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SUPREME COURT

OF THE

PHILIPPINES

FROM

NOVEMBER 18, 2008 TO NOVEMBER 27, 2008

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 176951. November 18, 2008]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; and MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON,** *respondents.*

CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF

TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM, *petitioners-in-intervention.*

[G.R. No. 177499. November 18, 2008]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; and MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL,** *respondents.*

CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM, *petitioners-in-intervention.*

[G.R. No. 178056. November 18, 2008]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP) represented by LCP National President JERRY P. TREÑAS, CITY OF ILOILO represented by MAYOR JERRY P. TREÑAS, CITY OF CALBAYOG represented by MAYOR MEL SENEN S. SARMIENTO, and JERRY P. TREÑAS in his personal capacity as taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; and MUNICIPALITY OF EL SALVADOR, MISAMIS ORIENTAL,** *respondents.*

CITY OF TARLAC, CITY OF SANTIAGO, CITY OF IRIGA, CITY OF LIGAO, CITY OF LEGAZPI, CITY OF TAGAYTAY, CITY OF SURIGAO, CITY OF BAYAWAN, CITY OF SILAY, CITY OF GENERAL SANTOS, CITY OF ZAMBOANGA, CITY OF GINGOOG, CITY OF CAUAYAN, CITY OF PAGADIAN, CITY OF SAN CARLOS, CITY OF SAN FERNANDO, CITY OF TACURONG, CITY OF TANGUB, CITY OF OROQUIETA, CITY OF URDANETA, CITY OF VICTORIAS, CITY OF CALAPAN, CITY OF HIMAMAYLAN, CITY OF BATANGAS, CITY OF BAIS, CITY OF CADIZ, and CITY OF TAGUM, *petitioners-in-intervention.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PARTIES OF LEGAL STANDING IN CASE AT BAR, WHICH IS AN ACTION FOR PROHIBITION TO TEST THE CONSTITUTIONALITY OF LAWS ADMINISTERED BY COMELEC LIKE THE CITYHOOD LAWS WHERE PLEBISCITES ARE DIRECTED TO BE HELD IN IMPLEMENTATION THEREOF.— Prohibition is the proper action for testing the constitutionality of laws administered

by the COMELEC, like the Cityhood Laws, which direct the COMELEC to hold plebiscites in implementation of the Cityhood Laws. Petitioner League of Cities of the Philippines has legal standing because Section 499 of the Local Government Code tasks the League with the "primary purpose of ventilating, articulating and crystallizing issues affecting city government administration and securing, through proper and legal means, solutions thereto." Petitioners-in-intervention, which are existing cities, have legal standing because their Internal Revenue Allotment will be reduced if the Cityhood Laws are declared constitutional. Mayor Jerry P. Treñas has legal standing because as Mayor of Iloilo City and as a taxpayer he has sufficient interest to prevent the unlawful expenditure of public funds, like the release of more Internal Revenue Allotment to political units than what the law allows.

2. POLITICAL LAW; ADMINISTRATIVE LAW; RA NO. 9009 (ACT AMENDING SEC. 450 OF THE 1991 LOCAL GOVERNMENT CODE, INCREASING AVERAGE ANNUAL INCOME REQUIREMENT FOR MUNICIPALITY OR CLUSTER OF BARANGAYS TO BE CONVERTED INTO A COMPONENT CITY); PROSPECTIVE APPLICATION IN CASE AT BAR.— RA 9009 became effective on 30 June 2001 during the 11th Congress. This law specifically amended Section 450 of the Local Government Code. RA 9009 increased the income requirement for conversion of a municipality into a city from ₱20 million to ₱100 million. Section 450 of the Local Government Code, as amended by RA 9009, does not provide any exemption from the increased income requirement. Prior to the enactment of RA 9009, a total of 57 municipalities had cityhood bills pending in Congress. Thirty-three cityhood bills became law before the enactment of RA 9009. **Congress did not act on 24 cityhood bills during the 11th Congress**. During the 12th Congress, the House of Representatives adopted Joint Resolution No. 29, exempting from the income requirement of ₱100 million in RA 9009 the 24 municipalities whose cityhood bills were not acted upon during the 11th Congress. This Resolution reached the Senate. **However, the 12th Congress adjourned without the Senate approving Joint Resolution No. 29. During the 13th Congress,** 16 of the 24 municipalities mentioned in the unapproved Joint Resolution No. 29 filed between November and December of 2006, through

their respective sponsors in Congress, individual cityhood bills containing a common provision, as follows: Exemption from Republic Act No. 9009. — The City of xxx shall be exempted from the income requirement prescribed under Republic Act No. 9009. **This common provision exempted each of the 16 municipalities from the income requirement of P100 million prescribed in Section 450 of the Local Government Code, as amended by RA 9009.** These cityhood bills lapsed into law on various dates from March to July 2007 after President Gloria Macapagal-Arroyo failed to sign them. Indisputably, Congress passed the Cityhood Laws long ***after*** the effectivity of RA 9009. **RA 9009 became effective on 30 June 2001 or during the 11th Congress. The 13th Congress passed in December 2006 the cityhood bills which became law only in 2007.** Thus, respondent municipalities cannot invoke the principle of non-retroactivity of laws. This basic rule has no application because RA 9009, an earlier law to the Cityhood Laws, is not being applied retroactively but prospectively.

3. ID.; CONSTITUTIONAL LAW; LOCAL GOVERNMENT; CREATION OF LOCAL GOVERNMENT UNITS MUST FOLLOW THE CRITERIA ESTABLISHED IN THE LOCAL GOVERNMENT CODE, NOT IN ANY OTHER LAW, INCLUDING THE CITYHOOD LAWS.— Section 10, Article X of the 1987 Constitution provides: No province, city, municipality, or *barangay* shall be created, divided, merged, abolished or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one Local Government Code. The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws. The criteria prescribed in the Local Government Code govern exclusively the creation of a city. No other law, not even the charter of the city, can govern such creation. The clear intent of the Constitution is to insure that the creation of cities and other political units must follow **the same uniform, non-**

discriminatory criteria found solely in the Local Government Code. Any derogation or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution. RA 9009 amended Section 450 of the Local Government Code to increase the income requirement from P20 million to ₱100 million for the creation of a city. **This took effect on 30 June 2001. Hence, from that moment the Local Government Code required that any municipality desiring to become a city must satisfy the P100 million income requirement.** Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption from this income requirement. In enacting RA 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills were pending in Congress when Congress passed RA 9009. The Cityhood Laws, all enacted **after** the effectivity of RA 9009, explicitly exempt respondent municipalities from the increased income requirement in Section 450 of the Local Government Code, as amended by RA 9009. **Such exemption clearly violates Section 10, Article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.**

4. **ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; SECTION 450 THEREOF; AMENDMENT UNDER RA NO. 9009 IS PLAIN, CLEAR AND UNAMBIGUOUS; NO RESORT TO EXTRINSIC AIDS NECESSARY.—** There can be no resort to extrinsic aids — like deliberations of Congress — if the language of the law is plain, clear and unambiguous. Courts determine the intent of the law from the literal language of the law, within the law's four corners. If the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms. If a literal application of the law results in absurdity, impossibility or injustice, then courts may resort to extrinsic aids of statutory construction like the legislative history of the law. Congress, in enacting RA 9009 to amend Section 450 of the Local Government Code, did not provide any exemption from the increased income requirement, not even to respondent municipalities whose cityhood bills were then pending when Congress passed RA 9009. Section 450 of the Local Government Code, as amended by RA 9009, contains no

exemption whatsoever. Since the law is clear, plain and unambiguous that any municipality desiring to convert into a city must meet the increased income requirement, there is no reason to go beyond the letter of the law in applying Section 450 of the Local Government Code, as amended by RA 9009.

5. MERCANTILE LAW; PRIVATE CORPORATIONS; BP BLG. 68 (CORPORATION CODE OF THE PHILIPPINES); GENERAL LAW FOR THE CREATION OF PRIVATE CORPORATIONS.— Section 10 of Article X is similar to Section 16, Article XII of the Constitution prohibiting Congress from creating private corporations except by a general law. Section 16 of Article XII provides: **The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations.** Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability. Thus, Congress must prescribe all the criteria for the "formation, organization, or regulation" of private corporations in a **general law applicable to all without discrimination.** Congress cannot create a private corporation through a special law or charter.

6. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; CONGRESS; DELIBERATIONS ON UNAPPROVED BILLS OF ONE CONGRESS, WORTHLESS UPON ADJOURNMENT OF THAT CONGRESS. – Congress is not a continuing body. The **unapproved** cityhood bills filed during the 11th Congress became mere scraps of paper upon the adjournment of the 11th Congress. All the hearings and deliberations conducted during the 11th Congress on unapproved bills also **became worthless upon the adjournment of the 11th Congress. These hearings and deliberations cannot be used to interpret bills enacted into law in the 13th or subsequent Congresses.** The members and officers of each Congress are different. All unapproved bills filed in one Congress become *functus officio* upon adjournment of that Congress and must be re-filed anew in order to be taken up in the next Congress. When their respective authors re-filed the cityhood bills in 2006 during the 13th Congress, the bills had to start from square one again, going through the legislative mill just like bills taken up for the first time, from the filing to the approval. Section 123, Rule XLIV of the Rules of the

Senate, on Unfinished Business, provides: Sec. 123. x x x **All pending matters and proceedings shall terminate upon the expiration of one (1) Congress,** but may be taken by the succeeding Congress **as if presented for the first time.** Similarly, Section 78 of the Rules of the House of Representatives, on Unfinished Business, states: Section 78. Calendar of Business. — The Calendar of Business shall consist of the following: a. Unfinished Business. This is business being considered by the House at the time of its last adjournment. Its consideration shall be resumed until it is disposed of. The Unfinished Business at the end of a session shall be resumed at the commencement of the next session as if no adjournment has taken place. **At the end of the term of a Congress, all Unfinished Business are deemed terminated.** Thus, the deliberations during the 11th Congress on the unapproved cityhood bills, as well as the deliberations during the 12th and 13th Congresses on the unapproved resolution exempting from RA 9009 certain municipalities, have no legal significance. They do not qualify as extrinsic aids in construing laws passed by subsequent Congresses.

7. ID.; ID.; EQUAL PROTECTION CLAUSE; VALID CLASSIFICATION THEREOF; NOT PRESENT IN CITYHOOD BILL IN CASE AT BAR.— The exemption provision in the Cityhood Laws merely states, **"Exemption from Republic Act No. 9009 — The City of . . . shall be exempted from the income requirement prescribed under Republic Act No. 9009."** This one sentence exemption provision contains no classification standards or guidelines differentiating the exempted municipalities from those that are not exempted. Even if we take into account the deliberations in the 11th Congress that municipalities with pending cityhood bills should be exempt from the ₱100 million income requirement, there is still no valid classification to satisfy the equal protection clause. **The exemption will be based solely on the fact that the 16 municipalities had cityhood bills pending in the 11th Congress when RA 9009 was enacted.** This is not a valid classification between those entitled and those not entitled to exemption from the ₱100 million income requirement. To be valid, the classification in the present case must be based on substantial distinctions, rationally related to a legitimate government objective which is the purpose of the law, not limited to existing conditions only, and applicable

to all similarly situated. Thus, this Court has ruled: The equal protection clause of the 1987 Constitution permits a valid classification under the following conditions: 1. The classification must rest on substantial distinctions; 2. The classification must be germane to the purpose of the law; 3. The classification must not be limited to existing conditions only; and 4. The classification must apply equally to all members of the same class. There is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality. Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. In short, the classification criterion — mere pendency of a cityhood bill in the 11th Congress — is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.

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

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; PERSONS WISHING TO CONTEST, ON CONSTITUTIONAL GROUNDS, THE VALIDITY OF THE STATUTE; *LOCUS STANDI*, ELUCIDATED.— In the leading case of *Baker v. Carr*, the United States Supreme Court, speaking through Mr. Justice William J. Brennan, held that "the gist of the question of standing" is whether the party "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Thus, the rule in the United States is that persons wishing to contest, on constitutional grounds, the validity of the statute must be able to show not only that the statute is invalid but also that they have sustained, or are in immediate danger of sustaining, some direct injury as the result of its enforcement. Suffering in some indefinite way in common with people generally would not suffice. In other words, one who is not prejudiced by the enforcement of an act

of Congress cannot question its constitutionality. In the absence of showing of injury, actual, or threatened, there can be no constitutional argument. The rule has been adopted in our jurisdiction. In *House International Building Tenants Association, Inc. v. Intermediate Appellate Court, Joya v. Presidential Commission on Good Government, Integrated Bar of the Philippines v. Zamora, Francisco, Jr. v. The House of Representatives*, and *Anak Mindanao Party-list Group v. The Executive Secretary*, among others, this Court made similar pronouncements on *locus standi*. In the last mentioned case, the Court summarized the rule, thus: *Locus Standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. xxx a party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of. For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action. Parties can have *locus standi* depending on the personality they assume. Parties may come to the Court as (1) organizations and groups representing their own interests; (2) organizations and groups representing the interests of their members; (3) individuals championing a class; (4) political subdivisions; (5) public officials; (6) members of Congress; (7) taxpayers; (8) corporations and other business entities; (9) citizens, residents, and aliens; (10) health professionals; (11) voters; and (12) other miscellaneous classes.

2. ID.; ID.; ID.; ID.; LEAGUE OF CITIES OF THE PHILIPPINES, WHO STAND TO SUFFER REDUCTION OF THE IRA THEY ARE PRESENTLY RECEIVING DUE TO CONVERSION OF RESPONDENT MUNICIPALITIES INTO CITIES, HAS LEGAL STANDING.— The League of Cities of the Philippines has legal standing. As averred in its petition, it is an association of cities in the Philippines, and is organized and existing by virtue of Philippine laws. In fact, its existence is sanctioned by Section 13, Article X of the 1987 Constitution, and Section 499 of the Local Government Code. As a juridical person or entity, it may be a party to a civil action. It has a legal personality of its own. It may sue or be sued in its name, in conjunction with the laws and regulations of its organization. Petitioners City of Iloilo and City of Calbayog, and petitioners-in-intervention, who are all members of the League of Cities of the Philippines, also have legal standing. Aside from being public corporations by virtue of their being cities, they stand to suffer a reduction or decrease of the IRA they are presently receiving due to the conversion of respondent municipalities into cities.

3. ID.; ID.; ID.; ID.; A TAXPAYER WHO WOULD BE INJURED BY THE UNLAWFUL EXPENDITURE OF PUBLIC FUNDS HAS LEGAL STANDING FOR A TAXPAYER'S SUIT; CASE AT BAR.— Jerry P. Treñas, as taxpayer, has *locus standi*. A person who pays taxes or is liable to pay taxes for the support of a taxing unit, and who would be injured by the unlawful expenditure of public funds by the illegal disposition of the public property of such unit, or by any other illegal act which would increase his or her burden of taxation, has *locus standi* to institute and maintain a taxpayer's suit. This is regardless of the amount or kind of taxes being paid. In *Velarde v. Social Justice Society,* reiterating the doctrine in *Del Mar v. Philippine Amusement and Gaming Corporation,* the Court held that "parties suing as taxpayers must specifically prove that they have sufficient interest in preventing the illegal expenditure of money raised by taxation." A taxpayer's suit "may be properly brought only when there is an exercise by Congress of its taxing or spending power." Here, there is no question that the conduct of the plebiscites required under the cityhood laws and the consequent release of the respective IRAs of respondent municipalities as cities, entails the spending of funds sourced

from the public coffers. Clearly, there is an exercise by Congress of its taxing or spending power.

