos. When Alipio met with Santos on December 21, 1998, Alipio was asked regarding her payslip vouchers. She told Santos that she made copies of her payslip vouchers because Peninsula does not give her copies of the same. Santos was peeved with Alipio's response because the latter was allegedly not entitled to get copies of her payslip vouchers. Santos likewise directed Alipio not to report for work anymore.

Aggrieved, Alipio filed a complaint for illegal dismissal against the petitioners.

After due proceedings, the Labor Arbiter dismissed the complaint for lack of merit, but directed that Peninsula pay Alipio separation pay amounting to ₱20,000. The Labor Arbiter held,

> WHEREFORE, in view of the foregoing, judgment is hereby rendered ***DISMISSING*** the instant complaint for lack of merit. However, considering that complainant had served as reliever for respondent hotel for a long period, the respondent hotel is ordered to give her separation pay equivalent to one-half month pay for every year of complainant's reliever service, in the total amount of ₱20,000.00 based on an average monthly pay of ₱8,000.00.
>
> SO ORDERED.[5]

On appeal, the NLRC affirmed with modification the Labor Arbiter's decision, to wit:

> WHEREFORE, the appeal of the complainant is dismissed for lack of merit. Accordingly, the decision appealed from is affirmed with the modification that the award of separation pay is hereby deleted.

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[5] *Id*. at 72.

SO ORDERED.[6]

Upon further review, the Court of Appeals reversed the decision of the NLRC after ascertaining that the findings of the Labor Arbiter and the NLRC that Alipio is not an employee of Peninsula and that she was validly dismissed is not supported by the evidence on record.[7] The dispositive portion of the Decision dated August 23, 2004 of the Court of Appeals reads:

> WHEREFORE, the petition is ***GRANTED*** and the Decision dated December 29, 2000 and the Order dated June 29, 2001 of the National Labor Relations Commission are ***REVERSED*** and ***SET ASIDE***.
>
> Private respondents The Peninsula Manila and Benilda Quevedo-Santos are ordered to reinstate petitioner Elaine M. Alipio as regular staff nurse without loss of seniority rights; to pay petitioner, jointly and severally, full backwages and all the benefits to which she is entitled under the Labor Code from December 12, 1994 up to the time of her actual reinstatement; moral damages in the amount of ₱30,000.00, exemplary damages in the amount of ₱20,000[.]00, and attorney's fees equivalent to ten (10%) percent of the total monetary award.
>
> Let this case be remanded to the Labor Arbitration Branch, National Labor Relations Commission for the computation of the monetary claims of petitioner.
>
> SO ORDERED.[8] (Emphasis supplied.)

Petitioners moved for reconsideration but their motion was denied. Hence, the instant petition for review on *certiorari* contending that the Court of Appeals seriously erred:

I.

IN GIVING DUE COURSE TO THE RESPONDENT'S PETITION FOR *CERTIORARI* WHICH WAS MAINLY BASED ON ALLEGATIONS OF SUPPOSED FACTUAL ERRORS COMMITTED

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[6] *Id*. at 81.

[7] *Id*. at 40.

[8] *Id*. at 50.

BY THE NATIONAL LABOR RELATIONS COMMISSION AND IN REVERSING THE LATTER'S FINDINGS OF FACT WHICH WERE SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD; AND

II.

IN DECLARING THE RESPONDENT'S DISMISSAL TO BE ILLEGAL AND ORDERING HER REINSTATEMENT WITH FULL BACK WAGES, TOGETHER WITH PAYMENT OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[9]

Petitioners contend that the Court of Appeals should have accorded the unanimous findings of the Labor Arbiter and the NLRC due respect and finality as the conclusion reached by the two bodies is supported by substantial evidence on record. Petitioners insist Alipio was terminated for a just cause and with due process. Petitioners likewise argue that Alipio cannot be reinstated as a regular staff nurse because (1) she never served in that capacity; and (2) there is no vacancy for the said position or any equivalent position to which she may be reinstated.

Alipio, for her part, counters that the NLRC decision, affirming that of the Labor Arbiter, is not beyond the scope of judicial review because palpable mistake was committed in disregarding evidence showing (1) her status as a regular employee of Peninsula; and (2) petitioners' failure to observe substantive and procedural due process. She points out that a Certification dated April 22, 1997 issued by the hotel proves she was a regular staff nurse until her illegal dismissal. She stresses that her supposed employment at the Quezon City Medical Center does not negate the fact that she also worked as a regular nurse of the hotel. Additionally, she contends that obtaining copies of her own payslips does not indicate a perverse attitude justifying dismissal for serious misconduct or willful disobedience. She adds, there is no showing that her refusal to return copies of her payslips caused material damage to petitioners. She further claims that bad faith attended her dismissal.

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[9] *Id*. at 139-140.

After carefully weighing the parties' arguments, we resolve to deny the petition.

It is doctrinal that the factual findings of quasi-judicial agencies like the NLRC are generally accorded respect and finality if such are supported by substantial evidence. In some instances, however, the Court may be compelled to deviate from this general rule if the Labor Arbiter and the NLRC misappreciated the facts, thereby resulting in the impairment of the worker's constitutional and statutory right to security of tenure.[10]

The conclusions reached by the NLRC and the Labor Arbiter, that Alipio was not a regular employee of the hotel and that she was validly dismissed, are not supported by law and evidence on record.

Article 280 of the Labor Code provides:

ART. 280. ***Regular and Casual Employment.*** — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, **an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer**, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided,* That, **any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists**. (Emphasis supplied.)

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[10] *Trendline Employees Association-Southern Philippines Federation of Labor v. NLRC*, G.R. No. 112923, May 5, 1997, 272 SCRA 172, 179.

Thus, an employment is deemed regular when the activities performed by the employee are usually necessary or desirable in the usual business of the employer. However, any employee who has rendered at least one year of service, even though intermittent, is deemed regular with respect to the activity performed and while such activity actually exists.[11]

In this case, records show that Alipio's services were engaged by the hotel intermittently from 1993 up to 1998. Her services as a reliever nurse were undoubtedly necessary and desirable in the hotel's business of providing comfortable accommodation to its guests. In any case, since she had rendered more than one year of intermittent service as a reliever nurse at the hotel, she had become a regular employee as early as December 12, 1994. Lastly, per the hotel's own Certification dated April 22, 1997, she was already a "regular staff nurse" until her dismissal.

Being a regular employee, Alipio enjoys security of tenure. Her services may be terminated only upon compliance with the substantive and procedural requisites for a valid dismissal: (1) the dismissal must be for any of the causes provided in Article 282[12] of the Labor Code; and (2) the employee must be given an opportunity to be heard and to defend himself.[13]

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[11] *De Leon v. National Labor Relations Commission*, G.R. No. 70705, August 21, 1989, 176 SCRA 615, 621.

[12] **ART. 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.

[13] *Voyeur Visage Studio, Inc. v. Court of Appeals*, G.R. No. 144939, March 18, 2005, 453 SCRA 721, 729.

Did Alipio commit serious misconduct when she obtained copies of her payslips?

We have defined misconduct as any forbidden act or dereliction of duty. It is willful in character and implies a wrongful intent, not a mere error in judgment. The misconduct, to be serious, must be grave and not merely trivial.[14]

In this case, Alipio's act of obtaining copies of her payslips cannot be characterized as a misconduct, much less a grave misconduct. On the contrary, we find it absurd that she had to resort to her own resourcefulness to get hold of these documents since it was incumbent upon Peninsula, as her employer, to give her copies of her payslips as a matter of course. We are thus convinced that Alipio's dismissal was not based on a just cause.

Was Alipio afforded an opportunity to be heard and to defend herself?

When Santos had a meeting with Alipio on December 21, 1998, she was not informed that the hotel was contemplating her dismissal. Neither was she informed of the ground for which her dismissal was sought. She was simply told right there and then that she was already dismissed, thereby affording no opportunity for her to be heard and defend herself. Thus, Alipio was likewise deprived of procedural due process.

Clearly, Alipio was illegally dismissed because petitioners failed on both counts to comply with the twin requisites for a valid termination. She is thus entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and to other benefits, or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement.[15] Should reinstatement

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[14] *Lakpue Drug, Inc. v. Belga*, G.R. No. 166379, October 20, 2005, 473 SCRA 617, 623.

[15] LABOR CODE, **ART. 279.** ***Security of Tenure.*** — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who

be no longer feasible, Alipio is entitled to separation pay equivalent to one month pay for her every year of service in lieu of reinstatement.[16]

Furthermore, as a rule, moral damages are recoverable where the dismissal of the employee was attended with bad faith or was done in a manner contrary to good customs.[17] Exemplary damages may also be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[18]

In this case, while the petitioners issued a Certification dated April 22, 1997 and recognized Alipio as a regular employee, they deprived her of copies of her own payslips. Moreover, her dismissal was effected in a manner whereby she was deprived of due process. Under these circumstances, she is also entitled to moral damages in the amount of ₱15,000 and exemplary damages in the amount of ₱10,000.

Lastly, the award of attorney's fees equivalent to ten percent (10%) of the total monetary award is consistent with prevailing jurisprudence[19] and thus ought to be affirmed.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated August 23, 2004 and Resolution

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is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[16] *P.J. Lhuillier, Inc. v. National Labor Relations Commission*, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 799, citing *Gaco v. National Labor Relations Commission,* G.R. No. 104690, February 23, 1994, 230 SCRA 260, 268.

[17] *Mayon Hotel & Restaurant v. Adana*, G.R. No. 157634, May 16, 2005, 458 SCRA 609, 639.

[18] *Kay Products, Inc. v. Court of Appeals*, G.R. No. 162472, July 28, 2005, 464 SCRA 544, 559.

[19] *Micro Sales Operation Network v. National Labor Relations Commission*, G.R. No. 155279, October 11, 2005, 472 SCRA 328, 331.

dated March 11, 2005 of the Court of Appeals in CA-G.R. SP No. 67007 are hereby *AFFIRMED as MODIFIED*, such that the amount of moral damages is reduced to only ₱15,000 and the exemplary damages to only ₱10,000.

No pronouncement as to costs.

SO ORDERED.

Tinga, Reyes,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167674. June 17, 2008]

PHILIPPINE ISLANDS CORPORATION FOR TOURISM DEVELOPMENT, INC., *petitioner, vs.* **VICTORIAS MILLING COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; FORUM SHOPPING; DEFINED. — Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

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[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

2. CIVIL LAW; CONCURRENCE AND PREFERENCE OF CREDITS; SUSPENSION OF THE PROCEEDINGS, PROPER; RATIONALE. — The purpose for the suspension of the proceedings is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora. The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation. We are not persuaded by PICTD's argument that it should be exempt from the suspension order because it is a secured creditor. Unlike the provisions in the Insolvency Law which exempts secured creditors from the suspensive effect of the order issued by the court in an ordinary suspension of payments proceedings, the provisions of P.D. No. 902-A, when it comes to the appointment of a management committee or a rehabilitation receiver, do not contain an exemption for secured creditors. We likewise find no merit in PICTD's argument that the SEC should have exempted it from the suspension order. Although the SEC may, under Section 4-10, Rule IV of the Rules of Procedure on Corporate Recovery of the SEC, on motion or *motu proprio*, grant, on a case-to-case basis, a relief from the suspension order, we find that the determination of such issue is an administrative finding that this Court will not disturb absent any showing of grave abuse of discretion on the part of the SEC.

APPEARANCES OF COUNSEL

Singson Valdez and Associates for petitioner.
Villanueva Gabionza & De Santos for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This is a petition for review under Rule 45 of the Rules of Court seeking a reversal of the Decision[1] dated June 30, 2004 and the Resolution[2] dated March 30, 2005 of the Court of Appeals in CA-G.R. SP No. 79230. The appellate court had affirmed the Order[3] dated June 20, 2002 of the Securities and Exchange Commission (SEC) in SEC Case No. 07-97-5693, denying petitioner's motion to lift the suspension of proceedings of the civil case for collection of a sum of money which petitioner had filed against respondent Victorias Milling Company, Inc. (VMC) before the Regional Trial Court (RTC) of Makati City, Branch 148.

The facts culled from the records are as follows:

On March 7, 1997, petitioner Philippine Islands Corporation for Tourism Development, Inc. (PICTD) filed a complaint[4] for collection of a sum of money with prayer for the issuance of a writ of preliminary attachment against VMC before the RTC of Makati City, Branch 148. The complaint was docketed as Civil Case No. 97-483. In its complaint, PICTD alleged that VMC obtained loans from the CICM Missionaries, Inc. in the amount of ₱3,259,988.08 and from the Congregation of the Most Holy Redeemer in the amount of ₱1,211,596.00 Both loans were assigned to PICTD by way of a deed of assignment.

When the loans matured on March 3, 1997, PICTD sought payment from VMC but the latter failed to pay, prompting PICTD to file the abovementioned complaint. The RTC ordered the

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[1] *Rollo*, pp. 27-38. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Delilah Vidallon-Magtolis and Bienvenido L. Reyes concurring.

[2] *Id*. at 40-42.

[3] CA *rollo,* pp. 20-24.

[4] *Id*. at 27-35.

issuance of a writ of preliminary attachment against VMC's properties. However, upon VMC's motion, the writ of attachment was lifted when VMC deposited a counter attachment bond.

Meanwhile, on July 4, 1997, VMC filed a petition[5] before the SEC to declare itself in a state of suspension of payments, alleging that although it has sufficient property to cover all of its debts, it foresees its inability to pay them when they become due because of financial difficulties. VMC sought the appointment of a management committee that would oversee the implementation of its proposed rehabilitation plan so that it can continue its operations and thus enable it to meet its obligations and satisfy its liabilities.

On July 8, 1997, the SEC ordered the suspension of all actions or claims against VMC pending before any court, tribunal, office, board, body and/or commission.[6] Pursuant to said order, VMC filed before the RTC an urgent motion to suspend proceedings in Civil Case No. 97-483.[7] The RTC, in an Order[8] dated September 26, 1998, granted VMC's motion and suspended proceedings in the civil case.

On December 29, 1999, PICTD filed before the SEC a motion to lift the suspension of proceedings.[9] In an Order dated June 20, 2002, the SEC denied PICTD's motion. The SEC ruled that PICTD is merely a general creditor who was able to seize the property of the debtor through an attachment issued before judgment and did not have a prior security agreement with VMC that will ripen into a creditor's right in case of default. Thus, its claim against VMC could not take precedence over the secured creditors.[10] The dispositive portion of the SEC Order states:

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[5] *Id*. at 51-58.

[6] *Id*. at 161-166.

[7] *Id*. at 167-169.

[8] *Id*. at 59-60.

[9] *Id*. at 61-63.

[10] *Id*. at 23.

WHEREFORE, premises considered, PIC's Motion to Lift [the] Suspension of Proceedings is hereby **DENIED** for lack of merit.

SO ORDERED.[11]

PICTD then appealed to the Court of Appeals which affirmed the SEC's Order. The dispositive portion of the appellate court's decision reads:

WHEREFORE, in view of the foregoing, the petition for review is hereby ***DISMISSED*** and the Order dated 20 June 2002 of the Securities and Exchange Commission in SEC Case No. 07-97-5693 is hereby ***AFFIRMED*** *in toto*.

SO ORDERED.[12]

Hence, this petition.

PICTD raises the following issues for our resolution:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN LIMITING THE ISSUE ON THE APPLICABILITY OF THE ORDER OF SUSPENSION ISSUED BY THE SEC ON THE CLAIM OF PETITIONER FILED BEFORE THE RTC.

II.

WHETHER OR NOT THE COURT OF APPEALS FAILED TO RESOLVE THAT UNDER THE CIRCUMSTANCES OF THE PRESENT CASE *VIS-À-VIS* SECTION 4-10, RULE IV OF THE RULES OF PROCEDURE ON CORPORATE RECOVERY[,] THE SEC HAS THE POWER TO LIFT OR MODIFY THE ORDER OF SUSPENSION.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT EXCLUDING THE CLAIM OF PETITIONER IN CIVIL CASE NO. 97-[483] FROM THE STAY ORDER ISSUED BY THE SEC IN SEC CASE NO. 07-97[-]5693.

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[11] *Id*. at 24.

[12] *Rollo,* p. 37.

IV.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM SHOPPING.[13]

On the other hand, VMC posits the following issues for our resolution:

I.

WHETHER OR NOT PETITIONER'S CLAIM IN CIVIL CASE NO. 97-483 IS INCLUDED IN THE COVERAGE OF THE SEC ORDER OF SUSPENSION.

II.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM SHOPPING.[14]

In sum, the issues are (1) whether or not the proceedings of the complaint for collection of a sum of money filed by PICTD against VMC before the RTC of Makati City should be excluded from the SEC Order suspending all actions or claims against VMC pending before any court, tribunal, office, board, body and/or commission; and (2) whether or not PICTD is guilty of forum shopping.

PICTD argues that the Court of Appeals erred when it ruled that the order of suspension suspends all actions or claims against VMC without qualification as to whether the claim is secured or unsecured. It also argues that the SEC, had it been objective and cognizant of the predicament of PICTD, should have lifted the order of suspension because under Section 4-10,[15] Rule IV

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[13] *Id*. at 625.

[14] *Id*. at 421.

[15] **SECTION 4-10. Relief From, Modification, or Termination of Suspension Order.** The Commission may, on motion or *motu proprio* terminate, modify, or set conditions for the continuance of the suspension order, or relieve a claim from the coverage thereof upon showing that (a) any of the allegations in the petition, or any of the contents of any attachment, or the verification thereof has ceased to be true, (b) a creditor does not have adequate protection over property securing its claim, or (c) the debtor's secured obligation is

of the Rules of Procedure on Corporate Recovery of the SEC, the SEC can, on motion or *motu proprio*, grant, on a case-to-case basis, a relief from the stay order issued.[16]

On the other hand, VMC counters that under Section 6(c)[17]

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more than the fair market value of the property subject of the stay and such property is not necessary for the rehabilitation of the debtor.

For purposes of this section, the creditor shall lack adequate protection if it can be shown that:

a. the debtor is not honoring pre-existing agreement with the creditor to keep the property insured;

b. the debtor is failing to take commercially reasonable steps to maintain the property; or

c. depreciation of the property is increasing to the extent that the creditor is undersecured.

Upon showing of a lack of adequate protection, the Commission shall order the debtor to (a) make arrangements to provide for the insurance or maintenance of the property, (b) to make payments or otherwise provide an additional or replacement lien to the creditor to offset the extent that the depreciation of the property is increasing the extent that the creditor is undersecured. Provided, however, that the Commission may deny the creditor the remedies in this paragraph if such remedies would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a Rehabilitation Plan.

[16] *Rollo,* pp. 626-627.

[17] SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

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c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: *Provided, however,* That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: *Provided, further,* That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: *Provided, finally,* That upon

of Presidential Decree No. 902-A[18] as amended by P.D. No. 1799, all claims for actions against a corporation declared to be in a status of suspension of payments and under a management committee are suspended.[19] VMC also argues that PICTD's effort to distinguish itself as a secured creditor exempt from the order of suspension of proceedings will not help its cause since P.D. No. 902-A makes no distinction and the Order dated July 8, 1997 of the SEC suspending all actions is explicit.[20]

Before ruling on the merits of the case, we first address the procedural issue of whether or not petitioner PICTD is guilty of forum shopping. Respondent VMC contends that PICTD is guilty of forum shopping because it wants to extirpate itself from the SEC Order dated July 8, 1997 directing the suspension of all claims or actions against VMC even though said order had already been upheld by the Court of Appeals in another case docketed as CA-G.R. SP No. 61267 and that said decision had already become final and executory.[21]

After considering the circumstances of this case and the submissions of the parties, we are in agreement that PICTD is not guilty of forum shopping.

Forum shopping is defined as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another

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appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

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[18] REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT, done on March 11, 1976.

[19] *Rollo,* p. 423.

[20] *Id.* at 424-425.

[21] *Id.* at 451-452.

forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[22]

Records show that CA-G.R. No. 61267 originated from a Motion to Set Case for Further Proceedings[23] filed by PICTD before the RTC in Civil Case No. 97-483. When the motion was granted, VMC filed a Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order and Preliminary Injunction[24] before the Court of Appeals assailing the RTC's Order. The Court of Appeals granted the petition and reversed the RTC's Order. In this case, PICTD filed a motion to lift the suspension of proceedings of Civil Case No. 97-483 before the SEC. This petition was filed solely to address the issue of whether or not PICTD should be exempted from the suspension order. Finding two related proceedings involving similar issues are to be expected, petitioner cannot be charged with deliberately seeking a friendlier forum when it was merely pursuing the next proper recourse permitted by the Rules.[25]

Coming to the merits of this petition, we agree to sustain the ruling of the appellate court upholding the SEC Order suspending the proceedings of the collection suit filed by PICTD against VMC.

Section 6(c) of P.D. No. 902-A as amended by P.D. No. 1799, enumerating the powers of the SEC provides:

SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

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[22] *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, October 3, 2005, 472 SCRA 1, 6.

[23] *Rollo*, pp. 474-476.

[24] *Id.* at 499-511.

[25] *Philippine National Construction Corporation v. Dy*, *supra*.

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission…whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors:…*Provided, finally,* That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, **all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.** (Emphasis supplied.)

The purpose for the suspension of the proceedings is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora. The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[26]

We are not persuaded by PICTD's argument that it should be exempt from the suspension order because it is a secured creditor. Unlike the provisions in the Insolvency Law which exempts secured creditors from the suspensive effect of the order issued by the court in an ordinary suspension of payments proceedings, the provisions of P.D. No. 902-A, when it comes to the appointment of a management committee or a rehabilitation receiver, do not contain an exemption for secured creditors.

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[26] *Sobrejuanite v. ASB Development Corporation*, G.R. No. 165675, September 30, 2005, 471 SCRA 763, 770-771; *BF Homes, Incorporated v. Court of Appeals*, G.R. Nos. 76879 & 77143, October 3, 1990, 190 SCRA 262, 269.

We likewise find no merit in PICTD's argument that the SEC should have exempted it from the suspension order. Although the SEC may, under Section 4-10, Rule IV of the Rules of Procedure on Corporate Recovery of the SEC, on motion or *motu proprio*, grant, on a case-to-case basis, a relief from the suspension order, we find that the determination of such issue is an administrative finding that this Court will not disturb absent any showing of grave abuse of discretion on the part of the SEC.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated June 30, 2004 and the Resolution dated March 30, 2005 of the Court of Appeals in CA-G.R. SP No. 79230 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Tinga, Reyes,[*] *Leonardo-de Castro,*[**] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 167860-65. June 17, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **TEDDY M. PAJARO, CRISPINA P. ABEN and FLOR S. LIBERTAD,** *appellants.*

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[*] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[**] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

SYLLABUS

1. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS THRU FALSIFICATION OF PUBLIC DOCUMENTS; ELEMENTS; PERSON WHO MAY BE HELD LIABLE. — Appellants are charged, in conspiracy with each other, with the complex crime of Malversation of Public Funds thru Falsification of Public Documents defined and penalized under Article 217, in relation to Article 171 of the Revised Penal Code, the elements of which are as follows: a) The offender is a public officer; b) He has custody or control of the funds or property by reason of the duties of his office; c) The funds or property are public funds or property for which he is accountable; and d) He has appropriated, taken, misappropriated or consented, or through abandonment or negligence, permitted another person to take them. It is undisputed that appellants are all public officers and the funds allegedly misappropriated are public in character. Appellant Libertad, by reason of her office as Municipal Treasurer had custody and control of such funds and is therefore accountable for the same. Ordinarily, a municipality's mayor and accountant are not accountable public officers as defined under the law. However, a public officer who is not in charge of public funds or property by virtue of his official position, or even a private individual, may be liable for malversation if such public officer or private individual conspires with an accountable public officer to commit malversation, as in the instant case.

2. REMEDIAL LAW; EVIDENCE; TESTIMONY; PREVAILS AS AGAINST AFFIDAVIT IN CONTRADICTION. — That Penar and Lacerna signed several affidavits prior to their testimonies does not totally impair the credibility of their averments. Contradictions between the contents of an affidavit of a witness and his testimony on the witness stand do not always militate against the witness' credibility. It is established jurisprudence that affidavits, which are taken *ex-parte* are generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross-examination.

3. CRIMINAL LAW; CONSPIRACY; WHEN PRESENT. — Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before,

during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.

4. ID.; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); SECTION 3(e); ELEMENTS. — Appellants were also correctly found liable of violation of Section 3(e) of Republic Act No. 3019, as amended, the elements of which are as follows: 1.) the accused must be a public officer discharging administrative, judicial or official functions; 2.) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3.) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

5. ID.; ID.; ID.; ID.; ACT WITH MANIFEST PARTIALITY OR EVIDENT BAD FAITH, PRESENT IN CASE AT BAR. — The first element is not disputed; thus what needs to be resolved is the presence of the second and third elements, that is, whether as public officers, appellants acted with manifest partiality or evident bad faith and caused undue injury to the government in the respective amounts of ₱179,000.00 and ₱140,000.00. Appellants admitted that the disbursements were made in cash in violation of Section 9 of COA Circular 92-382 which provides that all disbursements shall be made by check except in cases where cash advance is drawn and maintained according to COA rules. When appellants disbursed the amounts in cash, purportedly for reasons of expediency and practicality, they did not only make it difficult to keep track of the disbursements' whereabouts but they also engendered suspicion that they were hiding something. Had they followed the prescribed procedure and released the funds in the form of checks, they would have had documents at their disposal to prove the legitimacy of said transactions. COA Circular No. 92-382 issued on July 3, 1992 by the Commission on Audit laid down accounting and auditing rules and regulations designed to implement the provisions of Republic Act No. 7160, otherwise known as the Local Government Code of 1991. It is issued pursuant to the constitutional authority of the COA to define the scope of

audit, make rules and disallow unnecessary expenditures in the government. The circular is addressed to public officers concerned with accounting and auditing of local funds such as mayors, local treasurers, accountants and budget officers among others. It provides the prescribed accounting system for expenditure and transfers of local funds. Since the rules clearly delineate the procedure for disbursement of public or local funds there was no reason for appellants to make judgment calls and substitute their own interpretation of the above provision.

6. ID.; ID.; ID.; ID.; CAUSING UNDUE INJURY TO THE GOVERNMENT, PRESENT IN CASE AT BAR. — The third element of the offense penalized in Section 3 (e) is satisfied when the questioned conduct causes undue injury to any party, including the government, or gives any unwarranted benefit, advantage or preference in the discharge of his functions to any private party. Proof of the extent or quantum of damage is thus not essential, it being sufficient that the injury suffered or benefit received can be perceived to be substantial enough and not merely negligible. The prosecution's evidence satisfactorily demonstrated that by countervailing the clearly delineated procedure laid down in COA Circular 92-382, appellants defrauded the government of a much needed resource by facilitating the release of local funds which no one can account for and which did not reach the pockets of its intended recipients.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Wilfredo N. Labuntog for accused-appellants.
Gille and Associates Law Firm for F.S. Libertad.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the January 19, 2005[1] Decision of the Sandiganbayan which found appellants

[1] *Rollo*, pp. 42-86. Penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Gregory S. Ong and Jose R. Hernandez.

guilty of four (4) counts of malversation of public funds through falsification of public documents and two (2) counts of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case Nos. 26728 to 26733 and its March 21, 2005 Resolution[2] denying the motion for reconsideration.

Appellant Teddy M. Pajaro (Pajaro) was the Municipal Mayor of Lantapan, Bukidnon from 1989 to 1998; while appellants Crispina Aben (Aben) and Flor S. Libertad (Libertad) served as acting Municipal Accountant and Municipal Treasurer respectively. During their term of office, specifically from September 1997 to March 1998, they allegedly caused the irregular disbursement of public funds as financial assistance pursuant to livelihood projects and IEC-Peace and Order Program in the respective amounts of ₱179,000.00 and ₱140,000.00. In a special audit of certain disbursements made during Pajaro's administration, State Auditor Rogelio Tero (Auditor Tero) noted that ₱74,000.00 of the money disbursed was not actually received by the intended beneficiaries who were chosen arbitrarily; and that the disbursements were irregularly processed and released to the prejudice of the local government.[3]

During preliminary investigation, Pajaro maintained that the subject disbursements were made pursuant to Resolutions issued by the Sangguniang Bayan of Lantapan and the Municipal Development Council approving and adopting respectively, 20% of the municipal budget to be used for its local development programs such as livelihood projects and intelligence data-gathering. He explained that the vouchers and the Requests for Obligation of Allotments (ROAs) lacked certification by the municipal budget officer because the latter refused to sign the documents despite the presence of supporting papers. He belied the audit's finding that the beneficiaries of the program were chosen arbitrarily and averred that such beneficiaries attended a three-day orientation program and were required to submit

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[2] *Id.* at 94-101.

[3] Special Audit and Investigation Report dated March 21, 2000; Records, Vol. I, pp. 316-333.

project proposals subject to review by the project coordinator; that non-government organizations were also tapped to ensure a wider coverage in the selection of beneficiaries. Pajaro also presented affidavits of alleged beneficiaries Anecito Penar (Penar) and Angelita Lacerna (Lacerna) to prove that they received the disbursed amounts. He also stated that the financial assistance under the IEC-Peace and Order Program in the amount of ₱140,000.0 was properly chargeable to intelligence funds and may be justified solely on the certification of the head of agency that the funds were used for a highly confidential project, the details of which cannot be divulged without posing a threat to security or the success of the mission. Pajaro admitted there were accounting lapses relative to the charging of these payments but same were eventually corrected by appellant Aben, hence no project duly covered by the municipal budget was impaired.[4] Appellants Aben and Libertad pleaded the same defenses in their counter-affidavits.[5]

Finding probable cause, the Office of the Ombudsman filed four Informations for Malversation of Public Funds thru Falsification of Public Documents defined and penalized under Article 217 in relation to Article 171 of the Revised Penal Code against appellants. Save for the date of commission of the offense, the nature of the livelihood project, its beneficiaries and the amount allegedly misappropriated, the Informations were similarly worded as follows:

That on or about (September 16, 1997 in Criminal Case No. 26728, November 24, 1997 in Criminal Case No. 26729, December 10, 1997 in Criminal Case No. 26730 and February 18, 1998 in Criminal Case No. 26731), in the Municipality of Lantapan, Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the accused TEDDY M. PAJARO, a high-ranking public officer, being then the Municipal Mayor of Lantapan, Bukidnon, and accused CRISPINA ABEN and FLOR S. LIBERTAD, both low-ranking public officers, being then the Municipal Accountant and Municipal Treasurer, respectively, of Lantapan, Bukidnon, conspiring and confederating

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[4] Records, Vol. I, pp. 15-23.

[5] *Id*. at 24-41.

with one another, who, by reason of the duties of their office are accountable for public funds, while in the performance of their official duties and taking advantage of their positions, thus committing the offense in relation to their office, did then and there, willfully, unlawfully, and feloniously, appropriate, take, misappropriate or consent or permit another person to take public funds for their own personal use and benefit in the amount of (₱15,000.00 in Criminal Case No. 26728, ₱25,000.00 in Criminal Case No. 26729, ₱24,00.00. (sic) in Criminal Case No. 26730 and ₱10,000.00 in Criminal case No. 26731) purportedly intended as payment of financial assistance for corn production livelihood project to (Anecito Penar, in Criminal Case No. 2678, 26729 and 26731; Angelita "Didith" Lacerna in Criminal Case No. 26730) by falsifying the disbursement voucher and the supporting documents and making it appear that said amount was received by said (Anecito Penar in Criminal Case Nos. 2678, 2679 and 26731; Angelita "Didith" Lacerna in Criminal Case No. 26730), when in truth and in fact, as the accused well knew, (Anecito Penar in Criminal Case Nos. 26728, 26729 and 26731; Angelita "Didith" Lacerna in Criminal Case No. 26730) never received the said amount, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.

Also, two Informations[6] for violation of Section 3, paragraph (e) of Republic Act No. 3019[7] were filed against appellants, thus:

That on or about November 1997 to March 1998, or sometime prior or subsequent thereto, in the Municipality of Lantapan, Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the accused TEDDY M. PAJARO, a high-ranking public officer, being then the Municipal Mayor of Lantapan, Bukidnon, and accused CRISPINA ABEN and FLOR S. LIBERTAD, both low-ranking public officers, being then the Municipal Accountant and Municipal Treasurer, respectively, of Lantapan, Bukidnon, conspiring and confederating with one another, while in the performance of their official duties and taking advantage of their positions, thus committing the offense in relation to their office, through manifest partiality or evident

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[6] *Rollo*, pp. 31-34.

[7] ANTI-GRAFT and CORRUPT PRACTICES ACT.

bad faith, did then and there, willfully, unlawfully, and criminally, cause undue injury to the Government in the amount of (₱179,000.00 in Criminal Case No. 26732 and ₱140,00.00 (sic) in Criminal Case No. 26733) by releasing and/or causing the release of the aforesaid amount (for purported livelihood projects in Criminal Case No. 26732 and as purported financial assistance under the IEC-Peace and Order program in Criminal Case No. 26733) without the approval or knowledge of the Municipal Budget Officer, without being supported with complete documents and without any terms and conditions for its repayment, benefiting individuals arbitrarily chosen, to the damage and prejudice of the government in the aforesaid amount(s).

CONTRARY TO LAW.

Appellants filed a Motion for Reinvestigation[8] but it was denied by the Sandiganbayan in its Order[9] dated December 3, 2001. Upon arraignment all three pleaded not guilty.[10]

At the trial, Auditor Tero testified to the veracity of the findings in the audit report as follows:

I. With respect to the amount of ₱179,000.00 for livelihood projects:

a.) a total of ₱74,000.00 in 4 disbursement vouchers were disbursed using the names of Anecito Penar and Didith Lacerna who did not actually receive the amount;
b.) 12 disbursement vouchers for the payment of financial assistance for livelihood projects were paid in cash instead of check, bypassing the Office of the Municipal Budget Officer and charging other items of appropriations of the budget not intended for livelihood projects;
c.) The grant of financial assistance under 12 disbursement vouchers were not supported with complete documents;
d.) The amount of ₱179,000.00 was released without any terms and conditions for its repayment;
e.) The financial assistance of ₱179,000.00 benefited only individuals arbitrarily chosen.

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[8] Records, Vol. 1, pp. 104-112.

[9] *Id*. at 119.

[10] *Id*. at 118.

II. With respect to the payment and reimbursement of expenses amounting to ₱140,00.00 (sic) as financial assistance for IEC-Peace and Order program:

a.) all 8 disbursement vouchers covering the payment and reimbursement of expenses were paid bypassing the Office of the Municipal Budget Officer and charging the payments to other budget appropriations not intended for IEC-Peace and Order program;
b.) The payment of financial assistance under the 8 disbursement vouchers were not supported with complete documents;
c.) The amount of ₱140,000.00 paid as reimbursement and payment of financial assistance were paid without any terms and conditions for its repayment;
d.) The financial assistance of ₱140,000.00 benefited only individuals arbitrarily chosen.[11]

The auditor stressed that under COA rules and regulations,[12] the certification of the budget officer is a mandatory requirement for the disbursement of public funds.[13]

Municipal Budget Officer Dioscoro Rara (Rara) corroborated the audit report and averred that the documents in question do not bear his signature and lacked certification as required by law because the same did not pass through his office in contravention of the standard procedure.[14]

Penar and Lacerna denied signing the questioned documents[15] and receiving the amounts of ₱50,000.00 and ₱24,000.00 respectively from appellant Libertad.[16] Although Penar admitted

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[11] *Id.* at 3-4.

[12] Particularly Section 57 of COA Circular No. 92-382 (July 3, 1992) which states that: "The budget officer shall certify to the existence of appropriation that has been legally made for the purpose by signing Certification No. 1 of the ROA."

[13] TSN, June 24, 2002, p. 34; Section 38, COA Circular No. 92-382.

[14] TSN, August 27, 2002, pp. 15, 18, 19 and 23.

[15] Voucher Nos. 2612; 3005 and 516 for Penar and Voucher No. 166 for Lacerna; Records, Vol. I, pp. 353, 337, 340 and 376.

[16] TSN, June 25, 2002, pp. 10-12 and 40-41.

signing two affidavits dated June 8 and July 24, 2000 attesting that he is a beneficiary of the livelihood program and receiving the amount of ₱50,000.00, Penar explained however that he did not read the contents of the affidavits but he signed them upon appellant Pajaro's prodding. Penar claimed that after signing the second affidavit, Pajaro gave him ₱700.00 for his fare and pocket money.[17]

Lacerna also admitted executing an affidavit[18] dated March 13, 2000 before Municipal Judge Febrestina Villanueva stating that she did not sign Voucher No. 166 nor did she receive ₱24,000.00 as financial assistance. When confronted with two subsequent affidavits[19] containing statements in contradiction of her previous declarations, she explained that the signatures contained therein were hers; however, she claimed that she signed the affidavits without reading the contents because appellant Pajaro assured her that her brother has received the money on her behalf.[20]

For his part, appellant Pajaro claimed that the disbursements were properly made pursuant to approved resolutions of the Sangguniang Bayan and the Municipal Development Council and were provided for in the Municipal Budget Plan for 1998. He stated that as municipal mayor, his role was limited to approving the vouchers with respect to the disbursement of local funds[21] and he usually does not have any personal knowledge whether the amounts disbursed were received by the intended beneficiaries except in the case of Penar whom he personally know and Lacerna whose brother received the money on her behalf. He insisted that the subject documents were executed according to procedure save for the budget officer's certification because the municipal budget officer unjustifiably refused to affix his signature on the documents despite the supporting attachments.[22]

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[17] *Id*. at 23-25, 35.

[18] *Id*. at 343-344.

[19] Dated June 26 and July 24, 2000 respectively.

[20] *Id*. at 42-44, 46-49; TSN, August 27, 2002, pp. 4-8, 10-11.

[21] Section 39, COA Circular No. 92-382.

[22] TSN, August 5, 2003, pp. 10-11; 15-16; 21; 32; 43-44.

Delilah Gayao, a casual employee in the municipal accounting office in charge of processing the disbursement documents, corroborated Pajaro's testimony and stated that the Municipal Budget Officer refused to sign the subject vouchers and its corresponding ROAs when they were brought to his office for certification.[23]

Appellant Aben alleged that she processed the subject vouchers even without prior certification from the budget officer because she knew that there is a sufficient budget for it. Moreover, she claimed that Pajaro directed her to expedite the release because the beneficiaries were in dire need of financial assistance.[24] She further averred that as a matter of procedure, whenever proper disbursements are erroneously charged to other appropriations she makes the necessary adjustments in the entries in the municipality's Journal of Analysis and Obligations (JAO) at the close of every fiscal year.[25] Aben stated that even without Pajaro's directive and prior certification from the budget officer she would still obligate the ROAs and its corresponding vouchers as a matter of course because sufficient funding exists to support its disbursement.

Appellant Libertad averred that she served as the acting disbursement officer who personally released the money to Penar and Lacerna, the latter being accompanied by her brother when the money was given to her.[26]

Lacerna's brother, Roberto Ramos (Ramos), corroborated the testimonies of Pajaro and Libertad that he was with his sister when she personally received the money from Libertad.[27]

On January 19, 2005, the Sandiganbayan rendered the assailed Decision, the dispositive portion of which states:

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[23] *Id*. at 56-59.

[24] *Id*. at 74-76; 80-81.

[25] *Id*. at 4-8.

[26] *Id*. at 88-95.

[27] *Id*. at 65.

WHEREFORE, judgment is hereby rendered finding the three accused, Teddy Pajaro, Crispina Aben, and Flor Libertad guilty beyond reasonable doubt of the offense charged in the six (6) informations and sentencing each of them to suffer the following penalties:

1. In Criminal Case No. 26728 - imprisonment of thirteen (13) years, one (1) month, and eleven (11) days to eighteen (18) years, two (2) months, and twenty-one (21) days of *reclusion temporal*, as minimum and maximum, respectively - and to pay a fine ₱15,000;
2. In Criminal Case No. 26729 - *reclusion perpetua* - and to pay a fine of ₱25,000;
3. In Criminal Case No. 26730 - *reclusion perpetua* - and to pay a fine of ₱24,000;
4. In Criminal Case No. 26731 - imprisonment of eight (8) years, eight (8) months, and one (1) day of *prision mayor* to thirteen (13) years, one (1) month and eleven (11) days of *reclusion temporal* as minimum and maximum, respectively - and to pay a fine of ₱10,000;
5. In Criminal Case No. 26732 - imprisonment of six (6) years and one (1) month to ten (10) years; and
6. In Criminal Case No. 26733 - imprisonment of six (6) years and one (1) month to ten (10) years.

In the service of the sentence, the duration of their total imprisonment shall not exceed forty (40) years.

The three (3) accused are also sentenced to suffer perpetual special disqualification, and to pay and indemnify, jointly and severally, the government the amounts of ₱179,000 and ₱140,000, or a total of ₱319,000 plus costs.

SO ORDERED.[28]

Appellants filed a Motion for Reconsideration which was denied by the Sandiganbayan in its Order[29] dated March 21, 2005; hence this appeal.

The Office of the Special Prosecutor (OSP) argues that appellants failed to dispute the evidence adduced against them;

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[28] *Rollo*, pp. 357-403.

[29] *Id*. at 404-411.

and that the Sandiganbayan correctly found the documents containing the alleged signatures of Lacerna and Penar as falsified.

On the other hand, appellants argue[30] that the Sandiganbayan overlooked some documentary evidence which if considered would cast doubts on the validity of its conclusions; that Penar and Lacerna were unreliable as shown by the contradictions and inconsistencies in their statements as contained in their affidavits as well as those made during the trial.

The appeal lacks merit.

Appellants are charged, in conspiracy with each other, with the complex crime of Malversation of Public Funds thru Falsification of Public Documents defined and penalized under Article 217, in relation to Article 171 of the Revised Penal Code, the elements of which are as follows:

a.) The offender is a public officer;
b.) He has custody or control of the funds or property by reason of the duties of his office;
c.) The funds or property are public funds or property for which he is accountable; and
d.) He has appropriated, taken, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.[31]

It is undisputed that appellants are all public officers and the funds allegedly misappropriated are public in character. Appellant Libertad, by reason of her office as Municipal Treasurer had custody and control of such funds and is therefore accountable for the same. Ordinarily, a municipality's mayor and accountant are not accountable public officers as defined under the law. However, a public officer who is not in charge of public funds or property by virtue of his official position, or even a private individual, may be liable for malversation if such public officer

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[30] *Id*. at 141-263.