4. ID.; ID.; ID.; ID.; ECONOMIC INJURY AS CONSEQUENCE OF CONVERSION OF MUNICIPALITIES INTO CITIES IS A VALID BASIS FOR ACQUIRING *LOCUS STANDI* AND JUDICIAL REVIEW.— There is no merit to the contention of respondent COMELEC and respondent municipalities that the petitions and petitions-in-intervention are based on mere "speculative injury" that supposedly render them devoid of any actual controversy. This is belied by the allegations in the petitions and the petitions-in-intervention. There actually exist diametrically opposed views among the contending parties as regards the validity of the cityhood laws. Too, petitioners and petitioners-in-intervention have sufficiently averred economic injury to their city budgets and their plans and projects as a consequence of the conversion of respondent municipalities into component cities. Economic injury is a valid basis for acquiring *locus standi* and judicial review.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; PROPER REMEDY TO QUESTION THE CONSTITUTIONALITY OF CITYHOOD LAWS.— The Constitution grants to the Court original jurisdiction over petitions for prohibition. Although this original jurisdiction over petitions for prohibition (together with petitions for *certiorari*, *mandamus*, *quo warranto*, and *habeas corpus*) is concurrent with that of the Regional Trial Courts and the Court of Appeals, the established policy is that this Court allows the direct invocation of its original jurisdiction "if compelling reasons, or the nature and importance of the issues raised, warrant," or "in the interest of speedy justice and to avoid future litigations so as to promptly put an end to the present controversy." The Court should take cognizance of the petitions and petitions-in-intervention because the issues raised are exceptional and of paramount importance. They involve substantial public interest that warrant no less than the intervention of this Court so that said issues may be settled. In *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission,* the Court synthesized the requirements for a petition for prohibition, thus: (1) it must be directed against a tribunal, corporation, board, officer, or person exercising functions, judicial, quasi-judicial, or

ministerial; (2) the tribunal, corporation, board, or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any other plain, speedy, and adequate remedy in the contrary course of law. It is true that the usual function of the writ of prohibition is to prevent the execution of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished. The office of prohibition is to arrest proceedings rather than to undo them. A preventive remedy, as a rule, does not lie to restrain an act that is already *fait accompli*. However, courts may take exceptions. In the performance of their duties, courts should not be shackled by stringent rules which would result in manifest injustice. Rules of procedure are only tools crafted to facilitate the attainment of justice. Their strict and rigid application, if they result in technicalities that tend to frustrate rather than promote substantial justice, must be eschewed. Substantial rights must not be prejudiced by a rigid and technical application of the rules in the altar of expediency. When a case is impressed with public interest, a relaxation of the application of the rules is in order. Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.

6. POLITICAL LAW; CONSTITUTIONAL LAW; LOCAL GOVERNMENTS; CREATION OF LOCAL GOVERNMENT UNITS; ELUCIDATED.— Section 10, Article X of the 1987 Constitution states: No province, city, municipality, or *barangay* **shall** be created, divided, merged, abolished, or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. What the provision means is that once the Local Government Code is enacted, the creation, modification, or dissolution of local government units must conform with the criteria thus laid down. The use of the word "shall" in a constitutional provision is generally considered as a mandatory command, though the word "shall" may receive a permissive interpretation when necessary to carry out the ture intent of the provision where the word is found. Thus, it is not always the case that the use of the word "shall" is conclusive. However, a reading of Section 10, Article X cannot be construed as anything else but mandatory. That said Section 10

is mandatory is all the more bolstered by the use of the negative and prohibitory words **"[n]o** province, city x x x may be created x x x **except** in accordance with x x x." In *Varney v. Justice* and *Hunt v. State*, it was held that if the language used in the Constitution is prohibitory, it should be construed to mean a positive and unequivocal negation. Section 10, Article X is clear: (a) the creation, division, merger or abolition or alteration of boundaries of local government units must be in accordance with the criteria set forth in the Local Government Code; and (b) such act must be approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit directly affected. On one hand, it should be in accordance with the criteria set forth in the Local Government Code because the creation, division, merger, or abolition of political units is part of the larger power to enact laws which the Constitution vests in Congress. It is also to ensure uniformity in criteria. On the other hand, the plebiscite is required as a check against the pernicious political practice of gerrymandering. No better control exists against this excess than through the exercise of direct people power, which promotes local autonomy. After all, local autonomy is guaranteed by the Constitution.

7. ID.; ID.; ID.; ID.; R.A. NO. 9009 AMENDING SEC. 450 OF THE LOCAL GOVERNMENT CODE, EXEMPTING MUNICIPALITIES FROM INCOME REQUIREMENT OF ₱100,000,000; THE CITYHOOD LAWS MERELY CARRYING OUT R.A. NO. 9009 ARE IN ACCORDANCE WITH THE CRITERIA UNDER THE CODE, PURSUANT TO THE 1987 CONSTITUTION.— The intent of R.A. No. 9009, which amended Section 450 of the Local Government Code, is to exempt respondent municipalities from the income requirement of ₱100,000,000.00. Thus, the cityhood laws, which merely carry out the intent of R.A. No. 9009, are in accordance with the "criteria established in the Local Government Code," pursuant to Section 10, Article X of the 1987 Constitution. What Congress had in mind is not at all times accurately reflected in the language of the statute. Thus, the literal interpretation of a statute may render it meaningless; and lead to absurdity, injustice, or contradiction. When this happens, and following the rule that the intent or the spirit of the law is the law itself, resort should be had to the principle that the spirit of the law controls its letter. Not to the letter that killeth, but to the spirit that vivifieth. **Hindi**

and letra na pumapatay, kung hindi and diwa na nagbibigay buhay.

8. ID.; ID.; ID.; ID.; ID.; ID.; NO RETROACTIVE EFFECT. – The deliberations of Congress are necessary to ferret out the intent of the legislature in enacting R.A. No. 9009. It is very clear that **Congress intended that the then pending cityhood bills would not be covered by the income requirement of ₱100,000,000.00 imposed by R.A. No. 9009. It was made clear by the Legislature that R.A. No. 9009 would not have any retroactive effect.** Be that as it may, the Civil Code is explicit that laws shall have no retroactive effect unless the contrary is provided. This is expressed in the familiar legal maxim, *lex prospicit, non respicit.* The law looks forward, never backward. **Ang batas ay tumitingin sa hinaharap, hindi sa nakaraan.** The reason behind the rule is not difficult to perceive. The retroactive application of the law usually divests rights that have already become vested or impairs the obligations of contracts, thus, is unconstitutional. It then becomes clear that the basis for the inclusion of the exemption clause of the cityhood laws is the clear-cut *intent* of the Legislature of not giving retroactive effect to R.A. No. 9009. In fact, not only do the legislative records bear the legislative intent of exempting the cityhood laws from the income requirement of ₱100,000,000.00 imposed by R.A. No. 9009. Congress has now made its intent **express** in the cityhood laws.

9. INTERPRETATION OF STATUTES ; STATUTORY CONSTRUCTION; LEGISLATURE; INTENT OF THE LAW IS THE CONTROLLING FACTOR.— Legislative intent or spirit is the controlling factor, the leading star and guiding light in the application and interpretation of a statute. If a statute needs construction, the influence most dominant in that process is the intent or spirit of the act. The spirit, rather than the letter, of a statute, determines its construction. Thus, a statute must be read according to its spirit or intent. For what is within the spirit is within the statute although it is not within its letter, and that which is within the letter but not within the spirit is not within the statute. Stated otherwise, a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers. Legislative intent is part and parcel of the law.

It is the controlling factor in interpreting a statute. In fact, any interpretation that runs counter with the legislative intent is unacceptable and invalid. *Verba intentioni, non e contra debent inservire.* Words ought to be more subservient to the intent than intent to the words. **Ang mga salita ng batas ay dapat higit na sumunod sa layunin kaysa and layunin ang sumunod sa mga salita nito.**

10. ID.; ID.; ID.; PRESUMPTION OF CONSTITUTIONALITY; CASE AT BAR.— On the side of every law lies the presumption of constitutionality. Consequently, before a law is nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. Laws will only be declared invalid if the conflict with the Constitution is clear beyond reasonable doubt. A declaration of the unconstitutionality of a statute is only done (a) as a last resort; (b) when absolutely necessary; (c) when the statute is in palpable conflict with a plain provision of the Constitution; and (d) when the invalidity is beyond reasonable doubt. The presumption of constitutionality accorded to statutes produces a grave consequence — anyone who wants a statute to be declared unconstitutional bears the *onus probandi*. What should not be overlooked is that the cityhood laws enjoy the presumption of constitutionality. Petitioners and petitioners-in-intervention bear the heavy burden of overcoming such presumption. However, the majority does exactly the opposite. **It shifts the onus probandi to respondent municipalities to prove that their cityhood laws are constitutional. That is violative of the basic rule of evidence.**

11. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION OF LAWS; NOT VIOLATED BY CITYHOOD LAWS; ELUCIDATED.— Article III, Section 1 of the Constitution partly provides that no person shall "be denied the equal protection of the laws." This provision was sourced from the Fourteenth Amendment of the United States Constitution which, among others, provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Although couched differently, the equal protection clause in the United States Constitution has the same meaning as that in the Philippine Constitution. The essence of the command of the equal protection clause is a direction that all persons similarly situated should be treated alike. The primary

objective of the equal protection clause was to secure for the black persons, who were then recently emancipated, the full enjoyment of their freedom. As presently understood, however, equal protection extends to all persons without regard for race, color, or class. It prohibits any state legislation which denies to any race, class, or individual the equal protection of the laws. And as "persons" include corporations, political subdivisions of a state, which are public corporations, are covered by the guarantee of the equal protection clause. Not all classifications are prohibited, however. The equal protection guarantee of the Fourteenth Amendment does not take away from Congress the power of classification. Thus, it is hornbook doctrine that the guaranty of the equal protection of the law is not violated by a legislation based on reasonable classification. However, the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purpose of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class. Using the foregoing as parameters, We rule that the cityhood laws do not violate the equal protection clause. 'The equal protection of the law clause proscribes undue favor and individual favor and individual or class privilege as well as hostile discrimination or the possession of inequality. The equal protection clause is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. Neither does equal protection demand absolute equality among residents. It merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.' Even if the classification of the cityhood laws is limited to existing conditions only, this does not automatically mean that they are unconstitutional. The general rule is that a classification must not be based on existing conditions only. It must also be made for future acquisitions of the class as other subjects acquire the characteristics which form the basis of the classification. The exception is when the statute is curative or remedial, and thus temporary. Here, the cityhood laws are curative or remedial statutes. They seek to prevent the great injustice which would be committed to respondent municipalities. Again, the cityhood laws are not contrary to the spirit and intent of R.A. No. 9009 because Congress intended said law to be prospective, not retroactive,

in application. Indeed, to deny respondent municipalities the same rights and privileges accorded to the other thirty-two (32) municipalities when they are under the same circumstances, is tantamount to denying respondent municipalities the protective mantle of the equal protection clause. In effect, petitioners and petitioners-in-intervention are creating an absurd situation in which an alleged violation of the equal protection clause of the Constitution is remedied by another violation of the equal protection clause. That the Court cannot sustain. A statutory discrimination will not be set aside on the ground of denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it. Class legislation which discriminates against some and favors others is prohibited. But a classification on a reasonable basis, which is not made arbitrarily or capriciously, is permissible.

12. ID.; PRINCIPLE OF SEPARATION OF POWERS; COURTS CANNOT DELVE INTO THE WISDOM OF LEGISLATIVE ENACTMENTS.— It is not the province of the Court to delve into the wisdom of legislative enactments. The only function of courts is the interpretation of laws. The principle of separation of powers prevents them from reinventing laws. By the very nature of the function of the Legislature, it is that branch of government that is vested with being the judge of the necessity, adequacy, wisdom, reasonableness, and expediency of any law. Courts are bereft of any power to take away the prerogatives of the legislature in the guise of construing or interpreting the law. In making choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Courts do not sit to resolve the merits of conflicting theories. That is the prerogative of the political departments. It is settled that questions regarding the wisdom, morality, or practicability of statutes, are not addressed to the judiciary. They may be addressed only by the legislative and executive departments, to which the function belongs in our scheme of government. That function is exclusive, to which courts have no business of prying into. Whichever way the legislative and executive branches decide, they are answerable only to their own conscience and their constituents who will ultimately judge their acts, and not the courts of justice. Courts cannot question the wisdom of the classification made by Congress. This is the prerogative of the Legislature. The power of the Legislature to make distinctions and classifications

among persons is neither curtailed nor denied by the equal protection clause of the Constitution. Legislative power admits of a wide scope of discretion. A law can be violative of the constitutional limitation only when the classification is without reasonable basis. True, courts are given that awesome power to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. There is none here.

13. ID.; STATUTORY CONSTRUCTION; INTERPRETAION OF STATUTES; RESORT TO EXTRINSIC AIDS.— The dissent admits that **courts may resort to extrinsic aids of statutory construction like the legislative history of the law if the literal application of the law results in absurdity, impossibility, or injustice.**

APPEARANCES OF COUNSEL

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Benjamin Paradela Uy for Municipality of Tandag.
Immanuel M. Garde for Himamaylan City.
Lionel A. Titong for Municipality of Borongan.
Noel T. Tiampong for Municipalities of Catbalogan, Samar & Lamitan, Basilan.
Rodolfo R. Zabella, Jr. for Municipality of Tayabas.
Francisco C. Geronilla for Mayor of Makati.
Jaime V. Agtang for Municipality of Batac.
Francisco V. Mijares Jr. & Socorro D'Marie T. Inting for Municipality of Guihulngan.
Randy B. Bulwayan for Municipality of Tabuk.
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Jose Augusto J. Salvacion for Tayabas, Quezon.

Ruby Milagros A. Cortes Damian for Santiago City.
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Raoul C. Creencia & Edwin M. Carillo for the Cities of Mati, Davao and Carcar, Cebu.
The City Legal Officer for Tagum City.
Manuel P. Casino, Gilbert A. Escoto & Ruel CA. Amboy for City of Borongon.
Norberto B. Patriarca for Zamboanga City.
Reggie C. Placido for City of Cadiz.

D E C I S I O N

CARPIO, *J.*:

The Case

These are consolidated petitions for prohibition[1] with prayer for the issuance of a writ of preliminary injunction or temporary restraining order filed by the League of Cities of the Philippines, City of Iloilo, City of Calbayog, and Jerry P. Treñas[2] assailing the constitutionality of the subject Cityhood Laws and enjoining the Commission on Elections (COMELEC) and respondent municipalities from conducting plebiscites pursuant to the Cityhood Laws.

The Facts

During the 11th Congress,[3] Congress enacted into law 33 bills converting 33 municipalities into cities. However, Congress did not act on bills converting 24 other municipalities into cities.

During the 12th Congress,[4] Congress enacted into law Republic Act No. 9009 (RA 9009),[5] which took effect on 30 June 2001.

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[1] Under Section 2, Rule 65 of the 1997 Rules of Civil Procedure.

[2] As National President of the League of Cities of the Philippines, Mayor of Iloilo City, and taxpayer.

[3] June 1998 to June 2001.

[4] June 2001 to June 2004.

[5] Entitled AN ACT AMENDING SECTION 450 OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT

RA 9009 amended Section 450 of the Local Government Code by increasing the annual income requirement for conversion of a municipality into a city from ₱20 million to ₱100 million. The rationale for the amendment was to restrain, in the words of Senator Aquilino Pimentel, "the mad rush" of municipalities to convert into cities solely to secure a larger share in the Internal Revenue Allotment despite the fact that they are incapable of fiscal independence.[6]

After the effectivity of RA 9009, the House of Representatives of the 12th Congress[7] adopted Joint Resolution No. 29,[8] which sought to exempt from the ₱100 million income requirement in RA 9009 the 24 municipalities whose cityhood bills were not approved in the 11th Congress. However, the 12th Congress ended without the Senate approving Joint Resolution No. 29.