[31] *Barriga v. Sandiganbayan*, G.R. Nos. 161784-86, April 26, 2005, 457 SCRA 301, 314.

or private individual conspires with an accountable public officer to commit malversation,[32] as in the instant case.

In finding that appellants misappropriated the said public funds, the Sandiganbayan ruled on the authenticity of the signatures of the alleged beneficiaries Penar and Lacerna on the disbursement vouchers as follows:

> [T]he two affidavits of Penar dated June 8, 2000, and July 24, 2000, respectively relied on by the defense, and therefore bound by them, unwittingly show his true and real signature as one "*Penar*," signed without a "*longhand A*" like his two (2) signatures in his other affidavits, as distinguished from the signatures in the questioned documents x x x where the alleged signatures of Penar were signed with a "*longhand A*" or "*APenar*," thereby showing that the signatures in the said vouchers and receipts are not the signatures of Anecito Penar but are forged or falsified signatures. Simply stated, Penar's true and real signature is the one reflected in his affidavits which is different from the signatures affixed in the questioned documents.
>
> In the same manner, the two affidavits of Angelita Didith Lacerna dated June 26, 2000 and July 24, 2000, respectively, that state that she allegedly received the subject amounts, also relied upon by the defense and therefore also bound by them, likewise show her true and real signature which is a sort of initials on top of her full name like her signatures in her other affidavits, which are different from the signatures in the disbursement voucher and expense receipt which spell out her family name "*DLacerna*," thereby showing that these signatures are not her true signatures. Otherwise said, Lacerna's true and real signature is the one affixed in her affidavits and not the one in the vouchers and receipts.[33]

We agree with the Sandiganbayan's findings that the differences in the alleged beneficiaries' signatures are so evident that there is no need for an expert opinion.[34] Both Penar and Lacerna categorically denied that the signatures on the subject vouchers were their signatures; or that they received the money allegedly disbursed to them.

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[32] *Id*.

[33] *Rollo,* pp. 74-75.

[34] *Id*.

That Penar and Lacerna signed several affidavits prior to their testimonies does not totally impair the credibility of their averments. Contradictions between the contents of an affidavit of a witness and his testimony on the witness stand do not always militate against the witness' credibility. It is established jurisprudence that affidavits, which are taken *ex-parte* are generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross-examination.[35]

There is no doubt that appellants facilitated the illegal release of the funds by signing the subject vouchers. Without their signatures, said monies could not have been disbursed. Pajaro, as Mayor, initiated the request for obligation of allotments and certified and approved the disbursement vouchers; Aben, as Acting Municipal Accountant, obligated the allotments despite lack of prior certification from the budget officer. Municipal Treasurer Libertad certified to the availability of funds and released the money even without the requisite budget officer's certification. Their combined acts, coupled with the falsification of the signatures of Penar and Lacerna, all lead to the conclusion that appellants conspired to defraud the government.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.[36]

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[35] *Cariaga v. Court of Appeals*, G.R. No. 143561, June 6, 2001, 358 SCRA 583, 593.

[36] *People v. Garcia*, G.R. No. 138470, April 1, 2003, 400 SCRA 229, 238.

Appellants were also correctly found liable of violation of Section 3(e) of Republic Act No. 3019, as amended, the elements of which are as follows:

1.) the accused must be a public officer discharging administrative, judicial or official functions;
2.) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3.) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[37]

The first element is not disputed; thus what needs to be resolved is the presence of the second and third elements, that is, whether as public officers, appellants acted with manifest partiality or evident bad faith and caused undue injury to the government in the respective amounts of ₱179,000.00 and ₱140,000.00.

Appellants admitted that the disbursements were made in cash in violation of Section 9 of COA Circular 92-382 which provides that all disbursements shall be made by check except in cases where cash advance is drawn and maintained according to COA rules. When appellants disbursed the amounts in cash, purportedly for reasons of expediency and practicality, they did not only make it difficult to keep track of the disbursements' whereabouts but they also engendered suspicion that they were hiding something. Had they followed the prescribed procedure and released the funds in the form of checks, they would have had documents at their disposal to prove the legitimacy of said transactions.

Appellants' contention that the subject disbursements lacked prior certification by the municipal budget officer because the latter unjustifiably refused to sign the disbursement vouchers and ROAs deserves scant consideration. As correctly observed by the Office of the Ombudsman, if that was indeed the case, it is surprising to note that no action, administrative or otherwise,

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[37] *Soriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 228.

was instituted by appellant Pajaro against the budget officer. We are more inclined to give credence to the budget officer's categorical statement that he was not able to sign the ROAs because the documents were not presented for his signature.

COA Circular No. 92-382 issued on July 3, 1992 by the Commission on Audit laid down accounting and auditing rules and regulations designed to implement the provisions[38] of Republic Act No. 7160, otherwise known as the Local Government Code of 1991. It is issued pursuant to the constitutional authority[39] of the COA to define the scope of audit, make rules and disallow unnecessary expenditures in the government. The circular is addressed to public officers concerned with accounting and auditing of local funds such as mayors, local treasurers, accountants and budget officers among others. It provides the prescribed accounting system for expenditure and transfers of local funds as follows; *First*, the ROA shall be initially certified by the budget officer with respect to the existence of appropriation that has been legally made for the purpose by signing Certification No. 1 therein; *Second*, the treasurer shall certify that funds are available by signing Certification No. 2; *Third*, the accountant shall review the ROA, assign an obligation number thereto, and record the amount of the obligation in the Journal and Analysis of Obligations (JAO) *before* certifying as to the obligation of the allotment by signing the ROA.[40] Since the rules clearly delineate the procedure for disbursement of public or local funds there was no reason for appellants to make judgment calls and substitute their own interpretation of the above provision.

The third element of the offense penalized in Section 3 (e) is satisfied when the questioned conduct causes undue injury

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[38] Section 344 thereof states that — No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. x x x

[39] CONSTITUTION, Art. IX-D, Sec. 2(2).

[40] Sections 57, 58 and 59, COA Circular No. 92-382.

to any party, including the government, or gives any unwarranted benefit, advantage or preference in the discharge of his functions to any private party. Proof of the extent or quantum of damage is thus not essential, it being sufficient that the injury suffered or benefit received can be perceived to be substantial enough and not merely negligible.[41] The prosecution's evidence satisfactorily demonstrated that by countervailing the clearly delineated procedure laid down in COA Circular 92-382, appellants defrauded the government of a much needed resource by facilitating the release of local funds which no one can account for and which did not reach the pockets of its intended recipients.

WHEREFORE, the petition is *DENIED*. The January 19, 2005 Decision of the Sandiganbayan finding appellants guilty of four (4) counts of malversation of public funds through falsification of public documents and two (2) counts of violation of Sec. 3(e) of R.A. No. 3019, as well as the March 21, 2005 Resolution denying the Motion for Reconsideration are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and *Brion,*[*] *JJ.*, concur.

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[41] *Fonacier v. Sandiganbayan*, G.R. Nos. 50691, 52263, 52766, 52821, 53350, 53397, 53415, 53520, December 5, 1994, 238 SCRA 655, 688.

[*] Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

SECOND DIVISION

[G.R. No. 168210. June 17, 2008]

COASTAL SAFEWAY MARINE SERVICES, INC., *petitioner, vs.* **LEONISA M. DELGADO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT OF SEAFARERS; POEA STANDARD EMPLOYMENT CONTRACT TO BE INTEGRATED IN SEAFARER'S CONTRACT. — The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired; and as long as the stipulations therein are not contrary to **law**, morals, public order or public policy, they have the force of law between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA rules and regulations require that the POEA Standard Employment Contract be integrated in every seafarer's contract.

2. ID.; ID.; ID.; SECTION 20(A) OF THE POEA STANDARD EMPLOYMENT CONTRACT BASED ON THE POEA MEMORANDUM CIRCULAR NO. 055, SERIES OF 1996, APPLICABLE IN DETERMINING COMPENSABILITY OF DEATH IN CASE AT BAR. — A perusal of Jerry's employment contract reveals that what was expressly integrated therein by the parties was DOLE Department Order No. 4, series of 2000 or the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, and POEA Memorandum Circular No. 9, series of 2000. However, POEA had issued Memorandum Circular No. 11, series of 2000 stating that: **In view of the Temporary Restraining Order issued by the Supreme Court in a Resolution dated 11 September 2000** on the implementation of certain amendments of the Revised Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as contained in DOLE Department Order No. 04 and POEA Memorandum Circular No. 09, both Series of 2000, please be advised of the following: 1. **Section 20, Paragraphs (A),** (B) and (D) of the former Standard Terms and Conditions Governing the Employment

of Filipino Seafarers on Board Ocean-Going Vessels, **as provided in DOLE Department Order No. 33, and POEA Memorandum Circular No. 55, both Series of 1996 shall apply in lieu of Section 20 (A),** (B) and (D) **of the Revised Version;** x x x In effect, POEA Memorandum Circular No. 11-00 thereby paved the way for the application of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996. Worth noting, Jerry boarded the ship on August 2001 before the said temporary restraining order was lifted on June 5, 2002 by virtue of Memorandum Circular No. 2, series of 2002. Consequently, Jerry's employment contract with Coastal must conform to Section 20(A) of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996, in determining compensability of Jerry's death.

3. ID.; ID.; ID.; ID.; COMPENSATION AND BENEFITS FOR DEATH; ELUCIDATED. — Section 20(A) of the POEA Standard Employment Contract, based on POEA Memorandum Circular No. 055, series of 1996, is clear: SECTION 20. COMPENSATION AND BENEFITS A. COMPENSATION AND BENEFITS FOR DEATH 1. In case of death of the seafarer **during the term of his contract,** the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment. Stated differently, for death of a seafarer to be compensable, the death must occur during the term of his contract of employment. It is the only condition for compensability of a seafarer's death. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. Compensability of Jerry's death does not depend on whether his illness was work-connected or not. What is material is that his death occurred during the term of his employment contract. By provision of Section 20(A) of the POEA Standard Employment Contract, based on POEA Memorandum Circular No. 055, series of 1996, payment of death benefit pension is mandated in case of death of a seafarer during the term of his employment. It is not necessary, in order to recover compensation benefits, that an employee must have been in perfect health at the time he contracted the disease. A worker brings with him possible infirmities in the course

of his employment, but the employer, though not an insurer of the health of his employees, takes them as he finds them. Significantly, in issuing a fit-to-work certification to Jerry, petitioner assumed the risk of liability. Based on the certification itself, petitioner's accredited physician had attested that Jerry was fit to work prior to his deployment. The ship's captain had also reported Jerry to be healthy and energetic when he joined the crew. Petitioner cannot now evade its liability and deny the compensation for death benefits that respondent deserves.

4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES IF AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — Factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court. In our view, conclusive reliance can be placed on such findings.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER IN CASE AT BAR. — Respondent's prayer for the award of attorney's fees is based on specific provision of the Civil Code. The award of attorney's fees in this case is also consistent with current jurisprudence in labor cases. Such award must be upheld, not only because labor cases take much time to litigate, they also require, based on experience, special dedication and expertise on the part of the pro-worker's counsel.

APPEARANCES OF COUNSEL

Alicia A. Risos-Vidal for petitioner.
Dela Cruz Entero and Associates for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review are the Decision[1] and Resolution[2] dated February 10, 2005 and May 25, 2005, respectively, of the Court of Appeals

[1] *Rollo,* pp. 47-54. Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Eugenio S. Labitoria and Arturo D. Brion (now a member of this Court) concurring.

[2] *Id*. at 56-57.

in CA-G.R. SP No. 85961, which had affirmed the Decision[3] dated April 30, 2004 of the National Labor Relations Commission (NLRC), Third Division, in NLRC NCR CA No. 036508-03.

The antecedent facts are as follows:

Petitioner Coastal Safeway Marine Services, Inc. (Coastal), with Arabian Marine and Terminal Services Co. Ltd. as its principal, hired Jerry M. Delgado, with the position of General Purpose 2 on board M/V "Lulu 1."[4] Upon arrival in Saudi Arabia, however, Jerry was instructed to board another vessel, the M/V "Karan 7," and was deployed as a Chief Engineer on August 3, 2001.

On December 22, 2001, while on board, Jerry complained of stomach pain. He was immediately treated, but on December 29, 2001, he again fell ill. On January 8, 2002, while confined at the city hospital in Dharan, Saudi Arabia, Jerry died due to "acute cessation of blood circulation and respiration."[5] Thereafter, his remains were transported to Manila.

Respondent Leonisa M. Delgado, Jerry's wife, demanded payment of death and other benefits from Coastal, but the latter denied her claims.[6] Hence, Leonisa went to the NLRC on April 1, 2002 and filed a Complaint.[7] Labor Arbiter Francisco A. Robles ruled for Leonisa and awarded her death benefits and $7,000 for each of their four children. However, her claims for salary differential, moral and exemplary damages, were denied.[8]

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[3] Records, pp. 187-193.

[4] CA *rollo*, p. 47.

[5] Records, pp. 49-51, 88.

[6] *Id*. at 52-53. Respondent reiterated her claim against petitioner, through the International Transport Workers' Federation (ITF) FOC Phils., Inc. in a letter dated March 12, 2002.

[7] *Id*. at 1 (NLRC-NCR Case No. (M)-2002-04-00099-30).

[8] *Id*. at 86-97.

The NLRC, upon appeal of Coastal, affirmed the Labor Arbiter's ruling. It disposed of the case as follows:

> Based on records, complainant's husband was issued a fit to work certification by [Coastal's] accredited physician prior to his deployment and was reported by the ship's captain to be "healthy and energetic"…when he joined the vessel, but barely 5 months thereafter he died as a result of illness during the term of his contract and not from his own willful or criminal act. The employer/principal is therefore liable... [Coastal] is also answerable for such death benefits because the law (Sec. 10 of R.A. No. 8042) provides for the solidary liability of the principal and the local agent for any and all claims of an overseas worker.
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> x x x x x x x x x
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> WHEREFORE, the appeal is DENIED. The Decision dated May 20, 2003 is affirmed *in toto*.
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> SO ORDERED.[9]

After its motion for reconsideration was denied, Coastal filed a Petition for *Certiorari*[10] before the Court of Appeals. The Court of Appeals, however, dismissed the petition and ruled that based on Section 20(A)[11] of the Philippine Overseas Employment Administration (POEA) Standard Employment Contract,[12] it is sufficient that Jerry's death occurred during

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[9] *Id*. at 192-193.

[10] *Id*. at 403-429.

[11] SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In case of death of the seafarer **during the term of his contract**, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment. (Emphasis supplied.)

[12] Philippine Overseas Employment Administration (POEA) Memorandum Circular No. 055-96 (December 16, 1996).

the term of his employment as to entitle his beneficiaries to claim death benefits. The *fallo* of the decision reads:

> WHEREFORE, premises considered, the petition is **DISMISSED**.
>
> SO ORDERED.[13]

Coastal sought reconsideration, but to no avail. Hence, this petition, raising the following as issues:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT AWARDED DEATH BENEFITS TO THE BENEFICIARIES OF DECEASED JERRY DELGADO BASED ON SECTION 20 OF MEMORANDUM CIRCULAR NO. 55, SERIES OF 1996, WHEN THE APPLICABLE LAW IS DEPARTMENT ORDER NO. 4 AND MEMORANDUM CIRCULAR NO. 09, SERIES OF 2000 AS EMBODIED IN THE STANDARD EMPLOYMENT CONTRACT SIGNED BY THE PARTIES.

II.

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT MANIFESTLY OVERLOOKED CERTAIN MATERIAL FACTS THAT, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DISREGARDED THE NOTARIZED QUITCLAIM VOLUNTARILY EXECUTED BY THE DECEASED JERRY DELGADO IN FAVOR OF THE PETITIONER.

IV.

THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN AFFIRMING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF RESPONDENT DESPITE THE WANT OF ANY FACTUAL AND LEGAL BASIS.[14]

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[13] *Rollo*, p. 54.

[14] *Id*. at 16-18.

Simply put, the issues are: (1) Did the Court of Appeals err in awarding death benefits to Jerry's heirs based on Section 20(A) of the POEA Standard Employment Contract? (2) Is the affidavit of waiver executed by Jerry valid? (3) Is Leonisa entitled to attorney's fees?

Petitioner contends that in determining whether Jerry's death is compensable, Department of Labor and Employment (DOLE) Department Order No. 4, series of 2000[15] and POEA Memorandum Circular No. 9, series of 2000[16] should apply because these were the laws embodied in Jerry's employment contract.

On the other hand, respondent argues, together with the Court of Appeals, that it is Section 20(A) of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996[17] that should apply.

The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired;[18] and as long as the stipulations therein are not contrary to **law**, morals, public order or public policy, they have the force of law between the parties.[19] While the

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[15] AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING VESSELS, adopted on May 31, 2000.

[16] AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN-GOING VESSELS, adopted on June 14, 2000.

[17] REVISED STANDARD EMPLOYMENT TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN-GOING VESSELS, adopted on December 16, 1996.

[18] *NYK-Fil Ship Management, Inc. v. National Labor Relations Commission,* G.R. No. 161104, September 27, 2006, 503 SCRA 595, 603-604; *Pentagon International Shipping, Inc. v. Adelantar*, G.R. No. 157373, July 27, 2004, 435 SCRA 342, 348, citing *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002, 385 SCRA 306, 318.

[19] *Delos Santos v. Jebsen Maritime, Inc.,* G.R. No. 154185, November 22, 2005, 475 SCRA 656, 664.

seafarer and his employer are governed by their mutual agreement, the POEA rules and regulations[20] require that the POEA Standard Employment Contract be integrated in every seafarer's contract.[21]

A perusal of Jerry's employment contract[22] reveals that what was expressly integrated therein by the parties was DOLE Department Order No. 4, series of 2000 or the POEA Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, and POEA Memorandum Circular No. 9, series of 2000. However, POEA had issued Memorandum Circular No. 11, series of 2000[23] stating that:

In view of the Temporary Restraining Order issued by the Supreme Court in a Resolution dated 11 September 2000 on the implementation of certain amendments of the Revised Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels as contained in DOLE Department Order No. 04 and POEA Memorandum Circular No. 09, both Series of 2000, please be advised of the following:

1. **Section 20, Paragraphs (A)**, (B) and (D) of the former Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, **as provided in DOLE Department Order No. 33, and POEA Memorandum Circular No. 55, both Series of 1996 shall apply in lieu of Section 20 (A)**, (B) and (D) **of the Revised Version;** (Emphasis supplied.)

x x x x x x x x x

In effect, POEA Memorandum Circular No. 11-00 thereby paved the way for the application of the POEA Standard Employment Contract based on POEA Memorandum Circular

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[20] *Millares v. National Labor Relations Commission, supra* note 18.

[21] *Pentagon International Shipping, Inc. v. Adelantar, supra* note 18.

[22] Records, p. 3.

[23] TEMPORARY RESTRAINING ORDER ON CERTAIN AMENDMENTS OF THE REVISED TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN-GOING VESSELS, adopted on September 12, 2000.

No. 055, series of 1996. Worth noting, Jerry boarded the ship on August 2001 before the said temporary restraining order was lifted on June 5, 2002 by virtue of Memorandum Circular No. 2, series of 2002.[24] Consequently, Jerry's employment contract with Coastal must conform to Section 20(A) of the POEA Standard Employment Contract based on POEA Memorandum Circular No. 055, series of 1996, in determining compensability of Jerry's death.

Section 20(A) of the POEA Standard Employment Contract, based on POEA Memorandum Circular No. 055, series of 1996, is clear:

> SECTION 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR DEATH
>
> 1. In case of death of the seafarer **during the term of his contract**, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment. (Emphasis supplied.)

Stated differently, for death of a seafarer to be compensable, the death must occur during the term of his contract of employment.[25] It is the only condition for compensability of a seafarer's death.[26] Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable.[27] In Jerry's case, the parties did not dispute that Jerry

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[24] SUBJECT: SECTION 20 OF THE REVISED STANDARD TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN-GOING SHIPS.

[25] *Rosario v. Denklav Marine Services Ltd.*, G.R. No. 166906, March 16, 2005, pp. 1, 5 (Unsigned Resolution).

[26] *Hermogenes v. Osco Shipping Services, Inc.*, G.R. No. 141505, August 18, 2005, 467 SCRA 301, 309.

[27] *Prudential Shipping and Management Corporation v. Sta. Rita,* G.R. No. 166580, February 8, 2007, 515 SCRA 157, 168.

died due to heart ailment during the term of his employment. Aside from the fact that respondent had submitted Jerry's death certificate, petitioner admits such fact of death as early as the time it had submitted its first position paper with the NLRC.

Petitioner, however, alleges that respondent's claim for death benefits should be denied because there was no reasonable work connection between Jerry's death and his illness. To this allegation, we cannot agree. Compensability of Jerry's death does not depend on whether his illness was work-connected or not. What is material is that his death occurred during the term of his employment contract. By provision of Section 20(A) of the POEA Standard Employment Contract, based on POEA Memorandum Circular No. 055, series of 1996, payment of death benefit pension is mandated in case of death of a seafarer during the term of his employment.

Petitioner further presents an affidavit of waiver[28] allegedly executed by Jerry releasing it from any responsibility and liability and contends that the Fit-to-Work Certification was issued only upon his insistence to be deployed after he underwent medical examination and was found to have an unstable blood pressure. Respondent, on the other hand, disputes the validity of such waiver insisting that no waiver can validly renounce the future rights of Jerry's heirs and beneficiaries, it being against sound public policy.

Again, we find petitioner's arguments without merit. It is not necessary, in order to recover compensation benefits, that an employee must have been in perfect health at the time he contracted the disease. A worker brings with him possible infirmities in the course of his employment, but the employer, though not an insurer of the health of his employees, takes them as he finds them.[29] Significantly, in issuing a fit-to-work certification to Jerry, petitioner assumed the risk of liability. Based on the certification itself, petitioner's accredited physician

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[28] CA *rollo*, p. 75.

[29] *Seagull Shipmanagement and Transport, Inc. v. NLRC*, G.R. No. 123619, June 8, 2000, 333 SCRA 236, 243.

had attested that Jerry was fit to work prior to his deployment. The ship's captain had also reported Jerry to be healthy and energetic when he joined the crew.[30] Petitioner cannot now evade its liability and deny the compensation for death benefits that respondent deserves. Thus, we are in agreement with the NLRC decision that:

> Respondent cannot escape liability on the mere basis of the affidavit of waiver supposedly executed by the deceased seaman. The basic reason is that waivers and quitclaims are against public policy and therefore null and void. More especially, **We are inclined to regard said document as spurious or fabricated because it was only brought out on appeal after the Labor Arbiter has awarded death benefits in favor of the complainant and her 4 minor children**.[31] (Emphasis supplied and underscoring ours.)

Factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[32] In our view, conclusive reliance can be placed on such findings.

Lastly, respondent's prayer for the award of attorney's fees is based on specific provision of the Civil Code.[33] The award of attorney's fees in this case is also consistent with current jurisprudence[34] in labor cases. Such award must be upheld, not only because labor cases take much time to litigate, they

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[30] Records, p. 31.

[31] *Id*. at 192.

[32] *Ramos v. Court of Appeals*, G.R. No. 145405, June 29, 2004, 433 SCRA 177, 182.

[33] CIVIL CODE, Art. 2208, par. 2.

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
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> x x x x x x x x x
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> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
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> x x x x x x x x x

[34] *Pentagon International Shipping, Inc. v. Adelantar*, *supra* note 18.

also require, based on experience, special dedication and expertise on the part of the pro-worker's counsel.

WHEREFORE, the petition is hereby *DENIED*. The Court of Appeals' Decision dated February 10, 2005 and Resolution dated May 25, 2005 in CA-G.R. SP No. 85961 are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago,[*] *Tinga, Reyes,*[**] and *Leonardo-de Castro,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 171442. June 17, 2008]

ADING QUIZON, BEN ZABLAN, PETER SIMBULAN and SILVESTRE VILLANUEVA, *petitioners*, *vs*. **LANIZA D. JUAN,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND DETAINER; WHO MAY INSTITUTE PROCEEDINGS AND WHEN; ELUCIDATED. — Section 1, Rule 70 of the Revised Rules of Court requires that in actions for forcible entry, the plaintiff must allege that he has been

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[*] Additional member in place of Associate Justice Arturo D. Brion who took no part due to prior action in the Court of Appeals.

[**] Additional member in place of Associate Justice Presbitero J. Velasco, Jr. who is on official leave.

[***] Additional member in place of Associate Justice Conchita Carpio Morales who is on official leave.

deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth and the action must have been filed within one year from the time of such unlawful deprivation of possession. This requirement implies that in such cases, the possession of the land by the defendant is unlawful from the beginning, as he acquires possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. In *Cajayon v. Batuyong,* this Court elucidated: x x x [T]he complaint must allege that one in physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth. It is not essential, however, that the complaint should expressly employ the language of the law. It would be sufficient that facts are set up showing that dispossession took place under said conditions. 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 thereof. To constitute the use of "force" as contemplated in the above-mentioned provision, the trespasser does not have to institute a state of war. Nor is it even necessary that he use violence against the person of the party in possession. The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary. Hence, in actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction. First, the plaintiff must allege his prior physical possession of the property. 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 Revised Rules of Court, namely: force, intimidation, threats, strategy, and stealth.

2. ID.; ID.; ID.; ID.; PRIOR POSSESSION; MUST BE SUFFICIENTLY ESTABLISHED; ELUCIDATED. — There is no dispute that respondent sufficiently alleged in her complaint the material facts constituting forcible entry. However, despite the sufficiency of her complaint, respondent miserably failed to prove her allegations therein, most significantly the fact of her prior possession. Allegation is not tantamount to proof. It must be stressed that one who alleged a fact has the burden

of proving it. And mere allegation without supporting evidence is not sufficient to establish a *prima facie* case of prior physical possession. We emphasize that absence of prior physical possession by the plaintiff in a forcible entry case warrants the dismissal of his complaint. In a long line of cases, this Court reiterated that the fact of prior physical possession is an indispensable element in forcible entry cases. The plaintiff must prove that they were in prior physical possession of the premises long before they were deprived thereof by the defendant. Possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Possession can be acquired by juridical acts. "These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, x x x execution and registration of public instruments, and the inscription of possessory information titles." For one to be considered in possession, one need not have actual or physical occupation of every square inch of the property at all times.

3. ID.; ID.; ID.; QUESTION TO RESOLVE IS ONLY RIGHT TO PHYSICAL POSSESSION, NOT OWNERSHIP; ELUCIDATED. — We have long settled that the only question that the courts must resolve in ejectment proceedings is – who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*? Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession. Hence, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession. While it may be true that the issue of ownership may incidentally be looked into in an ejectment case to determine who has a better right to possession, yet, it is crystal clear in this case that the issue of ownership over the subject property has not been seriously and successfully

intertwined with the issue of possession. It has definitely been established by the testimony of Nuguid, the vendor of the property, and by ocular inspection of the MCTC of Capas, Tarlac, that the subject land is outside or not part of the lot sold to respondent.

4. ID.; APPEALS; FINDINGS OF TRIAL COURT, RESPECTED. — This Court will not disturb the findings of the MCTC, which had the opportunity to physically inspect the subject property, and personally hear the witnesses and examine their demeanor in the course of the hearing. It is worthy to note that the appellate court should only delve into a recalibration of the evidence on appeal if the findings of the trial court are not anchored on the witnesses' credibility and testimonies, but on the assessment of the documents that are available to appellate magistrates and subject to their scrutiny. Regrettably, the instant case does not fall under this exception.

APPEARANCES OF COUNSEL

Venancio Q. Rivera for petitioners.
E.M. Cruz & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioners Ading Quizon (Quizon), Ben Zablan (Zablan), Peter Simbulan (Simbulan) and Silvestre Villanueva (Villanueva), seeking the reversal and the setting aside of the Decision[2] dated 15 March 2005 and the Resolution[3] dated 24 January 2006 of the Court of Appeals in CA-G.R. SP No. 72921. The appellate court, in its assailed Decision, found that petitioners forcibly entered and

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[1] *Rollo*, pp. 14-24.

[2] Penned by Associate Justice Roberto A. Barrios with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring. *Rollo,* pp. 41-47.

[3] *Rollo,* pp. 53-54.

dispossessed respondent Laniza Juan (Juan) of her property. Thus, the Court of Appeals affirmed the Resolution[4] dated 8 August 2002 of the Regional Trial Court (RTC) of Capas, Tarlac, Branch 66, in Civil Case No. 527-(01), reversing the Decision[5] dated 14 March 2001 of the Municipal Circuit Trial Court (MCTC) of Capas, Tarlac, in Civil Case No. 2207, which dismissed respondent's complaint for ejectment on the ground that petitioners have established prior physical possession over the disputed property. In its assailed Resolution, the Court of Appeals refused to reconsider its earlier Decision.

In her Complaint, respondent alleged that she acquired a parcel of land situated in Sitio Bullhorn, Aranguen, Capas, Tarlac, with an area of 10.2 hectares from Melencio Nuguid (Nuguid) by virtue of a Deed of Sale executed on 11 December 1996. Respondent claimed that on 9 August 2000, petitioners, conspiring and confederating with each other and through the use of force and intimidation, entered a portion of her property without her knowledge and consent. On 21 August 2000, petitioners once again went back to the premises and destroyed the wooden fence set up by respondent, as well as the fruit-bearing trees and rice plantation found therein. Four days later, petitioners supplanted respondent's wooden fence with an iron fence, enclosing an area of about one hectare (subject property), over which they maintained control and possession up to the time of filing of respondent's Complaint with the MCTC.

In their Answer, petitioners countered that the Complaint in Civil Case No. 2207 lacks cause of action, for respondent does not have any legal right over the subject property. Petitioners Quizon and Zablan insisted that they are the lawful owners and possessors of the subject property and it was the respondent who, without any authority from petitioners Quizon and Zablan, invaded and occupied the property.

During the Pre-Trial Conference held on 22 January 2001, the parties stipulated that the houses of petitioners Quizon and

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[4] *Id*. at 38-39.

[5] *Id*. at 25-31.

Zablan were located outside the respondent's property. The parties likewise agreed that petitioners Simbulan and Villanueva have no possession or interest over the subject property, but they were with petitioners Quizon and Zablan when the alleged encroachment over respondent's property took place.

On 14 March 2001, the MCTC rendered a Decision dismissing Civil Case No. 2207, since respondent failed to establish that petitioners forcibly entered the subject property. The MCTC observed that petitioners Quizon and Zablan occupied the subject property long before the alleged sale occurred between Nuguid and respondent. Hence, petitioners Quizon and Zablan had sufficiently proved prior possession of the subject property. More importantly, upon ocular inspection, the MCTC found that the subject property occupied by petitioners Quizon and Zablan were outside the property sold by Nuguid to respondent. The dispositive portion of the MCTC Decision reads:

> IN VIEW THEREOF, decision is hereby rendered DISMISSING the complaint with cost *de officio*.
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> [Petitioners] counterclaim is also dismissed.[6]

On appeal, docketed as Civil Case No. 527-C-2001, the RTC initially affirmed the dismissal of Civil Case No. 2207 in its Decision dated 16 November 2001, ruling that the appealed MCTC Decision was based on facts and law on the matter.

Upon respondent's Motion for Reconsideration, however, the RTC reversed its Decision dated 16 November 2001. In its Resolution dated 20 May 2002, the RTC underscored the stipulations made by petitioners Simbulan and Villanueva during the Pre-Trial Conference before the MCTC that they were with petitioners Quizon and Zablan when the incident that led to the filing of Civil Case No. 2207 occurred, and construed such stipulation as admission that petitioners did unlawfully take over possession of the subject property, as alleged by respondent. Thus, the RTC disposed:

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[6] *Id*. at 31.

WHEREFORE, finding the [petitioners] to have ousted [respondent] of her possession of her one hectare land at Bullhorn, Aranguren, Capas, Tarlac and the destruction of her plants therein, the Court hereby reconsiders its decision on November 16, 2001 which affirmed *in toto* the decision of the 2nd Municipal Circuit Trial Court of Capas-Bamban-Concepcion, Capas, Tarlac; thereby reversing said decision and hereby: orders [petitioners] to restore [respondent] to the possession of the one hectare land she had been dispossessed; ordering the defendants to pay the amount of ₱50,000.00 for the destruction of the [respondent's] fence, crops and fruit bearing trees; ordering the defendants to reimburse the attorney's fees and appearance fees paid by [respondent] to her counsel and to pay the cost.[7]

The Motion for Reconsideration filed by petitioners was denied by the RTC in its Resolution dated 8 August 2002.

Dissatisfied, petitioners filed a Petition for Review with the Court of Appeals where it was docketed as CA-G.R. SP No. 72921, arguing that the RTC erred in not upholding the dismissal by the MCTC of the respondent's complaint in Civil Case No. 2207 for its utter lack of merit. Petitioners asserted that the RTC gravely abused its discretion in reversing the MCTC Decision in Civil Case No. 2207, asserting that they had a better right over the subject property. Petitioners likewise averred that the amount of ₱50,000.00 adjudged by the RTC as their liability for destroying the vegetables planted on the subject property was excessive.

On 15 March 2005, the Court of Appeals rendered a Decision, affirming the RTC Resolution dated 20 May 2002. The Court of Appeals declared that petitioners did commit forcible entry of the subject property since the parties already made a stipulation to that effect during the Pre-Trial Conference before the MCTC, to wit:

[Respondent] bought on December 11, 1996 from [Nuguid] a parcel of land consisting of 52,000 (sic) sq. meters situated at Bullhorn, Brgy. Aranguren, Capas, Tarlac; it was also stipulated upon proposal of the [petitioners] that [Simbulan] and [Villanueva] have no possession

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[7] *Id*. at 36-37.

over the subject parcel of land but they were with petitioners [Quizon] and [Zablan] when forcible entry was made leading to the ouster of [respondent's] possession and destruction [respondent's] plants. That [petitioner Quizon] house is outside the portion bought by [respondent] from [Nuguid].[8]

The appellate court further ruled that having voluntarily stipulated in the Pre-Trial Agreement that they forcibly entered the subject property, petitioners can no longer deny the same. Once validly entered into, stipulations will not be set aside unless for good cause. The party who validly made them can be relieved therefrom only upon showing of collusion, duress, fraud, misrepresentation as to facts, undue influence or such other sufficient cause as will serve justice in a particular case. There is no showing in this case of any cause or ground which could be the basis for relieving petitioners of the quicksand of admission which they voluntarily wallowed into. According to the decretal portion of the Court of Appeals Decision:

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.[9]

In a Resolution dated 24 January 2006, the Court of Appeals denied the Motion for Reconsideration interposed by petitioners, for it raised the same issues which were already considered and passed upon by the appellate court in its assailed Decision.

Petitioners are now before this Court *via* the Petition at bar raising the sole issue of whether the Court of Appeals erred in affirming the RTC Decision dated 16 November 2001, awarding possession of the subject property to respondent.

Section 1, Rule 70[10] of the Revised Rules of Court requires that in actions for forcible entry, the plaintiff must allege that

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[8] *Id*. at 44.

[9] *Id*. at 45.

[10] 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

he has been deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth and the action must have been filed within one year from the time of such unlawful deprivation of possession. This requirement implies that in such cases, the possession of the land by the defendant is unlawful from the beginning, as he acquires possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant.[11]

In *Cajayon v. Batuyong,*[12] this Court elucidated:

> x x x [T]he complaint must allege that one in physical possession of a land or building has been deprived of that possession by another through force, intimidation, threat, strategy or stealth. It is not essential, however, that the complaint should expressly employ the language of the law. It would be sufficient that facts are set up showing that dispossession took place under said conditions.
>
> 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 thereof. To constitute the use of "force" as contemplated in the above-mentioned provision, the trespasser does not have to institute a state of war. Nor is it even necessary that he use violence against the person of the party in possession. The act of going on the property and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property, and this is all that is necessary.

Hence, in actions for forcible entry, two allegations are mandatory for the municipal court to acquire jurisdiction. First,

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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 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.

[11] *Spouses Ong v. Parel*, 407 Phil. 1045, 1053 (2001).

[12] G.R. No. 149118, 16 February 2006, 482 SCRA 461, 471-472.

the plaintiff must allege his prior physical possession of the property. 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 Revised Rules of Court, namely: force, intimidation, threats, strategy, and stealth.

There is no dispute that respondent sufficiently alleged in her complaint the material facts constituting forcible entry, as she explicitly claimed that she had prior possession of the subject property since its purchase, and upon it built a wooden fence. She also particularly described in her Complaint how petitioners encroached upon the subject property and dispossessed her of the same. Respondent's complaint contains the allegations that petitioners, abetting and conspiring with one another, without respondent's knowledge and consent and through the use of force and intimidation, entered a portion of her land; thereafter pulled out and destroyed the fence she had erected, including the fruit-bearing trees planted thereon; and put their own iron fence enclosing an area of about one hectare. Petitioners Quizon and Zablan then purportedly took possession and control of the subject property up to the time Civil Case No. 2207 was filed with the MCTC. It is thus irrefutable that respondent sufficiently alleged that the possession of the subject property was wrested from her through violence and force.

However, despite the sufficiency of her complaint, respondent miserably failed to prove her allegations therein, most significantly the fact of her prior possession. Allegation is not tantamount to proof.[13] It must be stressed that one who alleged a fact has the burden of proving it.[14] And mere allegation without supporting evidence is not sufficient to establish a *prima facie* case of prior physical possession.

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[13] *V.V. Soliven Realty Corporation v. Ong,* G.R. No. 147869, 26 January 2005, 449 SCRA 339, 347.

[14] *Machica v. Roosevelt*, G.R. No. 168664, 4 May 2006, 489 SCRA 534, 544.

We emphasize that absence of prior physical possession by the plaintiff in a forcible entry case warrants the dismissal of his complaint.[15]

In a long line of cases,[16] this Court reiterated that the fact of prior physical possession is an indispensable element in forcible entry cases. The plaintiff must prove that they were in prior physical possession of the premises long before they were deprived thereof by the defendant.[17]

Possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. [18] Possession can be acquired by juridical acts. "These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, x x x execution and registration of public instruments, and the inscription of possessory information titles." For one to be considered in possession, one need not have actual or physical occupation of every square inch of the property at all times.[19]

During the ocular inspection, the MCTC had the opportunity to inquire from Nuguid the location of the land he supposedly sold to respondent. **Upon Nuguid's representation, the court found that the lot upon which the two adjacent houses of petitioner Quizon stood was not included in the property Nuguid sold to respondent**. On the same occasion, the MCTC also learned that petitioners Quizon and Zablan were already occupying the subject premises long before the alleged sale between respondent and Nuguid took place. It was based on the aforementioned finding that the MCTC dismissed Civil Case

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[15] *Sps. Gaza v. Lim*, 443 Phil. 337, 349 (2003).

[16] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, G.R. No. 155110, 31 March 2005, 454 SCRA 653; *Sps. Gaza v. Lim*, *id*.

[17] *Sps. Gaza v. Lim*, *id*. at 348-349.

[18] *Spouses Benitez v. Court of Appeals*, 334 Phil. 216, 222 (1997).

[19] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, *supra* note 16 at 671.

No. 2207 for failure of respondent to establish prior physical possession of the subject property.

The findings of the RTC and the Court of Appeals were largely anchored on the stipulation of facts, made during the Pre-Trial Conference, that petitioners Simbulan and Villanueva were with petitioners Quizon and Zablan when the latter two forcibly entered the subject property and destroyed respondent's plants. This is implying too much from a poorly worded stipulation of facts. If petitioners already did admit to having forcibly entered the subject property, then there would have been no more need for a trial. The reasonable interpretation of such stipulation of facts at the pre-trial would be that petitioners Simbulan and Villanueva were with petitioners Quizon and Zablan when the latter two purportedly destroyed the fence and plants of respondent found on the subject property, and surrounded the subject property with an iron fence. Far from being an admission by the petitioners that respondent had prior possession of the subject property, petitioners' actuations are only consistent with the claim of petitioners Quizon and Zablan that they were already in possession of the subject property and they were only protecting the same from respondent's repeated attempts to appropriate it to herself.

Based on the foregoing, it is clear that there was no ouster or dispossession that took place in the instant case. Petitioner Quizon's material possession of the subject property preceded the alleged sale between respondent and Nuguid. It was NEVER PROVEN that the subject property occupied by petitioners Quizon and Zablan encroached upon or overlapped the property bought by respondent from Nuguid. Quite interesting, was the testimony of Nuguid, a disinterested party, who had competent knowledge of the metes and bounds of the property he ceded *via* sale to respondent. The testimony undeniably established that the property subject of said sale is different from the subject property possessed and occupied by petitioner Quizon.

This Court will not disturb the findings of the MCTC, which had the opportunity to physically inspect the subject property, and personally hear the witnesses and examine their demeanor

in the course of the hearing. It is worthy to note that the appellate court should only delve into a recalibration of the evidence on appeal if the findings of the trial court are not anchored on the witnesses' credibility and testimonies, but on the assessment of the documents that are available to appellate magistrates and subject to their scrunity.[20] Regrettably, the instant case does not fall under this exception.

Verily, petitioners Quizon and Zablan's possession of the subject property cannot be disturbed. We have long settled that the only question that the courts must resolve in ejectment proceedings is — who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*? Regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be thrown out by a strong hand, violence or terror. Neither is the unlawful withholding of property allowed. Courts will always uphold respect for prior possession.[21]

Hence, a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him. To repeat, the only issue that the court has to settle in an ejectment suit is the right to physical possession.[22] While it may be true that the issue of ownership may incidentally be looked into in an ejectment case to determine who has a better right to possession,[23] yet, it is crystal clear in this case that the issue of ownership over the subject property has not been seriously and successfully intertwined with the issue of possession. It has definitely been established by the testimony

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[20] *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA*, 432 Phil. 895, 906 (2002).

[21] *Pajuyo v. Court of Appeals*, G.R. No. 146364, 3 June 2004, 430 SCRA 492, 510.

[22] *Id.* at 510-511.

[23] *Aquino v. Aure,* G.R. No. 153567, 18 February 2008.

of Nuguid, the vendor of the property, and by ocular inspection of the MCTC of Capas, Tarlac, that the subject land is outside or not part of the lot sold to respondent.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Decision dated 15 March 2005 of the Court of Appeals and its Resolution dated 24 January 2006 in CA-G.R. SP No. 72921 are hereby *REVERSED and SET ASIDE*. The Decision dated 14 March 2001 of the Municipal Circuit Trial Court of Capas Tarlac, in Civil Case No. 2207, dismissing respondent's complaint for ejectment is hereby *REINSTATED*. Costs against respondent Laniza D. Juan.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Reyes, and *Brion,*[*] *JJ.,* concur.