During the 13th Congress,[9] the House of Representatives re-adopted Joint Resolution No. 29 as Joint Resolution No. 1 and forwarded it to the Senate for approval. However, the Senate again failed to approve the Joint Resolution. Following the advice of Senator Aquilino Pimentel, 16 municipalities filed, through their respective sponsors, individual cityhood bills. The 16 cityhood bills contained a common provision exempting all the 16 municipalities from the ₱100 million income requirement in RA 9009.

On 22 December 2006, the House of Representatives approved the cityhood bills. The Senate also approved the cityhood bills in February 2007, except that of Naga, Cebu which was passed on 7 June 2007. The cityhood bills lapsed into law (Cityhood

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CODE OF 1991, BY INCREASING THE AVERAGE ANNUAL INCOME REQUIREMENT FOR A MUNICIPALITY OR CLUSTER OF *BARANGAYS* TO BE CONVERTED INTO A COMPONENT CITY.

[6] Sponsorship Speech of Senator Aquilino Pimentel, 5 October 2000.

[7] June 2004 to June 2007.

[8] Entitled *Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress before June 30, 2001 from the Coverage of Republic Act No. 9009*.

[9] June 2007 to June 2010.

Laws[10]) on various dates from March to July 2007 without the President's signature.[11]

[10] The sixteen (16) Cityhood Laws are the following:

Republic Act No. 9389, entitled "An Act converting the Municipality of Baybay in the Province of Leyte into a component city to be known as the City of Baybay." Lapsed into law on 15 March 2007;

Republic Act No. 9390, entitled "An Act converting the Municipality of Bogo, Cebu Province into a component city to be known as the City of Bogo." Lapsed into law on 15 March 2007;

Republic Act No. 9391, entitled "An Act converting the Municipality of Catbalogan in the Province of Samar into a component city to be known as the City of Catbalogan." Lapsed into law on 15 March 2007;

Republic Act No. 9392, entitled "An Act converting the Municipality of Tandag in the Province of Surigao del Sur into a component city to be known as the City of Tandag." Lapsed into law on 15 March 2007;

Republic Act No. 9394, entitled "An Act converting the Municipality of Borongan in the Province of Eastern Samar into a component city to be known as the City of Borongan." Lapsed into law on 16 March 2007;

Republic Act No. 9398, entitled "An Act converting the Municipality of Tayabas in the Province of Quezon into a component city to be known as the City of Tayabas." Lapsed into law on 18 March 2007;

Republic Act No. 9393, entitled "An Act converting the Municipality of Lamitan in the Province of Basilan into a component city to be known as the City of Lamitan." Lapsed into law on 15 March 2007;

Republic Act No. 9404, entitled "An Act converting the Municipality of Tabuk into a component city of the Province of Kalinga to be known as the City of Tabuk." Lapsed into law on 23 March 2007;

Republic Act No. 9405, entitled "An Act converting the Municipality of Bayugan in the Province of Agusan del Sur into a component city to be known as the City of Bayugan." Lapsed into law on 23 March 2007;

Republic Act No. 9407, entitled "An Act converting the Municipality of Batac in the Province of Ilocos Norte into a component city to be known as the City of Batac." Lapsed into law on 24 March 2007;

Republic Act No. 9408, entitled "An Act converting the Municipality of Mati in the Province of Davao Oriental into a component city to be known as the City of Mati." Lapsed into law on 24 March 2007;

Republic Act No. 9409, entitled "An Act converting the Municipality of Guihulngan in the Province of Negros Oriental into a component city to be known as the City of Guihulngan." Lapsed into law on 24 March 2007;

Republic Act No. 9434, entitled "An Act converting the Municipality of Cabadbaran into a component city of the Province of Agusan Del Norte to be known as the City of Cabadbaran." Lapsed into law on 12 April 2007;

The Cityhood Laws direct the COMELEC to hold plebiscites to determine whether the voters in each respondent municipality approve of the conversion of their municipality into a city.

Petitioners filed the present petitions to declare the Cityhood Laws unconstitutional for violation of Section 10, Article X of the Constitution, as well as for violation of the equal protection clause.[12] Petitioners also lament that the wholesale conversion of municipalities into cities will reduce the share of existing cities in the Internal Revenue Allotment because more cities will share the same amount of internal revenue set aside for all cities under Section 285 of the Local Government Code.[13]

Republic Act No. 9436, entitled "An Act converting the Municipality of Carcar in the Province of Cebu into a component city to be known as the City of Carcar." Lapsed into law on 15 April 2007;

Republic Act No. 9435, entitled "An Act converting the Municipality of El Salvador in the Province of Misamis Oriental into a component city to be known as the City of El Salvador." Lapsed into law on 12 April 2007; and

Republic Act No. 9491, entitled "An Act converting the Municipality of Naga in the Province of Cebu into a component city to be known as the City of Naga." Lapsed into law on 15 July 2007.

[11] Section 27 (1), Article VI of the Constitution.

[12] Section 1, Article III of the Constitution.

[13] Section 285 of the Local Government Code provides: "*Allocation to Local Government Units*. — The share of local government units in the internal revenue allotment shall be allocated in the following manner:

(a) Provinces — Twenty-three percent (23%);

(b) Cities — Twenty-three percent (23%);

(c) Municipalities — Thirty-four percent (34%); and

(d) Barangays — Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population — Fifty percent (50%);

(b) Land Area — Twenty-five percent (25%); and

(c) Equal sharing — Twenty-five percent (25%)

Provided, further, That the share of each barangay with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand (₱80,000.00) per annum chargeable against the twenty percent (20%) share of the barangay from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

The Issues

The petitions raise the following fundamental issues:

1. Whether the Cityhood Laws violate Section 10, Article X of the Constitution; and
2. Whether the Cityhood Laws violate the equal protection clause.

The Ruling of the Court

We grant the petitions.

The Cityhood Laws violate Sections 6 and 10, Article X of the Constitution, and are thus unconstitutional.

First, applying the ₱100 million income requirement in RA 9009 to the present case is a prospective, not a retroactive application, because RA 9009 took effect in 2001 while the cityhood bills became law more than five years later.

Second, the Constitution requires that Congress shall prescribe all the criteria for the creation of a city in the Local Government Code and not in any other law, including the Cityhood Laws.

Third, the Cityhood Laws violate Section 6, Article X of the Constitution because they prevent a fair and just distribution of the national taxes to local government units.

Fourth, the criteria prescribed in Section 450 of the Local Government Code, as amended by RA 9009, for converting a

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(a) On the first year of the effectivity of this Code:
    (1) Population — Forty percent (40%); and
    (2) Equal Sharing — Sixty percent (60%)
(b) On the second year:
    (1) Population — Fifty percent (50%); and
    (2) Equal Sharing — Fifty percent (50%)
(c) On the third year and thereafter:
    (1) Population — Sixty percent (60%); and
    (2) Equal sharing — Forty percent (40%).

Provided, finally, That the financial requirements of *barangays* created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned."

municipality into a city are clear, plain and unambiguous, needing no resort to any statutory construction.

Fifth, the intent of members of the 11th Congress to exempt certain municipalities from the coverage of RA 9009 remained an intent and was never written into Section 450 of the Local Government Code.

Sixth, the deliberations of the 11th or 12th Congress on unapproved bills or resolutions are not extrinsic aids in interpreting a law passed in the 13th Congress.

Seventh, even if the exemption in the Cityhood Laws were written in Section 450 of the Local Government Code, the exemption would still be unconstitutional for violation of the equal protection clause.

Preliminary Matters

Prohibition is the proper action for testing the constitutionality of laws administered by the COMELEC,[14] like the Cityhood Laws, which direct the COMELEC to hold plebiscites in implementation of the Cityhood Laws. Petitioner League of Cities of the Philippines has legal standing because Section 499 of the Local Government Code tasks the League with the "primary purpose of ventilating, articulating and crystallizing issues affecting city government administration and securing, through proper and legal means, solutions thereto."[15] Petitioners-in-

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[14] *Sema v. COMELEC*, G.R. No. 177597, 16 July 2008; *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571, 592 (2001); *Mutuc v. COMELEC*, 146 Phil. 798 (1970).

[15] Section 499 of the Local Government Code provides: "Purpose of Organization. — There shall be an organization of all cities to be known as the League of Cities for the primary purpose of ventilating, articulating and crystallizing issues affecting city government administration, and securing, through proper and legal means, solutions thereto.

The league may form chapters at the provincial level for the component cities of a province. Highly-urbanized cities may also form a chapter of the League. The National League shall be composed of the presidents of the league of highly-urbanized cities and the presidents of the provincial chapters of the league of component cities."

intervention,[16] which are existing cities, have legal standing because their Internal Revenue Allotment will be reduced if the Cityhood Laws are declared constitutional. Mayor Jerry P. Treñas has legal standing because as Mayor of Iloilo City and as a taxpayer he has sufficient interest to prevent the unlawful expenditure of public funds, like the release of more Internal Revenue Allotment to political units than what the law allows.

Applying RA 9009 is a Prospective Application of the Law

RA 9009 became effective on 30 June 2001 during the 11th Congress. This law specifically amended Section 450 of the Local Government Code, which now provides:

Section 450. *Requisites for Creation.* — (a) A municipality or a cluster of *barangays* may be converted into a component city if it has a locally generated **average annual income, as certified by the Department of Finance, of at least One hundred million pesos (₱100,000,000.00) for the last two (2) consecutive years based on 2000 constant prices**, and if it has either of the following requisites:

(i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or

(ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.

The creation thereof shall not reduce the land area, population and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed

[16] The Court granted the interventions of the following cities: Santiago City, Iriga City, Ligao City, Legazpi City, Tagaytay City, Surigao City, Bayawan City, Silay City, General Santos City, Zamboanga City, Gingoog City, Cauayan City, Pagadian City, San Carlos City, San Fernando City, Tacurong City, Tangub City, Oroquieta City, Urdaneta City, Victorias City, Calapan City, Himamaylan City, Batangas City, Bais City, Tarlac City, Cadiz City, and Tagum City.

of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income. (Emphasis supplied)

Thus, RA 9009 increased the income requirement for conversion of a municipality into a city from ₱20 million to ₱100 million. Section 450 of the Local Government Code, as amended by RA 9009, does not provide any exemption from the increased income requirement.

Prior to the enactment of RA 9009, a total of 57 municipalities had cityhood bills pending in Congress. Thirty-three cityhood bills became law before the enactment of RA 9009. **Congress did not act on 24 cityhood bills during the 11th Congress**.

During the 12th Congress, the House of Representatives adopted Joint Resolution No. 29, exempting from the income requirement of ₱100 million in RA 9009 the 24 municipalities whose cityhood bills were not acted upon during the 11th Congress. This Resolution reached the Senate. **However, the 12th Congress adjourned without the Senate approving Joint Resolution No. 29**.

During the 13th Congress, 16 of the 24 municipalities mentioned in the unapproved Joint Resolution No. 29 filed between November and December of 2006, through their respective sponsors in Congress, individual cityhood bills containing a common provision, as follows:

Exemption from Republic Act No. 9009. — The City of xxx shall be exempted from the income requirement prescribed under Republic Act No. 9009.

This common provision *exempted* each of the 16 municipalities from the income requirement of ₱100 million prescribed in Section 450 of the Local Government Code, as amended by RA 9009. These cityhood bills lapsed into law on various dates from March to July 2007 after President Gloria Macapagal-Arroyo failed to sign them.

Indisputably, Congress passed the Cityhood Laws long ***after*** the effectivity of RA 9009. **RA 9009 became effective on 30 June 2001 or during the 11th Congress. The 13th Congress passed in December 2006 the cityhood bills which became law only in 2007.** Thus, respondent municipalities cannot invoke the principle of non-retroactivity of laws.[17] This basic rule has no application because RA 9009, an earlier law to the Cityhood Laws, is not being applied retroactively but prospectively.

Congress Must Prescribe in the Local Government Code All Criteria

Section 10, Article X of the 1987 Constitution provides:

> No province, city, municipality, or *barangay* shall be created, divided, merged, abolished or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code** and not in any other law. There is only one Local Government Code.[18] The Constitution requires Congress to stipulate in the Local Government Code all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. Congress cannot write such criteria in any other law, like the Cityhood Laws.

The criteria prescribed in the Local Government Code govern exclusively the creation of a city. No other law, not even the charter of the city, can govern such creation. The clear intent of the Constitution is to insure that the creation of cities and other political units must follow **the same uniform, non-discriminatory criteria found solely in the Local Government Code**. Any derogation or deviation from the criteria prescribed

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[17] Article 4 of the Civil Code provides: "Laws shall have no retroactive effect, unless the contrary is provided."

[18] Republic Act No. 7160, as amended.

in the Local Government Code violates Section 10, Article X of the Constitution.

RA 9009 amended Section 450 of the Local Government Code to increase the income requirement from ₱20 million to ₱100 million for the creation of a city. **This took effect on 30 June 2001. Hence, from that moment the Local Government Code required that any municipality desiring to become a city must satisfy the ₱100 million income requirement**. Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption from this income requirement.

In enacting RA 9009, Congress did not grant any exemption to respondent municipalities, even though their cityhood bills were pending in Congress when Congress passed RA 9009. The Cityhood Laws, all enacted ***after*** the effectivity of RA 9009, explicitly exempt respondent municipalities from the increased income requirement in Section 450 of the Local Government Code, as amended by RA 9009. **Such exemption clearly violates Section 10, Article X of the Constitution and is thus patently unconstitutional. To be valid, such exemption must be written in the Local Government Code and not in any other law, including the Cityhood Laws.**

Cityhood Laws Violate Section 6, Article X of the Constitution

Uniform and non-discriminatory criteria as prescribed in the Local Government Code are essential to implement a fair and equitable distribution of national taxes to all local government units. Section 6, Article X of the Constitution provides:

> Local government units shall have a **just share**, as determined by law, in the national taxes which shall be automatically released to them. (Emphasis supplied)

If the criteria in creating local government units are not uniform and discriminatory, there can be no fair and just distribution of the national taxes to local government units.

A city with an annual income of only ₱20 million, all other criteria being equal, should not receive the same share in national

taxes as a city with an annual income of ₱100 million or more. The criteria of land area, population and income, as prescribed in Section 450 of the Local Government Code, must be strictly followed because such criteria, prescribed by law, are material in determining the "just share" of local government units in national taxes. Since the Cityhood Laws do not follow the income criterion in Section 450 of the Local Government Code, they prevent the fair and just distribution of the Internal Revenue Allotment in violation of Section 6, Article X of the Constitution.

Section 450 of the Local Government Code is Clear, Plain and Unambiguous

There can be no resort to extrinsic aids — like deliberations of Congress — if the language of the law is plain, clear and unambiguous. Courts determine the intent of the law from the literal language of the law, within the law's four corners.[19] If the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms. If a literal application of the law results in absurdity, impossibility or injustice, then courts may resort to extrinsic aids of statutory construction like the legislative history of the law.[20]

Congress, in enacting RA 9009 to amend Section 450 of the Local Government Code, did not provide any exemption from the increased income requirement, not even to respondent municipalities whose cityhood bills were then pending when Congress passed RA 9009. Section 450 of the Local Government Code, as amended by RA 9009, contains no exemption whatsoever. Since the law is clear, plain and unambiguous that any municipality desiring to convert into a city must meet the increased income requirement, there is no reason to go beyond the letter of the law in applying Section 450 of the Local Government Code, as amended by RA 9009.

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[19] *Ramirez v. Court of Appeals*, G.R. No. 93833, 28 September 1995, 248 SCRA 590, 596; *Security Bank and Trust Company v. RTC of Makati, Br. 61*, G.R. No. 113926, 23 October 1996, 263 SCRA 483, 488.

[20] *Republic v. Court of Appeals*, 359 Phil. 530, 559 (1998); *Commissioner of Internal Revenue v. Solidbank Corp.*, 462 Phil. 96, 129-131 (2003).

The 11th Congress' Intent was not Written into the Local Government Code

True, members of Congress discussed exempting respondent municipalities from RA 9009, as shown by the various deliberations on the matter during the 11th Congress. However, Congress did not write this intended exemption into law. Congress could have easily included such exemption in RA 9009 but Congress did not. This is fatal to the cause of respondent municipalities because such exemption must appear in RA 9009 as an amendment to Section 450 of the Local Government Code. The Constitution requires that the criteria for the conversion of a municipality into a city, including any exemption from such criteria, must all be written in the Local Government Code. Congress cannot prescribe such criteria or exemption from such criteria in any other law. **In short, Congress cannot create a city through a law that does not comply with the criteria or exemption found in the Local Government Code**.

Section 10 of Article X is similar to Section 16, Article XII of the Constitution prohibiting Congress from creating private corporations except by a general law. Section 16 of Article XII provides:

> **The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations**. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability. (Emphasis supplied)

Thus, Congress must prescribe all the criteria for the "formation, organization, or regulation" of private corporations in a **general law applicable to all without discrimination**.[21] Congress cannot create a private corporation through a special law or charter.

Deliberations of the 11th Congress on Unapproved Bills Inapplicable

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[21] The Corporation Code of the Philippines (Batas Pambansa Blg. 68) is the general law providing for the formation, organization and regulation of private corporations.

Congress is not a continuing body.[22] The **unapproved** cityhood bills filed during the 11th Congress became mere scraps of paper upon the adjournment of the 11th Congress. All the hearings and deliberations conducted during the 11th Congress on unapproved bills also became worthless upon the adjournment of the 11th Congress. **These hearings and deliberations cannot be used to interpret bills enacted into law in the 13th or subsequent Congresses**.

The members and officers of each Congress are different. All unapproved bills filed in one Congress become *functus officio* upon adjournment of that Congress and must be re-filed anew in order to be taken up in the next Congress. When their respective authors re-filed the cityhood bills in 2006 during the 13th Congress, the bills had to start from square one again, going through the legislative mill just like bills taken up for the first time, from the filing to the approval. Section 123, Rule XLIV of the Rules of the Senate, on Unfinished Business, provides:

Sec. 123. x x x

All pending matters and proceedings shall terminate upon the expiration of one (1) Congress, but may be taken by the succeeding Congress **as if presented for the first time**. (Emphasis supplied)

Similarly, Section 78 of the Rules of the House of Representatives, on Unfinished Business, states:

Section 78. Calendar of Business. The Calendar of Business shall consist of the following:

a. Unfinished Business. This is business being considered by the House at the time of its last adjournment. Its consideration shall be resumed until it is disposed of. The Unfinished Business at the end of a session shall be resumed at the commencement of the next session as if no adjournment has taken place. **At the end of the term of a Congress, all Unfinished Business are deemed terminated**. (Emphasis supplied)

[22] See *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, 25 March 2008, 549 SCRA 77, 135-136.

Thus, the deliberations during the 11th Congress on the unapproved cityhood bills, as well as the deliberations during the 12th and 13th Congresses on the unapproved resolution exempting from RA 9009 certain municipalities, have no legal significance. They do not qualify as extrinsic aids in construing laws passed by subsequent Congresses.

Applicability of Equal Protection Clause

If Section 450 of the Local Government Code, as amended by RA 9009, contained an exemption to the ₱100 million annual income requirement, the criteria for such exemption could be scrutinized for possible violation of the equal protection clause. Thus, the criteria for the exemption, if found in the Local Government Code, could be assailed on the ground of absence of a valid classification. However, Section 450 of the Local Government Code, as amended by RA 9009, does not contain any exemption. The exemption is contained in the Cityhood Laws, which are unconstitutional because such exemption must be prescribed in the Local Government Code as mandated in Section 10, Article X of the Constitution.

Even if the exemption provision in the Cityhood Laws were written in Section 450 of the Local Government Code, as amended by RA 9009, such exemption would still be unconstitutional for violation of the equal protection clause. The exemption provision merely states, "**Exemption from Republic Act No. 9009 — The City of x x x shall be exempted from the income requirement prescribed under Republic Act No. 9009.**" This one sentence exemption provision contains no classification standards or guidelines differentiating the exempted municipalities from those that are not exempted.

Even if we take into account the deliberations in the 11th Congress that municipalities with pending cityhood bills should be exempt from the ₱100 million income requirement, there is still no valid classification to satisfy the equal protection clause. **The exemption will be based solely on the fact that the 16 municipalities had cityhood bills pending in the 11th Congress when RA 9009 was enacted**. This is not a valid classification

between those entitled and those not entitled to exemption from the ₱100 million income requirement.

To be valid, the classification in the present case must be based on substantial distinctions, rationally related to a legitimate government objective which is the purpose of the law,[23] not limited to existing conditions only, and applicable to all similarly situated. Thus, this Court has ruled:

> The equal protection clause of the 1987 Constitution permits a valid classification under the following conditions:
>
> 1. The classification must rest on substantial distinctions;
> 2. The classification must be germane to the purpose of the law;
> 3. The classification must not be limited to existing conditions only; and
> 4. The classification must apply equally to all members of the same class.[24]

There is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. The pendency of a cityhood bill in the 11th Congress

[23] The *rational basis test* is the minimum level of scrutiny that all government actions challenged under the equal protection clause must meet. The *strict scrutiny test* is used in discriminations based on race or those which result in violations of fundamental rights. Under the strict scrutiny test, to be valid the classification must promote a **compelling state interest**. The *intermediate scrutiny test* is used in discriminations based on gender or illegitimacy of children. Under the intermediate scrutiny test, the classification must be **substantially related to an important** government objective. Laws not subject to the strict or intermediate scrutiny test are evaluated under the *rational basis test*, which is the easiest test to satisfy since the classification must only show a **rational relationship** to a legitimate government purpose. See Erwin Chemerinsky, *Constitutional Law, Principles and Policies*, 2nd Edition, pp. 645-646.

[24] *De Guzman, Jr. v. COMELEC*, 391 Phil. 70, 79 (2000); *Tiu v. Court of Tax Appeals*, 361 Phil. 229, 242 (1999).

does not affect or determine the level of income of a municipality. Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. In short, the classification criterion "mere pendency of a cityhood bill in the 11th Congress" is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.

Municipalities that did not have pending cityhood bills were not informed that a pending cityhood bill in the 11th Congress would be a condition for exemption from the increased ₱100 million income requirement. Had they been informed, many municipalities would have caused the filing of their own cityhood bills. These municipalities, even if they have bigger annual income than the 16 respondent municipalities, cannot now convert into cities if their income is less than ₱100 million.

The fact of pendency of a cityhood bill in the 11th Congress limits the exemption to a specific condition existing at the time of passage of RA 9009. That specific condition will never happen again. This violates the requirement that a valid classification must not be limited to existing conditions only. This requirement is illustrated in *Mayflower Farms, Inc. v. Ten Eyck*,[25] where the challenged law allowed milk dealers engaged in business prior to a fixed date to sell at a price lower than that allowed to newcomers in the same business. In *Mayflower*, the U.S. Supreme Court held:

> We are referred to a host of decisions to the effect that a regulatory law may be prospective in operation and may except from its sweep those presently engaged in the calling or activity to which it is directed. Examples are statutes licensing physicians and dentists, which apply only to those entering the profession subsequent to the passage of the act and exempt those then in practice, or zoning laws which exempt existing buildings, or laws forbidding slaughterhouses within certain areas, but excepting existing establishments. **The challenged provision is unlike such laws, since, on its face, it is not a regulation of a business or an activity in the interest**

[25] 297 U.S. 266 (1936).

of, or for the protection of, the public, but an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date. The appellees do not intimate that the classification bears any relation to the public health or welfare generally; that the provision will discourage monopoly; or that it was aimed at any abuse, cognizable by law, in the milk business. In the absence of any such showing, we have no right to conjure up possible situations which might justify the discrimination. The classification is arbitrary and unreasonable and denies the appellant the equal protection of the law. (Emphasis supplied)

In the same vein, the exemption provision in the Cityhood Laws gives the 16 municipalities a unique advantage based on an arbitrary date " the filing of their cityhood bills before the end of the 11th Congress – as against all other municipalities that want to convert into cities after the effectivity of RA 9009.

Furthermore, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded the exemption provision found in the Cityhood Laws, even if it were written in Section 450 of the Local Government Code, would still be unconstitutional for violation of the equal protection clause.

WHEREFORE, we *GRANT* the petitions and declare *UNCONSTITUTIONAL* the Cityhood Laws, namely: Republic Act Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491.

SO ORDERED.

Quisumbing, Austria-Martinez, Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

Corona, Azcuna, Chico-Nazario, and *Leonardo-de Castro, JJ.,* joins the dissent of Justice Ruben T. Reyes.

Reyes, J., see dissenting opinion.

Puno, C.J. and *Nachura, J.,* no part.

Tinga, J., no part. Close relation to an interested entity.

Ynares-Santiago, J., on leave.

DISSENTING OPINION

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

TODAY, the majority on a 6-5 voting has choked the aspiration of the 16 respondent municipalities in becoming cities by declaring their cityhood laws[1] unconstitutional. For the first time, I am compelled to submit a respectful dissent.

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[1] The Sixteen (16) Cityhood Laws are the following:

1. Republic Act No. 9389, otherwise known as "An Act converting the Municipality of Baybay in the Province of Leyte into a component city to be known as City of Baybay." Lapsed into law on March 15, 2007;

2. Republic Act No. 9390, otherwise known as "An Act converting the municipality of Bogo in the Province of Cebu into a component city to be known as City of Bogo." Lapsed into law on March 15, 2007;

3. Republic Act No. 9391, otherwise known as "An Act converting the Municipality of Catbalogan in the Province of Western Samar into a component city to be known as the City of Catbalogan." Lapsed into law on March 15, 2007;

4. Republic Act No. 9392, otherwise known as "An Act converting the Municipality of Tandag in the Province of Surigao del Sur into a component city to be known as City of Tandag." Lapsed into law on March 15, 2007;

5. Republic Act No. 9394, otherwise known as "An Act converting the Municipality of Borongan in the Province of Eastern Samar into a component city to be known as City of Borongan." Lapsed into law on March 16, 2007;

6. Republic Act No. 9398, otherwise known as "An Act converting the Municipality of Tayabas in the Province of Quezon into a component city to be known as City of Tayabas." Lapsed into law on March 18, 2007;

7. Republic Act No. 9393, otherwise known as "An Act converting the Municipality of Lamitan in the Province of Basilan into a component city to be known as City of Lamitan." Lapsed into law on March 15, 2007;

8. Republic Act No. 9404, otherwise known as "An Act converting the Municipality of Tabuk in the Province of Kalinga into a component city to be known as City of Tabuk." Lapsed into law on March 23, 2007;

9. Republic Act No. 9405, otherwise known as "An Act converting the Municipality of Bayugan in the Province of Agusan del Sur into a component city to be known as City of Bayugan." Lapsed into law on March 23, 2007;

The Facts

Between July 1998 and June 2001, during the Eleventh Congress, a total of fifty-seven (57) bills seeking the conversion of numerous municipalities into component cities were filed before the House of Representatives.[2] Out of the fifty-seven (57) bills, thirty-two (32) became cityhood laws, and one (1) was rejected in a plebiscite. Twenty-four (24) other bills were not acted upon.

On September 25, 2000, during the Eleventh Congress, Senator Aquilino Pimentel, Jr. introduced Senate Bill No. 2157[3] to amend

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10. Republic Act No. 9407, otherwise known as "An Act converting the Municipality of Batac in the Province of Ilocos Norte into a component city to be known as City of Batac." Lapsed into law on March 24, 2007;

11. Republic Act No. 9408, otherwise known as "An Act converting the Municipality of Mati in the Province of Davao Oriental into a component city to be known as City of Mati." Lapsed into law on March 24, 2007;

12. Republic Act No. 9409, otherwise known as "An Act converting the Municipality of Guihulngan in the Province of Negros Oriental into a component city to be known as City of Guihulngan." Lapsed into law on March 24, 2007;

13. Republic Act No. 9434, otherwise known as "An Act converting the Municipality of Cabadbaran in the Province of Agusan del Norte into a component city to be known as City of Cabadbaran." Lapsed into law on April 12, 2007;

14. Republic Act No. 9436, otherwise known as "An Act converting the Municipality of Carcar in the Province of Cebu into a component city to be known as City of Carcar." Lapsed into law on April 15, 2007;

15. Republic Act No. 9435, otherwise known as "An Act converting the Municipality of El Salvador in the Province of Misamis Oriental into a component city to be known as City of El Salvador." Lapsed into law on April 12, 2007; and

16. Republic Act No. 9491, otherwise known as "An Act converting the Municipality of Naga in the Province of Cebu into a component city to be known as City of Naga." Lapsed into law on July 15, 2007.

[2] Journal, Senate 13th Congress 59th Session 1238 (January 23, 2007).

[3] Entitled "An Act Amending Section 450 of Republic Act No. 7160, Otherwise Known as The Local Government Code of 1991, by Increasing the Average Annual Income Requirement for a Municipality or Cluster of *Barangay* to be Converted into a Component City."

Section 450 of the Local Government Code. The proposed legislation sought to increase the income requirement to qualify for conversion into a city from ₱20,000,000.00 annual income to ₱100,000,000.00 locally-generated income.

On March 20, 2001, Senate Bill No. 2157 was signed into law as **R.A. No. 9009**. It became effective on **June 30, 2001**. As revised, Section 450 of the Local Government Code now states, among others, that "[a] municipality or a cluster of *barangays* may be converted into a component city if it has a locally generated average annual income, as certified by the Department of Finance, of at least One Hundred Million Pesos (₱100,000,000.00) for the last two (2) consecutive years based on 2000 constant prices."

Immediately after the opening of the Twelfth Congress in July 2001 and with R.A. No. 9009 already in full force and effect, the House of Representatives adopted House Joint Resolution No. 29,[4] entitled "*Joint Resolution to Exempt Certain Municipalities Embodied in Bills Filed in Congress* ***Before*** *June 30, 2001 from the Coverage of Republic Act 9009.*"[5] The resolution sought to exempt from the income requirement of ₱100,000,000.00 in R.A. No. 9009 the twenty-four (24) municipalities[6] whose conversions into cities were not acted upon during the Eleventh Congress. The reasons for exempting these municipalities were the Senate Blue Ribbon Committee investigation into the *jueteng* scandal; the impeachment against former President Joseph Estrada by the House of Representatives; the aborted impeachment proceedings in the Senate; the leadership reorganization in both Houses of Congress; the "EDSA *Dos*" and "EDSA *Tres*" uprisings; the campaign period; and the May 2001 elections.[7]

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[4] House Joint Resolution No. 29 was actually a consolidation of House Joint Resolution No. 6 and a proposed bill of then Congressman Victor Sumulong seeking to amend Section 450 of the Local Government Code.