EN BANC

[G.R. No. 174479. June 17, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZALDY GARCIA *y* ANCHETA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF TRIAL COURT, RESPECTED. —The established rule in factual reviews before us is that the findings and conclusions of the trial court —

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[*] Per Special Order No. 507, dated 28 May 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Arturo D. Brion to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program.

including its assessment of the credibility of the witnesses and the probative weight of their testimonies — are accorded high respect, if not conclusive effect, especially if affirmed by the CA. We nevertheless fully scrutinized the records under review since the review of this case is pursuant to a constitutional command, dictated no less by the highest stake — the life of the accused.

2. ID.; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION. — We clarify at the outset that proof beyond reasonable doubt is not solely established by direct evidence. In the absence of direct evidence, the prosecution may present circumstantial evidence that, under given conditions, may meet the evidentiary standard of "proof beyond reasonable doubt" in criminal cases. Circumstantial evidence is sufficient for conviction if: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The conclusions that can be drawn from the chain of proven circumstances rather than their number are material to prove the guilt of the accused. What is paramount is that facts be proven from which inferences may be drawn — with all the circumstances being consistent with each other — that the accused is guilty and this inference is consistent with no other conclusion except that of guilt.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT.— There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of the means, method or manner of execution.

4. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELUCIDATED. — The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities

either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Without these reasons and where the clear reasons for the supposed surrender is the inevitability of arrest and the need to ensure his safety, the surrender cannot be spontaneous and cannot be the "voluntary surrender" that serves as a mitigating circumstance.

5. ID.; MURDER QUALIFIED BY TREACHERY AGGRAVATED BY USE OF UNLICENSED FIREARM; PROPER PENALTY. — The crime committed by the appellant is murder qualified by treachery penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with *reclusion perpetua* to death. The proven use of an unlicensed firearm adds an aggravating circumstance to the crime pursuant to Republic Act No. 8294 and its established jurisprudence. Consequently, the CA did not err when it upheld the trial court's imposition of the death penalty under Article 63(1) of the Revised Penal Code. Despite this confirmation, however, we cannot impose the death penalty in light of Republic Act No. 9346 entitled *"An Act Prohibiting the Imposition of Death Penalty in the Philippines"* signed into law on June 24, 2006. Section 2 of this law mandates that in lieu of the death penalty, *reclusion perpetua* must be imposed with no eligibility for parole under the Indeterminate Sentence Law.

6. ID.; ID.; CIVIL LIABILITIES; PROPER CIVIL INDEMNITY. — The grant of civil indemnity for the crime of murder requires no proof other than the fact of death as a result of the crime and proof of the appellant's responsibility therefor. Prevailing jurisprudence dictates an award of ₱75,000.00.

7. ID.; ID.; ID.; LOSS OF EARNING CAPACITY COMPUTED IN CASE AT BAR. — Indemnity for loss of earning capacity is determinable under established jurisprudence based on the *net earning capacity* of the murder victim computed under the formula: Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses) The records show that Major Opina's annual gross income was ₱154,800.00 per annum computed from his monthly rate of ₱12,900.00 a month. His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of ₱77,400.00. His life expectancy, on the other hand, is assumed

to be 2/3 of age 80 less 31, his age at the time he died. Applied to the above formula, these data yield the net earning capacity loss to be indemnified at ₱2,554,200.00.

8. ID.; ID.; ID.; ACTUAL DAMAGES; EXPENSES ALLOWED ONLY IF DULY SUPPORTED BY RECEIPTS. — With respect to actual damages, established jurisprudence allows only expenses duly supported by receipts. Only ₱64,075.00 was actually supported by the required receipts.

9. ID.; ID.; ID.; MORAL DAMAGES AND EXEMPLARY DAMAGES; PROPER IN CASE AT BAR. — We affirm, pursuant to Articles 2216, 2217 and 2219 of the Civil Code, the CA's award of moral damages in light of the mental anguish that the parents of Major Opina suffered. We similarly affirm the award of exemplary damages under Article 2230 of the Civil Code given the presence of the aggravating circumstance of use of an unlicensed firearm.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J.*:

We review in this appeal the May 31, 2006 decision[1] of the Court of Appeals *("CA")* in CA-G.R. CR-H.C. No. 02075 affirming with modification the decision[2] of the Regional Trial Court *("RTC")*, Branch 67, Bauang, La Union. This RTC decision found the accused-appellant Zaldy Garcia *y* Ancheta (*"appellant"*) guilty of the crime of murder qualified by treachery, attended by the special aggravating circumstance of use of an

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[1] Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justice Japar B. Dimaampao and Associate Justice Arturo G. Tayag; *rollo*, at pp. 3-25.

[2] Penned by Judge Rose Mary Molina-Alim; CA *rollo*, at pp. 111-153.

unlicensed firearm. The RTC imposed the *death penalty* on the appellant.

Background Facts

The prosecution charged the appellant before the RTC with the crimes of murder and violation of Republic Act (R.A.) No. 6425, as amended,[3] under two separate informations. The information for murder reads:

> Criminal Case No. 2300-Bg
>
> That on or about the 8th day of September 1999, in the Municipality of Bauang, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and in a treacherous manner, did then and there, willfully, unlawfully and feloniously shoot Police Chief Inspector Tito Ines Opina with an unlicensed firearm inflicting upon the latter a fatal gunshot wound which directly caused his death, all to the damage and prejudice of the heirs of Tito Ines Opina and other consequential damages.
>
> CONTRARY TO LAW.[4]

The charge for violating R.A. 6425 is no longer under review after the RTC acquitted the appellant on ground of reasonable doubt.

On arraignment, the appellant pleaded not guilty to the charges laid. The prosecution presented the following witnesses in the trial on the merits that ensued: Special Police Officer (SPO) 4 Paterno B. Oriña; Julita Ines Opina; Police Chief Inspector Benjamin Lusad; Dr. Bernardo Parado; Tito Opina, Sr.; SPO3 Edwin B. Benavidez; SPO2 Benjamin Soriano; and SPO1 Rolando Valdez Pascua. The appellant and his wife, Evangeline Garcia, took the witness stand for the defense.

The material points in the testimony of SPO4 Paterno B. Oriña *("SPO4 Oriña")* are summarized by the trial court as follows:

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[3] The Dangerous Drugs Act of 1972, as amended.

[4] CA *rollo,* at p. 10.

"Sometime on September 8, 1999 at around 8:00 o'clock in the morning, x x x he told his companions that he knew the whereabouts of Zaldy Garcia. So in the presence of the other officers, Major Opina told him that they will go and locate the whereabouts of Zaldy Garcia; x x x[5]

Thereafter, he and Major Opina proceeded to Barangay Pugo, Bauang, La Union to serve the Warrant of Arrest against Zaldy Garcia issued by Judge Adolfo Alagar. x x x Upon reaching Pugo, Bauang, La Union, they asked someone near the place who pointed to them the house being rented by Zaldy Garcia. They went nearer the compound and saw a little boy about four (4) to five (5) years old to whom they asked again the house of Zaldy Garcia and the boy pointed a (sic) house inside the compound surrounded by a fence.[6]

Inside the compound are two (2) houses. One is a big house, bungalow type while the other which was rented by Zaldy Garcia is small, bungalow type made of concrete hollow blocks. There is a perimeter fence, about seven (7) to eight (8) feet high with two (2) steel gates. Vehicles can pass through the wider gate while the other, only persons can pass through it. The wider gate is about six (6) to seven (7) feet wide and the other is about five (5) feet wide. Both gates were locked at that time.[7]

They stood in front of the gate that was closed, then a woman approached them at a distance of more or less three (3) meters away. The woman talked to Major Opina who introduced himself and his companion as policemen and she was told that a Warrant of Arrest was issued for the arrest of her husband. While Major Opina and the accused' (sic) wife were talking, Zaldy Garcia came out from their house half naked. The wife's reaction was then normal and she told Major Opina that they just (sic) stay outside for she will get the key from the caretaker and open the gate.[8]

When Major Opina saw Zaldy Garcia, he pointed his finger to Zaldy and said, "*Zaldy, agsurender kan, adda warrant of arrest mo*." (Zaldy you better surrender, you have a warrant of arrest.) Zaldy

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[5] TSN, July 11, 2000 at pp. 6-7.

[6] *Id.*, at pp. 8-10.

[7] *Id.*, at p. 12.

[8] *Id.*, at pp. 10-11.

just waived his hands indicating as if he refuses, who was then more or less twenty (20) meters from the gate. After waiving his hands, he went inside the house. *From the gate to the house, there were no obstruction and the ground was clear*.[9]

At that instance, he told his superior Major Opina that they call for a back up from the Police Station of Bauang. Major Opina then ordered him to call. He sent a young man about 16 years old from the vicinity to go to the Police Station to ask a back up for them. As they were waiting for the back-up, they discussed the strategy they would employ in order to arrest Zaldy Garcia. *After fifteen (15) to twenty (20) minutes, three (3) policemen arrived* and they were SPO3 Edwin Benavidez, PO1 Casem, and the third one, whose name he did not know.[10]

Upon the arrival of the three policemen, witness and Major Opina scaled the fence near the smaller gate and the three policemen positioned themselves outside the compound. SPO3 Benavidez stayed near the big gate outside the compound and the other two were at the back of the western and southern side of the compound.[11] He told SPO3 Benavidez to go with them as back up because he had a long firearm but Benavidez preferred to stay where he was positioned at the big gate. Both the big and small gates were closed. But even if someone is outside the gate, the whole of the house rented by Zaldy Garcia could still be seen.[12]

He and Major Opina were able to enter the compound by scaling the fence.[13] They proceeded to the house of the accused. *The pathway leading to the house is plain planted with Bermuda grass and is open. Aside from the main door of the house, there is a screen, it's a double opening door. If somebody is outside about one meter from the door, persons inside the house could be seen. The door was open but the screen made of chicken wire was closed.*[14]

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[9] *Id.*, at p. 13.

[10] *Id.*, at p. 14.

[11] *Id.*, at p. 15.

[12] *Id.*, at p. 16.

[13] *Id.*, at p. 17.

[14] *Id.*, at pp. 18-19.

While he was walking side by side with Major Opina approaching the door, Major Opina was on his left side, and was ahead of him. *Suddenly, they were shot at. He was not hit but Major Opina who was about one meter from the door was hit on the abdomen.* After the shot was fired, he dived and positioned himself in a safety (sic) place. Major Opina fell down and he heard the sound of "ehhh" from him.[15]

After he was able to position himself in a safer place, *he traded shots with the accused. He did not see the accused when the first shot was fired, but as they traded shots, he saw the accused inside the house near the window beside the door at the eastern portion of the house.* The open window at the eastern side of the house is a steel window with glass. At this point, witness was made to draw a sketch of the compound showing the two houses which are very near each other about one and a half (1 ½) meters away.[16]

When Major Opina fell to the ground, he tried to retrieve him but the accused traded shots with him. He called for the back-up policemen to get inside the compound telling them that Major Opina was shot, he heard somebody from the outside shouting, "You better cover yourself, Sarge." As no one came in from the back up and because he had no extra ammunitions, he covered himself, withdrew at the back of the house, scaled the fence and then went to the main gate. At that juncture, Major Lusad arrived. He traded approximately nine (9) shots with the accused, who had also fired more or less eight (8) to nine (9) shots. However, the accused did not run out of ammo., as they discovered when he surrendered that he has lot of ammunitions and extra magazine.[17]

Upon the arrival of Major Lusad, he ordered them not to shoot and he negotiated with Zaldy Garcia to surrender.[18] During the negotiation, he was outside the gate, but he was aware of what was happening. *He heard the demand of the accused before surrendering, that part of the policemen from San Fernando will leave the premises before he (Zaldy) will surrender.* x x x[19]

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[15] *Id.*, at pp. 19-20.

[16] *Id.*, at pp. 20-21.

[17] *Id.*, at pp. 22-23.

[18] *Id.*, at p. 23.

[19] *Id*., at pp. 29-30.

After the negotiation, he saw Zaldy Garcia went outside the house alone, handed his firearm and surrendered to Major Lusad. That was only the time the body of Police Chief Inspector Opina was retrieved by Dr. Parado and brought him to the ambulance.[20] x x x

Witness further testified that he was the one holding the Warant (sic) of Arrest.[21] x x x *They have also made precautions in Serving the Warrant of Arrest, but they were immediately shot at when they were approaching the door, as it is an open ground and there was no way for them to take cover if they will be fired upon.* So, when a shot rang out and *Major Opina was hit, he fell on the side near the door at a distance of more or less one meter.*[22] Major Opina was then a little bit ahead of him and nearer to the door.

At the outburst of the first shot, he dived to the ground between the two houses and traded shots with the accused. The shots of the accused were coming from inside the house through the window at the eastern side and from the window of the kitchen. *But the first shot was through the door because that was the place where Major Opina was standing while he was at his side."*[23] *(Italics and footnotes referring to the pertinent parts of the records supplied).*

Julita Ines Opina, the mother of the victim, testified that her son was the Chief Intelligence Officer at the San Fernando City Police Station holding the rank of police major.[24] He received a monthly pay of Twenty Thousand Pesos (₱20,000.00), more or less, at the time of his death.[25] She affirmed that their family incurred expenses during her son's wake and burial, and in attending the hearings of the case. They spent Twenty Thousand Pesos (₱20,000.00), more or less, for the wake. These expenses were not receipted. They also spent Fifty-eight Thousand Pesos (₱58,000.00) for the funeral expenses covered by an official receipt issued by the Jones Funeral Homes, and an additional

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[20] *Id*., at p. 26.

[21] *Id*., at p. 37.

[22] *Id*., at p. 39.

[23] *Id*., at pp. 39-40.

[24] TSN, July 12, 2000 at p. 4.

[25] *Id.*, at p. 7.

Six Thousand Pesos (₱6,000.00) issued by the Glamor Studio. On top of all these, their non-receipted miscellaneous expenses amounted to Sixty-four Thousand Pesos (₱64,000.00). After the funeral, they spent around Three Thousand Pesos (₱3,000.00) every time they went to court for the hearings; up to July 12, 2000, they had spent Thirty-three Thousand Pesos (₱33,000.00). She suffered mental anguish that could not be paid for in money terms, which led to the enlargement of her heart and hypertension.[26]

The testimony of Police Chief Inspector Benjamin Lusad (*"Chief Inspector Lusad"*), who acted as the senior police officer at the scene immediately after the shooting, was summarized as well by the RTC as follows:

"Upon receiving a report that an incident transpired at Barangay Pugo, Bauang, La Union, he immediately proceeded to the scene and was informed by his men that Police Chief Inspector Tito Opina had been shot. The first thing he did was to clear the scene. When he saw that there were two houses within the compound, he had to clear the first house in order for him to reach the second house which the suspect was believed to be in. He and his men approached the gate which was apparently padlocked. He peeped in and saw three (3) children who were at the balcony outside the door of the bigger bungalow so that what he did was to evacuate them. They were able to enter the compound as it was the timely arrival of the owner of the house by the name of Norman Lopez.[27]

Upon entering the compound, he searched the house, but he could not see the inside of the house where the suspect was presumed to be hiding because of the locked windows. In going to the second door of the first house, there was an alley where Police Chief Inspector Opina was lying. After clearing the first house, the next thing he did as commander in that kind of situation was to neutralize the suspect by negotiating for his surrender. He was asking the wife to leave but she would not leave and was holding on to him. *Their conversation with the accused went on as the wife was the one speaking to the husband while he was the one telling the wife what to tell her*

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[26] *Id.* at pp. 9-12.

[27] TSN, July 25, 2000 at pp. 5-6.

husband. x x x However, he could not see the accused as they were separated by walls, but he was at a hearing distance.[28]

He could not exactly remember how long did it take him to negotiate as he did not want the negotiation to go further. He had to think fast and told the accused to come out and if he wants to surrender, he can surrender. He requested him to surrender and when he opened the door of the bigger bungalow, he immediately saw the suspect inside the smaller bungalow and upon seeing him, he stood up, raised both his hands and put down his gun at the wall of the window, then gave his firearm to him while witness was at the alley. When the accused raised his hands and handed him the firearm, he took hold of it and took the magazine and ordered the accused to get out from the house. Witness was made to identify a firearm made in Hungary with SN B60071 including magazines and he said that was the firearm surrendered to him because he was the one whom the suspect had surrendered. He personally took the firearm from the suspect and brought the suspect to the mobile car. *The gun was loaded at that time which will be enough to fire at least ten (10) more rounds. The bullets are not just ordinary but special kind that has the tendency to rapture upon impact*. x x x Aside from the firearm and extra magazines, the magazines were loaded with ammunitions. x x x[29]

x x x x x x x x x

He was able to talk to the accused at the Police Station. Upon initial inquiry on the matter, *he immediately asked the suspect why he was able to do that and the accused said that he shot the late Tito Opina because he believed that he was at a disadvantage. He knew that they are (were) policemen, so he fired first before the policemen could arrest him for certain offense.*[30] *(Italics and footnotes referring to pertinent parts of the records supplied)*

x x x x x x x x x

Dr. Bernardo Parado, a Municipal Health Officer of Bauang, La Union, declared on the witness stand that on September 8,

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[28] *Id*., at pp. 6-8.

[29] *Id*., at pp. 9-12.

[30] *Id*. at p. 16.

1999, he conducted an autopsy of Major Opina's body upon the request of Chief Inspector Lusad.[31] According to him, Major Opina's cause of death was cardiopulmonary arrest secondary to hypovolemic shock, irreversible, secondary to massive hemathorax secondary to ruptured pulmonary artery left secondary to gunshot wound 3rd to 4th rib; left parasternal line, left anterior chest wall.[32]

Tito Opina, Sr. testified that the loss of his son greatly affected his family physically, mentally and financially.[33] He added that his son was a recipient of many awards, including being named the Most Outstanding Chief of Police of La Union.[34]

SPO3 Edwin B. Benavidez testified that in the morning of September 8, 1999, he, together with Police Officer (PO) 3 Juan D. Casem, Jr. (*"PO3 Casem"*) and PO2 Amelito Sapitula (*"PO2 Sapitula"*) were assigned by Chief Inspector Lusad to assist Major Opina and SPO4 Oriña at Pugo, Bauang, La Union. Upon reaching the place, they were informed that Major Opina and SPO4 Oriña would effect the arrest of appellant. Afterwards, Major Opina — who had no gun with him — borrowed the unloaded gun of PO3 Casem.[35]

Thereafter, SPO3 Benavidez saw Major Opina and SPO4 Oriña scale the fence to enter the compound. He instructed PO3 Casem and PO2 Sapitula to position themselves at the back of the house to prevent the appellant's escape from that end, while he positioned himself in front of the main gate. As Major Opina, with SPO4 Oriña at his back, approached the appellant's house, he heard a shot and saw Major Opina fall. He intended to but did not shoot at the house because the appellant's wife told him there were children inside. He then

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[31] TSN, July 26, 2000 at p. 4.

[32] *Id*., at p. 10.

[33] TSN, August 1, 2000 at p. 4.

[34] *Id*., at p. 7.

[35] TSN, September 13, 2000 at pp. 4-6.

called for reinforcement through his radio.[36] While waiting, gunshots were exchanged between SPO3 Oriña and the appellant. After Chief Inspector Lusad's arrival, he instructed the people at the first house to leave for a safer place. He followed Chief Inspector Lusad to the first house from where the latter asked for the appellant's surrender. The negotiation took some time, with the accused surrendering only at approximately 2 p.m. Upon surrender, the appellant handed a 9mm. pistol with magazines and ammunitions to Chief Inspector Lusad who brought these to the police station. These were later on handed over to him for marking as evidence and submission to the representative of the PNP Crime Laboratory.

SPO2 Benjamin Soriano, Chief of the Investigation Division of Bauang Police Station, testified that he conducted an investigation of the incident. He saw the lifeless body of Major Opina when he arrived at the scene. *It was lying near the doorstep of the second house.* He took pictures of the crime scene and investigated the witnesses. When he entered appellant's house with the deputy chief of police, they saw *several empty bullet shells* ***in the living room*** *and* ***kitchen***.[37]

SPO1 Rolando Valdez Pascua, a police officer assigned at the Firearms and Explosives Division at Camp Crame as custodian officer, confirmed that appellant was not a registered firearm holder.[38]

The appellant gave a different version of the events, summarized in the RTC decision as follows:

"On September 8, 1999 in the morning, he was inside their rented house with his wife at Pugo, Bauang, La Union. He began renting that house owned by a certain Bobot for two (2) months prior to the date of the incident.[39]

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[36] *Id.*, at pp. 7-8.

[37] TSN, September 18, 2001 at pp. 4-5.

[38] TSN, October 30, 2001 at pp. 5-6.

[39] TSN, July 17, 2002 at p. 4.

He was about to take a bath when there were two (2) persons knocking at the main gate of the compound about ten (10) meters away from their apartment. The compound is fenced. He went out when he heard these two persons calling "*Apo*" and told then to come back when the owner of the house arrives. As he was about to take a bath, he told his wife to ask the two persons their purpose and that was the time the wife saw an armalite partly hidden beside the gate.[40]

The main gate of the fence that enclosed the apartment is concrete made of iron. From the place where he was, he cannot see if there was anybody outside the fence, he can only see, if he goes outside the house (sic). His wife coming (sic) back from the gate informed him that the persons calling has an armalite. And while these two (2) persons are climbing the fence, he heard one of them uttering that they will kill him, although he did not know who between the two persons uttered those words as he was already inside the house because he was afraid.[41]

He does not know these persons as they were not in uniforms nor did they inform him that they are Police Officers. After hearing those utterances that they will kill him, he just stayed inside the house. The door of their apartment covered with screen was closed at that time.[42]

He did not see who between the two persons told him the word, "I will kill you, Zaldy," because his view was blocked by a plastic curtain, but at that time he went out, he saw them but they were not familiar to him as that was the first time he saw them. Upon hearing those words, "I will kill you, Zaldy," he got nervous wondering what wrong had he committed.[43]

When he heard them coming nearer to their house, he began to clean the gun kept inside their cabinet. Because he feared for his life, he accidentally pulled the trigger of the gun once towards the direction of the door. The screen covering the main door was hit by the bullet.[44]

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[40] *Id.*, at pp. 4-6.

[41] *Id.*, at p. 7.

[42] *Id.*, at pp. 8-9.

[43] TSN, July 18, 2002 at pp. 5-6.

[44] *Id.*, at p. 7.

The gun is licensed according to the accused, owned by a certain Romy, a CIA from the Visayas and the Manager of Mama's Bar. He was asked to sell the gun. The documents needed for the sale were given to him but were taken back by the owner a day prior to the incident; while the gun remained in his possession, although he is not a licensed gun dealer.[45]

He did not know if there was any person hit when he accidentally pulled the trigger of the gun. He only learned from Major Benjamin Lusad that he hit Major Opina when the former came to the scene of the incident.[46]

After the firing of the gun, he hid himself at the kitchen for two to three hours. Thereafter, Major Lusad arrived, talked to him and he surrendered. He told Major Lusad that he does not know those persons.[47]

He testified further that he was not a former soldier nor had any training in the military so as to know how to operate a gun as he is only a high school graduate. When in fact (sic), he was not familiar with the mechanism of the gun, but the owner taught him how to untuck and tucked (sic) the gun, to open the gun, so that he can accidentally fire that gun without untucking it. Because of fear of his life, he has to arm himself to defend his life. However, he insisted having accidentally pulled the trigger of the gun as he did not notice that the persons were already outside the door, where one of them was Major Opina who was accidentally hit.[48]

x x x x x x x x x

Again, he said, he accidentally fired the gun inside the house because of his nervousness, but, he did not intentionally killed (sic) the victim. At that time. He thought of committing suicide to finish his life as he had hurt feelings upon hearing that they will kill him. He said, he even fired the gun four (4) times at the flooring of the house.[49]

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[45] TSN, July 17, 2002 at pp. 10-11.

[46] TSN, July 18, 2002, at p. 8.

[47] *Id.*, at pp. 10-11.

[48] *Id.*, at pp. 16-17.

[49] TSN, July 18, 2002, at p. 18.

He came to see the body of Major Opina who was about two to three meters away from the door of the house when he surrendered.[50] At first, he was then afraid to surrender, but Major Lusad was able to convince him."[51] (Footnoting ours)

Evangeline Garcia, the appellant's wife, corroborated the appellant's testimony. She narrated that on the morning of September 8, 1999, two (2) men in civilian clothes arrived at the gate of the compound of the house they were renting. Upon her husband's instruction, she went out and asked these persons who they were looking for. She noticed that one of them had a long firearm. The men introduced themselves as the *compadre* of her husband. She then told them to wait for the owner of the house, as the gate was padlocked. As she was returning to the house, she saw the men scaling the fence. She immediately went inside the house, got her children, and proceeded to their room. She heard gunshots afterwards.[52]

The RTC's decision of August 26, 2003 convicting the accused of the crime of murder provides:

WHEREFORE, judgment is rendered in Criminal Case No. 2300, finding the accused Zaldy Garcia GUILTY beyond reasonable doubt of the crime of MURDER qualified by treachery and with the attendant of a special aggravating circumstance of "the use of unlicensed firearm" and is hereby sentenced to suffer the supreme Penalty of Death, and to pay the heirs of the late Chief Inspector Tito Opina, Jr., the following:

a) ₱50,000.00 for death indemnity;

b) ₱126,000.00 as expenses for the wake, burial and funeral of the victim;

c) ₱1,000,000.00 for loss of earning capacity;

d) ₱50,000.00 for moral damages;

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[50] *Id*., at p. 25.

[51] *Id*., at pp. 27-28.

[52] TSN, October 2, 2002 at pp. 5-7.

e) ₱50,000.00 for exemplary damages plus the costs of the suit.

In Criminal Case No. 2301, the accused is hereby acquitted on reasonable doubt.

SO ORDERED.[53]

The case was elevated to this Court on automatic appeal but was remanded to the Court of Appeals (CA) in accordance with *People v. Mateo*.[54]

The CA decision of May 31, 2006[55] affirmed with modification the RTC decision, reducing the award of actual damages and exemplary damages to ₱64,075.00 and ₱25,000.00, respectively, and increasing the indemnity for loss of earning capacity to ₱2,563,516.70. The CA likewise elevated the case to the Supreme Court for automatic review pursuant to A.M. No. 00-5-03-SC (Amendments to the Revised Rule of Criminal Procedure to Govern Death Penalty Cases).

In his brief,[56] the appellant argues that the RTC erred —

1. in convicting him after the prosecution failed to prove his guilt beyond reasonable doubt;

2. in appreciating the qualifying circumstance of treachery;

3. in failing to recognize the mitigating circumstance of voluntary surrender in imposing the penalty; and

4. in awarding ₱1,000,000.00 as indemnity for loss of earning capacity.

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[53] CA *rollo*, at pp. 152-153.

[54] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[55] *Rollo*, at pp. 3-25.

[56] CA *rollo*, at pp. 92-109.

The Court's Ruling

After due consideration, we deny the appeal but modify the penalty imposed and the awarded indemnities.

Sufficiency of Prosecution Evidence

The established rule in factual reviews before us is that the findings and conclusions of the trial court — including its assessment of the credibility of the witnesses and the probative weight of their testimonies — are accorded high respect, if not conclusive effect, especially if affirmed by the CA.[57] We nevertheless fully scrutinized the records under review since the review of this case is pursuant to a constitutional command, dictated no less by the highest stake — the life of the accused.[58]

The appellant contends, as his first point, that his guilt has not been proven beyond reasonable doubt; **no one really testified that it was he who shot Major Opina.**

We clarify at the outset that proof beyond reasonable doubt is not solely established by direct evidence. In the absence of direct evidence, the prosecution may present circumstantial evidence that, under given conditions, may meet the evidentiary standard of "proof beyond reasonable doubt" in criminal cases. Circumstantial evidence is sufficient for conviction if: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[59] The conclusions that can be drawn from the chain of proven circumstances rather than their number are material to prove the guilt of the accused. What is paramount is that facts be proven from which inferences may be drawn — with all the circumstances being consistent with each other —

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[57] *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.

[58] Article VIII, Section 5(2)(d), Philippine Constitution.

[59] *People v. Estillore*, G.R. No. 140348, July 18, 2003, 406 SCRA 605, 615.

that the accused is guilty and this inference is consistent with no other conclusion except that of guilt.[60]

The records of this case show that evidence of who actually shot Major Opina is not lacking. In fact, the evidence is the strongest there is, as **the appellant himself admitted in open court that he was the one who wielded the gun and pulled the trigger**. In his July 17, 2002 testimony, he narrated:

ATTY. GOMEZ:

Q: Now, you said that you were afraid and you stayed inside your house, after you heard those utterances what happened next after that?

ZALDY GARCIA:

A: When I heard them coming nearer to my house, that was the time that I was cleaning the gun they were asking me to sell, **I accidentally pulled the trigger of the gun**, sir.[61] (Emphasis ours)

Likewise, during the continuation of the hearing on July 18, 2002, the appellant testified thus:

ATTY. GOMEZ:

Q: Now you said that upon hearing those statements from the person outside your house what did you do next mr. witness?

ZALDY GARCIA:

A: I waited when my wife informed me that they climbed the fence and that was the time that I got nervous.

Q: And what did you do mr. witness or after feeling nervous?

A: **Accidentally pulled the trigger of the gun** sir.

Q: When in point in time did you take the gun from the place where it is hidden you have earlier stated?

A: When they were already inside the compound sir.

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[60] *People v. Loreto*, G.R. No. 137411-13, February 28, 2003, 398 SCRA 448, 459.

[61] TSN, July 17, 2002 at p. 9.

Q: And after getting the gun, what did you do mr. witness with that gun?

A: I was holding it and **accidentally pulled the trigger of the gun** sir.[62] (Emphasis supplied)

This same gun, by the admission of the appellant's lawyer at the hearing, was confiscated from the appellant and was the same gun that fired the bullet extracted from the body of Major Opina.[63] This same gun (cal. 9mm Parrabellum with serial number B60071), was found by the PNP Regional Crime Laboratory Office 1 to be positive of gunpowder nitrates,[64] indicating that it had recently been fired.

From the various testimonies, we note that no other person, except for the appellant's wife and some children were in the compound at the time of the incident. The compound, surrounded by a fence, had practically been cordoned off by the time reinforcement came; thus, no other person could go in and out therefrom. Moreover, testimonies also confirm that the appellant was alone in the house during his surrender.[65] Evidence shows too that the fatal shot came from within the house, specifically from behind the screen door.[66] All these, taken collectively and even without the appellant's admission, lead to no other conclusion than that appellant was the only person who could have fired the gun that killed Major Opina. They constitute too an unbroken chain leading to the conclusion that appellant was responsible for Major Opina's death.

The appellant's contention that he accidentally pulled the trigger of the gun out of nervousness deserves scant consideration. His conduct after shooting Opina belies this claim. *First*, appellant traded shots with SPO4 Oriña immediately after Major Opina was hit. The testimonies of SPO4 Oriña himself and the other

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[62] TSN, July 18, 2002 at p. 7.

[63] TSN, September 13, 2000 at p. 15.

[64] Records, at p. 5.

[65] TSN, July 11, 2000 at p. 24; TSN, July 25, 2000 at p. 13.

[66] *Id.,* at pp. 18-19.

police witnesses, supported by physical evidence of the empty 9mm bullet shells recovered from the appellant's house, attest to the exchange of gunfire. A man who shoots another by accident would have been concerned with the consequences of the accident and does not immediately trade shots with the shooting victim's companion. *Second*, the appellant was fully and adequately armed to do battle, as shown by the gun magazines and ammunition he subsequently surrendered. It is hard to picture a man so armed and who had traded shots with the police to be one who would accidentally shoot another. *Finally*, a man who accidentally shoots another does not resist and fail to surrender for an extended time. The prolonged negotiations alone showed lack of concern and repentance — traits and reactions inconsistent with the claimed accidental shooting. Thus, based on conclusions from the established facts, we rule out the validity of the appellant's claim of accidental shooting.

The Presence of Treachery

There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make.[67]

To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of the means, method or manner of execution.

The appellant seeks to negate these elements of treachery by claiming to have acted out of fear and nervousness; he was allegedly under these stresses because persons who were armed, dressed in civilian clothes and who did not identify themselves as members of the police, scaled his fence. He simply reacted to the intrusion and had no plan to shoot one of those who so

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[67] *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 288.

approached his house. Hence, he concludes that there was no treachery and the killing could not have been attended by this qualifying circumstance. He posits that the court *a quo* should have recognized all these.

What are the undisputed facts?

First, it is not disputed that the appellant went out of his house to see for himself the two men who came. *Second*, by his own testimony, he returned to his house to get his gun. *Third*, no immediate shooting took place. The two policemen still called for backup assistance, waited and conferred on what to do, and only after the backup came did they scale the fence. Twenty minutes must have elapsed from the time the appellant went inside the house up to the time of the actual shooting. *Fourth*, Major Opina was almost at the door of the appellant's house when the shot that killed him rang out. *Fifth*, the shot came from inside the house through a closed chicken wire screen door that effectively hid a man from inside the house from someone from the outside. *Sixth*, the first and fatal shot was sudden, immediately hitting Major Opina.

We conclude from all these established facts that indeed treachery had attended the killing of Major Opina. While the original initiative originated from the police who sought to arrest the appellant, the latter's response was an attack which showed, by its method and manner, that it did not come at the spur of the moment. The appellant was duly forewarned about the identities of Major Opina and SPO4 Oriña. Not only was he forewarned, he had ample time to reflect on what to do. His immediate response was to arm himself and to lie in wait — in ambush, literally — and to fire from a position of concealment and relative safety at the two policemen who were fully exposed and in the open at the time. The shooting distance of a little more than a meter effectively gave Major Opina no chance. This, in our view, is a classic example of treachery under the definition of the Revised Penal Code of the term.[68]

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[68] Article 14, paragraph 16 of the Revised Penal Code provides: There is treachery when the offender commits any of the crimes against person,

Voluntary Surrender

Nor can we accede to the appellant's claim that he should get the mitigating benefit of voluntary surrender in the imposition of his penalty.

The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[69] Without these reasons and where the clear reasons for the supposed surrender is the inevitability of arrest and the need to ensure his safety, the surrender cannot be spontaneous and cannot be the "voluntary surrender" that serves as a mitigating circumstance.[70]

Again, to hark back to the undisputed facts, no surrender immediately took place after the shooting of Major Opina; what followed was an exchange of shots between the appellant and SPO4 Oriña, after which the appellant holed out in his kitchen for some two to three hours. It was only after negotiations with Chief Inspector Lusad that he gave himself up. Thus, SPO3 Benavidez testified that the negotiation was "*quite long*."[71] SPO4 Oriña, on the other hand, testified that the appellant even made demands before he surrendered.[72] When he did surrender, the police had been in place for some time, fully surrounding his house so that he could not have escaped without a major and direct confrontation with them. Then, too, he did not acknowledge

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employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

[69] *People v. Acuram*, G.R. No. 117954, April 27, 2000, 331 SCRA 129, 137.

[70] *People v. Deopante*, G.R. No. 102772, October 30, 1996, 263 SCRA 691, 702.

[71] TSN, September 13, 2000 at p. 10.

[72] TSN, July 11, 2000 at p. 30.

liability for the killing of Major Opina even after his surrender to Chief Inspector Lusad. Under these circumstances, none of the attendant elements that would make the surrender a mitigating circumstance was present. The appellant surrendered simply because there was no other way out without risking his own life and limb in a battle with the police.

The Proper Penalty

The crime committed by the appellant is murder qualified by treachery penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659)[73] with *reclusion perpetua* to death.[74] The proven use of an unlicensed firearm adds an aggravating circumstance to the crime pursuant to Republic Act No. 8294[75] and its established jurisprudence.[76] Consequently, the CA did not err when it upheld the trial court's imposition of the death penalty under Article 63(1) of the Revised Penal Code.[77]

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[73] The Heinous Crime Law.

[74] ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. With treachery x x x

[75] Section 1, paragraph 3 of this Act (which took effect on July 6, 1997) provides that "if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance."

[76] *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 688; *People v. Palaganas*, G.R. No. 165483, September 12, 2006, 501 SCRA 533; *People v. Malinao*, G.R. No. 128148, February 16, 2004, 423 SCRA 34, 51; *People v. Castillo*, G.R. Nos. 131592-93, February 15, 2000, 325 SCRA 613, 619.

[77] ART. 63. *Rules for the application of indivisible penalties.*

x x x x x x x x x

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x x x x x x x

Despite this confirmation, however, we cannot impose the death penalty in light of Republic Act No. 9346 entitled *"An Act Prohibiting the Imposition of Death Penalty in the Philippines"* signed into law on June 24, 2006. Section 2 of this law mandates that in lieu of the death penalty, *reclusion perpetua* must be imposed with no eligibility for parole under the Indeterminate Sentence Law.[78]

Civil liability

The grant of civil indemnity for the crime of murder requires no proof other than the fact of death as a result of the crime and proof of the appellant's responsibility therefor.[79] While the trial court and the CA commonly awarded ₱50,000.00 as death indemnity to the murder victim's heirs, prevailing jurisprudence dictates an award of ₱75,000.00.[80] Hence, we modify the civil indemnity award to this extent to be paid by the appellant to the heirs of Major Opina.

Indemnity for loss of earning capacity is determinable under established jurisprudence based on the *net earning capacity* of the murder victim computed under the formula:

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[78] SECTION 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) The penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SECTION 3. Persons convicted of offenses punishable with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[79] *People v. Malinao*, G.R No. 128148, February 16, 2004, 423 SCRA 34.

[80] *People v. Brodett*, G.R. No. 170136, January 18, 2008, 542 SCRA 88.

> Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses)[81]

The records show that Major Opina's annual gross income was ₱154,800.00 per annum computed from his monthly rate of ₱12,900.00 a month. His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of ₱77,400.00. His life expectancy, on the other hand, is assumed to be 2/3 of age 80 less 31, his age at the time he died. Applied to the above formula, these data yield the net earning capacity loss to be indemnified at ₱2,554,200.00. The CA award must thus be reduced to this amount.

With respect to actual damages, established jurisprudence allows only expenses duly supported by receipts.[82] It appears that out of the ₱126,000.00 awarded by the trial court, only ₱64,075.00 was actually supported by the required receipts.[83] The difference represents the amounts based solely on the unreceipted submissions by Major Opina's mother. Thus, we affirm the indemnity for actual damages of ₱64,075.00 that the CA awarded.

We likewise affirm, pursuant to Articles 2216, 2217 and 2219 of the Civil Code, the CA's award of moral damages in light of the mental anguish that the parents of Major Opina suffered. Lastly, we similarly affirm the award of exemplary damages[84] under Article 2230 of the Civil Code given the presence of the aggravating circumstance of use of an unlicensed firearm.

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the May 31, 2006 decision of the CA in CA-G.R. CR-H.C. No. 02075 with the following *MODIFICATIONS*:

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[81] *People v. Batin*, *supra*, note 66 at p. 294.

[82] *Pleyto v. Lomboy*, G.R. No. 148737, June 16, 2004, 432 SCRA 329; *People v. Buenavidez*, G.R. No. 141120, September 17, 2003, 411 SCRA 202.

[83] See Exh. "F-F3", Records at pp. 64-65.

[84] *People v. Villa, Jr.*, G.R. No. 179278, March 28, 2008.

(1) the penalty of death imposed on accused-appellant is **REDUCED** to *reclusion perpetua* without eligibility for parole;

(2) the death indemnity is **INCREASED** to ₱75,000.00; and

(3) the indemnity for loss of earning capacity is **REDUCED** to ₱2,554,200.00.

No pronouncement as to costs.

SO ORDERED.

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

Carpio Morales, Velasco, Jr., and *Nachura, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 176358. June 17, 2008]

BIENVENIDO LIBRES and JULIE L. PANINGBATAN, *petitioners, vs.* **SPOUSES RODRIGO DELOS SANTOS and MARTINA OLBA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; NOTARIAL DOCUMENTS; SIGNIFICANCE THEREOF. — Notarial documents executed with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character. To overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than merely preponderant evidence. A notarial document, guaranteed by public attestation in accordance with the law, must be sustained

in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law. Without that sort of evidence, the presumption of regularity, the evidentiary weight conferred upon such public document with respect to its execution, as well as the statements and the authenticity of the signatures thereon, stand.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF NOTARIES PUBLIC PREVAIL AS AGAINST BARE DENIALS. — Against the bare denials and interested disavowals of the petitioners, the testimonies of the two notaries public must prevail. Their identical and categorical declarations that Libres signed the mortgage deeds in their presence present a more convincing picture of the actual events that transpired. He who disavows the authenticity of his signature on a public document bears the responsibility to present evidence to that effect. Mere disclaimer is not sufficient. At the very least, he should present corroborating witnesses to prove his assertion. At best, he should present an expert witness. This is because as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.

3. ID.; ID.; ID.; TESTIMONIES OF NOTARIES PUBLIC PREVAIL AS AGAINST LONE EVIDENCE OF HANDWRITING EXPERT'S OPINION. — Petitioners, left with no other recourse than their self-serving declarations for lack of corroborating evidence, seek redemption through the lone testimony of the NBI handwriting expert, who understandably is the sole disinterested witness for the petitioners. This, however, cannot suffice. Standing alone amidst the mass of evidence adduced by the respondents and their witnesses, the NBI handwriting expert's opinion may not overturn the categorical declaration of the notaries public that Libres signed the mortgage deeds in their presence. As we held in *Leyva v. Court of Appeals*, the positive testimony of the attesting witnesses ought to prevail over expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities. Besides, the handwriting expert's testimony is only persuasive, not conclusive.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Horatio Enrico M. Bona for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the September 11, 2006 Decision[1] of the Court of Appeals in CA-G.R. CV No. 65722 reversing and setting aside the Decision[2] of the Regional Trial Court of Lingayen, Pangasinan, Branch 68, in Civil Case No. 17416 holding petitioners liable to respondents as follows:

> WHEREFORE, the appealed Decision is hereby REVERSED and SET ASIDE and a new one entered ordering appellees Bienvenido Libres and Julie Paningbatan to jointly pay the appellants, within ninety (90) days from notice the sum of ₱150,000.00 together with legal interest at twelve percent (12%) per annum from August 18, 1995 until the obligation is fully paid. In case of non-payment, the mortgaged property shall be sold on public auction in accordance with Rule 68 of the Rules of Court.
>
> SO ORDERED.[3]

Also assailed is the January 17, 2007 Resolution[4] denying the motion for reconsideration.