[5] Annex "A", Memorandum of Petitioners.

[6] The sixteen (16) respondent municipalities are among those included in the list of twenty-four (24).

[7] *Supra* note 2.

The proponents of House Joint Resolution No. 29 found success in the House all the way through the Senate. In the Senate, they found a staunch ally in the person of Senator Robert Barbers, chair of the Committee on Local Government. However, notwithstanding the several public hearings, caucuses, dialogues, and informal discussions, the favorable committee report did not translate into legislation.[8] The Twelfth Congress ended without favorable action.

During the Thirteenth Congress (2004-2007), the House of Representatives reinitiated the move, this time via House Joint Resolution No. 1, and forwarded it to the Senate for approval.

On July 25, 2006, the Senate Committee on Local Government submitted its Committee Report No. 84 recommending approval of House Joint Resolution No. 1, with amendments. The amendments included the change in (a) the number of municipalities which sought conversion into cities during the Eleventh Congress from fifty-six (56) to fifty-seven (57); and (b) the number of bills that were not acted upon from twenty-three (23) to twenty-four (24).[9]

Out of the sixteen (16) members of the Committee who deliberated on House Joint Resolution No. 1, seven (7) senators signed with either "reservations"[10] or "strong reservations,"[11] while three (3) senators dissented.[12]

During the Senate session held on November 6, 2006, Senator Aquilino Pimentel, Jr. asserted that the net effect of passing House Joint Resolution No. 1 would be the grant of a wholesale exemption from the income requirement imposed on the

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[8] *Id.*

[9] Annex "B", Memorandum of Petitioners.

[10] Senator Manuel B. Villar, Jr., Senator Ramon Bong Revilla, Jr., Senator Juan Ponce Enrile, Senator Manuel "Lito" M. Lapid, and Senator Jinggoy Ejercito Estrada.

[11] Senator Ramon B. Magsaysay, Jr. and Senator Compañera Pia S. Cayetano.

[12] Senator Rodolfo G. Biazon, Senator Richard J. Gordon, and Senator Aquilino Q. Pimentel, Jr.

municipalities. Instead, Senator Pimentel suggested that the House of Representatives should initiate and file individual bills for the municipalities that would like to become cities and forward these to the Senate for proper action.

The proponents of House Joint Resolution No. 1 acceded to the suggestion of Senator Pimentel. Consequently, of the twenty-four (24) municipalities enumerated in House Joint Resolution No. 1, sixteen (16) municipalities filed their individual cityhood bills. Each of the cityhood bills contained a common provision **exempting** the particular municipality from the income requirement imposed by R.A. No. 9009.

On December 22, 2006, the House of Representatives approved the cityhood bills and transmitted them to the Senate for its approval. This time, the required consent of the Senate was attained.

When the cityhood bills were forwarded to the Office of the President, they were allowed to lapse into law pursuant to Section 27(1), Article VI of the Constitution,[13] after President Gloria Macapagal-Arroyo chose not to sign them.

Under the cityhood laws, respondent Commission on Elections (COMELEC) is directed to conduct and supervise plebiscites in respondent municipalities within thirty (30) days from the approval of each of the cityhood laws. The expense for such plebiscites will be shouldered by the respective respondent municipalities.

On March 27, 2007,[14] May 4, 2007,[15] and June 14, 2007,[16] three (3) separate petitions for prohibition were filed by petitioners

[13] Sec. 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter its objections at large in its Journal and proceed to reconsider it. x x x The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

[14] *Rollo* (G.R. No. 176951), Vol. 1, pp. 3-65.

[15] *Rollo* (G.R. No. 177499), Vol. 1, pp. 3-65.

[16] *Rollo* (G.R. No. 178056), Vol. 1, pp. 3-69.

League of Cities of the Philippines,[17] City of Iloilo,[18] City of Calbayog,[19] and Jerry P. Treñas as taxpayer, against the COMELEC; Municipality of Baybay, Province of Leyte; Municipality of Bogo, Province of Cebu; Municipality of Catbalogan, Province of Western Samar; Municipality of Tandag, Province of Surigao del Sur; Municipality of Borongan, Province of Eastern Samar; Municipality of Tayabas, Province of Quezon; Municipality of Lamitan, Province of Basilan; Municipality of Tabuk, Province of Kalinga; Municipality of Bayugan, Province of Agusan del Sur; Municipality of Batac, Province of Ilocos Norte; Municipality of Mati, Province of Davao Oriental; Municipality of Guihulngan, Province of Negros Oriental; Municipality of Cabadbaran, Province of Agusan del Norte; Municipality of Carcar, Province of Cebu; and Municipality of El Salvador, Province of Misamis Oriental.

As a show of support to their mother association, separate petitions-in-intervention were filed by various sympathetic cities who are members of the League of Cities of the Philippines. The petitions-in-intervention were admitted by the Court *en banc* through various Resolutions on separate dates.[20]

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[17] Represented by its National President, Jerry P. Treñas.

[18] Represented by its City Mayor, Jerry P. Treñas.

[19] Represented by its City Mayor, Mel Senen S. Sarmiento.

[20] July 24, 2007 for the City of Oroquieta, City of Victorias, and City of Cauayan, Isabela.

July 31, 2007 for the City of Gingoog, City of Himamaylan, City of Tacurong, City of Urdaneta, City of Santiago, and City of Iriga.

August 7, 2007, for the City of Ligao and City of Legazpi.

August 14, 2007, for the City of Tagaytay and City of Surigao.

August 21, 2007, for the City of Bayaman.

September 4, 2007, for the City of Silay.

September 11, 2007, for the City of General Santos.

September 18, 2007, for the City of Tarlac, City of Zamboanga, City of Borongan, and City of San Carlos.

October 2, 2007, for the City of Cadiz.

October 16, 2007, for the City of Batangas, City of San Fernando, Pampanga, and City of Tagum.

Petitioners and petitioners-in-intervention collectively prayed for the issuance of lawful orders from this Court, enjoining respondent COMELEC and respondent municipalities from implementing the provisions of the challenged cityhood laws and conducting plebiscites in the affected areas or, in the alternative, for the COMELEC not to proclaim the plebiscite results. They likewise prayed that the cityhood laws[21] be struck down as unconstitutional.

On July 24, 2007, the Court *en banc* resolved to consolidate the petitions and the petitions-in-intervention. On September 28, 2007, petitioners filed a supplemental petition impleading the Municipality of Naga, Cebu and the Department of Budget and Management (DBM) as additional respondents,[22] which the Court granted on October 2, 2007.[23]

On March 11, 2008, oral arguments were held pursuant to the resolution of the Court dated February 5, 2008. The parties were then directed to file simultaneously their respective memoranda.

As no temporary restraining order and/or preliminary injunction was issued by the Court, the COMELEC proceeded to conduct plebiscites in respondent municipalities, where all the cityhood laws were ratified. Too, the DBM to date has been releasing the Internal Revenue Allotments (IRAs) to respondent municipalities as cities.

Issues

Petitioners in G.R. No. 176951,[24] G.R. No. 177499,[25] and G.R. No. 178056[26] pose common issues for Our consideration, to wit:

November 13, 2007, for the City of Tangub, City of Victorias, and City of Calapan.

January 15, 2008, for the City of Pagadian.

[21] See note 1.

[22] *Rollo* (G.R. No. 176951), Vol. 3, pp. 1628-1665.

[23] *Id.* at 1724.

[24] *Id.*, Vol. 1, p. 27.

[25] *Rollo* (G.R. No. 177499), Vol. 1, p. 26.

[26] *Rollo* (G.R. No. 178056), Vol. 1, p. 27.

I

THE CITYHOOD LAWS DIRECTLY VIOLATE SECTION 10, ARTICLE X OF THE 1987 CONSTITUTION BY UNLAWFULLY EXEMPTING THE RESPONDENT MUNICIPALITIES FROM COMPLIANCE WITH THE MINIMUM INCOME REQUIREMENT IMPOSED BY THE LOCAL GOVERNMENT CODE.

II

THE CITYHOOD LAWS DIRECTLY VIOLATE THE EQUAL PROTECTION CLAUSE UNDER SECTION 1, ARTICLE III OF THE CONSTITUTION AS IT UNREASONABLY GRANTS SPECIAL TREATMENT TO THE RESPONDENT MUNICIPALITIES BY UNREASONABLY EXEMPTING THEM FROM COMPLIANCE WITH THE MINIMUM INCOME REQUIREMENT IMPOSED BY THE LOCAL GOVERNMENT CODE. (Underscoring supplied)

Petitioners-in-intervention raise essentially similar issues.

There are, however, two (2) procedural issues which must be resolved at the outset as they would determine whether the petitions and the petitions-in-intervention should proceed: first, whether petitioners and petitioners-in-intervention possess *locus standi*; and second, whether a petition for prohibition is the correct remedy to question the constitutionality of the cityhood laws.

Ruling

Preliminaries

***Petitioners and petitioners-in-intervention possess locus standi*.**

In the leading case of *Baker v. Carr*,[27] the United States Supreme Court, speaking through Mr. Justice William J. Brennan, held that "the gist of the question of standing" is whether the party "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[28]

[27] 369 US 186, 7 L. Ed. 2d 663, 82 S. Ct. 691 (1962).

[28] *Baker v. Carr, id.* at 204.

Thus, the rule in the United States is that persons wishing to contest, on constitutional grounds, the validity of the statute must be able to show not only that the statute is invalid but also that they have sustained, or are in immediate danger of sustaining, some direct injury as the result of its enforcement. Suffering in some indefinite way in common with people generally would not suffice.[29] In other words, one who is not prejudiced by the enforcement of an act of Congress cannot question its constitutionality.[30] In

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[29] 16 Am. Jur. 2d, Constitutional Law, § 143, citing *Shaw v. Hunt,* 517 US 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996) (declined on other grounds to extend by, *Cleveland County Ass'n for the Government by the People v. Cleveland County Bd. of Com'rs.,* 965 F. Supp. 72 (D.D.C. 1997)) and (distinguished on other grounds by, *Harvell v. Blytheville School Dist. No. 5,* 126 F. 3d 1038, 121 Ed. Law Rep. 525 (8th Cir. 1997)); *U.S. v. Hays,* 515 US 737, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995), on remand to, 936 F. Supp. 360 (W.D. La. 1996) (declined to extend on other grounds by, *Vera v. Bush,* 1997 WL 597873 (S.D. Tex. 1997)); *Adarand Constructors, Inc. v. Pena,* 515 US 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158, 67 Fair Empl. Prac. Cas. (BNA) 1828, 40 Cont. Cas. Fed. (CCH) ¶ 76756, 66 Empl. Prac. Dec. (CCH) ¶ 43556 (1995) (declined on other grounds to follow by, *Cohen v. Brown University,* 101 F. 3d 155, 114 Ed. Law Rep. 394, 45 Fed. R. Evid. Serv. (LCP) 1369 (1st Cir. 1996)) and on remand to, 965 F. Supp. 1556, 41 Cont. Cas. Fed. (CCH) ¶ 77118 (D. Colo. 1997) and (distinguished on other grounds by, *Hunter by Brandt v. Regents of the University of California,* 971 F. Supp. 1316, 120 Ed. Law Rep. 705 (C.D. Cal. 1997) and (declined to extend on other grounds by, *Abreu v. Callahan,* 971 F. Supp. 799, 54 Soc. Sec. Rep. Serv. 60 (S.D.N.Y. 1997)) and (distinguished on other grounds by, *Allen v. Alabama State Bd. of Educ.,* 976 F. Supp. 1410, 121 Ed. Law Rep. 984 (M.D. Ala. 1997)); *Schlesinger v. Reservists Committee to Stop the War,* 418 US 208, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974); *Montcalm Pub. Corp. v. Beck,* 80 F. 3d 105, 24 Media L. Rep. (BNA) 1665 (4th Cir. 1996), cert. denied, 117 S. Ct. 296, 136 L. Ed. 2d 215 (U.S. 1996); *Pence v. State,* 652 NE 2d 486 (Ind. 1995), reh'g denied, (Sept. 22, 1995); *Second St. Properties, Inc. v. Fiscal Court of Jefferson County,* 445 SW 2d 709 (Ky. 1969); *Whitney Nat. Bank of New Orleans v. Little Creek Oil Co.,* 212 La. 949, 33 So. 2d 693 (1947); *State ex rel. Lynch v. Rhodes,* 176 Ohio St. 251, 27 Ohio Op. 2d 155, 199 N.E.2d 393 (1964); *Porter v. City of Paris,* 184 Tenn. 551, 201 SW 2d 688 (1947).

[30] *Id.,* § 139, citing *Shaw v. Hunt,* 517 US 899, 116 S. Ct. 1894, 135 L. Ed. 2d 207 (1996) (declined on other grounds to extend by, *Cleveland County Ass'n for Government by the People v. Cleveland County Bd. of Com'rs.,* 965 F. Supp. 72 (D.D.C. 1997)) and (distinguished on other grounds by, *Harvell v. Blytheville School Dist. No. 5,* 126 F. 3d 1038, 121 Ed. Law Rep. 525

the absence of showing of injury, actual, or threatened, there can be no constitutional argument.[31]

The rule has been adopted in our jurisdiction. In *House International Building Tenants Association, Inc. v. Intermediate Appellate Court*, [32] *Joya v. Presidential Commission on Good Government*,[33] *Integrated Bar of the Philippines v. Zamora*,[34] *Francisco, Jr. v. The House of Representatives*,[35] and *Anak Mindanao Party-List Group v. The Executive Secretary*,[36] among others, this Court made similar pronouncements on *locus standi*. In the last mentioned case, the Court summarized the rule, thus:

Locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

x x x a party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the

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(8th Cir. 1997); *U.S. v. Hays*, 515 US 737, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995), on remand to, 936 F. Supp. 360 (W.D. La.) 1996 (declined to extend by, *Vera v. Bush*, 1997 WL 597873 (S.D. Tex. 1997)); *McDowell v. U.S.*, 274 F. Supp. 426 (E.D. Tenn. 1967); *City of Pueblo v. Pullaro*, 130 Colo. 354, 275 P. 2d 938 (1954); *State ex rel. Nielson v. City of Gooding*, 75 Idaho 36, 266 P. 2d. 655 (1953); *De Febio v. County School Bd. of Fairfax County*, 199 Va. 511, 100 SE 2d 760 (1957), appeal dismissed, cert. denied, 357 US 218, 78 S. Ct. 1363, 2 L. Ed. 2d 1361 (1958).

[31] *Id.*, citing *Anderson Nat. Bank v. Luckett*, 321 US 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 ALR 824 (1944); *New Hampshire Right to Life Political Action Committee v. Gardner*, 99 F. 3d 8 (1st Cir. 1996).

[32] G.R. No. 75287, June 30, 1987, 151 SCRA 703.

[33] G.R. No. 96541, August 24, 1993, 225 SCRA 568.

[34] G.R. No. 141284, August 15, 2000, 338 SCRA 81.

[35] 460 Phil. 830 (2003).

[36] G.R. No. 166052, August 29, 2007, 531 SCRA 583.

law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.

For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action.[37]

Parties can have *locus standi* depending on the personality they assume. Parties may come to the Court as (1) organizations and groups representing their own interests; (2) organizations and groups representing the interests of their members; (3) individuals championing a class; (4) political subdivisions; (5) public officials; (6) members of Congress; (7) taxpayers; (8) corporations and other business entities; (9) citizens, residents, and aliens; (10) health professionals; (11) voters; and (12) other miscellaneous classes.[38]

The League of Cities of the Philippines has legal standing. As averred in its petition, it is an association of cities in the Philippines, and is organized and existing by virtue of Philippine laws.[39] In fact, its existence is sanctioned by

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[37] *Anak Mindanao Party-List Group v. The Executive Secretary*, *id.* at 591-592.

[38] See 16 Am. Jur. 2d, Constitutional Law, §§ 148-160. Am. Jur. also says that "The United States has standing to challenge state laws or rules that contradict or contravene federal laws or practices." This is clearly not applicable in our jurisdiction because we do not have a federal government.

[39] As alleged in the Memorandum of Petitioners, the League of Cities of the Philippines was issued a certificate of registration by the Securities and Exchange Commission on July 8, 1993 under SEC Reg. No. AN093-003067. It also filed and registered with the SEC on July 9, 1993 its Articles of Incorporation and By-Laws, by which it is organized as a non-stock corporation.

Section 13, Article X of the 1987 Constitution,[40] and Section 499 of the Local Government Code.[41] As a juridical person or entity, it may be a party to a civil action.[42] It has a legal personality of its own.[43] It may sue or be sued in its name, in conjunction with the laws and regulations of its organization.[44]

Petitioners City of Iloilo and City of Calbayog, and petitioners-in-intervention, who are all members of the League of Cities of the Philippines, also have legal standing. Aside from being public corporations by virtue of their being cities,[45] they stand to suffer a reduction or decrease of the IRA they are presently receiving due to the conversion of respondent municipalities into cities.

The Local Government Code mandates that each class of Local Government Unit should have a fixed share in the IRA. In the case of cities, they are entitled to 23%. In dividing this 23% share among all the cities, the population of a particular city is considered.[46] But 25% of the 23% share is equally divided

[40] Sec. 13. Local government unites may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law.

[41] Sec. 499. *Purpose of Organization*. – There shall be an organization of all cities, to be known as the League of Cities, for the primary purpose of ventilation, articulating and crystallizing issues affecting city government administration and securing, through proper and legal means, solutions thereto.

The League may form chapters at the provincial level for the component cities of a province. The National League shall be composed of the presidents of the league of highly urbanized cities and the presidents of the provincial chapters of the league of component cities.

[42] RULES OF COURT (1997), Rule 3, Sec. 1.

[43] Civil Code, Art. 44.

[44] *Id.*, Art. 46; Corporation Code, Art. 36.

[45] Local Government Code, Sec. 15 provides: "Every local government created or recognized under this Code is a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it shall exercise powers as a political subdivision of the national government and as a corporate entity representing the inhabitants of its territory."

[46] *Id.*, Sec. 285. *Allocation to Local Government Units*. – The share of local government units in the internal revenue allotment shall be allocated in the following manner:

among all the cities. Thus, an increase in the number of cities means that the allotment to each city out of the fixed 23% IRA share of all will be reduced. A fixed numerator divided by an increased denominator necessarily results in a smaller quotient. The reduction would obviously affect the amounts budgeted by existing cities for their programs and projects.

Jerry P. Treñas, as taxpayer, has *locus standi*. A person who pays taxes or is liable to pay taxes for the support of a taxing unit, and who would be injured by the unlawful expenditure of public funds by the illegal disposition of the public property of such unit, or by any other illegal act which would increase his or her burden of taxation, has *locus standi* to institute and

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(a) Provinces – Twenty-three percent (23%)
(b) Cities – Twenty-three percent (23%)
(c) Municipalities – Thirty-four percent (34%)
(d) *Barangays* – Twenty percent (20%)

Provided, however, That the share of each province, city, and municipality shall be determined on the basis of the following formula:

(a) Population – Fifty percent (50%)
(b) Land Area – Twenty-five percent (25%); and
(c) Equal Sharing – Twenty-five percent (25%):

Provided, further, That the share of each *barangay* with a population of not less than one hundred (100) inhabitants shall not be less than Eighty thousand pesos (₱80,000.00) per annum chargeable against the twenty percent (20%) share of the *barangay* from the internal revenue allotment, and the balance to be allocated on the basis of the following formula:

(a) On the first year of the effectivity of this Code:
    (1) Population – Forty percent (40%); and
    (2) Equal Sharing – Sixty percent (60%)
(b) On the second year:
    (1) Population – Fifty percent (50%); and
    (2) Equal Sharing – Fifty percent (50%)
(c) On the third year and thereafter:
    (1) Population – Sixty percent (60%); and
    (2) Equal Sharing – Forty percent (40%):

Provided, finally, That the financial requirements of *barangays* created by local government units after the effectivity of this Code shall be the responsibility of the local government unit concerned.

maintain a taxpayer's suit. This is regardless of the amount or kind of taxes being paid.[47]

In *Velarde v. Social Justice Society*,[48] reiterating the doctrine in *Del Mar v. Philippine Amusement and Gaming Corporation*,[49] the Court held that "parties suing as taxpayers must specifically prove that they have sufficient interest in preventing the illegal expenditure of money raised by taxation."[50] A taxpayer's suit "may be properly brought only when there is an exercise by Congress of its taxing or spending power."[51] Here, there is no question that the conduct of the plebiscites required under the cityhood laws and the consequent release of the respective IRAs of respondent municipalities as cities, entails the spending of funds sourced from the public coffers. Clearly, there is an exercise by Congress of its taxing or spending power.

In any event, the Court in more than one instance has taken a liberal stance as far as standing is concerned. This is especially true when important constitutional issues are at stake. The cases of *Philippine Constitution Association, Inc. v. Gimenez*,[52] *Civil Liberties Union v. Executive Secretary*,[53] *Guingona, Jr. v. Carague*,[54] *Basco v. Philippine Amusement and Gaming Corporation (PAGCOR)*,[55] *Osmeña v. Commission on Elections*,[56]

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[47] 16 Am. Jur. 2d, Constitutional Law, § 155.

[48] G.R. No. 159357, April 28, 2004, 428 SCRA 283.

[49] G.R. Nos. 138298 & 138982, November 29, 2000, 346 SCRA 485.

[50] *Velarde v. Social Justice Society, supra* at 296.

[51] *Id.*, citing *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections,* G.R. No. 132922, April 21, 1998, 289 SCRA 337; *Sanidad v. Commission on Elections*, G.R. Nos. L-44640, L-44684 & L-44714, October 12, 1976, 73 SCRA 333.

[52] G.R. No. L-23326, December 18, 1965, 15 SCRA 479.

[53] G.R. No. 83896, February 22, 1991, 194 SCRA 317.

[54] G.R. No. 94571, April 22, 1991, 196 SCRA 221.

[55] G.R. No. 91649, May 14, 1991, 197 SCRA 52.

[56] G.R. Nos. 100318, 100308, 100417 & 100420, July 30, 1991, 199 SCRA 750.

Carpio v. Executive Secretary,[57] *Kilosbayan, Inc. v. Guingona, Jr.*,[58] *Cruz v. Secretary of Environment and Natural Resources*,[59] and *Agan v. Philippine International Air Terminals Co., Inc.*,[60] bear witness to the liberal attitude of the Court on *locus standi*.

Indeed, public interest demands that the Court take a more liberal view in determining whether petitioners and petitioners-in-intervention possess *locus standi*. The issues hoisted are of paramount importance. The petitions and petitions-in-intervention raise serious constitutional issues on the requirements for conversion of a municipality to a city. This, in turn, would affect not only the conversion of respondent municipalities but also all future conversions of municipalities to cities. To dismiss the petitions and petitions-in-intervention on mere technicality is not in line with the function of this Court as the final interpreter of what the law is and should mean.

There is no merit to the contention of respondent COMELEC and respondent municipalities that the petitions and petitions-in-intervention are based on mere "speculative injury" that supposedly render them devoid of any actual controversy. This is belied by the allegations in the petitions and the petitions-in-intervention. There actually exist diametrically opposed views among the contending parties as regards the validity of the cityhood laws. Too, petitioners and petitioners-in-intervention have sufficiently averred economic injury to their city budgets and their plans and projects as a consequence of the conversion of respondent municipalities into component cities. Economic injury is a valid basis for acquiring *locus standi* and judicial review.[61]

Prohibition is the correct remedy to question the constitutionality of the cityhood laws.

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[57] G.R. No. 96409, February 14, 1992, 206 SCRA 290.

[58] G.R. No. 113375, May 5, 1994, 232 SCRA 110, 134-135.

[59] G.R. No. 135385, December 6, 2000, 347 SCRA 128.

[60] G.R. Nos. 155001, 155547 & 155661, May 5, 2003, 402 SCRA 612.

[61] *Scripps-Howard Radio v. FCC*, 316 US 4 (1942); *FCC v. Sanders Bros. Radio Station*, 309 US 470, 477 (1940).

The Constitution[62] grants to the Court original jurisdiction over petitions for prohibition. Although this original jurisdiction over petitions for prohibition (together with petitions for *certiorari*, *mandamus*, *quo warranto*, and *habeas corpus*) is concurrent with that of the Regional Trial Courts and the Court of Appeals, the established policy is that this Court allows the direct invocation of its original jurisdiction "if compelling reasons, or the nature and importance of the issues raised, warrant,"[63] or "in the interest of speedy justice and to avoid future litigations so as to promptly put an end to the present controversy."[64] This policy has been applied by the Court in exceptional cases, among them, *People v. Cuaresma*,[65] *Santiago v. Vasquez*,[66] *Manalo v. Gloria*,[67] *Philippine National Bank v. Sayo, Jr.*,[68] *Cruz v. Secretary of Environment and Natural Resources*,[69] *Buklod ng Kawaning EIIB v. Zamora*,[70] and *Government of the United States of America v. Purganan*.[71]

The Court should take cognizance of the petitions and petitions-in-intervention because the issues raised are exceptional and of paramount importance. They involve substantial public interest that warrant no less than the intervention of this Court so that said issues may be settled.

In *Tan v. Commission on Elections*,[72] this Court granted the petition for prohibition and struck down as unconstitutional Batas Pambansa Blg. 885, which created the province of Negros del

[62] Constitution (1987), Art. VIII, Sec. 5.

[63] *Fortich v. Corona*, G.R. No. 131457, April 24, 1998, 289 SCRA 624.

[64] *Id.* at 646.

[65] G.R. No. 67787, April 18, 1989, 172 SCRA 415.

[66] G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633.

[67] G.R. No. 106692, September 1, 1994, 236 SCRA 130.

[68] G.R. No. 129918, July 9, 1998, 292 SCRA 202, 232.

[69] *Supra* note 59.

[70] G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718.

[71] G.R. No. 148571, September 24, 2002, 389 SCRA 623.

[72] G.R. No. 73155, July 11, 1986, 142 SCRA 727.

Norte. The Court held that "[t]the challenged act is manifestly void and unconstitutional. Consequently, all the implementing acts complained of, *viz*, the plebiscite, the proclamation of a new province of Negros del Norte and the appointment of its officials are equally void."[73]

In *Miranda v. Aguirre*,[74] this Court granted the petition for a writ of prohibition with prayer for preliminary injunction assailing the constitutionality of R.A. No. 8528 converting the city of Santiago, Isabela, from an independent component city to a component city.

In *Agan v. Philippine International Air Terminals Co., Inc.*,[75] petitioners and petitioners-in-intervention were allowed to avail themselves of the remedy of prohibition to stop the Manila International Airport Authority (MIAA) and the Department of Transportation and Communications (DOTC) and its Secretary from implementing several agreements executed by the Philippine Government through the DOTC and the MIAA and the Philippine International Air Terminals Co., Inc.

In *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*,[76] the remedies of prohibition and *mandamus* were used to assail the constitutionality of R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995, along with its Implementing Rules and Regulations, Department of Environment and Natural Resources Administrative Order 96-40, and the Financial and Technical Assistance Agreement entered into on March 30, 1995 by the Republic of the Philippines and WMC (Philippines), Inc., a corporation organized under Philippine Laws.

In *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*,[77] the Court synthesized

[73] *Tan v. Commission on Elections*, *id.* at 753. Mr. Justice Claudio Teehankee, concurring.

[74] G.R. No. 133064, September 16, 1999, 314 SCRA 603.

[75] *Supra* note 60.

[76] G.R. No. 127882, January 27, 2004, 421 SCRA 148. Reconsidered on December 1, 2004 in G.R. No. 127882, 445 SCRA 1.

[77] G.R. No. 144322, February 6, 2007, 514 SCRA 346.

the requirements for a petition for prohibition, thus: (1) it must be directed against a tribunal, corporation, board, officer, or person exercising functions, judicial, quasi-judicial, or ministerial; (2) the tribunal, corporation, board, or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[78]

The petitions and petitions-in-intervention comply with the above criteria.

First, the petitions and petitions-in-intervention seek to prohibit the COMELEC from complying with its ministerial function to conduct the plebiscites as required by the cityhood laws. The DBM is also sought to be enjoined from performing its ministerial function of releasing the IRA of respondent municipalities as cities. In *Ruperto v. Torres*[79] and *Municipal Council of Lemery v. Provincial Board of Batangas*,[80] among others, ministerial function was described as one by which an officer or a tribunal performs in the context of a given set of facts, in a prescribed manner, and without regard for the exercise of his/its own judgment upon the propriety of the act done. The respective functions of the COMELEC and DBM as far as the cityhood laws are concerned fit this parameter.

The conduct sought to be prohibited in the petitions and petitions-in-intervention is a ministerial function. The COMELEC does not have the discretion whether or not to conduct the plebiscites. The same may be said of the DBM. It has no choice save to release the respective IRAs of respondent municipalities as cities.

Second, the petitions and petitions-in-intervention have sufficiently alleged that the COMELEC and the DBM acted without or in excess of jurisdiction in implementing the cityhood laws – on the part of the COMELEC, in conducting the plebiscites;

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[78] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission, id.* at 356-357.

[79] 100 Phil. 1098 (1957).

[80] 56 Phil. 260, 268 (1931).

while on the part of the DBM, in releasing the respective IRAs of respondent municipalities as cities.

Third, petitioners and petitioners-in-intervention have no other plain, speedy, and adequate remedy in the ordinary course of law. To recall, the cityhood laws have a common provision that the COMELEC is supposed to conduct plebiscites in different parts of the country for the ratification of the cityhood laws. Thus, filing different petitions for prohibition in the various Regional Trial Courts where the plebiscites were to be conducted was not a speedy and adequate remedy.

I cannot subscribe to the *fait accompli* defense of respondent municipalities, which they claim should be a ground for outright dismissal of the petitions and petitions-in-intervention. They are not mooted by the fact that plebiscites were already conducted, respondent municipalities acknowledged as cities, and their officials correspondingly appointed. The petitions and petitions-in-intervention raise constitutional issues which necessitate the intervention of the Court. No amount of intervening events can legitimize the conversions of respondent municipalities into component cities if, indeed, the requirements of the Constitution and the Local Government Code have not been met. As the Court earlier held:

> x x x the fact that such plebiscite had been held and a new province proclaimed and its officials appointed, the case before Us cannot truly be viewed as already moot and academic. Continuation of the existence of this newly proclaimed province which petitioners strongly profess to have been illegally born, deserves to be inquired by this Tribunal so that, if indeed, illegality attaches to its creation, the commission of that error should not provide the very excuse for perpetuation of such wrong. For this Court to yield to the respondents' urging that, as there have been *fait accompli*, then this Court should passively accept and accede to the prevailing situation is an unacceptable suggestion. Dismissal of the instant petition, as respondents so propose is a proposition fraught with mischief. Respondents' submission will create a dangerous precedent. Should this Court decline now to perform its duty of interpreting and indicating what the law is and should be, this might tempt again those who strut about in the corridors of power to recklessly and without ulterior

motives, create, merge, divide and/or alter the boundaries of political subdivisions either brazenly or stealthily, confident that this Court will abstain from entertaining future challenges to their acts if they manage to bring about a *fait accompli*.[81]

It is true that the usual function of the writ of prohibition is to prevent the execution of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished.[82] The office of prohibition is to arrest proceedings rather than to undo them.[83] A preventive remedy, as a rule, does not lie to restrain an act that is already *fait accompli*.[84]

However, courts may take exceptions. In the performance of their duties, courts should not be shackled by stringent rules which would result in manifest injustice. Rules of procedure are only tools crafted to facilitate the attainment of justice. Their strict and rigid application, if they result in technicalities that tend to frustrate rather than promote substantial justice, must be eschewed. Substantial rights must not be prejudiced by a rigid and technical application of the rules in the altar of expediency. When a case is impressed with public interest, a relaxation of the application of the rules is in order.[85] Time and again, this Court has suspended its own rules and excepted a particular case from their operation whenever the higher interests of justice so require.[86]

The issues in the petitions and petitions-in-intervention are exceptional. They are of paramount importance and involve

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[81] *Tan v. Commission on Elections, supra* note 72, at 741-742.