As found by the appellate court, the factual background of the case is as follows:

> On August 18, 1995, the appellants (**spouses Rodrigo and Martina delos Santos**) filed with the court *a quo* a Complaint for foreclosure

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[1] *Rollo*, pp. 85-96; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Rosalinda Asuncion-Vicente.

[2] *Id.* at 16-42; penned by Judge Salvador I. Vedaña.

[3] *Id.* at 95.

[4] *Id.* at 102-104.

of mortgage against the appellees (**Bienvenido Libres and Julie Paningbatan**), alleging that appellee Bienvenido Libres executed, in favor of the appellants, three separate deeds of Real Estate Mortgage[5] to secure the payment of three loans in the total amount of One Hundred Fifty Thousand Pesos (₱150,000.00), which amounts were supposedly delivered by the appellants to appellee Julie L. Paningbatan, upon the instructions of appellee Bienvenido Libres.

According to the appellants, the appellees violated the terms of the mortgage when they failed to pay the principal loan and the accrued interests. The appellants prayed for the court *a quo* to render judgment ordering the appellees to pay the principal loan plus the stipulated interests, attorney's fees, expenses and costs. Alternatively, in default of such payment, the appellants prayed that the mortgaged property be ordered sold with the proceeds thereof applied to the mortgage debt, accumulated interests, attorney's fees, expenses and costs.

On September 20, 1995, appellees filed their Answer (prepared and signed by appellee Bienvenido Libres) and, except for the qualifications of the parties and the identity of the property involved, appellees denied all the rest of the allegations in the Complaint. Appellees claimed that the documents were falsified and their signatures appearing therein were forged. Moreover, appellee Bienvenido Libres claimed that he never authorized appellee Julie L. Paningbatan to represent him in such "anomalous" transactions. To prove his claim, appellee Bienvenido Libres requested that his signatures in the documents be examined by a handwriting expert of the National Bureau of Investigation. As relief, the appellees prayed that the case be dismissed with cost against the plaintiffs and that they be paid the amount of ₱20,000.00 as and by way of moral and exemplary damages and litigation expenses.

During the trial on the merits, the appellants presented two notaries public; an officer from the Registry of Deeds of Lingayen, Pangasinan; three *barangay* officials who presided and witnessed the *barangay* confrontation between the appellants and the appellees; and appellant Martina delos Santos herself.

The evidence of the appellants showed that appellees borrowed from the appellants the total amount of One Hundred Fifty Thousand

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[5] *Id*. at 39. The first allegedly dated October 30, 1993 for the amount of ₱25,000.00 (Exhibit "A"); the second, January 18, 1994 for ₱75,000.00 (Exhibit "B"); and the third, February 10, 1994, for ₱50,000.00 (Exhibit "G").

Pesos (₱150,000.00) which was delivered in three installments: ₱25,000.00 on October 23, 1993, ₱75,000.00 on January 18, 1994, and ₱50,000.00 on February 10, 1994. As security for the loan, appellee Bienvenido Libres executed three deeds of Real Estate Mortgage, the due execution of which was attested to by the administering notaries public. The deeds were likewise duly registered with the Office of the Register of Deeds of Lingayen, Pangasinan.

In violation of the terms of the Real Estate Mortgage, appellees failed to pay the principal amount and the accrued interests. Formal demand was made but despite receipt thereof, appellees refused to make any payment. Thus, Complaints were filed by the appellants with the *barangay* against the appellees. Allegedly, during the *barangay* confrontation, the appellees admitted their indebtedness and promised that they would pay. But no payment was made by the appellees.

For their part, appellees disputed the supposed loan in the amount of ₱150,000.00. Appellee Bienvenido Libres denied his signature in the Real Estate Mortgage and denied that he appeared before the notaries public to execute any document. Rather, according to appellee Julie Paningbatan, she was the one who transacted with appellant Martina delos Santos, and what she borrowed from the appellants was only ₱13,000.00. Furthermore, according to appellee Julie Paningbatan, she caused the execution of a different Real Estate Mortgage although similarly dated on October 30, 1993 but it was her godfather, a certain Engr. Carlo Mariñas who signed the name of appellee Bienvenido Libres. Also, appellee Julie Paningbatan denied that her father admitted in the *barangay* confrontation that he owed the appellants in the amount of ₱35,000.00. Instead, she was the one who admitted the indebtedness to Martina delos Santos of more or less ₱25,000.00 including interest.

To support their defense, appellees presented Adelia C. Demetillo, Senior Document Examiner of the National Bureau of Investigation (NBI), who was qualified as an expert witness. Said witness submitted to the court *a quo* Questioned Documents Report No. 545-697 dated July 4, 1997. According to said handwriting expert, the signature of appellee Bienvenido Libres in the questioned Real Estate Mortgage appears to be different from said appellee's sample and standard signatures. The same finding was made with respect to the signature

of one of the witnesses to the contract, Gloria Libres.[6] (Names in emphasis supplied)

Respondent Martina Olba testified during trial that petitioners are her "*barangay*mates"; that her husband Rodrigo is an overseas contract worker; that on October 23, 1993, petitioners came to her house asking for a loan in the amount of ₱150,000.00 for the medical expenses of Libres' wife Maria Laverosa; that she told them she had only ₱25,000.00 cash that day; that she asked for collateral, and Bienvenido Libres (Libres) agreed to constitute a mortgage on their home situated at a 267 square meter unregistered lot in Zamora Street, Mangatarem, Pangasinan (the subject property); that she handed the money to Julie Paningbatan (Paningbatan) who brought the money to Manila; that on October 30, 1993, they proceeded to the residence of notary public Filipina Lapurga Cardenas (Cardenas) who prepared and notarized the mortgage deed (the first deed) which was signed by Libres and his children Juancho (or Pancho) and Gloria Libres as witnesses; that in January 1994, petitioners again came to her house to borrow money for Maria's alleged eye operation; that they again proceeded to Cardenas' residence, and the latter prepared and notarized another mortgage deed (the second deed) which was signed by Libres and his children Juancho (or Pancho) and Gloria Libres as witnesses; that again, Libres came to her to borrow ₱50,000.00; this time, Cardenas was in Manila, so they proceeded to Atty. Lester Escobar (Atty. Escobar) for the notarization and acknowledgment of the third mortgage deed; that petitioners paid only a total of ₱5,000.00 by way of interest, prompting her to make a formal demand for the return of the whole amount of ₱150,000.00 loaned out to them; that petitioners failed to perform their obligation, and so the matter was brought to the attention of the *barangay* authorities.[7]

The two notaries public who notarized the three mortgage deeds, Cardenas and Atty. Escobar, testified during trial that

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[6] *Id*. at 86-88.

[7] *Id*. at 31-34.

Libres, together with his witnesses as well as respondent Martina, signed the subject mortgage deeds and acknowledged the same in their presence.

More particularly, Cardenas testified that Libres — together with his witnesses Pancho Libres and Gloria Libres, as well as respondent Martina — personally went to her house in the morning of October 30, 1993 and asked her to prepare a deed of real estate mortgage over a house and lot which she (Cardenas) herself knew (she claims to have seen the same since it is located within twenty houses from where she lived); that Libres personally wrote his Community Tax Certificate (CTC) number on said deed (the first deed, or the October 30, 1993 mortgage document); that on January 18, 1994, Libres, Martina, Pancho Libres and Gloria Libres again came to her house to execute another deed of real estate mortgage over the same property for an additional consideration, which she prepared and notarized after the parties signed and acknowledged the same in her presence; that she knows the signature in said deeds to be Libres' because the latter personally affixed his signature upon said documents "in front of her"; and that she explained the contents of the said documents in the Ilocano dialect, which Libres and the parties to the documents knew and understood.[8]

Atty. Escobar, on the other hand, testified that with respect to the third mortgage deed (dated February 10, 1994), he personally confirmed Libres' identity by specifically asking him of the same; that he compared Libres' signature in the Tax Declaration to the property and in his residence certificate or CTC; and that both documents were translated in the Ilocano dialect and explained to Libres as to be fully understood by the latter.[9]

It was shown as well during trial that on the occasion of conciliation proceedings held at the *barangay* level, petitioners admitted to *Barangay* Captain Henry Evangelista that they

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[8] *Id*. at 26-27; TSN, CARDENAS, March 6, 1999, pp. 11-23.

[9] TSN, ESCOBAR, August 26, 1996, pp. 3-7.

borrowed money from the respondents,[10] and petitioner Libres offered to pay respondents with a portion of the subject property, which offer the latter declined.[11]

On the other hand, petitioners — as defendants *a quo* — presented as their first witness Mrs. Adela Demetillo, Senior Document Examiner II of the National Bureau of Investigation (NBI), who conducted an examination and evaluation of the signatures of Libres and his witnesses (Pancho and Gloria Libres) in the questioned mortgage deeds as well as specimens of their respective signatures. Her findings are contained in a Report[12] which essentially reads, thus:

FINDINGS:

Comparative examination made on the specimens submitted under the stereoscopic microscope, magnifying lens and with the aid of photographic enlargement reveals the following:

1. There are significant fundamental differences in handwriting characteristics existing between the questioned and the standard/ sample signatures "B.A. LIBRES/BIENVENIDO LIBRES," such as in:

- manner of execution
- structural formation of letters
- other minute identifying details

2. There are significant fundamental differences in handwriting characteristics existing between the questioned and the standard/ sample signatures "GLORIA LIBRES/G.L. LIBRES," such as in:

- manner of execution
- structural formation of letters
- other minute identifying details

3. No definite opinion can be rendered on the questioned signatures "JUANCHO L. LIBRES" as the standard/sample signatures submitted are insufficient/inappropriate to serve as basis for a scientific comparative examination.

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[10] TSN, EVANGELISTA, April 17, 1996, p. 11.

[11] TSN, BRGY. CAPT. OLEGARIO, June 5, 1996, pp. 9-10.

[12] Questioned Document Report No. 545-697.

CONCLUSION:

1. The questioned and the standard/sample signatures "B.A. LIBRES BIENVENIDO LIBRES" were NOT WRITTEN by one and the same person.

2. The questioned and the standard/sample signatures "GLORIA LIBRES/G.L. LIBRES" were NOT WRITTEN by one and the same person.

3. No definite opinion can be rendered, per above FINDINGS 3.

REMARKS:

All the specimens submitted are forwarded to the Records Section of this Bureau in the meantime, for safekeeping.[13]

For his part, Libres testified that he knows the respondents who are residents of the same *barangay* where he resides; that he owns the subject property, which is where he and his family reside; that he knew notary public Cardenas, but denies having appeared before her as well as before Atty. Escobar; that petitioner Paningbatan is her daughter; that he denies having executed the three questioned mortgage deeds; that he admits having appeared at conciliation proceedings before the *barangay* captain; and that knowing that his signatures on the mortgage deeds were forged, he nevertheless did not file a criminal case against those responsible due to financial constraints.[14]

Petitioner Paningbatan, on the other hand, testified that she was the one who obtained a loan from respondents in the amount of ₱13,000.00, and not ₱150,000.00 which respondents claim; that the said amount was for the purpose of redeeming her godfather, the late Engr. Carlo Mariñas' vehicle which was pawned to a certain Mrs. Margate; that in order to secure the payment thereof, she executed a deed of mortgage dated October 30, 1993 over her father Bienvenido Libres' house and lot (the subject property), but that it was her godfather Engr. Mariñas

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[13] *Rollo*, pp. 35-36.

[14] *Id*. at 36-37.

who signed — forged — her father's signature on said mortgage deed; that she was able to secure her father's CTC and the Tax Declaration to the property; that she did all these without the knowledge and consent of her father; that it is not true that her father secured a loan from respondents in the total amount of ₱150,000.00 in order to pay for her mother's medical expenses in relation to the latter's eye and pulmonary problems; that it was her sister and brother-in-law who paid for her mother's medical expenses; that she knows nothing of the three mortgage deeds in issue; that she, together with her father, attended conciliation proceedings at the *barangay* level.[15]

Petitioners, however, did not call on the alleged witnesses to the mortgage deeds, Pancho and Gloria Libres, to testify in their behalf.

On November 3, 1999, the trial court rendered its Decision[16] dismissing the case. The dispositive portion thereof reads as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> 1. Ordering the dismissal of this instant case against the defendants Bienvenido Libres and Julie Paningbatan with cost against the plaintiffs; and
>
> 2. Ordering the plaintiffs to pay jointly and severally defendants moral and exemplary damages in the sum of ₱20,000.00, and ₱10,000.00, respectively, as well as litigation expenses of ₱10,000.00.
>
> SO ORDERED.[17]

Respondents filed their appeal with the Court of Appeals, which rendered the assailed Decision and Resolution reversing the trial court's decision.

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[15] *Id*. at 38-39.

[16] *Id*. at 16-42.

[17] *Id*. at 26-27.

The sole issue for resolution in the instant petition is:

WHETHER THE LOANS EXTENDED IN FAVOR OF THE PETITIONERS ARE SECURED BY A VALID AND LEGAL REAL ESTATE MORTGAGE, WHEN IT WAS PROVEN DURING THE TRIAL THAT THE ABSOLUTE OWNER THEREOF WAS NOT THE ONE WHO SIGNED THE DEED OF REAL ESTATE MORTGAGE, MUCH LESS AUTHORIZED HIS OWN DAUGHTER TO VALIDLY CONTRACT THE SAME.

Petitioners insist that Libres did not execute the three mortgage deeds sued upon, and that his signatures therein are mere forgeries. Hence, there should be no mortgage upon the property that may be the object of respondents' foreclosure suit; that the trial court was correct in dismissing the same.

In ordering the dismissal of the case, the trial court gave more weight to the NBI handwriting expert's opinion that it was possible that Libres' signatures in the three mortgage deeds in question *could have been* forged; that since Bienvenido Libres did not sign the mortgage deeds, respondents' claimed loan credits should be negated; thus, the subject property covered by the falsified mortgage deeds may not be foreclosed upon. The trial court believed Paningbatan's explanation that she was the one who obtained a loan from respondents in the amount of ₱13,000.00, and that it was Engr. Mariñas who forged Bienvenido's signature on said mortgage deed.

On the other hand, the Court of Appeals placed weight on the direct testimonies of the two notaries public, who categorically declared that Libres personally appeared before them and signed the mortgage deeds in their presence. The appellate court opined that, since they possessed the character of public documents — by their subsequent notarization and acknowledgment, the questioned mortgage deeds must be accorded the presumption of regularity. Evidence to contradict them must be clear, convincing and more than merely preponderant.[18] It ruled that

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[18] Citing *Domingo v. Domingo*, G.R. No. 150897, April 11, 2005, 455 SCRA 230.

any claim of forgery of these documents must be proved with evidence, which in petitioners' case, was not sufficiently established, beyond mere denials and the testimony and report of the NBI handwriting expert, which it considered as unconvincing.

The Court of Appeals held that the NBI handwriting expert's opinion is merely persuasive and not conclusive, citing *Jimenez v. Commission on Ecumenical Mission and Relations*,[19] where we held that resort to handwriting experts, although helpful in the examination of forged documents because of the technical procedure involved in analyzing them, is not mandatory or indispensable to the examination or comparison of handwriting, and a finding of forgery does not entirely depend upon the testimony of these experts.

The appellate court likewise found as fatal the failure of the petitioners to present the testimonies in court of Pancho and Gloria Libres, who could have readily confirmed the truth of petitioners' defense. Finally, it found that Paningbatan's claim of forgery committed by her godfather was self-serving.

We sustain the appellate court.

Notarial documents executed with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character. To overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than merely preponderant evidence.[20] A notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law.[21] Without that sort of evidence, the presumption

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[19] G.R. No. 140472, June 10, 2002, 383 SCRA 326.

[20] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, February 10, 2006, 482 SCRA 164, 174.

[21] *Carandang-Collantes v. Capuno*, G.R. No. 55373, July 25, 1983, 123 SCRA 652, 664, citing *Chilianchin v. Coquinco*, 84 Phil. 714; *Yason v. Arciaga*, G.R. No. 145017, January 28, 2005, 449 SCRA 458, 471-472.

of regularity, the evidentiary weight conferred upon such public document with respect to its execution, as well as the statements and the authenticity of the signatures thereon, stand.[22]

Against the bare denials and interested disavowals of the petitioners, the testimonies of the two notaries public must prevail. Their identical and categorical declarations that Libres signed the mortgage deeds in their presence present a more convincing picture of the actual events that transpired.

We agree with the appellate court's ruling that petitioners' failure to present the two witnesses to the mortgage deeds, Pancho and Gloria Libres, is fatal to their cause. Their testimonies, if favorable to petitioners' cause, would have dissipated, by way of corroboration, the courts' justifiable supposition that petitioners' testimonies are merely self-serving. He who disavows the authenticity of his signature on a public document bears the responsibility to present evidence to that effect. Mere disclaimer is not sufficient. At the very least, he should present corroborating witnesses to prove his assertion. At best, he should present an expert witness.[23] This is because as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.[24]

Petitioners, left with no other recourse than their self-serving declarations for lack of corroborating evidence, seek redemption through the lone testimony of the NBI handwriting expert, who understandably is the sole disinterested witness for the petitioners. This, however, cannot suffice. Standing alone amidst the mass of evidence adduced by the respondents and their witnesses, the NBI handwriting expert's opinion may not overturn the categorical declaration of the notaries public that Libres signed

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[22] *Barcenas v. Tomas*, G.R. No. 150321, March 31, 2005, 454 SCRA 593.

[23] *Id.*, *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, *supra*.

[24] *Heirs of Gregorio v. Court of Appeals*, G.R. No. 117609, December 29, 1998, 300 SCRA 565, 574.

the mortgage deeds in their presence. As we held in *Leyva v. Court of Appeals*,[25] the positive testimony of the attesting witnesses ought to prevail over expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities. Besides, the handwriting expert's testimony is only persuasive, not conclusive.

We cannot discount petitioners' admission during *barangay* conciliation proceedings that they owed respondents money and offered to pay the same with a portion of the subject property.[26]

Certainly, there is a preponderance of evidence in respondents' favor. We see no conflicting factual milieu; the dilemma lay merely in the appreciation of the evidence for both parties. Where in this respect the trial and appellate courts could not agree, we must intervene and, once again, exhibit the Court's wisdom in order to dispense justice with an even hand.

We note however, that the subject property is Bienvenido and Maria Libres' family home, although the truth of this observation could not be known from the evidence presented. It is thus incumbent upon the trial court to make a prior determination in this respect, taking to mind the provisions of the Family Code on the family home, specifically Articles 152 up to 162 thereof.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated September 11, 2006 in CA-G.R. CV No. 65722 ordering petitioners to pay respondents the amount of ₱150,000.00 with legal interest thereon of 12% until fully paid, and the Resolution dated January 17, 2007 denying the motion for reconsideration, are *AFFIRMED*.

However, considering the possibility that the subject property constitutes the petitioners' family home, the Regional Trial Court of Lingayen, Pangasinan, Branch 68 is *DIRECTED* to conduct a thorough inquiry into the nature, circumstances and value of

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[25] G.R. No. 71939, January 25, 1988, 157 SCRA 314.

[26] See footnotes 9 and 10.

the same, in accordance with and taking into consideration the provisions of the Family Code, and immediately make the corresponding determination in respect thereof prior to execution.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 176441. June 17, 2008]

HEIRS OF MARCELA NAVARRO represented by MARIO DACALOS, *petitioners, vs.* **WILLY Y. GO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; RECONSTITUTION OF CERTIFICATE OF TITLE; CONSTRUED; PURPOSE. — Reconstitution of a certificate of title, in the context of Republic Act No. 26, denotes the restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.

2. ID.; ID.; ID.; JURISDICTION THEREON ACQUIRED WITH THE OBSERVANCE OF THE PROVISIONS OF R.A. NO. 26. — In order for a court to acquire jurisdiction over a petition for reconstitution of title, the provisions of Republic Act

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[*] Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

No. 26 must be observed. Publication is a jurisdictional requirement and noncompliance therewith is fatal to the petition for reconstitution of title. Moreover, notwithstanding compliance with the notice by publication, the requirement of actual notice to the occupants and the owners of the adjoining property under Sections 12 and 13 of Republic Act No. 26 is itself mandatory to vest jurisdiction upon the court in a petition for reconstitution of title and essential in order to allow said court to take the case on its merits. The non-observance of the requirement invalidates the whole reconstitution proceedings in the trial court. Where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, or the proceedings will be void. As such, the court upon which the petition for reconstitution of title is filed is duty-bound to examine thoroughly the petition for reconstitution of title and review the record and the legal provisions laying down the germane jurisdictional requirements.

3. ID.; ID.; ID.; ISSUE ON OWNERSHIP, NOT INCLUDED. — Although the trial court was not convinced with respondent's claim of ownership over the subject property, this Court has held that reconstitution of a title "does not determine or resolve the ownership of the land covered by the lost or destroyed title." As such, the ownership and possession of the subject property could still be litigated in a proper case. Also, respondent's possessory right cannot simply be defeated by petitioners' reconstituted title because "a reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby." On the other hand, the nullity of petitioners' reconstitution proceedings does not necessarily divest them of their proprietary rights, if any, over the subject property; nor does it deprive them of any cause of action as they are not precluded from establishing by other evidence the requisite proof of their ownership of Lot No. 4829.

APPEARANCES OF COUNSEL

STEPLAW Firm Cebu for petitioners.
Zosa & Quijano Law Offices for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the August 17, 2006 Decision[2] of the Court of Appeals in CA-G.R. CV No. 80294, setting aside the June 3, 2003 Order[3] of the Regional Trial Court of Cebu, Branch 14, denying the petition for cancellation of OCT No. RO-3107 filed by herein respondent Go. Also assailed is the January 9, 2007 Resolution[4] denying the Motion for Reconsideration.[5]

The facts as found by the appellate court:

> The respondents-appellees Dacaloses [herein petitioners] claim to be the legal heirs of the late Marcela Navarro who was married to Alipio Dacalos. Marcela Navarro owned Lot No. 4829 by virtue of a Decree of Adjudication (Decree No. 98427) issued to her on November 16, 1920 by the then Court of First Instance, now the Regional Trial Court (RTC), of the Province of Cebu.
>
> Sometime in 1996, the respondents-appellees represented by Mario Dacalos, filed a petition for judicial reconstitution of title to Lot No. 4829, which lot is more particularly described as follows:
>
> > "A parcel of land (Lot No. 4829 of the Cadastral Survey of Cebu), with all buildings and improvements, except those herein expressly noted as belonging to other persons, situated in the Municipality of Cebu. Bounded on the NE, by Lots Nos. 4828 and 4837; on the SE, by Lot No. 3570; on the SW, by Lot No. 4628; and on the NW, by Lots Nos. 4630, 4818 and

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[1] *Rollo*, pp. 34-48.

[2] *Id*. at 10-20; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon.

[3] CA *rollo*, pp. 46-47; penned by Judge Raphael B. Yrastorza, Sr.

[4] *Rollo*, pp. 29-30; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Romeo F. Barza and Agustin S. Dizon.

[5] *Id*. at 21-26.

> 4827. Beginning at the point marked "1" on plan, being S. 75 deg. 54'W., 499.97 m. from B.M. No. 56; thence N. 29 deg. 36'W., 38.48 m. to point "2", thence No. 60 deg. 39'E., 21.11 m. to point "3", thence N. 61 deg. 14'E., 21.26 m. to point "4"; thence N. 68 deg. 52'E., 19.77 m. to point "5"; thence S. 20 deg. 35'E., 13.40 m. to point "6"; thence S. 16 deg. 35'E., 13.63 m. to point "7"; thence S. 24 deg. 30'E., 12.52 m. to point "8"; thence S. 64 deg. 18'E., 55.78 m. to the point of beginning; containing an area of TWO THOUSAND THREE HUNDRED AND THIRTY-SEVEN SQUARE METERS (2,337), more or less. All points referred to are indicated on the plan; bearings true; declination 1 deg. 33'E., date of survey, December 1910 to February 1912."

The Dacaloses claim that the Original Certificate of Title (OCT), as well as the owner's copy of the OCT, to the subject parcel of land was destroyed during World War II. Their petition was docketed as Cad. Case L.R.C. Rec. No. 13 and raffled to Branch 14 of the RTC in Cebu City.

The court *a quo* ordered on February 6, 1996 the setting of the petition for hearing as well as the publication of the same in the Official Gazette. During the initial hearing on June 4, 1996, the Dacaloses offered certain documents as evidence of their compliance with the jurisdictional requirements. Since no opposition to the petition was filed by the adjacent lot owners and by the concerned government agencies which were duly notified, the court *a quo* allowed the Dacaloses to present their evidence ex parte.

On July 2, 1996, the court *a quo* granted the petition and disposed the case in this wise:

> "WHEREFORE, given the foregoing facts which the petitioners have succeeded in establishing, the instant petition is hereby granted.
>
> Accordingly, the Court hereby —
>
> (1) Directs the Register of Deeds of Cebu City to reconstitute the Original Certificate of Title covering Lot No. 4829 of the Cebu Cadastre, located in Cebu City, in the name of the registered owner MARCELA NAVARRO, the wife of Alipio Dacalos, on the basis of Decree No. 98427, marked as Exhibit F, and carrying the same encumbrances, liens and annotations, if there are any; and

(2) Directs the Register of Deeds of Cebu City, upon payment of the prescribed fees therefor, to issue the owner's duplicate of the reconstituted certificate of title covering Lot No. 4829.

SO ORDERED."

By reason of the court *a quo*'s order, the Office of the Register of Deeds for the City of Cebu issued a reconstituted copy of the original title to Lot No. 4829 (OCT No. R-3107) in the name of Marcela Navarro, married to Alipio Dacalos.

On December 1, 1997, petitioner-appellant Willy Go (Go for brevity) [herein respondent] sought from the same trial court the nullification of the reconstituted titled issued to Marcela Navarro alleging that the same is null and void. According to Go, he is the actual possessor of the subject lot and the court *a quo* did not acquire jurisdiction over the Dacaloses' petition because the latter failed to notify him about their petition, in violation of Section 13 of Republic Act No. 26. Petitioner-appellant Go likewise claimed that the lot involved is already covered by an existing title (TCT No. 6807).

In an order dated June 3, 2003, the court *a quo* denied Go's petition for cancellation of title. Go sought for a reconsideration of the said order but the same was denied for lack of merit by the court *a quo* on June 26, 2003. x x x[6]

Respondent appealed to the Court of Appeals which rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the appeal filed in this case and SETTING ASIDE the assailed order issued by Regional Trial Court, Branch 14, in Cebu City in Cad. Case L.R.C. Rec. No. 13. The proceedings in L.R.C. No. 13 as well as the reconstituted OCT No. R-3107 are hereby declared as NULL AND VOID.

SO ORDERED.[7]

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[6] *Id*. at 11-13.

[7] *Id*. at 19.

The Court of Appeals ruled that the reconstitution proceedings is void for lack of notice to respondent who was in possession of the subject property. The appellate court concluded that petitioners wantonly disregarded the basic requirements of due process, specifically, Sections 12 and 13 of Republic Act No. 26.[8]

Petitioners filed a Motion for Reconsideration but it was denied on January 9, 2007; hence, the instant petition based on the following ground:

> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN GRANTING THE APPEAL AND IN SETTING ASIDE THE ASSAILED ORDER ISSUED BY THE REGIONAL TRIAL COURT, BRANCH 14, IN CEBU CITY IN CAD. CASE L.R.C. REC. NO. 13 ON THE BASIS OF LACK OF JURISDICTION OF THE COURT *A QUO* OVER PETITIONERS DACALOS' PETITION FOR RECONSTITUTION BACAUSE OF LACK OF NOTICE TO THE ACTUAL OCCUPANT THEREOF, PRIVATE RESPONDENT GO, IN VIOLATION OF SECTION 12, OF REPUBLIC ACT NO. 26 AND FOR BEING IN VIOLATION OF THE BASIC REQUIREMENTS OF DUE PROCESS.[9]

Petitioners allege that they have proven their right over the subject property as the legal and compulsory heirs of the late Marcela Navarro, the alleged registered owner thereof; that respondent failed to prove his right over the subject property; that respondent was a squatter or usurper of Lot No. 4829, hence, was not entitled to any notice in order for the trial court to acquire jurisdiction over the case; that while respondent claimed that Lot No. 4829 is covered by TCT No. 6807 under the name of Necitas Gabiana, he failed to present the original copy of the said title; that the alleged photocopy of said title appears spurious as the entries therein were virtually illegible; that the tax declaration certificates of Necitas Gabiana for the subject

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[8] An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed.

[9] *Rollo*, p. 41.

property were of dubious origin because they were based on the same ambiguous TCT No. 6807; that despite the lack of notice of the reconstitution proceedings, respondent was given the opportunity to prove his claim of ownership over the lot in controversy during the trial of his petition for cancellation of OCT No. RO-3107.

Respondent, in his Comment,[10] alleges that his claim over Lot No. 4829 and the existence of TCT No. 6807, were duly established in the proceedings for the cancellation of OCT No. RO-3107; that Antonio Abangan, a former clerk and junior appraiser at the Office of the City Assessor of Cebu City, testified that he cancelled Tax Declaration No. IV009764 in 1962 and issued Tax Declaration No. IV 009889 in the name of Nicetas Gabiana upon presentation to him of TCT No. 6807; that it was mentioned in the Decision of the Court of First Instance of Cebu in Civil Case No. R-7039[11] that Lot No. 4829 was registered in the name of Nicetas Gabiana under TCT No. 6807; that vendors, Librada Tariman Ediza and Lourdes Tariman Suson, inherited the subject property from their grandfather, Nicetas Gabiana, and parents, Luisa Gabiana and Felixberto Tariman; and that in 1994, said vendors duly executed a Deed of Absolute Sale[12] over Lot No. 4829 in his favor. Respondent also alleges that petitioners' allegation that he is a squatter on Lot No. 4829 was raised only for the first time in their Motion for Reconsideration of the Decision of the Court of Appeals. Finally, respondent notes that petitioners' Complaint[13] against him for ejectment from the subject property was dismissed by Branch 1, MTCC-Cebu; and their appeal thereto was likewise denied by Branch 5, RTC-Cebu.[14]

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[10] *Id*. at 82-91.

[11] *Librada Tariman v. Felixberto Tariman*.

[12] Records, pp. 102-103.

[13] CA *rollo*, pp. 190-194; Civil Case No. R-38014, entitled *Heirs of the Late Alipio Dacalos v. Willy Go*.

[14] Records, pp. 225-228 and *Rollo*, pp. 92-93; penned by Judge Ireneo Lee Gako, Jr.

The petition lacks merit.

Reconstitution of a certificate of title, in the context of Republic Act No. 26, denotes the restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.[15]

In order for a court to acquire jurisdiction over a petition for reconstitution of title, the following provisions of Republic Act No. 26 must be observed:

SEC. 12. Petitions for reconstitution from sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(d), 3(e), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location, area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property; and (g) a statement that no deeds or other instruments affecting the property had been presented for registration, or if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support of the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further

[15] *Republic of the Philippines v. Court of Appeals*, 368 Phil. 412, 420-421 (1999).

accompanied with a plan and technical description of the property duly approved by the Chief of the General Land Registration Office (now Commission of Land Registration), or with a certified copy of the description taken from a prior certificate of title covering the same property.

SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the municipality or city in which the land is situated, at the provincial building and of the municipal building at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.

Publication is a jurisdictional requirement and noncompliance therewith is fatal to the petition for reconstitution of title.[16] Moreover, notwithstanding compliance with the notice by publication, the requirement of actual notice to the occupants and the owners of the adjoining property under Sections 12 and 13 of Republic Act No. 26 is itself mandatory to vest jurisdiction upon the court in a petition for reconstitution of title and essential in order to allow said court to take the case on its merits. The non-observance of the requirement invalidates the whole reconstitution proceedings in the trial court.[17]

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[16] *Bernardo v. Court of Appeals*, 388 Phil. 793, 830 (2000).

[17] *Republic of the Philippines v. Court of Appeals*, *supra* at 424.

In the instant case, it was undisputed that respondent was in actual possession of the subject property and that petitioners knew of such fact, yet they failed to give him notice of the reconstitution proceedings. Consequently, we find that the Court of Appeals correctly invalidated the July 2, 1996 Order[18] of the Regional Trial Court of Cebu, Branch 14 in Cadastral Survey of Cebu Case No. 13, LRC Record No. 9496 reconstituting OCT No. RO-3107, for lack of jurisdiction. The trial court also erred in denying respondent's Petition for Cancellation of Reconstituted Title OCT No. RO-3107.

Where the authority to proceed is conferred by a statute and the manner of obtaining jurisdiction is mandatory, the same must be strictly complied with, or the proceedings will be void. As such, the court upon which the petition for reconstitution of title is filed is duty-bound to examine thoroughly the petition for reconstitution of title and review the record and the legal provisions laying down the germane jurisdictional requirements.[19]

Petitioners' reliance on *Esso Standard Eastern Inc. v. Lim*[20] is misplaced. In the said case, the person who assailed the reconstituted title was declared a mere squatter or usurper of the property in controversy because he failed to introduce evidence showing his ownership thereof, and likewise admitted that he occupied the land after he was told that there was no occupant therein.[21] As such, the Court found him not entitled to any notice of the reconstitution proceedings because there would be no difference if he had been notified for he had no better title in himself over the property and he suffered no damage as a result of the reconstitution of title.[22]

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[18] *Rollo*, pp. 116-118.

[19] *The Government of the Philippines v. Aballe*, G.R. No. 147212, March 24, 2006, 485 SCRA 308, 319.

[20] 208 Phil. 394 (1983).

[21] *Id.* at 408.

[22] *Id.*

In the instant case, respondent cannot be immediately discounted as a squatter or usurper for he had evidence pertaining to his alleged acquisition of the subject property in 1994. He never admitted that he possessed Lot No. 4829 upon being told no one occupies the same. In fact, respondent has been in possession of the subject property even before the filing of the Petition for the Reconstitution of Lost Certificate of Title in 1996.[23]

Finally, although the trial court was not convinced with respondent's claim of ownership over the subject property, this Court has held that reconstitution of a title "does not determine or resolve the ownership of the land covered by the lost or destroyed title."[24] As such, the ownership and possession of the subject property could still be litigated in a proper case. Also, respondent's possessory right cannot simply be defeated by petitioners' reconstituted title because "a reconstituted title, like the original certificate of title, by itself does not vest ownership of the land or estate covered thereby."[25] On the other hand, the nullity of petitioners' reconstitution proceedings does not necessarily divest them of their proprietary rights, if any, over the subject property; nor does it deprive them of any cause of action as they are not precluded from establishing by other evidence the requisite proof of their ownership of Lot No. 4829.

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 80294 declaring the proceedings of the Regional Trial Court of Cebu, Branch 14, in L.R.C. No. 13 as well as the reconstituted OCT No. RO-3107 as null and void, and the January 9, 2007 Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

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[23] Records, p. 13.

[24] *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 84 (2002).

[25] *Id*.

Austria-Martinez, Chico-Nazario, Reyes, and *Brion,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 176466. June 17, 2008]

TEGIMENTA CHEMICAL PHILS./VIVIAN D. GARCIA, *petitioner, vs.* **ROLAN E. BUENSALIDA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF PROCEDURE; SUBMISSION OF POSITION PAPER/ MEMORANDA; DETERMINATION OF CAUSE OF ACTION. — Section 3, Rule V of the New Rules of Procedure of the NLRC, as amended by NLRC Resolution No. 01-02 (Series of 2002), provides: SECTION 4. SUBMISSION OF POSITION PAPERS/MEMORANDA. Without prejudice to the provisions of the last paragraph, Section 2 of this Rule, the Labor Arbiter shall direct both parties to submit simultaneously their position papers with supporting documents and affidavits within an inextendible period of ten (10) days from notice of termination of the mandatory conference. These verified position papers to be submitted shall **cover only those claims and causes of action raised in the complaint** excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall **thereafter not be allowed to allege** facts, or present evidence to prove facts, not referred

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[*] Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

to and **any cause or causes of action not included in the complaint or position papers**, affidavits and other documents. Thus, the complaint is not the only document from which the complainant's cause of action is determined in a labor case. Any cause of action that may not have been included in the complaint or position paper, can no longer be alleged after the position paper is submitted by the parties. In other words, the filing of the position paper is the operative act which forecloses the raising of other matters constitutive of the cause of action. This necessarily implies that the cause of action is finally ascertained only after both the complaint and position paper are properly evaluated. A cause of action is the delict or wrongful act or omission committed by the defendant in violation of the primary right of the plaintiff. A complaint before the NLRC does not contain specific allegations of these wrongful acts or omissions which constitute the cause of action. All that it contains is the term by which such acts or omissions complained of are generally known. It cannot therefore be considered as the final determinant of the cause of action.

2. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS. — Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. There is forum shopping where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.

3. LABOR AND SOCIAL LEGISLATION; NLRC RULES OF PROCEDURE; THAT THERE SHALL BE ONLY ONE COMPLAINT AGAINST THE OTHER PARTY, FOR ALL CAUSES OF ACTION ARISING FROM THE SAME RELATIONSHIP; NOT APPLICABLE IN CASE AT BAR. — We are not unaware of the provision in Section 1 (b), Rule 3 of the NLRC Rules of Procedure which states that "a party having more than one cause of action against the other party

arising out of the same relationship shall include all of them in one complaint or petition." As stated earlier, however, the inclusion of respondent's cause of action for constructive illegal dismissal in the Davao case could not have been possible since the same arose only after the latter case was filed. At the time of the filing of the Davao case, respondent could not have yet claimed that petitioner committed acts that would amount to constructive illegal dismissal. Thus, the aforementioned rule has no application in this case.

4. ID.; ID.; CONSOLIDATION OF CASES/COMPLAINTS; NOT APPLICABLE IN CASE AT BAR. — Section 3, Rule IV of the NLRC Rules of Procedure states: SECTION 3. CONSOLIDATION OF CASES/COMPLAINTS. Where there are **two or more cases/complaints** pending before different Labor Arbiters in the **same Regional Arbitration Branch** involving the same employer and common principal causes of action or **the same parties with different causes of action**, the subsequent cases/complaints shall be consolidated with the first to avoid unnecessary costs or delay. Such consolidated cases/complaints shall be disposed of by the Labor Arbiter to whom the first case was assigned. In case of objection to the consolidation, the same shall be resolved by the Executive Labor Arbiter. An order resolving the motion shall be inappealable. Based on the above, it is plain that the two cases here cannot be consolidated because they were filed and are pending before different regional arbitration branches of the NLRC — the first, in Davao City and the second, in the National Capital Region. Considering that respondent was recalled to Manila from his former station in Davao City, it is understandable that he would seek to ventilate his claim of constructive illegal dismissal in Manila, as it would be costly and impractical to go all the way back to Davao City where he merely rented boarding space and had no means of employment. Besides, it appears that the material acts and events complained of as constituting constructive illegal dismissal transpired in Manila.

APPEARANCES OF COUNSEL

Antonio A. Geronimo for petitioners.
IBP National Committee on Legal Affairs for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review on *certiorari* of the November 28, 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 92810, which reversed and set aside the Resolutions[2] of the National Labor Relations Commission (NLRC) in NLRC-NCR CA No. 041042-04, affirming the Order[3] of Labor Arbiter Antonio A. Cea dismissing the complaint filed by respondent Rolan E. Buensalida for constructive illegal dismissal on the ground of forum-shopping.

Tegimenta Chemical Philippines is a sole proprietorship owned by petitioner Vivian D. Garcia. It is engaged in the business of providing manpower for the servicing and maintenance of air conditioning and air handling units that it likewise provides to its clients. On September 8, 1997, petitioner hired respondent Buensalida as an aircon maintenance technician.

On February 26, 2003, respondent injured his left ring finger while repairing the air handling units at the SM Department Store in Davao City. As a result, respondent underwent a surgical debridgement procedure and was confined in the hospital for two days.

SM Prime Holdings initially shouldered respondent's hospitalization expenses which amounted to ₱30,331.61 but it subsequently collected the amount from petitioner who, in turn, informed respondent that the amount would be deducted from his salary. Thus, on April 20, 2003, petitioner began deducting

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[1] *Rollo*, pp. 67-77; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Noel G. Tijam and Arturo G. Tayag.

[2] *Id*. at 36-47; dated July 7, 2005 and October 25, 2005; penned by Commissioner Angelita A. Gacutan and concurred in by Commissioners Raul T. Aquino and Victoriano R. Calaycay.

[3] *Id*. at 29-30.

₱300.00 from respondent's weekly earnings or a monthly deduction of ₱1,200.00.

According to respondent, he wanted to avail of the SSS benefits thus he accomplished an Employee Notification Form (SSS Form B-300 [8/75]) which he mailed to petitioner for completion but the latter did not send it back because it was allegedly filed beyond the allowable period. Petitioner also ignored respondent's PhilHealth Form 1 which the latter sent together with the SSS form.[4]

Thereafter, respondent demanded for the restoration of the deducted amounts but was denied by petitioner; hence, on May 16, 2003, he filed a complaint[5] for "constructive dismissal with money claims" against petitioner before the Regional Arbitration Branch No. XI of the NLRC-Davao City docketed as NLRC Case No. RAB-XI-05-00537-03 ("Davao case").

Meanwhile, respondent was recalled to the Head Office at Quezon City per Memorandum[6] dated September 25, 2003. Respondent averred that his transfer was purposely done by petitioner to harass him, in view of their estranged relationship brought about by the filing of the Davao case. He was not advanced any travel fare in going back to Manila. He was also instructed to attend seminars conducted by the SSS and PhilHealth to be held on October 21, 2003.

On October 3, 2003, petitioner issued another Memorandum[7] informing respondent that he would be re-assigned to Manila as night shift supervisor effective October 6, 2003. However, respondent refused the new assignment because it would allegedly affect his gross income and other benefits.[8] The night shift had no fixed work schedule in contrast to respondent's previous

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[4] *Id*. at 68-69.

[5] *Id*. at 23.

[6] CA *rollo*, p. 48.

[7] *Id*. at 50.

[8] *Id*. at 51.

six-days-a-week schedule. Respondent would then be deprived of a fixed or regular income.

On October 16, 2003, petitioner again issued a Memorandum[9] stating that respondent's re-assignment was "for the good interest of the company." The move was allegedly "aimed to stop the increasing polarization among the personnel in Davao City" and the "result of cost-cutting measures implemented by the company in all SM branches and establishments."

Thus, on October 27, 2003, respondent filed another Complaint[10] for constructive illegal dismissal against petitioner before the NLRC-NCR-North Sector in Quezon City, docketed as NLRC-NCR NORTH SEC Case No. 00-01-12481-03 ("NCR case").