[82] *Heirs of Eugenia V. Roxas, Inc. v. Intermediate Appellate Court*, G.R. Nos. 67195, 78618 & 78619-20, May 29, 1989, 173 SCRA 581; *Agustin v. De la Fuente*, 84 Phil. 515 (1949); *Calbanero v. Torres*, 61 Phil. 522 (1935).

[83] Ferris, *The Law of Extraordinary Remedies*, 418.

[84] *Montes v. Court of Appeals*, G.R. No. 143797, May 4, 2006, 489 SCRA 432.

[85] *Tomawis v. Tabao-Caudang*, G.R. No. 166547, September 12, 2007, 533 SCRA 68.

[86] *Piczon v. Court of Appeals*, G.R. Nos. 76378-81, September 24, 1990, 190 SCRA 31, 38.

substantial public interest. They warrant no less than the intervention of this Court.

Now to the main points of the petition.

I

The cityhood laws do not violate Section 10, Article X of the 1987 Constitution.

Section 10, Article X of the 1987 Constitution states:

> No province, city, municipality, or *barangay* **shall** be created, divided, merged, abolished, or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

What the provision means is that once the Local Government Code is enacted, the creation, modification, or dissolution of local government units must conform with the criteria thus laid down.[87]

The use of the word "shall" in a constitutional provision is generally considered as a mandatory command,[88] though the word "shall" may receive a permissive interpretation when necessary to carry out the true intent of the provision where the word is found.[89] Thus, it is not always the case that the use of the word "shall" is conclusive.[90] However, a reading of

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[87] *Torralba v. Municipality of Sibagat*, G.R. No. 59180, January 29, 1987, 147 SCRA 390.

[88] 16 Am. Jur. 2d, Constitutional Law, § 97, citing *Axberg v. City of Lincoln*, 141 Neb. 55, 2 NW 2d 613, 141 ALR 894 (1942); *People v. De Jesus*, 21 A.D. 2d 236, 250 N.Y.S. 2d 317 (4th Dep't 1964); *Jones v. Freeman*, 193 Okla. 554, 146 P. 2d 564 (1943), appeal dismissed, 322 US 717, 64 S. Ct. 1288, 88 L. Ed. 1558 (1944); *Stubbs v. State*, 216 Tenn. 567, 393 SW 2d 150 (1965); *McMurdie v. Chugg*, 99 Utah 403, 107 P. 2d 163, 132 ALR 435 (1940).

[89] *Id.*, citing *Northwestern Bell Telephone Co. v. Wentz*, 103 NW 2d 245 (N.D. 1960); *Scopes v. State*, 154 Tenn. 105, 289 SW 363, 53 ALR 821 (1927).

[90] *Id.*, citing *Canyon Public Service Dist. v. Tasa Coal Co.*, 156 W. Va. 606, 195 SE 2d 647 (1973).

Section 10, Article X cannot be construed as anything else but mandatory.

That said Section 10 is mandatory is all the more bolstered by the use of the negative and prohibitory words "[**n**]**o** province, city x x x may be created x x x **except** in accordance with xxx." In *Varney v. Justice*[91] and *Hunt v. State*,[92] it was held that if the language used in the Constitution is prohibitory, it should be construed to mean a positive and unequivocal negation.

Section 10, Article X is clear: (a) the creation, division, merger or abolition or alteration of boundaries of local government units must be in accordance with the criteria set forth in the Local Government Code; and (b) such act must be approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit directly affected. On one hand, it should be in accordance with the criteria set forth in the Local Government Code because the creation, division, merger, or abolition of political units is part of the larger power to enact laws which the Constitution vests in Congress.[93] It is also to ensure uniformity in criteria. On the other hand, the plebiscite is required as a check against the pernicious political practice of gerrymandering. No better control exists against this excess than through the exercise of direct people power, which promotes local autonomy. After all, local autonomy is guaranteed by the Constitution.[94]

A. The intent of R.A. No. 9009, which amended Section 450 of the Local Government Code, is to exempt respondent municipalities from the income requirement of ₱100,000,000.00. Thus, the cityhood laws, which merely carry out the intent of R.A. No. 9009, are in accordance with the "criteria established in the Local Government Code," pursuant to Section 10, Article X of the 1987 Constitution.

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[91] 86 Ky. 596, 6 SW 457 (1888).

[92] 22 Tex. App. 396, 3 SW 233.

[93] See *Mendenilla v. Onandia,* 115 Phil. 534 (1962).

[94] CONSTITUTION (1987), Art. X, Sec. 2.

The cityhood laws contain a uniformly worded exemption clause, which states: "*Exemption from Republic Act No. 9009.* The city of [___] shall be exempt from the income requirement prescribed under Republic Act No. 9009."[95]

Petitioners and petitioners-in-intervention contend that since Section 10, Article X is mandatory and prohibitive, it follows that there is no other way of compliance but to refrain from enacting cityhood laws unless these are in accordance with the criteria established in the Local Government Code.[96] Section 10 contains no exceptions and should admit of no exceptions. Any exceptions to the rule, to be valid, must necessarily be enacted by Congress by first converting itself into a constituent assembly to amend the provision.[97] Since the income requirements

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[95] 1. Republic Act No. 9389, Sec. 62 (respondent Municipality of Baybay);
2. Republic Act No. 9390, Sec. 60 (respondent Municipality of Bogo);
3. Republic Act No. 9391, Sec. 61 (respondent Municipality of Catbalogan);
4. Republic Act No. 9392, Sec. 63 (respondent Municipality of Tandag);
5. Republic Act No. 9393, Sec. 62 (respondent Municipality of Lamitan);
6. Republic Act No. 9394, Sec. 60 (respondent Municipality of Borongan);
7. Republic Act No. 9398, Sec. 62 (respondent Municipality of Tayabas);
8. Republic Act No. 9404, Sec. 56 (respondent Municipality of Tabuk);
9. Republic Act No. 9405, Sec. 61 (respondent Municipality of Bayugan);
10. Republic Act No. 9407, Sec. 62 (respondent Municipality of Batac);
11. Republic Act No. 9408, Sec. 61 (respondent Municipality of Mati);
12. Republic Act No. 9409, Sec. 61 (respondent Municipality of Guihulngan);
13. Republic Act No. 9434, Sec. 60 (respondent Municipality of Cabadbaran);
14. Republic Act No. 9435, Sec. 63 (respondent Municipality of El Salvador);
15. Republic Act No. 9436, Sec. 62 (respondent Municipality of Carcar);
16. In the case of respondent Municipality of Naga, the exempting clause is in the form of a proviso in Section 64 of Republic Act No. 9491, which states, "xxx *Provided, however,* that the income requirement prescribed under Republic Act No. 9009 shall not apply to the City of Naga."

[96] Memorandum of Petitioners, p. 25.

[97] *Id*.

prescribed under R.A. No. 9009 are among the criteria in the Local Government Code within the contemplation of Section 10, it follows that the exemption clauses in the cityhood laws are in direct violation of Section 10.[98] In other words, Congress cannot provide a wholesale exemption from R.A. No. 9009 without repealing the law itself.

Petitioners and petitioners-in-intervention would be correct if it were not the intent of R.A. No. 9009, which amended Section 450 of the Local Government Code, to exempt respondent municipalities from the income requirement of ₱100,000,000.00.

I will elaborate.

The "criteria established in the local government code" that Section 10, Article X of the 1987 Constitution speaks of, are spread in at least four sections of the Local Government Code, namely, **Section 6** entitled "Authority to Create Local Government Units";[99] **Section 7** entitled "Creation and Conversion,"[100] **Section 449** entitled "Manner of

[98] *Id.* at 26-27.

[99] Sec. 6. *Authority to Create Local Government Units*. – A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the *sangguniang panlalawigan* or *sangguniang panlungsod* concerned in the case of a *barangay* located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

[100] Sec. 7. *Creation and Conversion.* – As a general rule, the creation of a local government unit or its conversion from one level to another is based on verifiable indicators of viability and projected capacity to provide for services to wit: (a) *Income*. – It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned; (b) *Population*. – It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and (c) *Land Area*. – It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Creation,"[101] and most importantly, **Section 450** entitled "Requisites for Creation."

During the deliberations on Section 5(3), Article VI of the 1987 Constitution,[102] Commissioner De Castro remarked that when Palayan City in Nueva Ecija was made a city, there were only three houses and two shades for cows.[103] The apparent whimsical reasons for creating cities ended when Batas Pambansa (B.P.) Blg. 337 provided, *inter alia*, that "[a] municipality may be converted into a component city if it has x x x an average regular annual income, as certified by the Minister of Finance, of at least ten million pesos for the last three consecutive years."[104] *B.P. Blg.* 337 was **repealed** by R.A. No. 7160 (Local Government Code) whose then Section 450 provided that "[a] municipality or cluster of *barangays* may be converted into a component city if it has an average annual income, as certified by the Department of Finance, of at least twenty million pesos (₱20,000,000.00) for at least two (2) consecutive years based on 1991 constant prices, x x x." R.A. No. 9009, amending Section 450 of the Local Government Code, **further increased** the income requirement to ₱100,000,000.00, thus:

Section 450. *Requisites for Creation*. – (a) A municipality or a cluster of *barangays* may be converted into a component city if

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Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

[101] Sec. 449. *Manner of Creation.* – A city may be created, divided, merged, abolished, or its boundary substantially altered, only by an Act of Congress, and Subject to approval by a majority of the votes cast in a plebiscite to be conducted by the COMELEC in the local government unit or units directly affected. Except as may otherwise be provided in such Act, the plebiscite shall be held within one hundred twenty (120) days from the date of its effectivity.

[102] Sec. 5. x x x (3) Each legislative district shall comprise, as far as practicable, contiguous, compact, and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.

[103] II Record, Constitutional Commission, p. 137.

[104] *Batas Pambansa Blg.* 337, Sec. 164.

it has a locally generated average annual income, as certified by the Department of Finance, of at least One Hundred Million Pesos (₱100,000,000.00) for the last two (2) consecutive years based on 2000 constant prices, and if it has either of the following requisites:

A contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or

A population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.

The creation thereof shall not reduce the land area, population and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income. (Underscoring supplied)

What Congress had in mind is not at all times accurately reflected in the language of the statute. Thus, the literal interpretation of a statute may render it meaningless; and lead to absurdity, injustice, or contradiction.[105] When this happens, and following the rule that the intent or the spirit of the law is the law itself,[106] resort should be had to the principle that the spirit of the law controls its letter.[107] Not to the letter that killeth, but to the spirit that vivifieth. ***Hindi ang letra na pumapatay, kung hindi ang diwa na nagbibigay buhay***.

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[105] *Casela v. Court of Appeals*, G.R. No. L-26754, October 16, 1970, 35 SCRA 279; *Hidalgo v. Hidalgo*, G.R. No. L-25326, May 29, 1970, 33 SCRA 105.

[106] *Senarillos v. Hermosisima*, 100 Phil. 501 (1956); *Torres v. Limjap*, 56 Phil. 141 (1931); *Tamayo v. Gsell*, 35 Phil. 953 (1916); *U.S. v. Tamparong*, 31 Phil. 321 (1915).

It is in this respect that the intent of Congress in enacting Senate Bill No. 2157, which eventually became R.A. No. 9009, finds relevance.

The purpose of the enactment of R.A. No. 9009 can be seen in the sponsorship speech of Senator Pimentel on Senate Bill No. 2157. Noteworthy is his statement that the basis for the proposed increase from ₱20,000,000.00 to ₱100,000,000.00 in the income requirement for municipalities and cluster of *barangays* wanting to be converted into cities is the "mad rush of municipalities wanting to be converted into cities," and in order that the country "will not be a nation of all cities and no municipalities," *viz*:

Senator Pimentel. Mr. President, I would have wanted this bill to be included in the whole set of proposed amendments that we have introduced to precisely amend the Local Government Code. However, it is a fact that there is a **mad rush of municipalities wanting to be converted into cities**. Whereas in 1991, when the Local Government was approved, there were only 60 cities, today the number has increased to 85 cities, with 41 more municipalities applying for conversion to the same status. **At the rate we are going, I am apprehensive that before long this nation will be a nation of all cities and no municipalities**.

It is for that reason, Mr. President, that we are proposing among other things, that the financial requirement, which, under the Local Government Code, is fixed at ₱20 million, be raised to ₱100 million to enable a municipality to have the right to be converted into a city, and the ₱100 million should be sourced from locally generated funds.

What has been happening, Mr. President, is, the municipalities aspiring to become cities say that they qualify in terms of financial requirements by incorporating the Internal Revenue share of the taxes of the nation added on to their regularly generated revenue. Under that requirement, it looks clear to me that practically all municipalities in this country would qualify to become cities.

It is precisely for that reason, therefore, that we are seeking the approval of this Chamber to amend, particularly Section 450 of Republic Act No. 7160, the requisite for the average annual income of a municipality to be converted into a city or cluster of *barangays*

which seek to be converted into a city, raising that revenue requirement from ₱20 million to ₱100 million for the last two consecutive years based on 2000 constant prices.[108] (Emphasis supplied)

What follows is revealing. At the time that R.A. No. 9009 was being deliberated upon, Congress was also well aware that several municipalities wanting to become cities and which qualified under the income threshold of ₱20,000,000.00 under the old Local Government Code had pending cityhood bills. These included respondent municipalities. Thus, equally noteworthy is the interpellation by Senate President Franklin Drilon of Senator Pimentel in which the latter stated that municipalities that had pending cityhood bills "**would not be affected**" by the income threshold of ₱100,000,000.00 being proposed by Senate Bill No. 2157, thus:

THE PRESIDENT. The Chair would like to ask for some clarificatory point.

SENATOR PIMENTEL. Yes, Mr. President.

THE PRESIDENT. This is just on the point of the pending bills in the Senate which propose the conversion of a number of municipalities into cities and which qualify under the present standard.

We would like to know the view of the sponsor: Assuming that this bill becomes a law, will the Chamber apply the standard as proposed in this bill to those bills which are pending for consideration?

SENATOR PIMENTEL, Mr. President, it might not be fair to make this bill, on the assumption that it is approved, retroact to the bills that are pending in the Senate for conversion from municipalities to cities.

THE PRESIDENT. Will there be an appropriate language crafted to reflect that view? Or does it not become a policy of the Chamber, assuming that this bill becomes a law tomorrow, that it will apply to those bills which are already approved by the House under the old version of the Local Government Code and are now pending in the Senate? The Chair does not know if we can craft a language which will limit the application to those which are not yet in the Senate. Or is that a policy that the Chamber will adopt?