Subsequently, respondent amended his Complaint[11] in the NCR case to include underpayment or non-payment of salaries, service incentive leave, 13th month pay and boarding house rental. He claimed that petitioner failed to pay his boarding expenses arising from his assignment to Davao City, contrary to the promise of petitioner. His ECOLA, 13th month pay and service incentive leave pay were also not paid in the manner provided by law.

Thereafter, respondent submitted his Position Paper[12] in the NCR case. Petitioner filed a Motion to Dismiss[13] the NCR case on the ground of forum-shopping. Petitioner alleged that the Davao case was a pending case similar to the NCR case and that the latter should be dismissed pursuant to Section 14 (a) of the NLRC Rules of Procedure as well as Supreme Court Administrative Circular No. 04-94.

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[9] *Id*. at 52.

[10] *Rollo*, p. 18.

[11] CA *rollo*, p. 54.

[12] *Id*. at 55.

[13] *Rollo*, p. 20.

Respondent opposed the motion to dismiss contending that the two cases had different causes of action. While the Davao case was for illegal deduction, the NCR case was for constructive illegal dismissal as shown by the distinct issues raised by respondent in his position papers filed in the two cases.[14]

On July 15, 2004, Labor Arbiter Antonio A. Cea dismissed respondent's complaint in the NCR case on the ground that the cause of action therein was embraced in the Davao case.[15] The NLRC affirmed the decision of the Labor Arbiter in a resolution dated July 7, 2005.[16]

On appeal, the Court of Appeals reversed and set aside the NLRC resolution in a Decision[17] dated November 28, 2006. It held that respondent was not guilty of forum-shopping considering that the two cases had distinct causes of action; that while the complaints in the two cases appeared to allege on its face the same cause of action, respondent's position papers in the two cases show that the causes of action are actually different; that in determining the cause of action in NLRC cases, reliance on the face of the complaint is insufficient since the same consists only of a printed blank form that does not contain specific allegations and prayers, unlike those filed before the regular courts. Thus, an evaluation of the position paper is necessary in ascertaining the cause of action raised in a complaint before the NLRC.

Petitioner filed a motion for reconsideration but was denied by the appellate court in a Resolution[18] dated January 29, 2007. Hence, the instant petition alleging that the Court of Appeals abused its discretion in allowing the simultaneous prosecution of the two cases, as it "would expose the parties to unnecessary expenses by attending in Quezon City and in Davao City" and

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[14] *Id*. at 24-28.

[15] *Id*. at 29-30.

[16] *Id*. at 36.

[17] *Id*. at 67-76.

[18] *Id*. at 80.

there is a "great danger in dispensing two decisions which are contradictory to each other and are prejudicial to the parties."[19]

The petition lacks merit.

The Court of Appeals correctly relied not only on the face of the complaints, but also on the position papers submitted by respondent in determining the causes of action raised in the two cases. It correctly observed that a complaint in a case filed before the NLRC consists only of a blank form which provides a checklist of possible causes of action that the employee may have against the employer. The check list was designed to facilitate the filing of complaints by employees and laborers even without the intervention of counsel. It allows the complainant to expediently set forth his grievance in a general manner, but is not solely determinative of the ultimate cause of action that he may have against the employer.

Section 3, Rule V of the New Rules of Procedure of the NLRC, as amended by NLRC Resolution No. 01-02 (Series of 2002),[20] provides:

SECTION 4. SUBMISSION OF POSITION PAPERS/MEMORANDA. Without prejudice to the provisions of the last paragraph, Section 2 of this Rule, the Labor Arbiter shall direct both parties to submit simultaneously their position papers with supporting documents and affidavits within an inextendible period of ten (10) days from notice of termination of the mandatory conference.

These verified position papers to be submitted shall **cover only those claims and causes of action raised in the complaint** excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall **thereafter not be allowed to**

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[19] *Id.* at 13.

[20] These rules of procedure were applicable at the time that respondent filed the two complaints against petitioner. In 2005, the NLRC promulgated its Revised Rules of Procedure which incorporates the amendments introduced by NLRC Resolution No. 01-02 (Series of 2002) that are material to the instant case.

allege facts, or present evidence to prove facts, not referred to and **any cause or causes of action not included in the complaint or position papers**, affidavits and other documents.

Thus, the complaint is not the only document from which the complainant's cause of action is determined in a labor case. Any cause of action that may not have been included in the complaint or position paper, can no longer be alleged after the position paper is submitted by the parties. In other words, the filing of the position paper is the operative act which forecloses the raising of other matters constitutive of the cause of action. This necessarily implies that the cause of action is finally ascertained only after both the complaint and position paper are properly evaluated.

A cause of action is the delict or wrongful act or omission committed by the defendant in violation of the primary right of the plaintiff.[21] A complaint before the NLRC does not contain specific allegations of these wrongful acts or omissions which constitute the cause of action. All that it contains is the term by which such acts or omissions complained of are generally known. It cannot therefore be considered as the final determinant of the cause of action.

The complaint in the Davao case shows that respondent indicated, as causes of action, constructive illegal dismissal, illegal deductions, non-payment of premium pay, holiday pay and service incentive leave pay. On the other hand, the complaint in the NCR case had, for its cause of action, constructive illegal dismissal only. Later, the complaint in the NCR case was amended to include underpayment of salaries and wages, service incentive leave and 13th month pay as well as non-payment of boarding house rental fees. At face value, it would seem that the causes of action set forth in the two complaints are indeed similar, if not, identical.

However, the position papers filed in the two cases raise distinct causes of action, issues and prayers for relief. In

[21] RULES OF COURT, Rule 2, Sec. 2.

respondent's position paper in the Davao case, the following issues were clearly spelled out: (1) whether the injury sustained by respondent was work-related; (2) whether the salary deductions made by petitioner was proper; and (3) whether petitioner was justified in refusing to complete respondent's SSS and PhilHealth forms.[22] While the complaint in the Davao case also indicated constructive illegal dismissal, non-payment of premium pay, holiday pay and service incentive leave pay as causes of action, these were not mentioned or discussed in respondent's position paper.

In contrast, the amended complaint in the NCR case is one for constructive illegal dismissal and underpayment of monetary benefits. The issues raised therein are: (1) whether complainant was illegally dismissed; (2) whether complainant is entitled to all his monetary claims; (3) whether complainant is entitled to full backwages and separation pay; and (4) whether complainant is entitled to moral and exemplary damages.[23]

Thus, the causes of action pleaded in the two cases are not the same. The Davao case was clearly one for illegal deductions and the NCR case was for constructive illegal dismissal and money claims. The issue of respondent's alleged constructive illegal dismissal could not have been subsumed in the first case considering that the facts constitutive of this offense arose only after the first complaint was filed. In fact, respondent alleged in the Davao case that he was informed through a phone call of his re-assignment to Manila but did "not know whether he will be terminated soon."

Needless to say, the factual allegations that support the causes of action in the two cases are likewise dissimilar. The Davao case involved factual circumstances related to petitioner's refusal to shoulder respondent's hospitalization costs as well as the validity of the salary deductions made by the former.[24] On the

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[22] CA *rollo*, p. 40.

[23] *Id*. at 58.

[24] *Id*. at 38-40.

other hand, the NCR case pertained to alleged facts dealing with the aftermath of the filing of the Davao case, particularly the tactics petitioner allegedly employed to harass respondent and ease him out of his regular employment, as well as averments involving underpayment of monetary benefits.[25]

The two cases are not founded on the same set of facts, although the factual circumstances of the Davao case are undoubtedly related to the matters asserted in the NCR case. The two cases would require the appreciation of factual matters that are connected, but are not necessarily alike. The evidence required to prove the first case would not be the same as that needed to substantiate the second case, such that the outcome of either case will not automatically decide the result of the other.

Thus, respondent was not guilty of forum shopping when he filed the NCR case despite the pendency of the Davao case. Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[26] There is forum shopping where the elements of *litis pendentia* are present, namely: (a) there is identity of parties, or at least such parties as represent the same interest in both actions; (b) there is identity of rights asserted and relief prayed for, the relief being founded on the same set of facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.[27] While the first requisite concededly exists in the instant case, the second and third requisites do not.

We are not unaware of the provision in Section 1 (b), Rule 3 of the NLRC Rules of Procedure which states that "a party having

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[25] *Id.* at 57-58.

[26] *Guaranteed Hotels, Inc. v. Baltao*, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 743.

[27] *Mondragon Leisure and Resorts Corporation v. Court of Appeals*, G.R. No. 154188, June 15, 2005, 460 SCRA 279, 285-286.

more than one cause of action against the other party arising out of the same relationship shall include all of them in one complaint or petition." As stated earlier, however, the inclusion of respondent's cause of action for constructive illegal dismissal in the Davao case could not have been possible since the same arose only after the latter case was filed. At the time of the filing of the Davao case, respondent could not have yet claimed that petitioner committed acts that would amount to constructive illegal dismissal. Thus, the aforementioned rule has no application in this case.

Finally, it would be more in keeping with the orderly and efficient disposition of respondents' complaints to order the consolidation of the two cases; however, Section 3, Rule IV of the NLRC Rules of Procedure states:

SECTION 3. CONSOLIDATION OF CASES/COMPLAINTS. Where there are **two or more cases/complaints** pending before different Labor Arbiters in the **same Regional Arbitration Branch** involving the same employer and common principal causes of action or **the same parties with different causes of action**, the subsequent cases/complaints shall be consolidated with the first to avoid unnecessary costs or delay. Such consolidated cases/complaints shall be disposed of by the Labor Arbiter to whom the first case was assigned.

In case of objection to the consolidation, the same shall be resolved by the Executive Labor Arbiter. An order resolving the motion shall be inappealable.

Based on the above, it is plain that the two cases here cannot be consolidated because they were filed and are pending before different regional arbitration branches of the NLRC — the first, in Davao City and the second, in the National Capital Region. Considering that respondent was recalled to Manila from his former station in Davao City, it is understandable that he would seek to ventilate his claim of constructive illegal dismissal in Manila, as it would be costly and impractical to go all the way back to Davao City where he merely rented boarding space and had no means of employment. Besides, it appears that the material acts and events complained of as constituting constructive illegal dismissal transpired in Manila.

All told, the Court of Appeals did not err in reversing the resolution of the NLRC affirming the Labor Arbiter's order for the dismissal of the NCR case. Respondent did not commit forum shopping as the two cases he filed against petitioner pertained to different causes of action and involved related but distinct sets of factual circumstances. The NLRC's Rules of Procedure also sanction the filing of the NCR case independently of the Davao case.

WHEREFORE, based on the foregoing, the instant petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 92810 which reversed and set aside the resolutions of the National Labor Relations Commission in NLRC-NCR CA No. 041042-04 is hereby *AFFIRMED*. The complaint of respondent for constructive illegal dismissal in NLRC-NCR North Sector Case No. 00-10-12481-03 is *REINSTATED*. Labor Arbiter Antonio A. Cea is thus ordered to *DECIDE* the said case without further delay.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and *Brion,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 176742. June 17, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WENCESLAO ESPINO, JR.** ***y*** **SAURA,** ***alias*** **"Joe Pring,"** *accused-appellant.*

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[*] Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES. — A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape. Thus, in the disposition and review of rape cases, the Court is guided by these principles: *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove. And *fifth*, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, IF AFFIRMED BY THE APPELLATE COURT, RESPECTED. — Time and again, we have held that **when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often 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. The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and

value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. **The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.**

3. ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM UPHELD IN THE ABSENCE OF ILL MOTIVE, MAY BE THE BASIS FOR CONVICTION; CASE AT BAR. — A careful perusal of the records revealed that when AAA testified in court as regards her ordeal, she described in detail how she was sexually abused by the appellant on that fateful day of 21 September 1999. Her testimony can be regarded as straightforward, categorical and candid. A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to her that would make her testify falsely against the accused. For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true. Where an alleged rape victim says she was sexually abused, she says almost all that is necessary to show that rape has been inflicted on her person, provided her testimony meets the test of credibility. The appellant in this case considered his failure to give money to AAA as the latter's motive for charging him with the crime of rape; such allegation, however, remained unsubstantiated; therefore, it is self-serving. **It is an accepted doctrine that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.** Thus, the aforesaid allegation of the appellant cannot even shed any cloud of doubt on the credibility of the victim's testimony. Further, during AAA's testimony before the court *a quo*, there were instances when AAA cried while narrating and testifying in court about her horrible experience in the hands of the appellant. The fact that the victim cried during her testimony is evidence of the credibility of the rape charge for the display of such emotion indicates the pain that the victim felt when asked to recount her traumatic experience. Jurisprudence has steadfastly been already repetitious that the accused may be convicted on the sole testimony of the victim in a rape case, provided that

such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. In the case at bar, as is being heretofore emphasized, AAA testified in a direct, unequivocal, and consistent manner with regard to the rape committed against her by the appellant. **The straightforward narration by AAA of what transpired, accompanied by her categorical identification of appellant as the malefactor, sealed the case for the prosecution.**

4. CRIMINAL LAW; RAPE; MORAL CHARACTER OF THE VICTIM, NOT MATERIAL. — In rape cases, the moral character of the victim is immaterial. Rape may be committed not only against single women and children but also against those who are married, middle-aged, or pregnant. Even a prostitute may be a victim of rape. Thus, the fact that AAA worked in a beerhouse is insignificant and cannot be used by the appellant to destroy AAA's credibility.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN TESTIMONIES; CASE AT BAR. — Inconsistencies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility. The aforesaid inconsistency pointed out by the appellant did not erase the fact that the appellant had raped AAA. Verily, the issue of how long such sexual assault lasted was insignificant to the case of the prosecution. It cannot exonerate the appellant from the crime charged because the fact remains that he was AAA's ravisher. Rather than weakening the testimony of AAA, the aforesaid inconsistency serves to strengthen the veracity of the victim's story as it erases doubts that her testimony has been coached or rehearsed. More so, rape, being a harrowing experience, is usually not fully remembered. Rather, the victim of such an atrocity is normally inclined to forget certain details surrounding the execrable event and sweep them into her dustbin of unwanted experiences and memories. **What is important is her complete and vivid narration of the rape itself, which the trial court herein found to be truthful and credible.** Further, by way of clarification, during AAA's cross-examination, she denied that the sexual assault against her lasted for two hours. She simply stated that she could not anymore remember how long she was raped by the appellant.

6. CRIMINAL LAW; RAPE; HYMENAL LACERATIONS OF THE VICTIM, NOT MATERIAL. — The presence of old healed lacerations in the victim's hymen is irrelevant to appellant's defense. In the same way that their presence does not mean the victim was not raped recently, the absence of fresh lacerations does not negate rape either. Indeed, **hymenal laceration is not an element of the crime of rape. In the crime of rape, the testimony of the victim, and not the findings of the medico-legal officer, is the most important element to prove that the felony had been committed.** Even without a medical report, a medical examination of the victim is not indispensable in a prosecution for rape; **the victim's testimony alone if credible is sufficient to convict the accused of the crime.** AAA's testimony was, indeed, credible and sufficient to convict the appellant.

7. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL AGAINST CATEGORICAL TESTIMONIES. — Appellant's bare denial must likewise fail. It is well settled that denial is an intrinsically weak defense, which must be buttressed by strong evidence of non-culpability to merit credibility. **Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of appellant and his involvement in the crime attributed to him.** The defense of *alibi* is likewise unavailing. It is not enough, in order that *alibi* might prosper, to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. The defenses of denial and alibi offered by the appellant cannot prevail over the straightforward narration of AAA as well as her categorical identification of the appellant as her assailant.

8. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; USE OF DEADLY WEAPON; NOT APPRECIATED WHERE THE SAME WAS NOT ALLEGED IN THE INFORMATION; PROPER PENALTY. — Based on the records, there was a mention of a knife, which the appellant used in threatening AAA to make her submit to his bestial desire. In *People v. Fraga*, when the rape is committed "with the use of a deadly weapon," *i.e.*, when a deadly weapon is used to

make the victim submit to the will of the offender, the penalty is "*reclusion perpetua* to death." **This circumstance must, however, be alleged in the information because it is also in the nature of a qualifying circumstance which increases the range of the penalty to include death.** In the case at bar, while AAA testified that the appellant raped her after threatening her with a knife, **the "use of a deadly weapon" in the commission of the crime was not alleged in the information.** Therefore, even if the same was proved, it cannot be appreciated as a qualifying circumstance. The same can only be treated as a generic aggravating circumstance which, in this case, cannot affect the penalty to be imposed, *i.e.*, *reclusion perpetua*. Thus, both the trial court and the appellate court properly sentenced the appellant to suffer the penalty of *reclusion perpetua* for the crime of rape he committed against AAA.

9. ID.; ID.; ID.; MINORITY AND RELATIONSHIP OF VICTIM TO ACCUSED; TWIN CIRCUMSTANCES THAT MUST BE ESTABLISHED TO BE APPRECIATED. — Even though the Information alleged that AAA was only 14 years of age when she was raped by the appellant, said allegation cannot qualify the crime committed by the appellant from simple rape to rape in its qualified form. It bears emphasis that the age of the victim was not properly proven or established by the prosecution. No birth certificate or baptismal certificate was ever presented to prove the same. As the trial court mentioned in its Decision, citing *People v. Veloso*, this Court cannot rely solely on the testimony of the victim; not even the testimony of her mother would have sufficed in this regard. The circumstances that qualify a crime should be proved beyond reasonable doubt just as the crime itself. Moreover, even assuming *arguendo* that the minority of the victim was properly proven, still, the appellant cannot be convicted of qualified rape. The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape. Both relationship and minority must be alleged in the Information to qualify the crime as punishable by death. In this case, it is clear that the appellant was not related to the victim in any way. Thus, it is impossible to convict the appellant of the crime of qualified rape. Hence, the crime committed by the appellant was only simple rape.

10. ID.; ID.; DAMAGES; PROPER CIVIL PENALTIES. — The appellate court correctly ruled that AAA was entitled to the award of ₱50,000.00 as civil indemnity because it is mandatory upon the finding of the fact of rape and the same is not to be considered as moral damages, the latter being based on different jural foundations. Likewise, the Court of Appeals properly deleted the award of ₱50,000.00 as actual or compensatory damages given by the trial court to AAA. As we have explained in a number of cases, **the indemnity provided in criminal law as civil liability is the equivalent of actual or compensatory damages in civil law.** Thus, the award of ₱50,000.00 as civil indemnity also stands for actual or compensatory damages. Lastly, the appellate court was correct in reducing the award of moral damages from ₱100,000.00 to ₱50,000.00 in accordance with current jurisprudence.

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.*:

For review is the Decision[1] dated 13 December 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 02253 which affirmed with modification the Decision[2] dated 26 January 2001 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 21, in Criminal Case No. 599-M-2000, finding herein appellant Wenceslao Espino, Jr. *y* Saura, *alias* "Joe Pring" guilty beyond reasonable doubt of the crime of simple rape committed against AAA.[3]

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Renato C. Dacudao and Rosmari D. Carandang, concurring; *rollo*, pp. 2-11.

[2] Penned by Judge Cesar M. Solis; CA *rollo*, pp. 16-21.

[3] This is pursuant to the ruling of this Court in the case of *People of the Philippines v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA

In an Information[4] dated 21 February 2000, appellant Wenceslao Espino, Jr. *y* Saura, *alias* "Joe Pring" was charged with the crime of rape, as defined and penalized under Articles 266-A[5] and 266-B[6] of the Revised Penal Code, as amended, committed against AAA. The said Information reads as follows:

The undersigned Asst. Provincial Prosecutor, on complaint of AAA, accuses Wenceslao Espino, Jr. *y* Saura @ Joe Pring of the crime of rape, penalized under the provisions of Article 266-A-B of the Revised Penal Code as amended, committed as follows:

That on or about the 21st day of September, 1999, in the municipality of xxx, province of xxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, by means of force and with

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419, wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "xxx" as in "No. xxx Street, xxx District, City of xxx."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective November 15, 2004.

[4] CA *rollo*, p. 6.

[5] ART. 266-A. *Rape; When and How Committed.* —Rape is committed:

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) through force, threat or intimidation;
b) x x x
c) x x x
d) x x x.

[6] ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

lewd designs have carnal knowledge of the said AAA, a fourteen (14) year old girl, against her will and without her consent.[7]

Upon arraignment, the appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to the crime charged. Thereafter, trial on the merits ensued.

The pieces of evidence presented by the prosecution to prove its allegations are the testimonies of the following witnesses: AAA, the victim; BBB, the victim's mother; and Dr. Ivan Richard Viray (Dr. Viray), the medico-legal officer of the Philippine National Police (PNP) Crime Laboratory in Malolos, Bulacan.

AAA was already 15 years old at the time of her testimony before the court *a quo*.[8] She was only 14 years old when the alleged rape incident happened.

AAA disclosed that on 21 September 1999, at around 1:30 a.m., she and her friend Joa Italia, both residents of *Barangay* xxx, Municipality of xxx, Province of xxx, were on their way home from the house of their friend whom they called "Kuya Ariel." They left the house of Kuya Ariel at around 11:00 p.m., which was still 20 September 1999, by walking. Rain fell. Because of this sudden downpour, they remained in Barangay Bayugo, Meycauayan, Bulacan, until 1:30 a.m. of 21 September 1999. Suddenly, the *barangay tanods* of the aforesaid *barangay* apprehended them for violation of its curfew ordinance. They were then brought to the *barangay* hall wherein they were asked by Barangay (Brgy.) Captain Renato Ponciano (Brgy. Capt. Ponciano) to pay a fine of ₱200.00. They failed to do so, thus, an entry was made in the *barangay* blotter as regards what had happened.[9]

After a while, the appellant and Macar dela Cruz (Macar) arrived at the *barangay* hall. Of the two, only the latter went up while the former was left downstairs. Thereafter, Brgy.

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[7] CA *rollo*, p. 6.

[8] TSN, 16 June 2000, p. 2.

[9] *Id.* at 3-5.

Capt. Ponciano released AAA and Joa Italia to the custody of Macar and the appellant after the two represented that they knew the parents of the two girls and promised to bring them home. Due to the two girls' desire to go home, they acceded to be given to the custody of appellant and Macar. Brgy. Capt. Ponciano prepared a letter addressed to Macar and asked the latter to affix his signature thereto. Macar complied.[10]

Upon leaving the said *barangay* hall, appellant and Macar, together with AAA and Joa Italia, passed by a dark alley. The two girls were made to believe that they had to pass by that dark alley to avoid being spotted by the *barangay tanods*; otherwise, they would be brought again to the *barangay* hall. Along the way, AAA was held by the appellant, while Joa Italia was held by Macar. Thereafter, AAA and Joa Italia were dragged by the appellant and Macar towards a poultry house. Both AAA and Joa Italia resisted, but to no avail. AAA was forcibly dragged by the appellant to the side of the poultry house. There, the appellant poked a knife at AAA. He then removed AAA's pants. While the appellant was removing her pants, she tried to push him back, but the appellant was too strong and he forced her to lie down on a small bench. The appellant proceeded to remove his own clothes and told AAA not to report that incident to anybody. Then, the appellant raised AAA's left leg and inserted his penis into her vagina. Again, AAA tried to push away the appellant using her hands; she failed. The appellant succeeded in raping her.[11] AAA felt pain in her private organ.[12]

Simultaneously, her friend Joa Italia, who was about three or four meters away,[13] was allegedly raped by Macar.[14] After about 15 minutes, the appellant told AAA to stand up. She dressed up and went home. She did not, however, immediately

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

[11] *Id.* at 7-10.

[12] TSN, 19 June 2000, p. 2.

[13] TSN, 25 August 2000, p. 8.

[14] *Id.* at 7-13.

tell her parents about her ordeal. On the same day, AAA and her friend Joa Italia went to the house of their friend named "Kuya Olan" and told the latter about their harrowing experience. Subsequently, they reported the rape incident to Brgy. Capt. Ponciano and the latter summoned the appellant and Macar at around 7:00 p.m. of 21 September 1999. AAA and Joa Italia were advised by Brgy. Capt. Ponciano to file the proper complaint before the police authorities. As it was already late, AAA went home and finally told her parents that she was raped. Immediately, AAA's parents accompanied her to the police station and reported that the appellant sexually abused her.[15] AAA likewise executed a sworn statement or a "*Malaya at Kusang Loob na Salaysay*"[16] before the Meycauayan Police Station.[17]

On 24 September 1999, AAA was submitted to a physical and medical examination by Dr. Viray,[18] a medico-legal officer of the PNP Crime Laboratory in Malolos, Bulacan, as evidenced by Medico-Legal Report No. MR-130-99.[19] During his testimony, Dr. Viray revealed that AAA suffered superficial burns on the right hand measuring .3 x .3 centimeter. The same could have been inflicted two to three days prior to the date of examination and caused by a cigar as AAA herself told him. Dr. Viray also found deep-healed lacerations at 3, 5, 7, 9 and 10 o'clock positions in the victim's vagina, which could have been inflicted more than one week prior to the examination date. The said lacerations could have been caused by the insertion of a hard object, like an erect penis. Despite the lacerations, Dr. Viray found the "vaginal canal, narrow, prominent" ("*masikip pa*") because the patient had not yet given birth. Dr. Viray concluded that AAA was in a non-virgin state physically at the time of her examination.[20]

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[15] TSN, 19 June 2000, pp. 2-4.

[16] Records, pp. 3-4.

[17] TSN, 19 June 2000, pp. 4-5.

[18] *Id.* at 5.

[19] Records, p. 55.

[20] TSN, 11 October 2000, pp. 3-4.

The mother of the victim, BBB, was also presented by the prosecution as a witness. BBB testified that AAA was 15 years old at the time she gave her testimony in court. AAA was born on 11 April 1985.[21] On 21 September 1999, at about 3:00 a.m., her daughter came home alone. AAA told her that she was apprehended by the *barangay tanods* at Barangay Bayugo, Meycauayan, Bulacan, for violating its curfew ordinance. She was coming from a friend's house when suddenly the *barangay tanods* of the aforesaid *barangay* apprehended her. BBB thought that AAA wanted to tell her something but then she failed to listen to her daughter. Later, on the night of 21 September 1999, AAA, together with the *barangay tanods*, arrived in their house. It was the *barangay tanods* who informed her that her daughter AAA was raped. They then proceeded to Meycauayan, Bulacan Police Station and reported the rape incident. AAA executed a sworn statement[22] with respect to the rape incident. BBB affixed her signature to the sworn statement made by her daughter. Her daughter subsequently subjected herself to a physical and medical examination conducted by Dr. Viray.[23]

On the part of the defense, it presented the testimony of the appellant, who interposed the defenses of denial and alibi. Also, it presented Renato Ponciano, the *barangay* captain of Barangay Bayugo, Meycauayan, Bulacan, to prove that he did not see the appellant in the company of Macar during the time that the latter went to the *barangay* hall, and it was only Macar who took custody of AAA and Joa Italia.

The appellant testified that on 21 September 1999, at around 1:30 a.m., he was in their house located at Barangay Bayugo, Meycauayan, Bulacan.[24] He averred that on 20 September 1999, at around 7:00 p.m., he saw Macar at a birthday party in Barangay Bayugo, Meycauayan, Bulacan. Thereafter, at about

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[21] The prosecution failed to present the Certificate of Live Birth of the victim.

[22] Marked as Exhibit "A", records, pp. 3-4.

[23] TSN, 2 October 2000, pp. 4-6.

[24] TSN, 16 October 2000, p. 4.

11:00 p.m. of the same day, Macar went to his house to borrow money for the release of the two young ladies. Macar also asked him to accompany him to the *barangay* hall to facilitate the release of the said two young ladies, named AAA and Joa Italia. The appellant, however, refused Macar's requests. Macar then threatened him that he might regret what he did to him. Then at around 2:00 a.m. to 3:00 a.m. of 21 September 1999, Macar came back to appellant's house, together with AAA and Joa Italia. AAA asked appellant for the money that Macar gave him, purportedly intended as a payment for sexual favors from AAA and Joa Italia. Appellant did not give them any money.[25] Instead, he gave them ₱15.00 for their transportation fee and for them to stop pestering him, as his wife and child might be awakened.[26] When the appellant failed to give them the money they were asking for, AAA told the appellant, "Watch out the two of you."[27]

Thereafter, at around 8:00 p.m. of 21 September 1999, the *barangay tanods* of Barangay Bayugo, Meycauayan, Bulacan, fetched him from his house and brought him to the *barangay* hall because of a complaint for rape against him that was filed by AAA. He claimed that he only came to know AAA at the *barangay* hall of the aforesaid *barangay* after being summoned to answer for the rape charge filed against him. The appellant avowed that the accusation against him was merely fabricated by AAA who was just extorting money from him. He also described AAA as a woman of loose morals who was known in their *barangay* as having been in the company of different men. The appellant further stated that the reason why he was charged with rape was because of AAA and Joa Italia's habit of extorting money.

Appellant denied raping AAA. He, however, admitted having known Macar, as the latter is his "*kumpare*," because Macar is the godfather of his eldest child. He denied that he was with

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[25] *Id.* at 9-14.

[26] TSN, 18 October 2000, p. 3.

[27] TSN, 16 October 2000, p. 14.

Macar on 21 September 1999 when Macar requested the *barangay tanods* for the release of AAA and Joa Italia.[28] To further bolster his claim, the appellant pointed out that the rape charge filed against Macar was subsequently dismissed on the basis of Joa Italia's "*Pag-uurong ng Demanda*"[29] dated 20 September 2000.[30]

The defense also presented Brgy. Capt. Ponciano, the barangay captain of Barangay Bayugo, Meycauayan, Bulacan. He disclosed that on 20 September 1999, at about 11:40 p.m., there was only one entry in their *barangay* blotter relative to the violation of the curfew ordinance of their *barangay* committed by AAA and Joa Italia. He further testified that on that night, Macar suddenly appeared at the *barangay* hall requesting the release of AAA and Joa Italia. Since Macar was the son of his *barangay tanod* and a law-abiding citizen, he released the two girls to Macar's custody after the latter told him that he personally knew AAA and Joa Italia and after Macar signed the *barangay* blotter in his presence.

Brgy. Capt. Ponciano denied having seen the appellant at the *barangay* hall on the nights of 20 and 21 September 1999. He averred that Macar was alone when the latter requested the release of AAA and Joa Italia. Ponciano stated that it was only on the night of 21 September 1999 when AAA and Joa Italia made a complaint that he had seen the appellant. The *barangay* captain revealed that he did not conduct an investigation on the alleged rape incident because the case was not within his jurisdiction. Instead, he referred the victims to the police station.[31]

After trial, the RTC rendered a Decision[32] on 26 January 2001, finding the appellant guilty beyond reasonable doubt of

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

[29] Marked as Exhibit "4", records, p. 73.

[30] *Id*.

[31] TSN, 29 November 2000, pp. 2-5.

[32] CA *rollo*, pp. 16-21.

the crime of simple rape. The dispositive portion of the said Decision reads as follows:

> Wherefore, all premises considered, this Court resolves and so holds that the [appellant] is GUILTY beyond reasonable doubt, of the crime of simple Rape penalized under Article 266-A and B of the Revised Penal Code, as amended by [Republic Act] RA [No.] 7659.[33]
>
> Accordingly, [appellant] is hereby sentenced to suffer the penalty of *Reclusion Perpertua*. Further he is ordered to indemnify AAA in the sum of ₱50,000.00; pay her ₱100,000.00 for moral damages and another ₱50,000.00 for compensatory damages.
>
> With costs against the [appellant].[34]

The records of this case were originally transmitted before this Court on appeal. Pursuant to *People v. Mateo*,[35] the records were transferred to the Court of Appeals for appropriate action and disposition.

In his brief, the appellants raised the following assignment of errors:

> I. THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE TESTIMONY OF [AAA].
>
> II. THE TRIAL COURT GRAVELY ERRED IN FINDING THE [APPELLANT] GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[36]

The Court of Appeals rendered its Decision on 13 December 2006, affirming appellant's conviction for the crime of simple

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[33] Otherwise known as "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for Other Purposes. This law, however, was subsequently repealed by Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[34] CA *rollo*, p. 21.

[35] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[36] CA *rollo*, pp. 46, 52.

rape with modification by deleting the award of ₱50,000.00 as compensatory damages and reducing the award of moral damages from ₱100,000.00 to ₱50,000.00. The decretal portion of the said Decision reads as follows:

> WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision dated [26 January 2001] of the RTC of Malolos, Bulacan, Branch 21, is hereby **AFFIRMED** with modification deleting the award of ₱50,000.00 as compensatory damages and reducing the award of moral damages from ₱100,000.00 to ₱50,000.00.[37]

The appellant filed a Notice of Appeal.[38] In view thereof, the appellate court forwarded to this Court the records of this case.

On 4 June 2007,[39] this Court resolved to accept the present case and notified the parties that they may file their respective supplemental briefs, if they so desired. The Office of the Solicitor General manifested that it was adopting *in toto* its brief dated 15 May 2003 filed before the appellate court, as its supplemental brief.

After a meticulous review of the records, this Court affirms appellant's conviction.

A rape charge is a serious matter with pernicious consequences both for the appellant and the complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape.[40] Thus, in the disposition and review of rape cases, the Court is guided by these principles: *First*, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction. *Second*, the evidence for the prosecution must stand or fall on its own merits and cannot draw strength

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[37] *Rollo*, p. 11.

[38] *Id.* at 13-14.

[39] *Id.* at 16.

[40] *People v. Malones*, 469 Phil. 301, 318 (2004).

from the weakness of the evidence of the defense. *Third*, unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal. *Fourth*, an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove. And *fifth*, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.[41]

In this case, appellant's first assignment of error hinges on the credibility of the victim's testimony. The appellant sought to impugn the credibility of the victim on the bases of her reputation as a habitual delinquent and of her occupation as a beerhouse employee.[42] Similarly, the appellant firmly averred that the victim was not the innocent, naïve and unsophisticated girl she projected herself to be. Thus, her accusation of rape against him should not be given any credence.

The aforesaid contentions posed by the appellant deserve scant consideration.

Time and again, we have held that **when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often 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. The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witnesses were

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[41] *People v. Lou*, 464 Phil. 413, 421 (2004).

[42] TSN, 25 August 2000, p. 15.

telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying.[43] **The rule finds an even more stringent application where said findings are sustained by the Court of Appeals**.[44]

In the case at bar, this Court finds no compelling reason to deviate from the aforesaid rule that factual findings of the trial court should not be disturbed on appeal, as they are not clearly arbitrary or unfounded.

A careful perusal of the records revealed that when AAA testified in court as regards her ordeal, she described in detail how she was sexually abused by the appellant on that fateful day of 21 September 1999. Her testimony can be regarded as straightforward, categorical and candid. A candid narration by a rape victim deserves credence particularly where no ill motive is attributed to her that would make her testify falsely against the accused. For no woman in her right mind will admit to having been raped, allow an examination of her most private parts and subject herself as well as her family to the humiliation and shame concomitant with a rape prosecution, unless the charges are true. Where an alleged rape victim says she was sexually abused, she says almost all that is necessary to show that rape has been inflicted on her person, provided her testimony meets the test of credibility.[45]

The appellant in this case considered his failure to give money to AAA as the latter's motive for charging him with the crime of rape; such allegation, however, remained unsubstantiated; therefore, it is self-serving. **It is an accepted doctrine that in**

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[43] *People v. Belga*, 402 Phil. 734, 742-743 (2001).

[44] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[45] *People v. Sampior*, 383 Phil. 775, 783 (2000).

the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.[46] Thus, the aforesaid allegation of the appellant cannot even shed any cloud of doubt on the credibility of the victim's testimony. Further, during AAA's testimony before the court *a quo*, there were instances when AAA cried[47] while narrating and testifying in court about her horrible experience in the hands of the appellant. The fact that the victim cried during her testimony is evidence of the credibility of the rape charge [48] for the display of such emotion indicates the pain that the victim felt when asked to recount her traumatic experience.[49]

Moreover, **in rape cases, the moral character of the victim is immaterial**. Rape may be committed not only against single women and children but also against those who are married, middle-aged, or pregnant. Even a prostitute may be a victim of rape.[50] Thus, the fact that AAA worked in a beerhouse is insignificant and cannot be used by the appellant to destroy AAA's credibility.

The appellant also harps on the inconsistency found in the testimony of AAA in order to discredit her. The appellant averred that in the testimony of AAA before the court *a quo*, she stated that the sexual assault lasted for 15 minutes while during the preliminary investigation of Joa Italia, which was adopted by AAA, the latter mentioned that the sexual assault lasted for two hours. No matter.

Inconsistencies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility. [51] The aforesaid inconsistency pointed out by the appellant did not erase the fact that the appellant had raped

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[46] *People v. Managbanag*, 423 Phil. 97, 110 (2001).

[47] TSN, 16 June 2000, pp. 8-9.

[48] *People v. Celis*, 375 Phil. 491, 504-505 (1999).

[49] *People v. Ancheta*, 464 Phil. 360, 371 (2004).

[50] *People v. Bares*, 407 Phil. 747, 767 (2001).

[51] *People v. Villadares*, 406 Phil. 530, 540 (2001).

AAA. Verily, the issue of how long such sexual assault lasted was insignificant to the case of the prosecution. It cannot exonerate the appellant from the crime charged because the fact remains that he was AAA's ravisher. Rather than weakening the testimony of AAA, the aforesaid inconsistency serves to strengthen the veracity of the victim's story as it erases doubts that her testimony has been coached or rehearsed.[52] More so, rape, being a harrowing experience, is usually not fully remembered. Rather, the victim of such an atrocity is normally inclined to forget certain details surrounding the execrable event and sweep them into her dustbin of unwanted experiences and memories. **What is important is her complete and vivid narration of the rape itself, which the trial court herein found to be truthful and credible**.[53] Further, by way of clarification, during AAA's cross-examination, she denied that the sexual assault against her lasted for two hours. She simply stated that she could not anymore remember how long she was raped by the appellant.[54]

Bent on destroying AAA's credibility, the appellant further contends that the medical findings do not support the theory that AAA had been raped. He avers that the findings of old lacerations on AAA's vagina three days after the alleged rape were contrary to her allegation that she was raped by the appellant. The appellant emphasized that during Dr. Viray's testimony, the latter explained that with the kind of lacerations found on AAA's vagina, there could have been no trace anymore as to what possible date or time AAA obtained the same. The appellant also insists that if AAA really felt pain as a result of the insertion of his private organ into her vagina, there should have been some traces of abrasions or contusions on AAA's vagina or at most, a fresh laceration therein at the time of the examination. But, there was none in this case.

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[52] *People v. Dacara*, 420 Phil. 333, 340 (2001).

[53] *People v. Santos*, 420 Phil. 620, 631 (2001).

[54] TSN, 25 August 2000, pp. 10-11.

Appellant's attempt to capitalize on the medical report which found "old healed lacerations" in the victim's hymen when she was examined on 24 September 1999 or barely three days from the date of the alleged rape incident, must fail.

The presence of old healed lacerations in the victim's hymen is irrelevant to appellant's defense. In the same way that their presence does not mean the victim was not raped recently, the absence of fresh lacerations does not negate rape either. Indeed, **hymenal laceration is not an element of the crime of rape**.[55] **In the crime of rape, the testimony of the victim, and not the findings of the medico-legal officer, is the most important element to prove that the felony had been committed**. Even without a medical report, a medical examination of the victim is not indispensable in a prosecution for rape; **the victim's testimony alone if credible is sufficient to convict the accused of the crime**.[56] AAA's testimony was, indeed, credible and sufficient to convict the appellant.

From all the foregoing, **appellant utterly failed to destroy the credibility of the rape victim**. AAA's candid and direct narration of the details of the rape, as reviewed by this Court in the transcript of stenographic notes, evidently deserves full faith and credence. It bears stressing that AAA was only fourteen years old when she was sexually abused by the appellant. Again, settled is the rule that testimonies of child-victims are given full weight. When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[57] **Indeed, the findings of the trial court, which had the opportunity to observe her deportment on the witness stand, should be affirmed**.

As a last-ditch effort, appellant claims that it was unnatural and surprising that Joa Italia, the victim's friend, who could have been a vital witness in the instant case, as she was with

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[55] *People v. Esteves*, 438 Phil. 687, 699 (2002).

[56] *People v. Logmao*, 414 Phil. 378, 387 (2001).

[57] *People v. Dacara*, *supra* note 52 at 340.

AAA on that fateful day, failed to testify in court. He also points out that the *barangay* blotter dated 21 September 1999 revealed that he was not with Macar when the latter went to the *barangay* hall of Barangay Bayuga, Meycauayan, Bulacan, and took custody of AAA and Joa Italia.

Jurisprudence has steadfastly been already repetitious that the accused may be convicted on the sole testimony of the victim in a rape case, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[58] In the case at bar, as is being heretofore emphasized, AAA testified in a direct, unequivocal, and consistent manner with regard to the rape committed against her by the appellant. **The straightforward narration by AAA of what transpired, accompanied by her categorical identification**[59] **of appellant as the malefactor, sealed the case for the prosecution**.[60]

Corollarily, appellant's bare denial must likewise fail. It is well settled that denial is an intrinsically weak defense, which must be buttressed by strong evidence of non-culpability to merit credibility.[61] **Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of appellant and his involvement in the crime attributed to him**.

The defense of *alibi* is likewise unavailing. It is not enough, in order that *alibi* might prosper, to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[62]

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[58] *People v. Musa*, 422 Phil. 563, 573 (2001).

[59] TSN, 16 June 2000, p. 6.

[60] *People v. Macapal, Jr.*, G.R. No. 155335, 14 July 2005, 463 SCRA 387, 400.

[61] *People v. Aaron*, 438 Phil. 296, 311 (2002).

[62] *People v. Olaybar*, 459 Phil. 114, 127 (2003).

In this regard, we quote, with approval, the discussions made by the appellate court in its Decision, to wit:

x x x. In this case, **[the appellant's] allegation that he could not have raped AAA since he was at home was uncorroborated**. Neither is Barangay Captain Ponciano's testimony that he did not see [the appellant] with Macar on the night in question sufficient to exculpate him in the light of AAA's testimony that [the appellant] was waiting downstairs[63] when they were released. Nor is the absence of his name in the *barangay* blotter[64] tenable. As held in the case of *People vs. Sandig*,[65] "(E)ntries in a police or *barangay* blotter, although regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries, for these are often incomplete and inaccurate." x x x. **Besides, [the appellant] failed to establish that it was physically impossible for him to be at the scene of the crime considering the RTC's finding that his house was only a good walking distance[66] therefrom**.[67] (Emphasis supplied.)

IN ALL, the defenses of denial and alibi offered by the appellant cannot prevail over the straightforward narration of AAA as well as her categorical identification of the appellant as her assailant. The above disquisitions necessarily render the second assignment of error (failure to prove guilt beyond reasonable doubt) moot and academic.

As to penalty. Based on the records, there was a mention of a knife, which the appellant used in threatening AAA to make her submit to his bestial desire. In *People v. Fraga*,[68] when the rape is committed "with the use of a deadly weapon," *i.e.*, when a deadly weapon is used to make the victim submit to the will of the offender, the penalty is "*reclusion perpetua*

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[63] TSN, 16 June 2000, p. 7.

[64] *Rollo*, pp. 59-60; records, p. 68.

[65] 454 Phil. 801, 812-813 (2003).

[66] CA *rollo*, p. 19.

[67] *Rollo*, pp. 9-10.

[68] 386 Phil. 884 (2000).

to death." **This circumstance must, however, be alleged in the information because it is also in the nature of a qualifying circumstance which increases the range of the penalty to include death**.[69]

In the case at bar, while AAA testified that the appellant raped her after threatening her with a knife, **the "use of a deadly weapon" in the commission of the crime was not alleged in the information**. Therefore, even if the same was proved, it cannot be appreciated as a qualifying circumstance. The same can only be treated as a generic aggravating circumstance which, in this case, cannot affect the penalty to be imposed, *i.e.*, *reclusion perpetua*.[70] Thus, both the trial court and the appellate court properly sentenced the appellant to suffer the penalty of *reclusion perpetua* for the crime of rape he committed against AAA.

Further, even though the Information alleged that AAA was only 14 years of age when she was raped by the appellant, said allegation cannot qualify the crime committed by the appellant from simple rape to rape in its qualified form. It bears emphasis that the age of the victim was not properly proven or established by the prosecution. No birth certificate or baptismal certificate was ever presented to prove the same. As the trial court mentioned in its Decision, citing *People v. Veloso*,[71] this Court cannot rely solely on the testimony of the victim; not even the testimony of her mother would have sufficed in this regard. The circumstances that qualify a crime should be proved beyond reasonable doubt just as the crime itself. Moreover, even assuming *arguendo* that the minority of the victim was properly proven, still, the appellant cannot be convicted of qualified rape. The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape.[72] Both relationship and minority must be alleged in the

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[69] *Id.* at 911.

[70] *Id*.

[71] 386 Phil. 815, 825 (2000).

[72] *People v. Aparejado*, 434 Phil. 264, 273-274 (2002).

Information to qualify the crime as punishable by death.[73] In this case, it is clear that the appellant was not related to the victim in any way. Thus, it is impossible to convict the appellant of the crime of qualified rape. Hence, the crime committed by the appellant was only simple rape.

As to damages. The appellate court correctly ruled that AAA was entitled to the award of ₱50,000.00 as civil indemnity because it is mandatory upon the finding of the fact of rape and the same is not to be considered as moral damages, the latter being based on different jural foundations.[74] Likewise, the Court of Appeals properly deleted the award of ₱50,000.00 as actual or compensatory damages given by the trial court to AAA. As we have explained in a number of cases, **the indemnity provided in criminal law as civil liability is the equivalent of actual or compensatory damages in civil law**.[75] Thus, the award of ₱50,000.00 as civil indemnity also stands for actual or compensatory damages. Lastly, the appellate court was correct in reducing the award of moral damages from ₱100,000.00 to ₱50,000.00 in accordance with current jurisprudence.[76]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02253 dated 13 December 2006 finding herein appellant guilty beyond reasonable doubt of the crime of rape is hereby *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Reyes, and *Brion,*[*] *JJ.,* concur.

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[73] *People v. Mauricio*, 405 Phil. 557, 570 (2001).

[74] *People v. Bernaldez*, 379 Phil. 493, 505-506 (2000).

[75] *People v. Malapo*, G.R. No. 123115, 25 August 1998, 294 SCRA 579, 591.

[76] *People v. Pagsanjan*, 442 Phil. 667, 687 (2002).

[*] Per Special Order No. 507, dated 28 May 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Arturo D. Brion to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program.

THIRD DIVISION

[G.R. No. 177822. June 17, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HILARIO OPONG *y* TAÑESA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.— In reviewing rape cases, this Court is guided by three principles, to wit: (1) an accusation of rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. As a result of these guiding principles, the credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF MINOR RAPE VICTIM, UPHELD AS FOUND BY THE TRIAL COURT. — Well-entrenched is the rule that the testimony of a minor rape victim, such as AAA, is given full weight and credence considering that no young woman would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are badges of truth. It is also significant to note that the RTC gave full credence to the foregoing testimony of AAA as she relayed her painful ordeal in a candid manner. It found the testimonies of AAA to be "lucid, frank and irrefutable." Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, 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 because the trial court has had the unique opportunity to observe the demeanor of the witnesses and was in the best position to discern whether they were telling the truth. When the trial court's findings have been affirmed by the appellate court, as in the present case, said findings are generally binding upon this Court.

3. ID.; ID.; DEFENSE OF ILL MOTIVE, NOT APPRECIATED. — Motives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim. Further, ill motives become inconsequential if the rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused. AAA categorically identified appellant as the one who raped her on 2 and 9 May 1999. Her account of the incidents, as found by the RTC, the Court of Appeals, and by this Court, was sincere and honest. On the contrary, appellant was not able to present any proof as to the ill motives of AAA. There is no evidence on record showing that AAA had feelings for appellant and that appellant's disregard of AAA's affection led her to accuse him of rape. The girl named Baliling was not even presented during the trial to confirm appellant's claim that AAA indeed sent him messages of regards.

4. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DELAY IN REPORTING THE CRIME; SUFFICIENTLY EXPLAINED IN CASE AT BAR. — It is not uncommon for young rape victims to conceal for some time the assault on their virtues because of the rapist's threat on their lives. Thus, this Court has repeatedly held that delay in reporting an incident of rape due to death threats does not affect the credibility of the complainant nor can it be taken against her. The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. AAA, who was barely fifteen years old when she was defiled, satisfactorily explained why she did not immediately report the incidents to anybody. She testified that appellant repeatedly threatened to kill her if she would divulge the sexual attacks on her. Further, appellant was always present near the quarters where AAA stayed because he worked therein regularly as a grass-cutter. Appellant's constant presence near AAA's quarters evidently intimidated the latter. Besides,

in several cases we have decided, the delay in reporting the rape incidents lasted for months and even for years; nevertheless, the victims were found to be credible. Thus, AAA's delay in reporting the incidents for one month, being reasonable and sufficiently explained, should not be taken against her. Neither can it be used to diminish her credibility nor undermine the charge of rape.

5. CRIMINAL LAW; RAPE; NOT NEGATED BY THE FACT THAT VICTIM'S HYMEN WAS FOUND INTACT. — An intact hymen does not negate a finding that the victim was raped, and freshly broken hymen is not an essential element of rape. In *People v. Gabayron,* we sustained the conviction of accused for rape even though the victim's hymen remained intact after the incidents because medical researchers show that negative findings of lacerations are of no significance, as the hymen may not be torn despite repeated coitus. It was noted that many cases of pregnancy had been reported about women with unruptured hymens, and that there could still be a finding of rape even if, despite repeated intercourse over a period of years, the victim still retained an intact hymen without signs of injury. In the case at bar, Dr. Ledesma explained that AAA's hymen remained intact after the incidents because her hymen is **elastic** and **distensible**. In fact, it is capable of admitting a test tube 2.5 cm. in diameter which is equivalent to an average-sized adult Filipino male organ. He concluded that an erect average male organ is capable of penetrating such vagina **without causing hymenal injury**. It also bears stressing that a medico-legal report is not indispensable to the prosecution of a rape case, it being merely corroborative in nature. The credible disclosure of AAA that appellant raped her is the most important proof of the commission of the crime. Further, that no blood came out of AAA's vagina after the penetrations and that AAA did not see appellant's penis during the sexual attack does not negate rape, because these facts are not elements of the offense.

6. ID.; ID.; CONSUMMATED, NOT ATTEMPTED, AS DISCUSSED IN CASE AT BAR. — Rape is consummated from the moment the offender has carnal knowledge of the victim. Carnal knowledge is synonymous with sexual intercourse. There is carnal knowledge if there is the slightest penetration of the sexual organ of the female by the sexual organ of the male. All the elements of the offense, namely,

(a) that the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation, were already present and nothing more was left for the offender to do, having performed all the acts necessary to produce the crime and accomplish it. Full penetration of the vagina is not essential; any penetration of the female organ by the male organ, however slight, is sufficient. Entry of the penis into the labia or lips of the female organ, even without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction for consummated rape. Thus, complete or full penetration of the vagina is not required for rape to be consummated. Any penetration, in whatever degree, is enough to raise the crime to its consummated stage. On the other hand, in attempted rape, there was no penetration of the female organ because not all acts of execution were performed as the offender merely commenced the commission of the felony directly by overt acts. It is apparent from the records that appellant had carnal knowledge of AAA because his penis penetrated her vagina. During the incidents, appellant pushed her causing her to fall on a cemented floor. She tried to resist appellant's advances by kicking him but to no avail. Appellant then removed her panty, placed himself on top of her, and forcibly inserted his penis into her vagina. She felt pain during the repeated insertions. The foregoing established facts obviously show that the rape was consummated and not attempted.

7. ID.; ID.; PROPER PENALTY AND DAMAGES IN CASE AT BAR. — Article 266-B of the Revised Penal Code provides that the penalty for rape committed through force and intimidation, as in this case, is *reclusion perpetua*. Hence, the trial court and the appellate court were correct in sentencing appellant to *reclusion perpetua* for each of the two counts of rape in Criminal Cases No. 43,381-99 and No. 43,382-99. Both courts were also correct in holding that appellant is liable for civil indemnity in the amount of ₱50,000.00, and moral damages amounting to ₱50,000.00 for each of the two counts of rape pursuant to prevailing jurisprudence.

8. ID.; ID.; ID.; EXEMPLARY DAMAGES, NOT WARRANTED. — Exemplary damages may be awarded only when one or more aggravating circumstances are alleged in the information and proved during the trial. One of the circumstances which aggravate/qualify the crime of rape is when the victim is a minor

and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. The **minority** of the rape victim and her **relationship** with the offender must be *both* alleged in the information and proved during the trial in order to be appreciated as an aggravating/qualifying circumstance. Although the information in the instant case alleged that AAA was a minor during the incidents, there was, however, no allegation and proof that appellant was her ascendant or relative, or one who exercised moral ascendancy over her. Since relationship, as contemplated by law, between AAA and appellant was not duly established, the award of exemplary damages is not warranted.

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.*:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00416 MIN dated 25 October 2006, affirming *in toto* the Decision[2] of the Davao City Regional Trial Court (RTC), Branch 17, in Criminal Cases No. 43,381-99 and No. 43,382-99, finding accused-appellant Hilario Tañesa Opong guilty of two counts of simple rape.

The factual antecedents are as follows:

On 23 June 1999, two separate informations were filed before the RTC charging appellant with rape,[3] thus:

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[1] Penned by Associate Justice Sixto C. Marella, Jr. with Associate Justices Edgardo A. Camello and Mario V. Lopez concurring; *rollo*, pp. 4-18.

[2] Penned by Judge Renato A. Fuentes; CA *rollo*, pp. 16-29.

[3] Records, pp. 1 & 11.

CRIMINAL CASE NO. 43, 381-99

That on or about **May 2, 1999** in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with **AAA**,[4] who is fifteen (15) years of age against her will.

CRIMINAL CASE NO. 43, 382-99

That on or about **May 9, 1999** in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with **AAA**, who is fifteen (15) years of age against her will. (Emphases supplied.)

Subsequently, the cases were consolidated for joint trial. When arraigned on 26 November 1999, appellant, with the assistance of counsel *de oficio*, pleaded "Not guilty" to each of the charges.[5] Trial on the merits thereafter ensued.

The prosecution presented as witnesses AAA, Dr. Danilo Ledesma (Dr. Ledesma), and PO2 Jocris Sarenas (PO2 Sarenas). Their testimonies, taken together, present the following narrative:

Sometime in the year 1999, AAA was employed as a stay-in housemaid by Philippine National Police (PNP) Senior Superintendent Palawan Macadingdang (Supt. Macadingdang) in the latter's family residence at Tagum City, Davao.[6]

On 20 March 1999, per instruction of Mrs. Macadingdang (wife of Supt. Macadingdang), AAA went to Camp Catitipan,

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[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 victim, 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] Records, p. 25.

[6] TSN, 6 March 2000, pp. 3-4.

Panacan, Davao City, to serve as stay-in housemaid in the quarters of Supt. Macadingdang.[7]

On 2 May 1999, at about 7:00 in the evening, AAA, then 15 years of age, was left alone in the quarters of Supt. Macadingdang since the latter was at Tagum City. She went out of the quarters and sat on a bench located outside the Senior Officers Quarters Building (SOQB). Appellant, then working as a grass-cutter in Camp Catitipan, approached her and asked for a glass of cold water. She agreed and told him to wait outside the SOQB. She entered the SOQB and proceeded inside her employer's quarters.[8]

While she was filling up a drinking glass with cold water inside the quarters, appellant suddenly barged in. She handed the glass of cold water to appellant who, instead of taking it, held her hands tightly. She shouted for help but appellant covered her mouth and told her to keep quiet otherwise he would kill her. Thereupon, appellant pushed her, causing her to fall on the cemented floor. She tried to resist appellant's advances by kicking and pushing him away, but she was overpowered. Appellant then forcibly removed her panty, put himself on top of her, and repeatedly inserted his penis into her vagina. She felt pain in her vagina. Later that same evening, appellant ravished her again. Appellant warned her not to tell anyone of the incident or he would kill her.[9]

Again, on 9 May 1999, at about 8:30 in the evening, she was left alone inside the quarters. After washing the dishes, she went out of the quarters. Seeing appellant roaming inside the SOQB, she hurriedly went back to the quarters and locked the door. After several minutes, and thinking that appellant might have already left the building, she opened the door of the quarters. Appellant, who was all the while waiting in front of the door of the quarters, forcibly entered the quarters and pushed her. She knelt and pleaded with him not to touch her but to no avail.

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[7] *Id*.

[8] *Id*. at 4-5.

[9] *Id*. at 5-10.

Appellant removed her panty, placed himself on top of her, and inserted his penis into her vagina. Afterwards, appellant reiterated his threat to kill her if she would tell anyone of the incidents.[10]

On 10 May 1999, Supt. Macadingdang arrived at the quarters but she did not inform him of the incidents because of her fear that appellant would make good his threats to kill her.[11]

On 4 June 1999, Mrs. Macadingdang arrived and stayed at the quarters. As days passed by, Mrs. Macadingdang noticed that she was getting weak and was inefficient in her household tasks. Mrs. Macadingdang inquired from her if she had a problem. She cried and told Mrs. Macadingdang that she was raped by appellant. Subsequently, she and Mrs. Macadingdang relayed to Supt. Macadingdang the incidents.[12]

Supt. Macadingdang reported the incidents to the commander of Camp Catitipan, a certain Colonel Velasco. Thereafter, Police Officers Jocris Sarenas and Jesus Mayabason of the Buhangin Police Station, Davao City, arrived at Camp Catitipan and took AAA and appellant to the precinct for investigation. Thereupon, appellant was charged with raping AAA.[13]

Dr. Ledesma, Medico-Legal Officer IV of the Medical Service Office of the City of Davao, personally examined AAA.[14] His findings, as stated in the medico-legal report, are as follows:

FINDINGS

GENERAL PHYSICAL EXAMINATION:

Height : 149.0 cms.
Fairy nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

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[10] *Id*. at 10-12.

[11] *Id*. at 10.

[12] *Id*. at 12-13.

[13] *Id*. at 13-15.

[14] TSN, 21 January 2000, pp. 2-6.

Breasts : Fully developed, hemispherical, firm. Areolae, light brown, 3.0 cms. in diameter. Nipples, light brown, protruding, 0.8 cm. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora, gaping. Labia minora, coaptated. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, thick, tall, intact, distensible. Hymenal Orifice, annular, admits a tube, 2.5 cms. in diameter. Vaginal walls, tight. Vaginal rugosities, prominent.

CONCLUSIONS:

1) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.

2) Hymen, intact, but distensible and its orifice, wide as to allow complete penetration by an average-sized male organ in erection without causing hymenal injury.[15]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (1) the medico-legal report with regard to AAA issued and signed by Dr. Ledesma and marked as Exhibit "A";[16] and (2) certification from the Office of the Civil Registrar of Davao City issued and signed by Civil Registrar Marcelino A. Perandos attesting that AAA's date of birth as stated in the Register of Births was on 1 October 1983, marked as Exhibit "B."[17]

For its part, the defense presented the testimonies of appellant, Evangeline Wilson (Wilson), and Supt. Macadingdang to refute the foregoing accusations.

Appellant testified that he started working as a grass-cutter at Camp Catitipan on 27 November 1997. He met AAA for the first time on 27 April 1997 in Camp Catitipan when AAA approached and introduced herself to him. AAA liked him because

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[15] Records, p. 9.

[16] *Id*.

[17] *Id*. at 47.

she constantly sent her regards to him through a girl named Baliling. Except for the whole month of January 1999, he never slept inside the premises of Camp Catitipan. He denied raping AAA on 2 and 9 May 1999. He never entered the SOQB and the quarters of Supt. Macadingdang because it was a prohibited area for a civilian like him.[18]

Wilson, barangay captain of Pangian, Malita, Davao del Sur, narrated that she had known appellant since birth because they both belong to the Manobo tribe. She verified that appellant had good moral character because he never committed any offense since childhood.[19]

Supt. Macadingdang told the court that AAA was his stay-in housemaid at his quarters in Camp Catitipan; that he cannot remember the exact dates of the incidents; that after being informed by his wife and AAA of the incidents, he requested Colonel Velasco to turn over appellant to the police for investigation; and that he cannot remember if he personally asked assistance from the Buhangin Police Station regarding the incidents.[20]

After trial, the RTC rendered a Decision on 19 July 2000 convicting appellant of two counts of simple rape. In each of the two cases, the trial court imposed on appellant the penalty of *reclusion perpetua* and monetary award by way of damages. The dispositive portion of the decision reads:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused beyond reasonable doubt in Criminal Case No. 43,381-99 and in Criminal Case No. 43,382-99 above-mentioned pursuant to Art. 355 of the Revised Penal Code as amended by Republic Act 7659, without any aggravating circumstance attendant in the commission of the offense charged, in the two (2) above-informations, accused, HILARIO OPONG *Y* TAÑESA, is sentenced to suffer a penalty of *RECLUSION PERPETUA*, in each of the above- Criminal Case No. 43,381-99 and Criminal Case

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[18] TSN, 14 April 2000, pp. 2-7.

[19] TSN, 20 June 2000, pp. 2-3.

[20] *Id*. at 4-9.

No. 43,382-99, together with all accessory penalty as provided for by law.

Moreover, pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, above-accused, is furthermore ordered to pay complainant, AAA the amount of ₱50,000.00 in each of the two (2) counts of rape or a total amount of ₱100,000.00 by way of civil indemnity, another amount of ₱50,000.00 by way of moral damages or a total amount of ₱100,000.00; still another amount of ₱50,000.00 or a total amount of ₱100,000.00 by way of exemplary damages, to give example to the public as a deterrent in the further commission of said abominable and despicable offenses.[21]

On 11 August 2000, appellant filed a Notice of Appeal with the RTC stating that he would appeal his conviction to this Court.[22]

On 14 August 2000, the RTC issued an Order forwarding the records of the instant case to us for review.[23]

On 9 March 2005, we issued a Resolution [24] remanding the present case to the Court of Appeals for proper disposition pursuant to our ruling in *People v. Mateo*.[25] On 25 October 2006, the Court of Appeals promulgated its Decision affirming *in toto* the Decision of the RTC. Thus:

Appellant has not shown that departure from the findings of facts of the trial court is proper.

WHEREFORE, the Joint Judgment of the trial court is affirmed *in toto*.[26]

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[21] Records, p. 29.

[22] *Id.* at 81.

[23] *Id.* at 82.

[24] CA *rollo*, p. 34.

[25] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[26] *Rollo*, p. 19.

Before us, appellant assigns the following errors:

I.

THE TRIAL COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO PRIVATE COMPLAINANT'S CLAIM THAT SHE WAS RAPED DESPITE THE FACT THAT THE CHARGE WAS BELIED BY THE RESULT OF THE MEDICAL EXAMINATION.

II.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

III.

ON THE ASSUMPTION THAT ACCUSED-APPELLANT SEXUALLY ASSAULTED THE PRIVATE COMPLAINANT, THE CRIME HE COMMITTED WAS ONLY ATTEMPTED RAPE.[27]

In reviewing rape cases, this Court is guided by three principles, to wit: (1) an accusation of rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.[28]

As a result of these guiding principles, the credibility of the complainant becomes the single most important issue.[29] If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.[30]

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[27] CA *rollo*, p. 62.

[28] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 572.

[29] *People v. Andales*, 466 Phil. 873, 883 (2004).

[30] *Id*. at 888.

We have carefully examined AAA's court testimony and found it to be credible and trustworthy. Her positive identification of appellant as the one who ravished her on 2 and 9 May 1999 and her direct account of the bestial acts are clear and consistent,[31] *viz*:

FISCAL EVANGELIO:

Q. Sometime on May 2, 1999, at about 7:00 o'clock in the evening, AAA, can you recall where were you?

A. Yes, I can still recall.

Q. Please tell the court, where were you at that time?

A. I was sitting at the outside of the Senior Officer's quarter.

Q. At that time, where was Sr. Supt. Palawan Macadindang and his wife and family?

A. His wife was at that time in Manila, while Col. Macadindang was in Tagum.

Q. At that time, who were your companion in the house, if any?

ATTY. RAMIREZ:

What time?

FISCAL EVANGELIO:

About 7:00 o'clock, if there are any on May 2, 1999.

A. I was alone.

Q. While sitting at the outside, according to you on that place of senior officers quarter, Camp Catitipan, please tell the court, what happened, if any?

A. While I was seated there, this Junjun approach me.

Q. Who is this Junjun you are referring to?

A. Hilario Opong.

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[31] TSN, 6 March 2000, pp. 3-15.

Q. If that Hilario Opong or Junjun is in court, can you identify him by pointing to him?

A. I can point to him. (witness pointing to accused Hilario Opong).

Q. Now, do you know this accused personally?

A. We were not so acquainted with each other at that time; I can just remember his face.

Q. You said, Hilario Opong approached you now, what did he tell you, if any?

A. He told me at that time, that he was asking for cold water.

Q. What was your response?

A. I told him that if you want to ask for water, do not enter, just wait here because it is prohibited to enter.

Q. What happen (sic) next, after you told him that it is (sic) not allowed of you to enter?

A. I went inside the room and I took water when I was already inside the room, I look back, he was already there.

Q. Where, what do you mean he was already there?

A. In the room.

Q. Whose room are you referring to?

A. In the house where I was working at that time.

Q. How far is that room to the place where you sat outside?

A. Quite far.

Q. When you said, he entered in the room, what did he do to you?

A. When I tendered to him the glass of water, he held my hand tightly.

Q. Please demonstrate how the accused held your hand?

A. (witness demonstrating by holding the right hand of the interpreter supposed to be her hand tightly and twisted it with her left hand).

Q. What happened next?

A. I shouted, sir.

Q. How did you shout?

A. I ask for help.

Q. What transpired next?

A. He covered my mouth.

Q. How did he cover your mouth?

A. (witness demonstrating with his left hand by covering her mouth).

Q. Under that situation, what transpired next?

A. He told me to keep quiet, if I will make noise, he will kill me.

Q. After he told you those words, what transpired next?

A. He pushed me.

Q. To what place did he push you?

A. In the room.

Q. In what part of the room?

A. He pushed me to the room where I frequently sleep.

Q. And what happened to you, when you were pushed by the accused?

A. I fell down facing upward on the cemented floor.

Q. When you fell down to the cemented floor what happened next to you?

A. I put (sic) him by kicking him.

Q. After kicking him or resisting him what happened?

A. When I kicked him, he was too strong for me and he forcibly removed my panty.

Q. By the way, what clothes were you wearing at that time?

A. I was wearing skirt.

Q. While the accused according to you was removing your panty, what did you do?

A. I repeatedly kick him but he was too strong for me.

x x x x x x x x x

FISCAL EVANGELIO:

Q. After you were according to you overpowered by the accused because he is strong, what happened next?

A. After he sexually abused (*tamastamasan*) my womanhood . . .

x x x x x x x x x

FISCAL EVANGELIO:

Q. How did the accused do it or sexually abused you?

ATTY. RAMIREZ:

We object to the term sexually abused, it is *tamastamasan*.

FISCAL EVANGELIO:

Q. Exactly what did the accused do to you in simple layman's language?

A. He forcibly inserted his penis to my vagina.

Q. How many times when he forcibly entered his penis to your vagina, how did he do it?

A. He was riding on me, he was placing himself on top of me when he inserted his penis.

Q. While he was on top of you, what did you do?

A. When he was already on top of me, he forcibly inserted his penis into my vagina.

x x x x x x x x x

FISCAL EVANGELIO:

I will repeat.

Q. What was the position, how did the accused placed his penis into your vagina, how?

ATTY. RAMIREZ:

It was already answered, inserted.

FISCAL EVANGELIO:

Alright.

Q. Now, how many times did the accused sexually abused you that evening on May 2, 1999?

A. Two times.

Q. Tell the court, why is it that there was a second time?

A. Because he repeated it; I feel (sic) the first time, I felt the pain and yet, he again did it to me. He repeated it, what he did to me.

Q. After that incident on May 2, what happened?

A. After he did that act to me, he again reminded or confronted that if I will tell somebody about it, he will kill me.

Q. AAA, please describe to the court, what was the lighting condition at that time of the room, where you said, you were sexually abused by the accused?

A. The room was well-lighted because the light was on.

Q. You said, you shouted for help, what happened if any to your shouts?

A. Nobody heard me during that time.

x x x x x x x x x

Q. Now, on May 9, 1999, AAA, at about 8:30 in the evening, can you recall where were you?

A. I can still recall.

Q. Where were you?

A. I was still at the Senior Officer's Quarter and I was washing plates.

Q. Where was your male employer Sr. Police Superintendent at that time?

A. He was again in Tagum.

Q. How about his wife?

A. At that time, his wife has not yet return to Davao City, she was still in Manila.

Q. Their children, if any?

A. Their children are already of age and they were not in the house at that time.

Q. Now, you said that you were washing plates at that time, what happened while you were washing plates at that time?

A. I did not observe that "he" had already entered and went near me.

Q. Who is this "he" you are referring to?

A. Junjun.

Q. Again pointing him out, who is he if he is in court?

A. (witness pointing to the same person in this case Hilario Opong).

Q. This time on May 9, 1999, how did the accused abused (*sic*) you in that evening?

A. At that time, I observe that he was already there, I ran towards the room.

Q. When you ran towards the room, what did the accused do?

A. And I lock (sic) the door.

Q. What happened next after you lock (sic) the door?

A. I waited for a while before I went out.

Q. And when you went out, what happened?

A. When I open the door at that instance, he was already there and he immediately rushed to me.

Q. And what happened, when he rushed to you?

A. He locked the door and at that time, I kneeled in front of him.

Q. And why did you kneel in front of him?

A. I pleaded to him that he will not do it again.

Q. Despite your plea, what happened?

A. He did not mind my plea and instead he pushed me towards the cemented floor.

Q. And what happened after he pushed you on the cemented floor?

A. When he pushed me, I fell down on the cemented floor and my body was bent.

Q. What was your position at that time when you landed to the floor bent?

A. Because at that time, I was kneeling.

Q. While in the cemented floor what happened to you?

A. He did it again, he forcibly removed my panty.

Q. While he was removing your panty, what action did you take?

A. I kicked him, but it was useless because he was too strong for me.

Q. And since you overpowered, what happened next?

A. Then he placed himself on top of me and inserted his penis to my vagina.

x x x x x x x x x

Q. And what did he do with his pants, when he inserted his penis to you?

A. He unzipped first his pants before he inserted his penis into my vagina.[32]

Well-entrenched is the rule that the testimony of a minor rape victim, such as AAA, is given full weight and credence considering that no young woman would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for

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[32] TSN, 6 March 2000, pp. 4-11.

the wrong committed against her. Youth and immaturity are badges of truth.[33]

It is also significant to note that the RTC gave full credence to the foregoing testimony of AAA as she relayed her painful ordeal in a candid manner. It found the testimonies of AAA to be "lucid, frank and irrefutable."[34] Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, 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 because the trial court has had the unique opportunity to observe the demeanor of the witnesses and was in the best position to discern whether they were telling the truth. When the trial court's findings have been affirmed by the appellate court, as in the present case, said findings are generally binding upon this Court.[35]

Appellant, however, alleges in his first and second assigned errors that AAA liked him and that AAA sent him messages of regards through a girl named Balíling; that AAA was motivated by anger and revenge in charging him with rape because he ignored her show of affection; and that such ill motive on the part of AAA renders her testimony incredible.[36]

Motives such as resentment, hatred, or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[37] Further, ill motives become inconsequential if the rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused.[38]

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[33] *People v. Arsayo*, G.R. No. 166546, 26 September 2006, 503 SCRA 275, 287.

[34] CA *rollo*, p. 25.

[35] *People v. Bejic*, G.R. No. 174060, 25 June 2007, 525 SCRA 488, 504.

[36] CA *rollo*, pp. 67-71.

[37] *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 549.

[38] *People v. Santos*, G.R. No. 172322, 8 September 2006, 501 SCRA 325, 343.

AAA categorically identified appellant as the one who raped her on 2 and 9 May 1999. Her account of the incidents, as found by the RTC, the Court of Appeals, and by this Court, was sincere and honest. On the contrary, appellant was not able to present any proof as to the ill motives of AAA. There is no evidence on record showing that AAA had feelings for appellant and that appellant's disregard of AAA's affection led her to accuse him of rape. The girl named Baliling was not even presented during the trial to confirm appellant's claim that AAA indeed sent him messages of regards.

Appellant, nonetheless, asseverates that AAA's delay in reporting the incidents to her employers for almost one month from their alleged commission casts serious doubts on the veracity of her testimony.[39]

It is not uncommon for young rape victims to conceal for some time the assault on their virtues because of the rapist's threat on their lives.[40] Thus, this Court has repeatedly held that delay in reporting an incident of rape due to death threats does not affect the credibility of the complainant nor can it be taken against her.[41] The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained.[42]

AAA, who was barely fifteen years old when she was defiled, satisfactorily explained why she did not immediately report the incidents to anybody. She testified that appellant repeatedly threatened to kill her if she would divulge the sexual attacks on her.[43] Further, appellant was always present near the quarters where AAA stayed because he worked therein regularly as a

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[39] *People v. Arsayo*, *supra* note 33.

[40] *Id*. at 289.

[41] *Id.*; *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 670; *People v. Audine*, *supra* note 37 at 548; *People v. Montefalcon*, 364 Phil. 646, 656 (1999); *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 346.

[42] *Id*.

[43] TSN, 6 March 2000, pp. 10 & 12.

grass-cutter. Appellant's constant presence near AAA's quarters evidently intimidated the latter.

Besides, in several cases we have decided,[44] the delay in reporting the rape incidents lasted for months and even for years; nevertheless, the victims were found to be credible. Thus, AAA's delay in reporting the incidents for one month, being reasonable and sufficiently explained, should not be taken against her. Neither can it be used to diminish her credibility nor undermine the charge of rape.

Appellant argues that AAA's accusation of rape is not consistent with the result of Dr. Ledesma's medico-legal report which states that AAA's hymen was unbroken and completely intact.[45]

An intact hymen does not negate a finding that the victim was raped,[46] and a freshly broken hymen is not an essential element of rape.[47]

In *People v. Gabayron*,[48] we sustained the conviction of accused for rape even though the victim's hymen remained intact after the incidents because medical researches show that negative findings of lacerations are of no significance, as the hymen may not be torn despite repeated coitus. It was noted that many cases of pregnancy had been reported about women with unruptured hymens, and that there could still be a finding of rape even if, despite repeated intercourse over a period of years, the victim still retained an intact hymen without signs of injury.

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[44] *People v. Arsayo*, *supra* note 33 at 290; *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 663; *People v. Salvador*, 444 Phil. 325, 332 (2003); *People v. Suarez*, *supra* note 41 at 347.

[45] CA *rollo*, p. 27.

[46] *People v. Almaden*, 364 Phil. 634, 643 (1999).

[47] *People v. Teodoro*, G.R. No. 170473, 12 October 2006, 504 SCRA 304, 315.

[48] 343 Phil. 593 (1997).

In *People v. Capt. Llanto,*[49] citing *People v. Aguinaldo*,[50] we likewise affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. We elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse; on the other hand, it may be so resistant that its surgical removal is necessary before intercourse can ensue.

In *People v. Palicte*[51] and in *People v. Castro,*[52] the rape victims involved were minors. The medical examination showed that their hymen remained intact even after the rape. Even then, we held that such fact is not proof that rape was not committed.

In the case at bar, Dr. Ledesma explained that AAA's hymen remained intact after the incidents because her hymen is **elastic** and **distensible.** In fact, it is capable of admitting a test tube 2.5 cm. in diameter which is equivalent to an average-sized adult Filipino male organ. He concluded that an erect average male organ is capable of penetrating such vagina **without causing hymenal injury**.[53]

It also bears stressing that a medico-legal report is not indispensable to the prosecution of a rape case, it being merely corroborative in nature.[54] The credible disclosure of AAA that appellant raped her is the most important proof of the commission of the crime.[55]

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[49] 443 Phil. 580 (2003).

[50] 375 Phil. 295 (1999).

[51] G.R. No. 101088, 27 January 1994, 229 SCRA 543, 548.

[52] 274 Phil. 80 (1991).

[53] TSN, 21 January 2000, p. 5.

[54] *People v. Lou*, 464 Phil. 413, 423 (2004).

[55] *People v. Bohol*, 415 Phil. 749, 761 (2001).

Apropos the third issue, appellant claims that his penis did not penetrate AAA's vagina; that AAA did not feel pain when his penis allegedly penetrated her vagina; that no blood came out of AAA's vagina after the alleged penetration; that AAA admitted she did not see his penis when it allegedly penetrated her vagina; that he was still single, twenty-two years of age, and sexually inexperienced during the alleged incidents; and that the foregoing circumstances only show a mere attempt on AAA's virtue and not consummated rape.

Rape is consummated from the moment the offender has carnal knowledge of the victim.[56] Carnal knowledge is synonymous with sexual intercourse.[57] There is carnal knowledge if there is the slightest penetration of the sexual organ of the female by the sexual organ of the male.[58] All the elements of the offense, namely, (a) that the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation,[59] were already present and nothing more was left for the offender to do, having performed all the acts necessary to produce the crime and accomplish it. Full penetration of the vagina is not essential; any penetration of the female organ by the male organ, however slight, is sufficient. Entry of the penis into the labia or lips of the female organ, even without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction for consummated rape. Thus, complete or full penetration of the vagina is not required for rape to be consummated. Any penetration, in whatever degree, is enough to raise the crime to its consummated stage.[60]

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[56] *People v. Orita*, G.R. No. 88724, 3 April 1990, 184 SCRA 105, 114; *People v. Campuhan*, 385 Phil. 912, 915 (2000); *People v. Arango*, G.R. No. 168442, 30 August 2006, 500 SCRA 259, 279.

[57] *People v. Almendral*, G.R. No. 126025, 6 July 2004, 433 SCRA 440, 452.

[58] BLACK'S *LAW DICTIONARY*, De Luxe (Fourth Edition), p. 268.

[59] *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280, 298; Article 266-A (1)(a) of the Revised Penal Code, as amended.

[60] *Id*.

On the other hand, in attempted rape, there was no penetration of the female organ because not all acts of execution were performed as the offender merely commenced the commission of the felony directly by overt acts.[61]

It is apparent from the records that appellant had carnal knowledge of AAA because his penis penetrated her vagina. During the incidents, appellant pushed her causing her to fall on a cemented floor. She tried to resist appellant's advances by kicking him but to no avail. Appellant then removed her panty, placed himself on top of her, and forcibly inserted his penis into her vagina.[62] She felt pain during the repeated insertions.[63] The foregoing established facts obviously show that the rape was consummated and not attempted.

That no blood came out of AAA's vagina after the penetrations and that AAA did not see appellant's penis during the sexual attack does not negate rape, because these facts are not elements of the offense. Appellant's averment that he could not have successfully raped AAA because he was then single, twenty-two years of age, and sexually inexperienced is flimsy and deserves scant consideration. We take judicial notice of the fact that several young adults, such as appellant, and even minors have been charged with and convicted of rape.

We shall now determine the propriety of the penalties imposed by the RTC as affirmed by the Court of Appeals.

Article 266-B of the Revised Penal Code provides that the penalty for rape committed through force and intimidation, as in this case, is *reclusion perpetua*. Hence, the trial court and the appellate court were correct in sentencing appellant to *reclusion perpetua* for each of the two counts of rape in Criminal Cases No. 43,381-99 and No. 43,382-99.

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[61] *Id*.; *People v. Bon*, G.R. No. 166401, 30 October 2006, 506 SCRA 168, 188-189.

[62] TSN, 6 March 2000, pp. 3-15.

[63] *Id*. at 9.

Both courts were also correct in holding that appellant is liable for civil indemnity in the amount of ₱50,000.00, and moral damages amounting to ₱50,000.00 for each of the two counts of rape pursuant to prevailing jurisprudence.[64]

Nonetheless, we differ from their ruling that appellant is entitled to exemplary damages.

Exemplary damages may be awarded only when one or more aggravating circumstances are alleged in the information and proved during the trial.[65] One of the circumstances which aggravate/qualify the crime of rape is when the victim is a minor and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[66] The **minority** of the rape victim and her **relationship** with the offender must be **both** alleged in the information and proved during the trial in order to be appreciated as an aggravating/qualifying circumstance.[67]

Although the information in the instant case alleged that AAA was a minor during the incidents, there was, however, no allegation and proof that appellant was her ascendant or relative, or one who exercised moral ascendancy over her. Since relationship, as contemplated by law, between AAA and appellant was not duly established, the award of exemplary damages is not warranted.[68]

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[64] *People v. Candaza*, *supra* note 59 at 298; *People v. Balbarona*, G.R. No. 146854, 28 April 2004, 428 SCRA 127, 145; *People v. Antivola*, 466 Phil. 394, 418 (2004).

[65] *People v. Cachapero*, G.R. No. 153008, 20 May 2004, 428 SCRA 744, 758, citing *Talay v. Court of Appeals*, 446 Phil. 256, 278-279 (2003); *People v. Villanueva*, 440 Phil. 409, 425 (2002); *People v. Catubig*, 416 Phil. 102, 119 (2001).

[66] Article 266-B(1), Revised Penal Code.

[67] *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 131.

[68] *People v. Cachapero*, *supra* note 65.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00416 MIN dated 25 October 2006 is hereby *AFFIRMED* with *MODIFICATION*. The sentence imposed and the award of civil indemnity and moral damages are affirmed, but the award of exemplary damages is *DELETED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Reyes, and *Brion,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 178352. June 17, 2008]

VIRGILIO S. DELIMA, *petitioner, vs.* **SUSAN MERCAIDA GOIS,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; SEPARATE PERSONALITY; LIABILITY OF CORPORATION CANNOT BE IMPOSED AGAINST ITS OFFICERS; CASE AT BAR. — A corporation has a personality distinct and separate from its individual stockholders or members and from that of its officers who manage and run its affairs. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. Thus, property belonging to a corporation cannot be attached to satisfy the debt of a stockholder and vice versa, the latter having only

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[*] Per Special Order No. 507, dated 28 May 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Arturo D. Brion to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program.

an indirect interest in the assets and business of the former. Since the Decision of the Labor Arbiter dated April 29, 2005 directed only Golden to pay the petitioner the sum of ₱115,561.05 and the same was not joint and solidary obligation with Gois, then the latter could not be held personally liable since Golden has a separate and distinct personality of its own. It remains undisputed that the subject vehicle was owned by Gois, hence it should not be attached to answer for the liabilities of the corporation. Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. No evidence was presented to show that the termination of the petitioner was done with malice or in bad faith for it to hold the corporate officers, such as Gois, solidarily liable with the corporation.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE NLRC TO THE COURT OF APPEALS; PERIOD IS NOT LATER THAN SIXTY DAYS FROM NOTICE OF JUDGMENT SOUGHT TO BE ASSAILED. — A decision issued by a court is final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected. In the instant case, it is undisputed that when the entry of judgment was issued by the NLRC on September 12, 2006 and entered in the Book of Entries of Judgment on September 29, 2006, the reglementary period to file a petition for *certiorari* has not yet lapsed. In fact, when the petition for *certiorari* was filed on October 13, 2006, the same was still within the reglementary period. It bears stressing that a petition for *certiorari* under Rule 65 must be filed "not later than 60 days from notice of the judgment, order or resolution" sought to be annulled. The period or manner of "appeal" from the NLRC to the Court of Appeals is governed by Rule 65 pursuant to the ruling of this Court in the case of *St. Martin Funeral Home v. National Labor Relations Commission.* Section 4 of Rule 65, as amended, states that the "petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed.

Corollarily, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that "(f)or the purpose(s) of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record." Although this rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, we do not see any cogent reason why the same rule should not apply to petitions for *certiorari* filed with the Court of Appeals from decisions of the NLRC.

APPEARANCES OF COUNSEL

Bienvenido C. Elorcha for petitioner.
Marigold M. Zaballero for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review under Rule 45 of the Rules of Court assails the December 21, 2006 Decision[1] of the Court of Appeals which annulled and set aside the May 31, 2006 and August 22, 2006 Resolutions of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000188-2006 and ordered herein petitioner to return the cash bond released to him. Also assailed is the February 5, 2007 Resolution[2] denying the Motion for Reconsideration.

The antecedent facts are as follows:

A case for illegal dismissal was filed by petitioner Virgilio S. Delima against Golden Union Aquamarine Corporation (Golden), Prospero Gois and herein respondent Susan Mercaida Gois before the Regional Arbitration Branch No. VIII of the National Labor Relations Commission on October 29, 2004, docketed as NLRC RAB VIII Case No. 10-0231-04.

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[1] *Rollo*, pp. 19-25. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Pampio A. Abarintos and Romeo F. Barza.

[2] *Id*. at 33-34.

On April 29, 2005, Labor Arbiter Philip B. Montaces rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered —

1. Finding illegality in the dismissal of complainant Virgilio Delima from his employment;

2. Ordering respondent **Golden Union Aquamarine Corporation** to pay complainant the following:

a. Backwages (July 30, 2004 to April 29, 2005 = 9 mos.; ₱5,350.50 x 9 months) ..... ₱ 48,154.50
b. Separation Pay (₱5,350.50 x 4 year).....21,402.00
c. Salary Differentials.....32,679.00
d. Service Incentive Leave Pay 2,820.00
Sub-Total.....₱105,055.50
e. Attorney's fee (10%).....10,505.55
T O T A L.....₱115,561.05

3. Dismissing all other claims for lack of merit.

SO ORDERED.[3]

Golden failed to appeal the aforesaid decision; hence, it became final and executory. A writ of execution was issued and an Isuzu Jeep with plate number PGE-531 was attached.

Thereafter, respondent Gois filed an Affidavit of Third Party Claim claiming that the attachment of the vehicle was irregular because said vehicle was registered in her name and not Golden's; and that she was not a party to the illegal dismissal case filed by Delima against Golden.[4]

In an Order[5] dated December 29, 2005, the Labor Arbiter denied respondent's third-party claim on grounds that respondent was named in the complaint as one of the respondents; that summons were served upon her and Prospero Gois; that both

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[3] CA *rollo*, p. 22.

[4] *Id*. at 25.

[5] *Id*. at 28-29.

verified Golden's Position Paper and alleged therein that they are the respondents; and that respondent is one of the incorporators/officers of the corporation.

Gois filed an appeal before the NLRC. At the same time, she filed a motion before the Labor Arbiter to release the motor vehicle after substituting the same with a cash bond in the amount of ₱115,561.05.

On January 16, 2006, an Order was issued by the Labor Arbiter which states:

> Filed by Third Party Claimant SUSAN M. GOIS is a Motion to Release Motor Vehicle after substituting same with a cash bond of ₱115,561.05 under O.R. No. 8307036 which amount is equivalent to the judgment award in the instant case, in the meantime that she has appealed the Order denying her Third Party Claim.
>
> Finding said Motion in order and with merit, Sheriff Felicisimo T. Basilio is directed to release from his custody the Isuzu jeep with Plate No. PGE-532 and return same to SUSAN M. GOIS.
>
> SO ORDERED.[6]

Meanwhile, on May 31, 2006, the NLRC issued a Resolution[7] which dismissed respondent's appeal for lack of merit. A Motion for Reconsideration[8] was filed but it was denied on August 22, 2006.[9] On September 12, 2006, the NLRC Resolution became final and executory; subsequently, an Entry of Judgment[10] was issued on September 29, 2006.

On October 13, 2006, Gois filed a petition for *certiorari*[11] before the Court of Appeals as well as a Supplement to Petition[12]

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[6] *Id*. at 39.

[7] *Id*. at 41-43.

[8] *Id*. at 44-46.

[9] *Id*. at 14-16.

[10] *Id*. at 50.

[11] *Id*. at 2-13.

[12] *Id*. at 47-49.

on October 27, 2006. Gois alleged that the NLRC committed grave abuse of discretion when it dismissed her appeal. She claimed that by denying her third-party claim, she was in effect condemned to pay a judgment debt issued against a corporation of which she is neither a president nor a majority owner but merely a stockholder. She further argued that her personality is separate and distinct from that of Golden; thus, the judgment ordering the corporation to pay the petitioner could not be satisfied out of her personal assets.

On December 21, 2006, the appellate court rendered a Decision in favor of respondent, which reads in part:

> In the decision dated April 29, 2005 rendered by Labor Arbiter Montaces, the dispositive portion confined itself in directing Golden Union Aquamarine Corporation only, no more and no less, to pay private respondent the award stated therein, but did not mention that the liability is joint and solidary with petitioner Susan Gois although the complaint filed by the private respondent included petitioner as among the respondents therein.
>
> It bears stress also that corporate officers cannot be held liable for damages on account of the employee's dismissal because the employer corporation has a personality separate and distinct from its officers who merely acted as its agents. They are only solidarily liable with the corporation for the termination of employment of employees if the same was done with malice or in bad faith. In the case at bench, it was not clearly shown and established that the termination of private respondent from employment was tainted with evident malice and bad faith. As elucidated in the case of *Reahs Corporation vs. NLRC*, the main doctrine of separate personality of a corporation should remain as the guiding rule in determining corporate liability to its employees, and that, at the very least, to justify solidary liability, "there must be an allegation or showing that the officers of the corporation deliberately or maliciously designed to evade the financial obligation of the corporation to its employees."
>
> Further, as wisely put by the petitioner, while it may be true that the subject vehicle was used by the corporation in transporting the products bought by the corporation from Eastern Samar to Manila, it does not necessarily follow that it is owned by the corporation as in fact petitioner was able to duly establish that the said vehicle

is hers and is registered under her name. Nor does it imply that the corporation is free to dispose of the same and neither does it imply that the said vehicle may and can be levied by respondent NLRC to satisfy a judgment against the corporation.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case, ANNULLING and SETTING ASIDE the Resolutions dated May 31, 2006 and August 22, 2006, respectively, issued by the respondent National Labor Relations Commission (NLRC), 4th Division in NLRC Case No. V-000188-2006 and ORDERING private respondent to return to petitioner the cash bond earlier released to him.

SO ORDERED.[13]

Petitioner filed a Motion for Reconsideration [14] which was denied. Hence, the present petition raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS, NINETEENTH (19th) DIVISION, ERRED:

1. WHEN IT OMMITED PRIVATE RESPONDENT AS ONE OF THE PRINCIPAL RESPONDENTS IN THE ORIGINAL COMPLAINT AS ILLUSTRATED IN ITS BRIEF STATEMENT OF FACTS;
2. WHEN IT CONSIDERED THAT THE VEHICLE PRINCIPALLY USED IN THE BUSINESS OPERATIONS OF THE CORPORATION, WHICH WAS REGISTERED UNDER THE NAME OF PRIVATE RESPONDENT WHO WAS ALSO THE CORPORATION PRESIDENT, CANNOT BE SUBJECT OF GARNISHMENT;
3. WHEN IT ANNULLED AND SET ASIDE A FINAL AND EXECUTED ORDER/RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION.[15]

A corporation has a personality distinct and separate from its individual stockholders or members and from that of its officers

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[13] *Id*. at 77-78.

[14] *Id*. at 26-32.

[15] *Rollo*, p. 9.

who manage and run its affairs. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. Thus, property belonging to a corporation cannot be attached to satisfy the debt of a stockholder and vice versa, the latter having only an indirect interest in the assets and business of the former.[16]

Since the Decision of the Labor Arbiter dated April 29, 2005 directed only Golden to pay the petitioner the sum of ₱115,561.05 and the same was not joint and solidary obligation with Gois, then the latter could not be held personally liable since Golden has a separate and distinct personality of its own. It remains undisputed that the subject vehicle was owned by Gois, hence it should not be attached to answer for the liabilities of the corporation. Unless they have exceeded their authority, corporate officers are, as a general rule, not personally liable for their official acts, because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders and members. No evidence was presented to show that the termination of the petitioner was done with malice or in bad faith for it to hold the corporate officers, such as Gois, solidarily liable with the corporation.

We note that the Resolution of the NLRC dismissing respondent's appeal was entered in the Book of Entries of Judgment on September 29, 2006 after it allegedly became final and executory on September 12, 2006.

It will be recalled, however, that the NLRC issued the Resolution dismissing the appeal of the respondent on May 31, 2006. A motion for reconsideration was filed on July 24, 2006 but it was denied by the NLRC on August 22, 2006. Copy of the denial was received by the respondent on September 1, 2006.[17] Thus, respondent has sixty (60) days from receipt of the denial of the motion for reconsideration or until October 31,

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[16] *Malonso v. Principe*, A.C. No. 6289, December 16, 2004, 447 SCRA 1, 16.

[17] CA *rollo*, p. 4.

2006, within which to file the petition for *certiorari* under Section 4 of Rule 65 of the Rules of Court. Thus, the petition for *certiorari* filed by respondent before the Court of Appeals on October 13, 2006 was timely.[18] Consequently, the NLRC erred in declaring its May 31, 2006 Resolution final and executory.

A decision issued by a court is final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.[19]

In the instant case, it is undisputed that when the entry of judgment was issued by the NLRC on September 12, 2006 and entered in the Book of Entries of Judgment on September 29, 2006, the reglementary period to file a petition for *certiorari* has not yet lapsed. In fact, when the petition for *certiorari* was filed on October 13, 2006, the same was still within the reglementary period. It bears stressing that a petition for *certiorari* under Rule 65 must be filed "not later than 60 days from notice of the judgment, order or resolution" sought to be annulled.[20]

The period or manner of "appeal" from the NLRC to the Court of Appeals is governed by Rule 65 pursuant to the ruling of this Court in the case of *St. Martin Funeral Home v. National Labor Relations Commission*.[21] Section 4 of Rule 65, as amended, states that the "petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed."[22]

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[18] *Id*. at 2-13.

[19] *Juco v. Heirs of Tomas Siy Chung Fu*, G.R. No. 150233, February 16, 2005, 451 SCRA 464, 474.

[20] *David v. Cordova*, G.R. No. 152992, July 28, 2005, 464 SCRA 384.

[21] G.R. No. 130866, September 16, 1998, 295 SCRA 494.

[22] *Ginete v. Sunrise Manning Agency*, G.R. No. 142023, June 21, 2001, 359 SCRA 404, 407-408.

Corollarily, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that "(f)or the purpose(s) of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record." Although this rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, we do not see any cogent reason why the same rule should not apply to petitions for *certiorari* filed with the Court of Appeals from decisions of the NLRC.[23]

We note that in the dispositive portion of its Decision, the appellate court ordered petitioner to return to respondent the cash bond earlier released to him. However, petitioner admitted that the monies were spent to defray the medical expenses of his ailing mother. Considering that petitioner is legally entitled to receive said amount, Golden must reimburse respondent Gois the amount of ₱115,561.05. To rule otherwise would result in unjust enrichment of Golden. The corporation has benefited from the payment made by Gois because it was relieved from its obligation to pay to petitioner the judgment debt.

WHEREFORE, the petition is *PARTLY GRANTED*. The assailed Decision of the Court of Appeals dated December 21, 2006 annulling and setting aside the May 31, 2006 and August 22, 2006 Resolutions of the National Labor Relations Commission; and its Resolution dated February 5, 2007 are *AFFIRMED with the MODIFICATION* that Golden Union Aquamarine Corporation is ordered to *REIMBURSE* respondent Susan M. Gois the amount of ₱115,561.05.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Reyes, and *Brion,*[*] *JJ.,* concur.

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[23] *Id*. at 408.

[*] Designated in lieu of Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program, per Special Order No. 507 dated May 28, 2008, signed by Chief Justice Reynato S. Puno.

THIRD DIVISION

[G.R. No. 179150. June 17, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELIA BAYANI *y* BOTANES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165); INSTIGATION DISTINGUISHED FROM ENTRAPMENT. — Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker. Thus, in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing. But in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct. In instigation, where law enforcers act as co-principals, the accused will have to be acquitted. But entrapment cannot bar prosecution and conviction. As has been said, instigation is a "trap for the unwary innocent," while entrapment is a "trap for the unwary criminal."

2. ID.; ID.; ENTRAPMENT; BUY-BUST OPERATION; DECOY SOLICITATION, NOT PROHIBITED. — As a general rule, a buy-bust operation, considered as a form of entrapment, is a valid means of arresting violators of Republic Act No. 9165. It is an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust operations. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of

the criminal's course of conduct. In *People v. Sta. Maria*, the Court clarified that a "decoy solicitation" is not tantamount to inducement or instigation: It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the office is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct. As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced the appellant to sell illegal drugs to him.

3. ID.; ID.; INSTIGATION; WHEN VALID AS A DEFENSE AND WHEN NOT APPLICABLE. — The law deplores instigation or inducement, which occurs when the police or its agent devises the idea of committing the crime and lures the accused into executing the offense. Instigation absolves the accused of any guilt, given the spontaneous moral revulsion from using the powers of government to beguile innocent but ductile persons into lapses that they might otherwise resist. *People v. Doria* enumerated the instances when this Court recognized instigation as a valid defense, and an instance when it was not applicable: In *United Sates v. Phelps*, we acquitted the accused from the offense of smoking opium after finding that the government employee, a BIR personnel, actually induced him to commit the crime in order to persecute him. Smith, the BIR agent, testified that Phelps' apprehension came after he overheard Phelps in a saloon say that he like smoking opium on some occasions. Smith's testimony was disregarded. We accorded significance to the fact that it was Smith who went to the accused three times to convince him to look for an opium den where both of them could smoke this drug. The conduct of the BIR agent was condemned as "most reprehensible." In *People v. Abella*, we acquitted the accused of the crime of selling explosives after examining the testimony of the apprehending police officer who pretended to be a merchant. The police officer offered "a tempting price, x x x a very high one" causing

the accused to sell the explosives. We found there was inducement, "direct, persistent and effective" by the police officer and that outside of his testimony, there was no evidence sufficient to convict the accused. In *People v. Lua Chu and Uy Se Tieng*, [W]e convicted the accused after finding that there was no inducement on the part of the law enforcement officer. We stated that the Customs secret serviceman smoothed the way for the introduction of opium from Hong Kong to Cebu after the accused had already planned its importation and ordered said drug. We ruled that the apprehending officer did not induce the accused to import opium but merely entrapped him by pretending to have an understanding with the Collector of Customs of Cebu to better assure the seizure of the prohibited drug and the arrest of the surreptitious importers.

4. ID.; ID.; ILLEGAL SALE OF *SHABU*; ESTABLISHED IN THE BUY-BUST OPERATION. — The essential elements for the prosecution for illegal sale of *shabu* were established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money, as relayed by PO3 Bernardo, successfully consummated the buy-bust transaction.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT IF AFFIRMED BY THE APPELLATE COURT, RESPECTED. — In the case before us, we find the testimony of the poseur-buyer, together with the dangerous drug taken from the appellant, more than sufficient to prove the crime charged. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during the trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule

finds an even more stringent application where said findings are sustained by the Court of Appeals. Finding no compelling reason to depart from the findings of both the trial court and the Court of Appeals, this Court affirms the same.

6. ID.; ID.; DENIAL; NOT APPRECIATED IN CASE AT BAR. — The self-serving denial of the appellant deserves scant credence, since it is unsupported by any evidence other than the testimony of her son, Dan Jefferson. This Court finds her son's testimony even more suspect, considering that his statement that five men barged into their house was belied by appellant's allegation that seven men forcibly entered their home. An allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing.

7. ID.; ID.; ILL MOTIVE; NOT ESTABLISHED IN CASE AT BAR. — There was no allegation of any attempt at extortion on the part of police officers or any reason for the police officers to falsify a serious criminal charge against appellant. Appellant admitted that she had never even seen any of the police officers until she was arrested. This negates any vengeful motive for her arrest. In the absence of proof of any ill motive or intent on the part of the police authorities to falsely impute a serious crime to the appellants, the presumption of regularity in the performance of official duties must prevail over the latter's self-serving and uncorroborated claim. This presumption is placed on an even more firm foothold when supported by the findings of the trial court on the credibility of the witness, PO3 Bernardo.

8. ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; CORROBORATING TESTIMONY OF CONFIDENTIAL INFORMANT IN A DRUG CASE AND ADDITIONAL WITNESSES, NOT ESSENTIAL FOR CONVICTION. — Contrary to the appellant's claim, the prevailing doctrine is that additional corroborating testimony of the confidential informant is not essential to a successful prosecution. Intelligence agents are not often called to testify in court in order to hide their identities and preserve their invaluable service to the police. Once known, they may even be the object of revenge by criminals they implicate. Lastly,

the testimonies of other arresting officers are not required in obtaining a conviction. The testimony of PO3 Bernardo, being candid and straightforward, is complete and sufficient for a finding of guilt. Section 6, Rule 133 of the Rules of Court allows the court to stop introduction of further testimony upon a particular point when more witnesses to the same point cannot be expected to be additionally persuasive. Furthermore, appellant cannot allude to or suggest the possibility of any irregularity that could have been revealed by the presentation of additional witnesses, when she herself failed to exert any effort to summon these witnesses when she had the chance to do so.

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.*:

Appellant Delia Bayani *y* Botanes assails the Decision[1] of the Court of Appeals dated 20 December 2005 in CA-G.R. CR-H.C. No. 00310, affirming the Decision[2] dated 16 July 2004 of Branch 103 of the Regional Trial Court (RTC) of Quezon City, in Criminal Case No. Q-03-115598. The RTC found appellant guilty beyond reasonable doubt of drug pushing, in violation of Section 5, Article II of Republic Act No. 9165,[3]

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[1] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Eliezer R. de los Santos and Fernanda Lampas Peralta, concurring; *Rollo*, pp. 2-10.

[2] Penned by Presiding Judge Jaime N. Salazar, Jr.; CA *rollo*, pp. 36-38.

[3] **Section 5.** Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another,

also known as the Comprehensive Dangerous Drugs Act of 2002, and sentenced her to suffer life imprisonment and a fine of five hundred thousand pesos.

On 7 March 2003, an Information[4] was filed before the RTC charging appellant with Violation of Section 5 of Republic Act No. 9165, which reads:

> That on or about the 3rd day of March 2003, in the Quezon City, Philippines, the above-named accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, **six point forty one (6.41) grams of Methylamphetamine Hydrochloride**, a dangerous drug.

On 9 September 2003, appellant, with the assistance of counsel *de oficio*, was arraigned and she pleaded "Not guilty." Thereafter, a pre-trial conference was held, and trial ensued accordingly.[5]

Evidence for the prosecution consisted of the testimony of PO3 Virgilio Bernardo, who testified that on 3 March 2003, a confidential informant arrived at Police Station 3, Quirino Highway, Barangay Talipapa, Quezon City, where he was on duty, and reported to the Drug Enforcement Unit that appellant was illegally trading drugs along Trinidad Street, Barangay Gulod, Novaliches, Quezon City. Chief Superintendent Gerardo Ratuita formed a team composed of PO3 Bernardo, SPO4 Brigido An, SPO2 Levi Sevilla, PO2 Manny Panlilio, and PO2 Cecil Collado to conduct a buy-bust operation. The team took with them "boodle" money with two (2) pieces of genuine one-hundred-peso bills on top as buy-bust money.[6]

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distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] CA *rollo,* p. 11.

[5] *Id*. at 12.

[6] *Id*.

At around 10:30 in the morning of the same day, PO3 Bernardo and the informant went in front of the appellant's house located at No. 22 Barangay Gulod, Trinidad Street, Novaliches, Quezon City, while the other police officers positioned themselves within viewing distance. The appellant was standing in front of her house. As they approached her, the informant introduced Bernardo to her as a *shabu* buyer. Witness testified that he told appellant that he wanted to buy ten thousand pesos (₱10,000.00) worth of *shabu,* and the appellant nodded her head. Thereafter, she handed him two sachets containing a crystalline substance which was suspected to be *shabu*. Witness, in turn, gave the boodle money, after which he grabbed the appellant's right hand, apprehended her, and identified himself as a police officer.[7]

After the apprehension of the appellant, the team brought her before the Police Station investigator, while the drugs and the buy-bust money were turned over to the crime laboratory. Appellant was apprised of her constitutional rights.[8]

During his testimony, PO3 Bernardo identified the accused, the boodle money with his initials "VB," as well as two (2) sachets of crystalline substance (also with the same initials) which was positive of methylamphetamine hydrochloride after laboratory examination.[9]

Denying the charge filed against her, appellant testified that at around 7:00 in the morning of 3 March 2003, she was inside her house with her children and her sister-in-law. While changing her clothes inside her room at the third floor, seven men barged inside her house. When she asked them what they were doing inside her house, they refused to answer. Although they continued to search her house, they did not find drugs therein. Thereafter, they introduced themselves as police officers and commanded her to show them the *shabu*. When she denied possession of any *shabu*, the police officers got angry and forced her to go

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[7] *Id*.

[8] *Id*. at 13.

[9] *Id*.

with them to the Police Station. She also testified that she could not cry to her neighbors for help because she was locked inside her room while her sister-in-law and her five children were all afraid of the police.[10]

When they arrived at the Police Station, she was asked if she knew a certain "Allan." She answered in the negative. After a day of detention, she was brought to the office of the inquest fiscal where she was informed that she was being charged with drug pushing.[11]

Appellant's seventeen-year-old son, Dan Jefferson, corroborated his mother's testimony. He recounted that he was about to leave their house when five men barged into their house and went straight to his mother's room at the third floor. He testified that he did not know what happened on the third floor since, at that time, he stayed in their *sala* at the second floor of the house. Thereafter, the rest of the police officers and his mother left the house, while he stayed put.[12]

In a Decision dated 16 July 2004, the RTC decreed that the accused was guilty without reasonable doubt since the fact of the illegal sale of a dangerous drug, methylamphetamine hydrochloride, was sufficiently and indisputably established by the prosecution. PO3 Bernardo, as the poseur-buyer, positively identified the appellant as the person who handed him two sachets containing 6.41 grams of *shabu* in exchange for ₱10,000.00. The boodle money was marked as Exhibit "B" for the prosecution.[13] The two sachets of *shabu* were likewise presented and marked in court as Exhibits "G" and "H".[14] The RTC gave full credence to PO3 Bernardo's testimony, given the presumption of regularity in the performance of his functions as a police officer, especially since no ill motive was attributed

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[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] Records, p. 24.

[14] *Id*. at 28.

to him for the appellant's apprehension. On the other hand, the RTC found the testimony of appellant's son, Dan, on what transpired on the third floor to be unreliable, since at that time he was supposedly staying in the *sala*, which was located at another floor.[15]

According to the dispositive part of the Decision dated 16 July 2004:

> ACCORDINGLY, judgment is hereby rendered finding the accused **GUILTY** beyond reasonable doubt for (sic) violation of Section 5, Article II, R.A. 9165 for drug pushing of six point forty one (6.41) grams of crystalline substance containing Methylamphetamine hydrochloride and is hereby sentenced to suffer **LIFE IMPRISONMENT** and to pay a fine of Five Hundred Thousand Pesos.
>
> The drug involved in this case is hereby ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) through the Dangerous Drugs Board for proper disposition.[16]

The appellant filed an appeal before the Court of Appeals docketed as CA-G.R. CR-H.C. No. 00310. Raising only one assignment of error, appellant faulted the RTC's finding of guilt for being based on a buy-bust transaction instigated by the arresting officers. In affirming the RTC Decision, the appellate court declared that the police officers did not induce the appellant to sell the prohibited drugs. By pointing out the fact that appellant had the *shabu* in her possession, ready for selling, before the police officer approached her, it adjudged that the appellant's criminal resolve was evident; no inducement to sell the prohibited drugs had led to the commission of the offense. It maintained that the fact that the police officers did not conduct a prior surveillance does not affect the validity of an entrapment operation. It further held that presentation by the prosecution of the informant and other police officers who had witnessed the buy-bust operations was not required to prove the appellant's guilt, where their testimonies would merely repeat the testimony of the poseur-

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[15] CA *rollo*, pp. 13-14.

[16] *Id*. at 14.

buyer.[17] In the Decision dated 20 December 2005, the *fallo* reads:

> WHEREFORE, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Decision **AFFIRMED** *in toto*. Without pronouncement as to costs.[18]

Hence, the present petition in which the appellant reiterates the sole assignment of error, to wit:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT THE POLICE INSTIGATED THE ALLEGED BUY-BUST TRANSACTION.

This petition must fail, since the argument raised by appellant is specious. Appellant argues that PO3 Bernardo's act of approaching the appellant to buy *shabu* during a buy-bust operation amounted to instigation. Such contention lacks basis and is contrary to jurisprudence.

Instigation is the means by which the accused is lured into the commission of the offense charged in order to prosecute him. On the other hand, entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker.[19] Thus, in instigation, officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense which he or she would otherwise not commit and has no intention of committing. But in entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused, and law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes; thus, the accused cannot justify his or her conduct. In instigation, where law enforcers act as co-principals, the accused will have to be acquitted. But

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[17] *Rollo*, pp. 2-10.

[18] *Id*. at 10.

[19] *People v. Gatong-o*, G.R. No. 78698, 29 December 1988, 168 SCRA 716, 717.

entrapment cannot bar prosecution and conviction. As has been said, instigation is a "trap for the unwary innocent," while entrapment is a "trap for the unwary criminal."[20]

As a general rule, a buy-bust operation, considered as a form of entrapment, is a valid means of arresting violators of Republic Act No. 9165. It is an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.

A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust operations. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct.[21] In *People v. Sta. Maria*, the Court clarified that a "decoy solicitation" is not tantamount to inducement or instigation:

> It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the office is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.

As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant.

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[20] *Cabrera v. Pajares*, A.M. Nos. R-278-RTJ & R-309-RTJ, 30 May 1986, 142 SCRA 127, 134; *Araneta v. Court of Appeals*, G.R. No. L-46638, 9 July 1986, 142 SCRA 534, 539; *People v. Lapatha*, G.R. No. 63074, 9 November 1988, 167 SCRA 159, 172-173; and *People v. Patog*, G.R. No. 69620, 24 September 1986, 144 SCRA 429, 437.

[21] *People v. Gonzales*, 430 Phil. 504, 513 (2002).

There was no showing that the informant induced the appellant to sell illegal drugs to him.[22]

Conversely, the law deplores instigation or inducement, which occurs when the police or its agent devises the idea of committing the crime and lures the accused into executing the offense. Instigation absolves the accused of any guilt, given the spontaneous moral revulsion from using the powers of government to beguile innocent but ductile persons into lapses that they might otherwise resist.[23]

People v. Doria enumerated the instances when this Court recognized instigation as a valid defense, and an instance when it was not applicable:

> In *United Sates v. Phelps*, we acquitted the accused from the offense of smoking opium after finding that the government employee, a BIR personnel, actually induced him to commit the crime in order to persecute him. Smith, the BIR agent, testified that Phelps' apprehension came after he overheard Phelps in a saloon say that he like smoking opium on some occasions. Smith's testimony was disregarded. We accorded significance to the fact that it was Smith who went to the accused three times to convince him to look for an opium den where both of them could smoke this drug. The conduct of the BIR agent was condemned as "most reprehensible." In *People v. Abella*, we acquitted the accused of the crime of selling explosives after examining the testimony of the apprehending police officer who pretended to be a merchant. The police officer offered "a tempting price, x x x a very high one" causing the accused to sell the explosives. We found there was inducement, "direct, persistent and effective" by the police officer and that outside of his testimony, there was no evidence sufficient to convict the accused. In *People v. Lua Chu and Uy Se Tieng*, [W]e convicted the accused after finding that there was no inducement on the part of the law enforcement officer. We stated that the Customs secret serviceman smoothed the way for the introduction of opium from Hong Kong to Cebu

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[22] *People v. Sta. Maria*, G.R. No. 171019, 23 February 2007, 516 SCRA 621, 628.

[23] *People v. Doria*, G.R. No. 125299, 22 January 1999, 301 SCRA 668, 686; *People v. Boco*, G.R. No. 129676, 23 June 1999, 309 SCRA 42, 65.

after the accused had already planned its importation and ordered said drug. We ruled that the apprehending officer did not induce the accused to import opium but merely entrapped him by pretending to have an understanding with the Collector of Customs of Cebu to better assure the seizure of the prohibited drug and the arrest of the surreptitious importers.[24]

In recent years, it has become common practice for law enforcement officers and agents to engage in buy-bust operations and other entrapment procedures in apprehending drug offenders, which is made difficult by the secrecy with which drug-related offenses are conducted and the many devices and subterfuges employed by offenders to avoid detection. On the other hand, the Court has taken judicial notice of the ugly reality that in cases involving illegal drugs, corrupt law enforcers have been known to prey upon weak, hapless and innocent persons.[25] The distinction between entrapment and instigation has proven to be crucial. The balance needs to be struck between the individual rights and the presumption of innocence on one hand, and ensuring the arrest of those engaged in the illegal traffic of narcotics on the other.

In the present case, PO3 Bernardo testified that appellant stood in front of her house and was in possession of drugs readily available for anyone who would buy them. PO3 Bernardo did not even have to employ any act of instigation or inducement, such as repeated requests for the sale of prohibited drugs or offers of exorbitant prices.

In addition, PO3 Bernardo was able to identify the accused, the boodle money, and the two packets of crystalline substance, which tested positive for methylamphetamine hydrochloride.[26]

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[24] *People v. Doria*, *id*. at 692-693.

[25] *Id*. at 697; *People v. Ale*, G.R. No. 70998, 14 October 1986, 145 SCRA 50, 58-59; *People v. Fernando*, G.R. No. 66947, 24 October 1986, 145 SCRA 151, 159; *People v. Crisostomo*, G.R. No. 97427, 24 May 1993, 222 SCRA 511,514; *People v. Salcedo*, G.R. No. 86975, 18 March 1991, 195 SCRA 345, 352; and *People v. Cruz*, G.R. No. 102880; 25 April 1994, 231 SCRA 759, 764-765.

[26] Chemistry Report No. D-236-2003, 4 March 2003; Records, p. 8.

The essential elements for the prosecution for illegal sale of *shabu* were established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and payment therefor. In short, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money, as relayed by PO3 Bernardo, successfully consummated the buy-bust transaction.[27]

In the case before us, we find the testimony of the poseur-buyer, together with the dangerous drug taken from the appellant, more than sufficient to prove the crime charged. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during the trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[28]

The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[29] Finding no compelling reason to depart from the findings of both the trial court and the Court of Appeals, this Court affirms the same.

The self-serving denial of the appellant deserves scant credence, since it is unsupported by any evidence other than the testimony of her son, Dan Jefferson. This Court finds her son's testimony even more suspect, considering that his statement that five men

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[27] *People v. Gonzales*, *supra* note 21 at 513; and *People v. Jocson*, G.R. No. 169875, 18 December 2007.

[28] *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

[29] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

barged into their house was belied by appellant's allegation that seven men forcibly entered their home. An allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing.[30]

In this case, there was no allegation of any attempt at extortion on the part of police officers or any reason for the police officers to falsify a serious criminal charge against appellant. Appellant admitted that she had never even seen any of the police officers until she was arrested. This negates any vengeful motive for her arrest. In the absence of proof of any ill motive or intent on the part of the police authorities to falsely impute a serious crime to the appellants, the presumption of regularity in the performance of official duties must prevail over the latter's self-serving and uncorroborated claim. This presumption is placed on an even more firm foothold when supported by the findings of the trial court on the credibility of the witness, PO3 Bernardo.[31]

Contrary to the appellant's claim, the prevailing doctrine is that additional corroborating testimony of the confidential informant is not essential to a successful prosecution. Intelligence agents are not often called to testify in court in order to hide their identities and preserve their invaluable service to the police. Once known, they may even be the object of revenge by criminals they implicate.[32]

Lastly, the testimonies of other arresting officers are not required in obtaining a conviction. The testimony of PO3 Bernardo, being candid and straightforward, is complete and sufficient for a finding of guilt. Section 6, Rule 133 of the Rules of Court allows the court to stop introduction of further testimony upon

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[30] *People v. Boco*, *supra* note 23 at 65.

[31] *People v. Pacis*, 434 Phil. 148, 158-159 (2001); *People v. Simon*, G.R. No. 93028, 29 July 1994, 234 SCRA 555, 563.

[32] *People v. Doria*, *supra* note 23 at 699; *People v. Pacis*, *id*. at 159; *People v. Boco*, *supra* note 23 at 62.

a particular point when more witnesses to the same point cannot be expected to be additionally persuasive. Furthermore, appellant cannot allude to or suggest the possibility of any irregularity that could have been revealed by the presentation of additional witnesses, when she herself failed to exert any effort to summon these witnesses when she had the chance to do so.

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals dated 20 December 2005 in CA-G.R. CR-H.C. No. 00310 is *AFFIRMED*. Appellant Delia Bayani *y* Botanes is found *GUILTY* of violation of Section 5, Article II of Republic Act No 9165. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Reyes, and *Brion,*[*] *JJ.,* concur.

EN BANC

[G.R. No. 180164. June 17, 2008]

FLORENTINO P. BLANCO, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and EDUARDO A. ALARILLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF IN THE ABSENCE OF REQUISITE

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[*] Per Special Order No. 507, dated 28 May 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Arturo D. Brion to replace Associate Justice Antonio Eduardo B. Nachura, who is on official leave under the Court's Wellness Program.

MOTION FOR RECONSIDERATION; WHERE ISSUE INVOLVES PRINCIPLE OF SOCIAL JUSTICE, WHEN RESOLUTION SOUGHT TO BE SET ASIDE IS A NULLITY, AS IN CASE AT BAR. —The initial issue that has to be determined is whether the Court can take cognizance of this case since petitioner did not file a motion for reconsideration of the Resolution of the COMELEC, Second Division before the COMELEC *en banc* as he went directly to this Court by filing this petition "in accordance with Sec. 7 of Article IX-A of the Constitution," which provides: Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof. *Soriano v. COMELEC* and *Repol v. COMELEC* gave the Court's interpretation of Sec. 7, Article IX-A of the Constitution, thus: We have interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. This decision must be a final decision or resolution of the COMELEC *en banc*. The Supreme Court has no power to review via *certiorari* an interlocutory order or even a final resolution of a Division of the COMELEC. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition. However, this rule is not ironclad. In *ABS-CBN Broadcasting Corporation v. COMELEC,* we stated — This Court, however, has ruled in the past that this procedural requirement [of filing a motion for reconsideration] may be glossed over to prevent a miscarriage of justice, when the issue involves the principle of social justice or the protection of labor, **when the decision or resolution sought to be set aside is a nullity**, or when the need for relief is extremely urgent and *certiorari* is the only adequate and speedy remedy available. The Court holds that direct resort to this Court through a special civil action for *certiorari* is justified in this case since the Resolution sought to be set aside is a nullity. The holding of periodic

elections is a basic feature of our democratic government. Setting aside the resolution of the issue will only postpone a task that could well crop up again in future elections.

2. POLITICAL LAW; ADMINISTRATIVE LAW; OMNIBUS ELECTION CODE; DISQUALIFICATION UNDER SEC. 68; VOTE-BUYING AS PROVIDED IN SEC. 261(A) OF THE CODE; CASE AT BAR. — Petitioner contends that in *Blanco v. COMELEC*, G.R. No. 122258, he was found only administratively liable for vote-buying in the 1995 elections and was disqualified under Sec. 68 of the Omnibus Election Code, and that he was not disqualified under Sec. 261(a) and Sec. 264 of the Omnibus Election Code since no criminal action was filed against him. He submits that his disqualification was limited only to the 1995 elections and that it did not bar him from running for public office in the succeeding elections. Petitioner's contention is meritorious. The Court notes that the Office of the Solicitor General, in its Comment, found this petition meritorious. Petitioner's disqualification in 1995 in *Blanco v. COMELEC*, G.R. No. 122258, was based on Sec. 68 of the Omnibus Election Code, although the COMELEC, Second Division, pronounced that petitioner violated 261 (a) of the Omnibus Election Code. In *Blanco v. COMELEC*, G.R. No. 122258, the Court held: . . . Vote-buying has its criminal and electoral aspects. Its *criminal aspect* to determine the guilt or innocence of the accused cannot be the the subject of summary hearing. However, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character. In *Lanot v. COMELEC*, the Court further explained: . . . The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and *vice versa*. The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the

COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office. Petitioner's disqualification in 1995 was resolved by the COMELEC in a summary proceeding. The COMELEC only determined the electoral aspect of whether petitioner should be disqualified as a candidate. It resolved "to DISQUALIFY [petitioner] Florentino P. Blanco as a candidate for the Office of Mayor of Meycauayan, Bulacan in the May 8, 1995 elections for having violated Section 261 (a) of the Omnibus Election Code." This Court, in G.R. No. 122258, affirmed only the electoral aspect of the disqualification made by COMELEC, which falls under Sec. 68 of the Omnibus Election Code: Sec. 68. *Disqualifications*. — Any candidate who, in an action or protest in which he was a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) **given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions x x x shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. . . .** Hence, in G.R. No. 122258, petitioner was disqualified from continuing as a candidate only in the May 8, 1995 elections. Relevant to this case is *Codilla v. De Venecia*, which held that **the jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Sec. 68 of the Omnibus Election Code**. The records did not show that a criminal complaint was filed against petitioner for the election offense of vote-buying under Sec. 261 (a) of the Omnibus Election Code. There was also no evidence that the accessory penalty of disqualification to hold public office under Sec. 264 of the same Code was imposed on petitioner by the proper court as a consequence of conviction for an election offense.

3. ID.; ID.; LOCAL GOVERNMENT CODE; DISQUALIFICATION FROM RUNNING FOR MAYORALTY POSITION; REMOVAL FROM OFFICE; NOT PRESENT IN CASE AT BAR. — Petitioner contends that the COMELEC gravely abused its discretion in ruling that he was disqualified from running

for a mayoralty position under Sec. 40 (b) of the Local Government Code for having been removed from office as a result of an administrative case. Petitioner's contention is meritorious. Removal from office entails the ouster of an incumbent before the expiration of his term. In G.R No. 122258, petitioner was **disqualified from continuing as a candidate** for the mayoralty position in the May 8, 1995 elections. The suspension of his proclamation was made permanent, so petitioner never held office from which he could be removed.

APPEARANCES OF COUNSEL

Karaan and Karaan Law Office for petitioner.
The Solicitor General for public respondent.
Lorna Imelda M. Suarez for private respondent.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for *certiorari*[1] alleging that the Commission on Elections (COMELEC), Second Division, acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolution dated August 28, 2007 disqualifying petitioner from running for an elective office in the May 14, 2007 National and Local Elections.

The facts are as follows:

Petitioner Florentino P. Blanco was the mayor of Meycauayan, Bulacan from 1987 up to 1992.

During the May 8, 1995 elections, petition ran as a candidate for the same mayoralty position and won during the canvassing by more than 6,000 votes over private respondent Eduardo A. Alarilla. Private respondent filed a petition for the disqualification of petitioner on the ground of vote-buying which resulted in the suspension of petitioner's proclamation.

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[1] Under Rule 64 of the Rules of Court.

On August 15, 1995, public respondent issued a resolution disqualifying petitioner as candidate for the said position due to violation of Sec. 261 (a) of the Omnibus Election Code. This Court affirmed the disqualification under Sec. 68 of the Omnibus Election Code in *Blanco v. COMELEC*,[2] G.R. No. 122258, which was promulgated on July 21, 1997.

During the 1998 elections, petitioner again ran as a mayoralty candidate. Domiciano G. Ruiz, a voter of Meycauayan, Bulacan, sought to disqualify him on the basis of the Court's ruling in G.R. No. 122258.

On April 30, 1998, the COMELEC, Second Division, issued a resolution in SPA No. 98-043 dismissing the petition for disqualification on the ground that petitioner was not disqualified under Sec. 68 of the Omnibus Election Code as his previous disqualification in the May 8, 1995 elections attached only during that particular election.

Moreover, the COMELEC stated that "no criminal action was instituted against [petitioner], much less a judgment of conviction for vote-buying under Sec. 261 (a) of the Omnibus Election Code has been rendered against [petitioner] in order that Section 264 of the same [Code] providing for the accessory penalty of disqualification from holding public office may attach to [petitioner]."

During the May 14, 2001 elections, petitioner again ran for a mayoralty position, but private respondent sought petitioner's disqualification based on the Court's ruling in G.R. No. 122258.

On May 11, 2001, the COMELEC, Second Division, issued a resolution in SPA No. 01-050, this time disqualifying petitioner from running for a mayoralty position in the May 14, 2001 elections under Sec. 40 (b) of the Local Government Code for having been removed from office through an administrative case. It denied petitioner's motion for reconsideration for having been filed beyond the 5-day reglementary period.

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[2] G.R. No. 122258, July 21, 1997, 275 SCRA 762.

During the May 10, 2004 elections, petitioner again ran as a mayoralty candidate, but private respondent sought to disqualify him based on the Court's ruling in G.R. No. 122258. Petitioner withdrew his certificate of candidacy, so the petition for disqualification was dismissed for being moot.

Apprehensive that he would encounter another petition for disqualification in succeeding elections, petitioner filed a petition for declaratory relief before the Regional Trial Court (RTC) of Malolos, Bulacan, for the issuance of a judgment declaring him eligible to run for public office in contemplation of Sec. 40 (b) of the Local Government Code and Secs. 68, 261(a) and 264 of the Omnibus Election Code.

In a Decision dated November 6, 2005, the RTC declared petitioner eligible to run for an elective office.

During the May 14, 2007 elections, petitioner ran anew for a mayoralty position. Again, private respondent sought the disqualification of petitioner based on the Court's ruling in G.R. No. 122258 and the COMELEC Resolution dated May 11, 2001 in SPA No. 01-050.

On August 28, 2007, the COMELEC, Second Division, issued a resolution in SPA Case No. 07-410 disqualifying petitioner from running in the May 14, 2007 elections on the ground that *Blanco v. COMELEC*, G.R. No. 122258, affirmed its disqualification of petitioner in the May 8, 1995 elections, and that the COMELEC Resolution in SPA No. 01-050 also disqualified petitioner under Sec. 40 (b) of the Local Government Code. The COMELEC stated that since petitioner failed to show that he had been bestowed a presidential pardon, amnesty or other form of executive clemency, there is no reason to disturb its findings in SPA No. 01-050.

Hence, this petition praying that the COMELEC Resolution dated August 28, 2007 be reversed and set aside, and that petitioner be declared as eligible to run for public office.

Petitioner raised these issues:

I.

WHETHER OR NOT THE COMELEC, SECOND DIVISION, GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONER IS DISQUALIFIED TO RUN FOR AN ELECTIVE OFFICE BY REASON OF THE COURT'S RULING IN *BLANCO V. COMELEC*, G.R. NO. 122258, AS WELL AS THE RESOLUTION OF THE COMELEC IN SPA NO. 01-050.

II.

WHETHER OR NOT THE COMELEC, SECOND DIVISION, GRAVELY ABUSED ITS DISCRETION IN RULING THAT PETITIONER IS DISQUALIFIED TO RUN FOR AN ELECTIVE OFFICE SINCE HE HAS NOT BEEN BESTOWED A PRESIDENTIAL PARDON, AMNESTY OR ANY FORM OF EXECUTIVE CLEMENCY.[3]

The initial issue that has to be determined is whether the Court can take cognizance of this case since petitioner did not file a motion for reconsideration of the Resolution of the COMELEC, Second Division before the COMELEC *en banc* as he went directly to this Court by filing this petition "in accordance with Sec. 7 of Article IX-A of the Constitution," which provides:

> Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

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[3] *Rollo*, p. 8.

Soriano v. COMELEC[4] and *Repol v. COMELEC*[5] gave the Court's interpretation of Sec. 7, Article IX-A of the Constitution, thus:

> We have interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC rendered in the exercise of its adjudicatory or quasi-judicial powers. The decision must be a final decision or resolution of the COMELEC *en banc*. The Supreme Court has no power to review via *certiorari* an interlocutory order or even a final resolution of a Division of the COMELEC. Failure to abide by this procedural requirement constitutes a ground for dismissal of the petition.

However, this rule is not ironclad. In *ABS-CBN Broadcasting Corporation v. COMELEC*, we stated —

> This Court, however, has ruled in the past that this procedural requirement [of filing a motion for reconsideration] may be glossed over to prevent a miscarriage of justice, when the issue involves the principle of social justice or the protection of labor, **when the decision or resolution sought to be set aside is a nullity**, or when the need for relief is extremely urgent and *certiorari* is the only adequate and speedy remedy available.[6]

The Court holds that direct resort to this Court through a special civil action for *certiorari* is justified in this case since the Resolution sought to be set aside is a nullity. The holding of periodic elections is a basic feature of our democratic government.[7] Setting aside the resolution of the issue will only postpone a task that could well crop up again in future elections.[8]

In this case, petitioner contends that in *Blanco v. COMELEC*, G.R. No. 122258, he was found only administratively liable for vote-buying in the 1995 elections and was disqualified under

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[4] G.R. Nos. 164496-505, April 2, 2007, 520 SCRA 88, 105.

[5] G.R. No. 161418, April 28, 2004, 428 SCRA 321, 330.

[6] Emphasis supplied.

[7] *Supra*, note 5, at 331.

[8] *Ibid.*

Sec. 68 of the Omnibus Election Code, and that he was not disqualified under Sec. 261(a) and Sec. 264 of the Omnibus Election Code since no criminal action was filed against him. He submits that his disqualification was limited only to the 1995 elections and that it did not bar him from running for public office in the succeeding elections.

Petitioner's contention is meritorious.

The Court notes that the Office of the Solicitor General, in its Comment, found this petition meritorious.

Petitioner's disqualification in 1995 in *Blanco v. COMELEC*, G.R. No. 122258, was based on Sec. 68 of the Omnibus Election Code, although the COMELEC, Second Division, pronounced that petitioner violated 261 (a) of the Omnibus Election Code.

Sec. 68 and Sec. 261 (a) of the Omnibus Election Code provide:

Sec. 68. *Disqualifications*. — Any candidate who, in an action or protest in which he was a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) **given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions**; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, **shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office**. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.[9]

Sec. 261. *Prohibited Acts*. — The following shall be guilty of an election offense:

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[9] Emphasis supplied.

> (a) *Vote-buying and vote-selling.* — (1) Any person who gives, offers or promises money or anything of value, gives or promises any office or employment, franchise or grant, public or private, or makes or offers to make an expenditure, directly or indirectly, or cause an expenditure to be made to any person, association, corporation, entity, or community in order to induce anyone or the public in general to vote for or against any candidate or withhold his vote in the election, or to vote for or against any aspirant for the nomination or choice of a candidate in a convention or similar selection process of a political party.

In *Blanco v. COMELEC*, G.R. No. 122258, the Court held:

> . . . Vote-buying has its criminal and electoral aspects. Its *criminal aspect* to determine the guilt or innocence of the accused cannot be the subject of summary hearing. However, its electoral aspect to ascertain whether the offender should be disqualified from office can be determined in an administrative proceeding that is summary in character.[10]

In *Lanot v. COMELEC*,[11] the Court further explained:

> . . . The electoral aspect of a disqualification case determines whether the offender should be disqualified from being a candidate or from holding office. Proceedings are summary in character and require only clear preponderance of evidence. An erring candidate may be disqualified even without prior determination of probable cause in a preliminary investigation. The electoral aspect may proceed independently of the criminal aspect, and *vice versa*.
>
> The criminal aspect of a disqualification case determines whether there is probable cause to charge a candidate for an election offense. The prosecutor is the COMELEC, through its Law Department, which determines whether probable cause exists. If there is probable cause, the COMELEC, through its Law Department, files the criminal information before the proper court. Proceedings before the proper court demand a full-blown hearing and require proof beyond reasonable doubt to convict. A criminal conviction shall result in the disqualification of the offender, which may even include disqualification from holding a future public office.[12]

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[10] *Supra*, note 2, at 777.

[11] G.R. No. 164858, November 16, 2006, 507 SCRA 114.

[12] *Id*. at 139-140.

Petitioner's disqualification in 1995 was resolved by the COMELEC in a summary proceeding. The COMELEC only determined the electoral aspect of whether petitioner should be disqualified as a candidate. It resolved "to DISQUALIFY [petitioner] Florentino P. Blanco as a candidate for the Office of Mayor of Meycauayan, Bulacan in the May 8, 1995 elections for having violated Section 261 (a) of the Omnibus Election Code." This Court, in G.R. No. 122258, affirmed only the electoral aspect of the disqualification made by COMELEC, which falls under Sec. 68 of the Omnibus Election Code:

> Sec. 68. *Disqualifications*. — Any candidate who, in an action or protest in which he was a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) **given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions** x x x **shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office**. . . .

Hence, in G.R. No. 122258, petitioner was disqualified from continuing as a candidate only in the May 8, 1995 elections.

Relevant to this case is *Codilla v. De Venecia*,[13] which held that **the jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in Sec. 68 of the Omnibus Election Code,** thus:

> . . . [T]he jurisdiction of the COMELEC to disqualify candidates is limited to those enumerated in section 68 of the Omnibus Election Code. All other election offenses are beyond the ambit of COMELEC jurisdiction. They are criminal and not administrative in nature. Pursuant to Sections 265 and 268 of the Omnibus Election Code, the power of the COMELEC is confined to the conduct of preliminary investigation on the alleged election offenses for the purpose of prosecuting the alleged offenders before the regular courts of justice, *viz*:
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> Section 265. *Prosecution.* — The Commission shall, through its duly authorized legal officers, have the exclusive power to

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[13] G.R. No. 150605, December 10, 2002, 393 SCRA 639.

> conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: *Provided, however,* That in the event that the Commission fails to act on any complaint within four months from its filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.
>
> x x x x x x x x x
>
> Section 268. *Jurisdiction of courts.* — The regional trial court shall have the exclusive original jurisdiction to try and decide any criminal action or proceeding for violation of this Code, except those relating to the offense of failure to register or failure to vote which shall be under the jurisdictions of metropolitan or municipal trial courts. From the decision of the courts, appeal will lie as in other criminal cases.[14]

The records did not show that a criminal complaint was filed against petitioner for the election offense of vote-buying under Sec. 261 (a) of the Omnibus Election Code. There was also no evidence that the accessory penalty of disqualification to hold public office under Sec. 264[15] of the same Code was imposed on petitioner by the proper court as a consequence of conviction for an election offense.

Since there is no proof that petitioner was convicted of an election offense under the Omnibus Election Code and sentenced to suffer disqualification to hold public office, the COMELEC, Second Division, committed grave abuse of discretion in

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[14] *Id*. at 670-671.

[15] Omnibus Election Code, Sec. 264. *Penalties*. — Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

pronouncing that absent any showing that petitioner had been bestowed a presidential pardon, amnesty or any other form of executive clemency, petitioner's disqualification from being a candidate for an elective position remains.

In view of the above ruling, the second issue raised by petitioner regarding the necessity of a presidential pardon in order for him to be able to run for an elective office need not be discussed.

Petitioner also contends that the COMELEC gravely abused its discretion in ruling that he was disqualified from running for a mayoralty position under Sec. 40 (b) of the Local Government Code[16] for having been removed from office as a result of an administrative case.

Petitioner's contention is meritorious.

Removal from office entails the ouster of an incumbent before the expiration of his term.[17] In G.R No. 122258, petitioner was **disqualified from continuing as a candidate** for the mayoralty position in the May 8, 1995 elections. The suspension of his proclamation was made permanent, so petitioner never held office from which he could be removed.

In fine, therefore, the COMELEC, Second Division, committed grave abuse of discretion in disqualifying petitioner from running for an elective position under Sec. 40 (b) of the Local Government Code in its Resolutions in SPA No. 01-050 dated May 11, 2001 and in SPA No. 07-410 dated August 28, 2007. The grave abuse of discretion attending the Resolution in this case is tantamount to lack of jurisdiction and thus renders it a nullity, thereby allowing this Court to grant this petition directly against the Resolution of the COMELEC's Second Division.[18]

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[16] Sec. 40. *Disqualifications*. — The following persons are disqualified from running for any elective local position:

x x x x x x x x x

(b) Those removed from office as a result of an administrative case.

[17] *Aparri v. Court of Appeals*, L-30057, January 31, 1984, 127 SCRA 231, 241.

[18] *Supra*, note 4.

WHEREFORE, the petition is *GRANTED*. The Resolution of the COMELEC, Second Division, in SPA Case No. 07-410, promulgated on August 28, 2007, is declared *NULL* and *SET ASIDE*, and petitioner Florentino P. Blanco is held eligible to run for an elective office.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Tinga, Chico-Nazario, Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Carpio Morales, Velasco, Jr., and *Nachura, JJ.,* on official leave.

EN BANC

[G.R. No. 182484. June 17, 2008]

DANIEL MASANGKAY TAPUZ, AURORA TAPUZ-MADRIAGA, LIBERTY M. ASUNCION, LADYLYN BAMOS MADRIAGA, EVERLY TAPUZ MADRIAGA, EXCEL TAPUZ, IVAN TAPUZ and MARIAN TIMBAS, *petitioners, vs.* **HONORABLE JUDGE ELMO DEL ROSARIO, in his capacity as Presiding Judge of RTC Br. 5, Kalibo, SHERIFF NELSON DELA CRUZ, in his capacity as Sheriff of the RTC, THE PHILIPPINE NATIONAL POLICE stationed in Boracay Island, represented by the PNP STATION COMMANDER, THE HONORABLE COURT OF APPEALS IN CEBU 18th DIVISION, SPOUSES GREGORIO SANSON & MA. LOURDES T. SANSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELUCIDATED. — "Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for *certiorari*. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. Willful and deliberate violation of the rule against it is a ground for summary dismissal of the case; it may also constitute direct contempt."

2. ID.; MUNICIPAL CIRCUIT TRIAL COURTS; JURISDICTION IN FORCIBLE ENTRY AND UNLAWFUL DETAINER CASES, EXPLAINED. — The MCTC correctly assumed jurisdiction over the private respondents' complaint, which specifically alleged a cause for forcible entry and not — as petitioners may have misread or misappreciated — a case involving title to or possession of realty or an interest therein. Under Section 33, par. 2 of The Judiciary Reorganization Act, *as amended by Republic Act (R.A.) No. 7691*, exclusive jurisdiction over forcible entry and unlawful detainer cases lies with the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. These first-level courts have had jurisdiction over these cases — called *accion interdictal* — even before the R.A. 7691 amendment, based on the issue of pure *physical* possession (as opposed to the *right* of possession). This jurisdiction is regardless of the assessed value of the property involved; the law established no distinctions based on the assessed value of the property forced into or unlawfully detained. Separately from *accion interdictal* are *accion publiciana* for the recovery of the right of possession as a plenary action, and *accion reivindicacion* for the recovery of ownership. Apparently, these latter actions are the ones the petitioners refer to when they cite Section 33, par. 3, in relation with Section 19, par. 2 of The Judiciary

Reorganization Act of 1980, as amended by Republic Act No. 7691, in which jurisdiction may either be with the first-level courts or the regional trial courts, *depending* on the assessed value of the realty subject of the litigation. As the complaint at the MCTC was patently for forcible entry, that court committed no jurisdictional error correctible by *certiorari* under the present petition.

3. ID.; WRIT OF AMPARO; NOT A WRIT TO PROTECT CONCERNS THAT ARE PURELY PROPERTY OR COMMERCIAL, NOR A WRIT TO BE ISSUED ON AMORPHOUS AND UNCERTAIN GROUNDS. — The writ of amparo was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. **What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of Amparo — in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands — requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit: "(a) The personal circumstances of the petitioner; (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation; ***(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits***; ***(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report***; (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person

responsible for the threat, act or omission; and (f) The relief prayed for. The petition may include a general prayer for other just and equitable reliefs." The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed. Also, the Rule on the Writ of Amparo provides for rules on the institution of separate actions, for the effect of earlier-filed criminal actions, and for the consolidation of petitions for the issuance of a writ of amparo with a subsequently filed criminal and civil action. These rules were adopted to promote an orderly procedure for dealing with petitions for the issuance of the writ of amparo when the parties resort to other parallel recourses.

4. ID.; WRIT OF *HABEAS DATA*; PETITION THEREOF REQUIRES SOME MATERIAL ALLEGATIONS OF THE ULTIMATE FACTS. — Section 6 of the Rule on the Writ of *Habeas Data* requires the following material allegations of ultimate facts in a petition for the issuance of a writ of *habeas data*: "(a) The personal circumstances of the petitioner and the respondent; ***(b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party; (c) The actions and recourses taken by the petitioner to secure the data or information; (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;*** *(e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent*. In case of threats, the relief may include a prayer for an order enjoining the act complained of; and (f) Such other relevant reliefs as are just and equitable."

APPEARANCES OF COUNSEL

Movement of Attorneys for Brotherhood Integrity and Nationalism for petitioners.

Stephen C. Arceño for Sps. Sanson.

R E S O L U T I O N

BRION, *J.*:

Before us for the determination of sufficiency of form and substance (*pursuant to Sections 1 and 4 of Rule 65 of the Revised Rules of Court; Sections 1 and 5 of the Rule on the Writ of Amparo;*[1] *and Sections 1 and 6 of the Rule on the Writ of Habeas Data*[2]) is the petition for *certiorari* and for the issuance of the writs of amparo and *habeas* data filed by the above-named petitioners against the Honorable Judge Elmo del Rosario [in his capacity as presiding judge of RTC Br. 5, Kalibo], Sheriff Nelson de la Cruz [in his capacity as Sheriff of the RTC], the Philippine National Police stationed in Boracay Island, represented by the PNP Station Commander, the Honorable Court of Appeals in Cebu, 18th Division, and the spouses Gregorio Sanson and Ma. Lourdes T. Sanson, respondents.

The petition and its annexes disclose the following material antecedents:

The private respondents spouses Gregorio Sanson and Ma. Lourdes T. Sanson (the "*private respondents*"), filed with the Fifth Municipal Circuit Trial Court of Buruanga-Malay, Aklan (the "*MCTC*") a complaint[3] dated 24 April 2006 for **forcible entry** and damages with a prayer for the issuance of a writ of preliminary mandatory injunction against the petitioners Daniel Masangkay Tapuz, Aurora Tapuz-Madriaga, Liberty M. Asuncion, Ladylyn Bamos Madriaga, Everly Tapuz Madriaga, Excel Tapuz, Ivan Tapuz and Marian Timbas (the "*petitioners*") and other John Does numbering about 120. The private respondents alleged in their complaint that: (1) they are the registered owners under TCT No. 35813 of a 1.0093-hectare parcel of land located at Sitio Pinaungon, Balabag, Boracay, Malay, Aklan (the "*disputed land*"); (2) they were the disputed land's prior possessors when

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[1] A.M. No. 07-9-12-SC.

[2] A.M. No. 08-1-16-SC.

[3] *Rollo*, pp. 71-76.

the petitioners — armed with bolos and carrying suspected firearms and together with unidentified persons numbering 120 — entered the disputed land by force and intimidation, without the private respondents' permission and against the objections of the private respondents' security men, and built thereon a nipa and bamboo structure.

In their Answer[4] dated 14 May 2006, the petitioners denied the material allegations of the complaint. They essentially claimed that: (1) they are the actual and prior possessors of the disputed land; (2) on the contrary, the private respondents are the intruders; and (3) the private respondents' certificate of title to the disputed property is spurious. They asked for the dismissal of the complaint and interposed a counterclaim for damages.

The MCTC, after due proceedings, rendered on 2 January 2007 a decision[5] in the private respondents' favor. It found prior possession — the key issue in forcible entry cases — in the private respondents' favor, thus:

"The key that could unravel the answer to this question lies in the Amended Commissioner's Report and Sketch found on pages 245 to 248 of the records and the evidence the parties have submitted. It is shown in the Amended Commissioner's Report and Sketch that the land in question is enclosed by a concrete and cyclone wire perimeter fence in pink and green highlighter as shown in the Sketch Plan (p. 248). Said perimeter fence was constructed by the plaintiffs 14 years ago. The foregoing findings of the Commissioner in his report and sketch collaborated the claim of the plaintiffs that after they acquired the land in question on May 27, 1993 through a Deed of Sale (Annex 'A', Affidavit of Gregorio Sanson, p. 276, rec.), they caused the construction of the perimeter fence sometime in 1993 (Affidavit of Gregorio Sanson, pp. 271-275, rec.).

From the foregoing established facts, it could be safely inferred that the plaintiffs were in actual physical possession of the whole lot in question since 1993 when it was interrupted by the defendants (sic) when on January 4, 2005 claiming to (sic) the Heirs of Antonio

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[4] *Id.*, pp. 87-102.

[5] Penned by Judge Raul C. Barrios, *id.*, pp. 108-115.

Tapuz entered a portion of the land in question with view of inhabiting the same and building structures therein prompting plaintiff Gregorio Sanson to confront them before BSPU, Police Chief Inspector Jack L. Wanky and Barangay Captain Glenn Sacapaño. As a result of their confrontation, the parties signed an Agreement (Annex 'D', Complaint p. 20) wherein they agreed to vacate the disputed portion of the land in question and agreed not to build any structures thereon.

The foregoing is the prevailing situation of the parties after the incident of January 4, 2005 when the plaintiff posted security guards, however, sometime on or about 6:30 A.M. of April 19, 2006, the defendants some with bolos and one carrying a sack suspected to contain firearms with other John Does numbering about 120 persons by force and intimidation forcibly entered the premises along the road and built a nipa and bamboo structure (Annex 'E', Complaint, p. 11) inside the lot in question which incident was promptly reported to the proper authorities as shown by plaintiffs' Certification (Annex 'F', Complaint, p. 12) of the entry in the police blotter and on same date April 19, 2006, the plaintiffs filed a complaint with the Office of the Lupong Tagapamayapa of Barangay Balabag, Boracay Island, Malay, Aklan but no settlement was reached as shown in their Certificate to File Action (Annex 'G', Complaint, p. 13); hence the present action.

Defendants' (sic) contend in their answer that 'prior to January 4, 2005, they were already occupants of the property, being indigenous settlers of the same, under claim of ownership by open continuous, adverse possession to the exclusion of other (sic).' (Paragraph 4, Answer, p. 25).

The contention is untenable. As adverted earlier, the land in question is enclosed by a perimeter fence constructed by the plaintiffs sometime in 1993 as noted by the Commissioner in his Report and reflected in his Sketch, thus, it is safe to conclude that the plaintiffs where (sic) in actual physical possession of the land in question from 1993 up to April 19, 2006 when they were ousted therefrom by the defendants by means of force. Applying by analogy the ruling of the Honorable Supreme Court in the case of *Molina, et al. vs. De Bacud*, 19 SCRA 956, if the land were in the possession of plaintiffs from 1993 to April 19, 2006, defendants' claims to an older possession must be rejected as untenable because possession as a fact cannot be recognized at the same time in two different personalities.

Defendants likewise contend that it was the plaintiffs who forcibly entered the land in question on April 18, 2006 at about 3:00 o'clock in the afternoon as shown in their Certification (Annex 'D', Defendants' Position Paper, p. 135, rec.).

The contention is untenable for being inconsistent with their allegations made to the commissioner who constituted (sic) the land in question that they built structures on the land in question only on April 19, 2006 (Par. D.4, Commissioner's Amended Report, pp. 246 to 247), after there (sic) entry thereto on even date.

Likewise, said contention is contradicted by the categorical statements of defendants' witnesses, Rowena Onag, Apolsida Umambong, Ariel Gac, Darwin Alvarez and Edgardo Pinaranda, in their Joint Affidavit (pp. 143-144, rec.) [sic] categorically stated 'that on or about April 19, 2006, a group of armed men entered the property of our said neighbors and built plastic roofed tents. These armed men threatened to drive our said neighbors away from their homes but they refused to leave and resisted the intruding armed men.'

From the foregoing, it could be safely inferred that no incident of forcible entry happened on April 18, 2006 but it was only on April 19, 2006 when the defendants overpowered by their numbers the security guards posted by the plaintiffs prior to the controversy.

Likewise, defendants (sic) alleged burnt and other structures depicted in their pictures attached as annexes to their position paper were not noted and reflected in the amended report and sketch submitted by the Commissioner, hence, it could be safely inferred that these structures are built and (sic) situated outside the premises of the land in question, accordingly, they are irrelevant to the instant case and cannot be considered as evidence of their actual possession of the land in question prior to April 19, 2006."[6]

The petitioners appealed the MCTC decision to the Regional Trial Court ("*RTC,*" Branch 6 of Kalibo, Aklan) then presided over by Judge Niovady M. Marin ("*Judge Marin*").

On appeal, Judge Marin granted the private respondents' motion for the issuance of a *writ of preliminary mandatory injunction* through an Order dated 26 February 2007, with the

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[6] *Id.*, pp. 111-113.

issuance conditioned on the private respondents' posting of a bond. The writ[7] — authorizing the immediate implementation of the MCTC decision — was actually issued by respondent Judge Elmo F. del Rosario (the "*respondent Judge*") on 12 March 2007 after the private respondents had complied with the imposed condition. The petitioners moved to reconsider the issuance of the writ; the private respondents, on the other hand, filed a motion for demolition.

The respondent Judge subsequently denied the petitioners' Motion for Reconsideration and to Defer Enforcement of Preliminary Mandatory Injunction in an Order dated 17 May 2007.[8]

Meanwhile, the petitioners opposed the motion for demolition.[9] The respondent Judge nevertheless issued *via* a Special Order[10] a writ of demolition to be implemented fifteen (15) days after the Sheriff's written notice to the petitioners to voluntarily demolish their house/s to allow the private respondents to effectively take actual possession of the land.

The petitioners thereafter filed on 2 August 2007 with the Court of Appeals, Cebu City, a Petition for Review[11] (under Rule 42 of the 1997 Rules of Civil Procedure) of the ***Permanent Mandatory Injunction and Order of Demolition of the RTC of Kalibo, Br. 6 in Civil Case No. 7990***.

Meanwhile, respondent Sheriff Nelson R. dela Cruz issued the Notice to Vacate and for Demolition on 19 March 2008.[12]

It was against this factual backdrop that the petitioners filed the present petition last 29 April 2008. The petition contains

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[7] *Id*., p. 191.

[8] *Id.*, p. 44.

[9] *Id*., pp. 66-70.

[10] *Id*., p. 79.

[11] *Id*., pp. 117-150; dated and filed 2 August 2007.

[12] *Id*., p. 116.

and prays for three remedies, namely: a petition for *certiorari* under Rule 65 of the Revised Rules of Court; the issuance of a writ of *habeas data* under the Rule on the Writ of *Habeas Data*; and finally, the issuance of the writ of amparo under the Rule on the Writ of Amparo.

To support the petition and the remedies prayed for, the petitioners present factual positions diametrically opposed to the MCTC's findings and legal reasons. Most importantly, the petitioners maintain their claims of *prior possession* of the disputed land and of *intrusion* into this land by the private respondents. The material factual allegations of the petition — bases as well of the petition for the issuance of the writ of amparo — read:

"29. On April 29, 2006 at about 9:20 a.m. armed men **sporting 12 gauge shot guns intruded into the property of the defendants** [the land in dispute]. They were not in uniform. They fired their shotguns at the defendants. Later the following day at 2:00 a.m. two houses of the defendants were burned to ashes.

30. These armed men [without uniforms] removed the barbed wire fence put up by defendants to protect their property from intruders. Two of the armed men trained their shotguns at the defendants who resisted their intrusion. One of them who was identified as SAMUEL LONGNO *y* GEGANSO, 19 years old, single, and a resident of Binunan, Batad, Iloilo, fired twice.

31. **The armed men torched two houses of the defendants reducing them to ashes. [...]**

32. These acts of TERRORISM and (heinous crime) of ARSON were reported by one of the HEIRS OF ANTONIO TAPUZ [...]. The terrorists trained their shotguns and fired at minors namely IVAN GAJISAN and MICHAEL MAGBANUA, who resisted their intrusion. Their act is a blatant violation of the law penalizing Acts of Violence against women and children, which is aggravated by the use of high-powered weapons.

[…]

34. That the threats to the life and security of the poor indigent and unlettered petitioners continue because the private respondents Sansons have under their employ armed men and they are influential with the police authorities owing to their financial and political clout.

35. The actual prior occupancy, as well as the ownership of the lot in dispute by defendants and the atrocities of the terrorists [introduced into the property in dispute by the plaintiffs] are attested by witnesses who are persons not related to the defendants are therefore disinterested witnesses in the case namely: Rowena Onag, Apolsida Umambong, Ariel Gac, Darwin Alvarez and Edgardo Penarada. Likewise, the affidavit of Nemia T. Carmen is submitted to prove that the plaintiffs resorted to atrocious acts through hired men in their bid to unjustly evict the defendants."[13]

The petitioners posit as well that the MCTC has no jurisdiction over the complaint for forcible entry that the private respondents filed below. Citing Section 33 of *The Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691*,[14] they maintain that the forcible entry case in fact involves issues of title to or possession of real property or an interest therein, with the assessed value of the property involved exceeding ₱20,000.00; thus, the case should be originally cognizable by the RTC. Accordingly, the petitioners reason out that the RTC — to where the MCTC decision was appealed — equally has no jurisdiction to rule on the case on appeal and could not have validly issued the assailed orders.

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[13] *Id.*, pp. 11-12.

[14] Section 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:

[…]

(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 disputed 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.

OUR RULING

We find the petitions for *certiorari* and issuance of a writ of *habeas data* fatally defective, both in substance and in form. The petition for the issuance of the writ of amparo, on the other hand, is fatally defective with respect to content and substance.

The Petition for *Certiorari*

We conclude, based on the outlined material antecedents that led to the petition, that the petition for *certiorari* to nullify the assailed RTC orders has been **filed out of time**. It is not lost on us that the petitioners have a pending petition with the Court of Appeals (the "*CA petition*") for the review of the same RTC orders now assailed in the present petition, although the petitioners never disclosed *in the body of the present petition* the exact status of their pending CA petition. The CA petition, however, was filed with the Court of Appeals on 2 August 2007, which indicates to us that the assailed orders (or at the very least, the latest of the interrelated assailed orders) were received on ***1 August 2007*** at the latest. The present petition, on the other hand, was filed on April 29, 2008 or more than eight months from the time the CA petition was filed. Thus, the present petition is separated *in point of time* from the assumed receipt of the assailed RTC orders by at least eight (8) months, *i.e.*, beyond the reglementary period of sixty (60) days[15] from receipt of the assailed order or orders or from notice of the denial of a seasonably filed motion for reconsideration.

We note in this regard that the petitioners' counsel stated in his attached "Certificate of Compliance with Circular #1-88 of the Supreme Court"[16] ("*Certificate of Compliance*") that "*in the meantime the RTC and the Sheriff issued a NOTICE TO*

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[15] Under Section 4, Rules 65 of the Revised Rules of Court.

[16] *Rollo*, pp. 27-28; A separate substitute compliance for the required Statement of Material Dates in petitions for *certiorari* under the second paragraph of Section 3, Rule 46, in relations with Rules 56 and 65 of the Revised Rules of Court.

VACATE AND FOR DEMOLITION not served to counsel but to the petitioners who sent photo copy of the same NOTICE to their counsel on April 18, 2008 by LBC." To guard against any insidious argument that the present petition is timely filed because of this Notice to Vacate, we feel it best to declare now that the counting of the 60-day reglementary period under Rule 65 cannot start from the April 18, 2008 date cited by the petitioners' counsel. The Notice to Vacate and for Demolition is not an order that exists independently from the RTC orders assailed in this petition and in the previously filed CA petition. It is merely a notice, made in compliance with one of the assailed orders, and is thus an administrative enforcement medium that has no life of its own separately from the assailed order on which it is based. It cannot therefore be the appropriate subject of an independent petition for *certiorari* under Rule 65 in the context of this case. The April 18, 2008 date cannot likewise be the material date for Rule 65 purposes as the above-mentioned Notice to Vacate is not even directly assailed in this petition, as the petition's Prayer patently shows.[17]

Based on the same material antecedents, we find too that the petitioners have been guilty of willful and deliberate misrepresentation before this Court and, at the very least, of forum shopping.

By the petitioners' own admissions, they filed a petition with the Court of Appeals (docketed as CA-G.R. SP No. 02859) for the review of the orders now also assailed in this petition, but brought the present recourse to us, allegedly because "*the CA did not act on the petition up to this date* and *for the petitioner* (sic) *to seek relief in the CA would be a waste of time and would render the case moot and academic since the CA refused to resolve pending urgent motions and the Sheriff is determined to enforce a writ of demolition despite the defect of LACK OF JURISDICTION.*"[18]

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[17] *Id.,* p. 24.

[18] *Id.*, p. 9, par. 23 of the Petition.

Interestingly, the petitioners' counsel — while making this claim in the body of the petition — at the same time represented in his Certificate of Compliance[19] that:

"x x x x x x x x x

(e) the petitioners went up to the Court of Appeals to question the WRIT OF PRELIMINARY INJUNCTION copy of the petition is attached (*sic*);

(f) **the CA initially issued a resolution denying the PETITION because it held that the ORDER TO VACATE AND FOR DEMOLITION OF THE HOMES OF PETITIONERS is not capable of being the subject of a PETITION FOR RELIEF,** copy of the resolution of the CA is attached hereto; *(underscoring supplied)*

(g) Petitioners filed a motion for reconsideration on August 7, 2007 but up to this date the same had not been resolved copy of the MR is attached (*sic*).

x x x x x x x x x"

The difference between the above representations on what transpired at the appellate court level is replete with significance regarding the petitioners' intentions. We discern — from the petitioners' act of misrepresenting in the body of their petition that "*the CA did not act on the petition up to this date*" while stating the real Court of Appeals action in the Certification of Compliance — the intent to hide the real state of the remedies the petitioners sought below in order to mislead us into action on the RTC orders without frontally considering the action that the Court of Appeals had already undertaken.

At the very least, the petitioners are obviously seeking to obtain from us, *via* the present petition, the same relief that it could not wait for from the Court of Appeals in CA-G.R. SP No. 02859. The petitioners' act of seeking *against the same parties* the nullification of *the same RTC orders* before the appellate court and before us *at the same time,* although made through different mediums that are both improperly used, constitutes willful and deliberate forum shopping that can

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[19] *Supra*, at note 16.

sufficiently serve as basis for the summary dismissal of the petition under the combined application of the fourth and penultimate paragraphs of Section 3, Rule 46; Section 5, Rule 7; Section 1, Rule 65; and Rule 56, all of the Revised Rules of Court. That a wrong remedy may have been used with the Court of Appeals and possibly with us will not save the petitioner from a forum-shopping violation where there is identity of parties, involving the same assailed interlocutory orders, with the recourses existing side by side at the same time.

To restate the prevailing rules, "forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for *certiorari*. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. Willful and deliberate violation of the rule against it is a ground for summary dismissal of the case; it may also constitute direct contempt."[20]

Additionally, the required verification and certification of non-forum shopping is defective as one (1) of the seven (7) petitioners — Ivan Tapuz — did not sign, in violation of Sections 4 and 5 of Rule 7; Section 3, Rule 46; Section 1, Rule 65; all in relation with Rule 56 of the Revised Rules of Court. Of those who signed, only five (5) exhibited their postal identification cards with the Notary Public.

In any event, we find the present petition for *certiorari*, on its face and on the basis of the supporting attachments, to be devoid of merit. The MCTC correctly assumed jurisdiction over the private respondents' complaint, which specifically alleged

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[20] *Spouses Julita dela Cruz v. Pedro Joaquin,* G.R. No. 162788, July 28, 2005, 464 SCRA 576.

a cause for forcible entry and not — as petitioners may have misread or misappreciated — a case involving title to or possession of realty or an interest therein. Under Section 33, par. 2 of The Judiciary Reorganization Act, *as amended by Republic Act (R.A.) No. 7691*, exclusive jurisdiction over forcible entry and unlawful detainer cases lies with the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts. These first-level courts have had jurisdiction over these cases — called *accion interdictal* — even before the R.A. 7691 amendment, based on the issue of pure *physical* possession (as opposed to the *right* of possession). This jurisdiction is regardless of the assessed value of the property involved; the law established no distinctions based on the assessed value of the property forced into or unlawfully detained. Separately from *accion interdictal* are *accion publiciana* for the recovery of the right of possession as a plenary action, and *accion reivindicacion* for the recovery of ownership.[21] Apparently, these latter actions are the ones the petitioners refer to when they cite Section 33, par. 3, in relation with Section 19, par. 2 of The Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691, in which jurisdiction may either be with the first-level courts or the regional trial courts, *depending* on the assessed value of the realty subject of the litigation. As the complaint at the MCTC was patently for forcible entry, that court committed no jurisdictional error correctible by *certiorari* under the present petition.

In sum, the petition for *certiorari* should be dismissed for the cited formal deficiencies, for violation of the non-forum shopping rule, for having been filed out of time, and for substantive deficiencies.

The Writ of Amparo

To start off with the basics, the writ of amparo was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these

[21] *Reyes v. Sta. Maria*, No. L-33213, June 29, 1979, 91 SCRA 164.

extraordinary concerns. It is intended to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules, or as a remedy supplemental to these Rules. **What it is not, is a writ to protect concerns that are purely property or commercial. Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of Amparo — in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands — requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit:

"(a) The personal circumstances of the petitioner;

(b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

(f) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs."[22]

The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of

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[22] Section 5 of the Rule on the Writ of Amparo.

how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed.

The issuance of the writ of amparo in the present case is anchored on the factual allegations heretofore quoted,[23] that are essentially repeated in paragraph 54 of the petition. These allegations are supported by the following documents:

"(a) Joint Affidavit dated 23 May 2006 of Rowena B. Onag, Apolsida Umambong, Ariel Gac, Darwin Alvarez and Edgardo Pinaranda, supporting the factual positions of the petitioners, *id*., petitioners' prior possession, private respondents' intrusion and the illegal acts committed by the private respondents and their security guards on 19 April 2006;

(b) Unsubscribed Affidavit of Nemia Carmen *y* Tapuz, alleging the illegal acts (firing of guns, *etc*.) committed by a security guard against minors — descendants of Antonio Tapuz;

(c) Unsubscribed Affidavit of Melanie Tapuz *y* Samindao, essentially corroborating Nemia's affidavit;

(d) Certification dated 23 April 2006 issued by Police Officer Jackson Jauod regarding the incident of petitioners' intrusion into the disputed land;

(e) Certification dated 27 April 2006 issued by Police Officer Allan R. Otis, narrating the altercation between the Tapuz family and the security guards of the private respondents, including the gun-poking and shooting incident involving one of the security guards;

(f) Certification issued by Police Officer Christopher R. Mendoza, narrating that a house owned by Josiel Tapuz, Jr., rented by a certain Jorge Buenavente, was ***accidentally burned by a fire***."

On the whole, what is clear from these statements — both sworn and unsworn — is the overriding involvement of property issues as the petition traces its roots to questions of physical possession of the property disputed by the private parties. If at all, issues relating to the right to life or to liberty can hardly be discerned except to the extent that the occurrence of *past*

[23] At pages 7-8 of this Resolution.

violence has been alleged. The right to security, on the other hand, is alleged only to the extent of the threats and harassments implied from the presence of "armed men bare to the waist" and the alleged pointing and firing of weapons. **Notably, none of the supporting affidavits compellingly show that the threat to the rights to life, liberty and security of the petitioners is imminent or is continuing**.

A closer look at the statements shows that at least two of them — the statements of Nemia Carreon *y* Tapuz and Melanie Tapuz are practically identical and *unsworn.* The Certification by Police Officer Jackson Jauod, on the other hand, simply narrates what had been reported by one Danny Tapuz *y* Masangkay, and even mentions that the burning of two residential houses was "accidental."

As against these allegations are the cited MCTC factual findings in its decision in the forcible entry case which rejected all the petitioners' factual claims. These findings are significantly complete and detailed, as they were made under a full-blown judicial process, *i.e.*, after examination and evaluation of the contending parties' positions, evidence and arguments and based on the report of a court-appointed commissioner.

We preliminarily examine these conflicting factual positions under the backdrop of a dispute (with incidents giving rise to allegations of violence or threat thereof) that was brought to and *ruled upon by* ***the MCTC***; subsequently brought ***to the RTC*** *on* an *appeal that is still pending*; still much later brought ***to the appellate court*** *without conclusive results*; and then brought ***to us*** *on interlocutory incidents involving a plea for the issuance of the writ of amparo* that, if decided as the petitioners advocate, may render the pending RTC appeal moot.

Under these legal and factual situations, we are far from satisfied with the *prima facie* existence of the ultimate facts that would justify the issuance of a writ of amparo. Rather than acts of terrorism that pose a continuing threat to the *persons* of the petitioners, the violent incidents alleged appear to us to be purely *property-related* and focused on the disputed land. Thus, if the petitioners wish to seek redress and hold the alleged

perpetrators criminally accountable, the remedy may lie more in the realm of ordinary criminal prosecution rather than on the use of the extraordinary remedy of the writ of amparo.

Nor do we believe it appropriate at this time to disturb the MCTC findings, as our action may carry the unintended effect, not only of reversing the MCTC ruling independently of the appeal to the RTC that is now in place, but also of nullifying the ongoing appeal process. Such effect, though unintended, will obviously wreak havoc on the orderly administration of justice, an overriding goal that the Rule on the Writ of Amparo does not intend to weaken or negate.

Separately from these considerations, we cannot fail but consider too at this point the indicators, clear and patent to us, that the petitioners' present recourse *via* the remedy of the writ of amparo is a mere subterfuge to negate the assailed orders that the petitioners sought and failed to nullify before the appellate court because of the use of an improper remedial measure. We discern this from the petitioners' misrepresentations pointed out above; from their obvious act of forum shopping; and from the recourse itself to the extraordinary remedies of the writs of *certiorari* and amparo based on grounds that are far from forthright and sufficiently compelling. To be sure, when recourses in the ordinary course of law fail because of deficient legal representation or the use of improper remedial measures, neither the writ of *certiorari* nor that of amparo — extraordinary though they may be — will suffice to serve as a curative substitute. The writ of amparo, particularly, should not issue when applied for as a substitute for the appeal or *certiorari* process, or when it will inordinately interfere with these processes — the situation obtaining in the present case.

While we say all these, we note too that the Rule on the Writ of Amparo provides for rules on the institution of separate actions,[24] for the effect of earlier-filed criminal actions,[25] and

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[24] SEC. 21. *Institution of Separate Actions.* — This Rule shall not preclude the filing of separate criminal, civil or administrative actions.

[25] SEC. 22. *Effect of Filing of a Criminal Action.* — When a criminal action has been commenced, no separate petition for the writ shall be filed.

for the consolidation of petitions for the issuance of a writ of amparo with a subsequently filed criminal and civil action.[26] These rules were adopted to promote an orderly procedure for dealing with petitions for the issuance of the writ of amparo when the parties resort to other parallel recourses.

Where, as in this case, there is an ongoing civil process dealing directly with the possessory dispute and the reported acts of violence and harassment, we see no point in separately and directly intervening through a writ of amparo in the absence of any clear *prima facie* showing that the right to life, liberty or security — the *personal* concern that the writ is intended to protect — is immediately in danger or threatened, or that the danger or threat is continuing. We see no legal bar, however, to an application for the issuance of the writ, *in a proper case*, by motion in a pending case on appeal or on *certiorari*, applying by analogy the provisions on the co-existence of the writ with a separately filed criminal case.

The Writ of *Habeas Data*

Section 6 of the Rule on the Writ of *Habeas Data* requires the following material allegations of ultimate facts in a petition for the issuance of a writ of *habeas data*:

"(a) The personal circumstances of the petitioner and the respondent;

(b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;

The reliefs under the writ shall be available by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of *amparo*.

[26] SEC. 23. *Consolidation.* — When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of *amparo*, the latter shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to apply to the disposition of the reliefs in the petition.

(c) The actions and recourses taken by the petitioner to secure the data or information;

(d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;

(e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.

In case of threats, the relief may include a prayer for an order enjoining the act complained of; and

(f) Such other relevant reliefs as are just and equitable."

Support for the *habeas data* aspect of the present petition only alleges that:

"1. […] Similarly, a petition for a WRIT OF *HABEAS DATA* is prayed for so that the PNP may release the report on the burning of the homes of the petitioners and the acts of violence employed against them by the private respondents, furnishing the Court and the petitioners with copy of the same;

[…]

66. Petitioners apply for a WRIT OF *HABEAS DATA* commanding the Philippine National Police [PNP] to produce the police report pertaining to the burning of the houses of the petitioners in the land in dispute and likewise the investigation report if an investigation was conducted by the PNP."

These allegations obviously lack what the Rule on Writ of *Habeas Data* requires as a minimum, thus rendering the petition fatally deficient. Specifically, we see no concrete allegations of unjustified or unlawful violation of the right to privacy related to the right to life, liberty or security. The petition likewise has not alleged, much less demonstrated, any need for information under the control of police authorities other than those it has already set forth as integral annexes. The necessity or justification for the issuance of the writ, based on the insufficiency of previous efforts made to secure information, has not also been shown. In sum, the prayer for the issuance of a writ of *habeas data* is

nothing more than the "*fishing expedition*" that this Court — in the course of drafting the Rule on *habeas data* — had in mind in defining *what the purpose of a writ of habeas data is not.* In these lights, the outright denial of the petition for the issuance of the writ of *habeas data* is fully in order.

WHEREFORE, premises considered, we hereby *DISMISS* the present petition *OUTRIGHT* for deficiencies of form and substance patent from its body and attachments.

SO ORDERED.

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

Carpio Morales, Velasco, Jr., and *Nachura, JJ.,* on official leave.

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