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[107] *Id.*

SENATOR PIMENTEL. Mr. President, personally, I do not think it is necessary to put that provision because what we are saying here will form part of the interpretation of this bill. Besides, if there is no retroactivity clause, I do not think that the bill would have any retroactive effect.

THE PRESIDENT. So the understanding is that those bills which are already pending in the Chamber will not be affected.

SENATOR PIMENTEL. These will not be affected, Mr. President.

THE PRESIDENT. Thank you Mr. Chairman.[109] (Underscoring supplied)

The deliberations of Congress are necessary to ferret out the intent of the legislature in enacting R.A. No. 9009. It is very clear that **Congress intended that the then pending cityhood bills would not be covered by the income requirement of ₱100,000,000.00 imposed by R.A. No. 9009**. It was made clear by the Legislature that **R.A. No. 9009 would not have any retroactive effect**.

Thus, the interpellations by Senator Drilon of Senator Pimentel are consistent with the rule that laws should be applied prospectively in the spirit of justice and fair play. Be that as it may, the Civil Code is explicit that laws shall have no retroactive effect unless the contrary is provided.[110] This is expressed in the familiar legal maxim, *lex prospicit, non respicit.* The law

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[108] II Record, Senate, 13th Congress, p. 164 (October 5, 2000).

[109] *Id.* at 167-168. This is confirmed by the Journal of the Senate on January 29, 2007, p. 1240, which contains the following entry:

"REMARKS OF SENATOR PIMENTEL"

"Expressing his support for the sentiment of Senator Lim, Senator Pimentel stated that the local government units applying for cityhood are requesting to be exempted from the income requirement because when this was raised by RA 9009, the bills on conversion to cityhood were already pending in the House of Representatives. He recalled that during the deliberation on said law, when Senate President Drilon asked him if there were pending bills on the creation of cities, he replied that there were three, only to find out later on that there were, in fact, a number of cityhood bills pending in the House of Representatives. He asked Senator Lim to be more patient and to allow Senators Roxas and Recto to interpellate on the bills the following day."

looks forward, never backward. ***Ang batas ay tumitingin sa hinaharap, hindi sa nakaraan***. The reason behind the rule is not difficult to perceive. The retroactive application of the law usually divests rights that have already become vested or impairs the obligations of contracts, thus, is unconstitutional.[111]

It then becomes clear that the basis for the inclusion of the exemption clause of the cityhood laws is the clear-cut **intent** of the Legislature of not giving retroactive effect to R.A. No. 9009. In fact, not only do the legislative records bear the legislative intent of exempting the cityhood laws from the income requirement of ₱100,000,000.00 imposed by R.A. No. 9009. Congress has now made its intent **express** in the cityhood laws.

Legislative intent or spirit is the controlling factor, the leading star and guiding light in the application and interpretation of a statute.[112] If a statute needs construction, the influence most dominant in that process is the intent or spirit of the act.[113] The spirit, rather than the letter, of a statute, determines its construction.[114] Thus, a statute must be read according to its spirit or intent.[115] For what is within the spirit is within the statute although it is not within its letter, and that which is within the letter but not within the spirit is not within the statute.[116]

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[110] Civil Code, Art. 4.

[111] *Land Bank of the Philippines v. De Leon*, G.R. No. 143275, March 20, 2003, 399 SCRA 376; *Francisco v. Certeza, Sr.*, G.R. No. L-16849, November 29, 1961, 3 SCRA 565.

[112] *Yellow Taxi & Pasay Transp. Workers' Union v. Manila Yellow Taxi Cab Co.*, 80 Phil. 833 (1948); *Ledesma v. Pictain*, 79 Phil. 95 (1947); *McMicking v. Lichauco*, 27 Phil. 386 (1914); *Garcia v. Ambler,* 4 Phil. 81 (1904).

[113] *De Jesus v. City of Manila*, 29 Phil. 73 (1914).

[114] *Hidalgo v. Hidalgo, supra* note 105; *Go Chi Gun v. Co Cho*, 96 Phil. 622 (1955); *Manila Race Horse Trainers Association, Inc. v. De la Fuente*, 88 Phil. 60 (1951).

[115] *Roa v. Collector of Customs*, 23 Phil. 315 (1912).

[116] *People v. Purisima*, G.R. Nos. L-42050-66, L-46229-32, L-46313-16 & L-46997, November 20, 1978, 86 SCRA 542; *Villanueva v. City of Iloilo*,

Stated otherwise, a thing which is within the intent of the lawmaker is as much within the statute as if within the letter; and a thing which is within the letter of the statute is not within the statute unless within the intent of the lawmakers.[117] Legislative intent is part and parcel of the law. It is the controlling factor in interpreting a statute. In fact, any interpretation that runs counter with the legislative intent is unacceptable and invalid.[118] *Torres v. Limjap*[119] could not have been more precise, to wit:

> ***The intent of a Statute is the Law***. – If a statute is valid, it is to have effect according to the purpose and intent of the lawmaker. **The intent is the vital part, the essence of the law and the primary rule of construction is to ascertain and give effect to that intent**. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, **although it may not be consistent with the strict letter of the statute**. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. **Intent is the spirit which gives life to a legislative enactment**. In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature x x x.[120] (Emphasis supplied)

Verba intentioni, non e contra debent inservire. Words ought to be more subservient to the intent than intent to the words. ***Ang mga salita ng batas ay dapat higit na sumunod sa layunin kaysa ang layunin ang sumunod sa mga salita nito***.

B. Petitioners and petitioners-intervention were not able to discharge their onus probandi of overcoming the presumption of constitutionality accorded to the cityhood laws.

G.R. No. L-26521, December 28, 1968, 26 SCRA 578; *Manila Race Horse Trainers Association, Inc. v. De La Fuente*, *supra*.

[117] *Alonzo v. Intermediate Appellate Court,* G.R. 72873, May 28, 1987, 150 SCRA 259; *Roa v. Collector of Customs, supra* note 115; *U.S. v. Co Chico,* 14 Phil. 128 (1909).

[118] *National Police Commission v. De Guzman, Jr.,* G.R. No. 106724, February 9, 1994, 229 SCRA 801.

[119] *Supra* note 106.

On the side of every law lies the presumption of constitutionality.[121] Consequently, before a law is nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. Laws will only be declared invalid if the conflict with the Constitution is clear beyond reasonable doubt.[122] A declaration of the unconstitutionality of a statute is only done (a) as a last resort;[123] (b) when absolutely necessary;[124] (c) when the statute is in palpable conflict with a plain provision of the Constitution;[125] and (d) when the invalidity is beyond reasonable doubt.[126]

x x x there is a strong presumption that all regularly enacted statutes are constitutional. In other words, statutes are not presumed to be irrational. Thus, where possible, congressional enactments are to be interpreted so as to avoid raising serious doubts on constitutional questions.

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[120] *Torres v. Limjap, id.* at 145-146, citing Sutherland, Statutory Construction, Vol. II, pp. 693-695.

[121] *Heller v. Doe by Doe,* 509 US 312, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993); *Basco v. Philippine Amusements and Gaming Corporation, supra* note 55; *Abbas v. Commission on Elections,* G.R. Nos. 89651 & 89965, November 10, 1989, 179 SCRA 287; *Salas v. Jarencio,* G.R. No. L-29788, August 30, 1972, 46 SCRA 734; *Yu Cong Eng v. Trinidad,* 47 Phil. 387 (1925).

[122] *Peralta v. Commission on Elections,* G.R. Nos. L-47771, L-47803, L-47816, L-47767, L-47791 & L-47827, March 11, 1978, 82 SCRA 30, citing *Cooper v. Telfair,* 4 Dall. 14; Dodd, *Cases on Constitutional Law,* 3rd ed. 1942, 56.

[123] 16 Am. Jur. 2d, Constitutional Law, § 115, citing *Tulkisarmute Native Community Council v. Heinze,* 898 P. 2d 935 (Alaska 1995); *Gail Turner Nurses Agency, Inc. v. State,* 17 Misc. 2d 273, 190 NYS 2d 720 (Sup. Ct. 1959); *El Dia, Inc. v. Hernandez Colon,* 963 F. 2d 488, 20 Media L. Rep. (BNA) 1210 (1st Cir. 1992) (declined to follow on other grounds by, *Charter Federal Sav. Bank v. Office of Thrift Supervision,* 976 F. 2d 203 (4th Cir. 1992)) and (declined to follow on other grounds by, *Jackson v. Culinary School of Washington, Ltd.,* 27 F. 3d 573, 92 Ed. Law Rep. 797 (D.C. Cir. 1994)) and disagreement on other grounds recognized by, *NUCOR Corp. v. Aceros Y Maquilas de Occidente, S.A. de C.V.,* 28 F. 3d 572, 23 U.C.C. Rep. Serv. 2d (CBC) 1044 (7th Cir. 1994).

[124] *Id.,* citing § 117.

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The general principle that there is a strong presumption that all regularly enacted statutes are constitutional has been expressed in a variety of ways. Thus, it has been said that all statutes are of constitutional validity unless they are shown to be invalid; that legislatures are presumed to have acted constitutionally in passing a statute; that the courts must start out with the presumption that a statute is constitutional and valid; that every intendment is in favor of the validity of a statute; that every act of the legislature is presumed to be in harmony with the constitution unless the contrary clearly appears; that every act of the legislature and every law found on the statute books is presumptively valid, at least if the statute is not patently unconstitutional on its face; that the courts will indulge in every presumption of constitutionality of which the statute is susceptible; that every rational and reasonable presumption must be indulged in favor of the validity of an act; and that the presumption of constitutionality is the postulate of judicial adjudication. The presumption should be the foremost thought in the court's mind as its proceeds to determine the constitutionality of a statute.[127] (Citations omitted)

The presumption of constitutionality accorded to statutes produces a grave consequence – anyone who wants a statute to be declared unconstitutional bears the *onus probandi*, thus:

A party who alleges the unconstitutionality of a statute normally has the burden of substantiating his or her claim. The burden is a heavy and difficult one, and it is well settled that to sustain it, the assailant must negate every reasonable, conceivable basis which might support the statute attacked; must be able to point out the particular provision that has been violated and the ground on which it has been infringed; with regard to facial attacks alleging invalidity, must establish that no set of circumstances exists under which the act may be held valid; and must overcome the strong presumption in favor of its validity, which continues until the contrary is proved. He or she must show how, as to him or her, the legislation in question is unconstitutional. x x x[128] (Citations omitted)

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[125] *Id.*, citing *State v. Watkins*, 676 So. 2d 247 (Miss. 1996).

[126] *Id.*, citing § 201.

Sadly for petitioners and petitioners-in-intervention, they failed to discharge their heavy burden. Because they failed to do so, the Court has no choice but to uphold the presumption of constitutionality accorded to the cityhood laws.

II

The cityhood laws do not violate the equal protection clause under Section 1, Article III of the Constitution by granting special treatment to respondent municipalities in exempting them from the minimum income requirement imposed by R.A. No. 9009.

Article III, Section 1 of the Constitution partly provides that no person shall "be denied the equal protection of the laws." This provision was sourced from the Fourteenth Amendment of the United States Constitution[129] which, among others, provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."[130] Although couched differently, the equal protection clause in the United States Constitution has the same meaning as that in the Philippine Constitution. [131]

The essence of the command of the equal protection clause is a direction that all persons similarly situated should be treated alike.[132] The primary objective of the equal protection clause was to secure for the black persons, who were then recently emancipated, the full enjoyment of their freedom.[133] As presently understood, however, equal protection extends to all persons without regard for race, color, or class. It prohibits any state legislation which denies to any race, class, or individual the

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[127] *Id.*, § 166.

[128] *Id.*, § 198.

[129] Ratified on July 9, 1868.

[130] Sec. 1.

[131] See *Smith, Bell & Co. v. Natividad,* 40 Phil. 136 (1919).

[132] 16B Am. Jur. 2d, Constitutional Law, § 777.

[133] *Id.*, § 781, citing *Palmer v. Thompson,* 403 US 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438 (1971); *Hunter v. Erickson,* 393 US 385, 89 S. Ct. 557, 21 L. Ed. 2d 616, 47 Ohio Op. 2d 100 (1969).

equal protection of the laws.[134] And as "persons" include corporations,[135] political subdivisions of a state, which are public corporations, are covered by the guarantee of the equal protection clause.

Not all classifications are prohibited, however. The equal protection guarantee of the Fourteenth Amendment does not take away from Congress the power of classification.[136] Thus, it is hornbook doctrine that the guaranty of the equal protection of the law is not violated by a legislation based on reasonable classification.[137]

However, the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purpose of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class.[138] Using the foregoing as parameters, We rule that the cityhood laws do not violate the equal protection clause.

A. Sponsorship speech of Senator Alfredo Lim on House Joint Resolution No. 1

But first, let the convincing sponsorship speech of then Senator Alfredo Lim on House Joint Resolution No. 1 shed light on the ensuing discussion:

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[134] *Id.*, citing *Truax v. Corrigan,* 257 US 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 ALR 375 (1921); *Hernandez v. State of Tex.*, 347 US 475, 74 S. Ct. 667, 98 L. Ed. 866 (1954).

[135] See 18A Am. Jur. 2d, Corporations, § 64.

[136] 16B Am. Jur. 2d, Constitutional Law, § 808, citing *Western and Southern Life Ins. Co. v. State Bd. of Equalization of California,* 451 US 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981); *Personnel Adm'r of Massachusetts v. Feeney,* 442 US 256, 99 S. Ct. 2282, 60. L. Ed. 2d 870, 19 Fair Empl. Prac. Cas. (BNA) 1377, 19 Empl. Prac. Dec. (CCH) ¶ 9240 (1979), on remand to, 475 F. Supp. 109, 20 Fair Empl. Prac. Cas. (BNA) 772, 20 Empl. Prac. Dec. (CCH) ¶ 30228 (D. Mass. 1979), judgment aff'd, 445 US 901, 100 S. Ct. 1075, 63 L. Ed. 2d 317, 22 Fair Empl. Prac. Cas. (BNA) 62, 22 Empl. Prac. Dec. (CCH) ¶ 30616 (1980); *DiSabato v. Board of Trustees of State Employees' Retirement System of Illinois*, 285 Ill. App. 3d 827, 221 Ill. Dec. 59, 674 NE 2d 852 (1st Dist. 1996); *Allen v. Montgomery Hosp.*, 548 Pa. 299, 696 A. 2d 1175 (1997), cert. denied, 118 S. Ct. 443 (U.S. 1997).

[137] *People v. Cayat,* 68 Phil. 12 (1939).

[138] *Id.* at 18.

I thank the Senate President and my colleagues in this Chamber for their kind indulgence in allowing this Representation to take the floor on behalf of the people of 12 municipalities in their collective aspiration for sustained growth and progress. Over a million people spread in eight regions have long been awaiting the realization of their dreams for cityhood.

Between July 1998 to June 2001, during the Eleventh Congress, fifty-seven (57) municipalities applied for city status, confident that each has met the requisites for conversion under Section 450 of the Local Government Code, particularly the income threshold of ₱20 million. Of the 57 that filed, thirty-two (32) were enacted into law; one was rejected in a plebiscite; while the rest – twenty-four (24) in all – failed to pass through Congress. Shortly before the long recess of Congress in February 2001, to give way to the May elections of that year, Senate Bill No. 2157, which eventually became Republic Act No. 9009, was passed into law, effectively raising the income requirement for creation of cities to a whooping ₱100 million, exclusive of IRA. Much as the proponents of the 24 cityhood bills then pending struggled to beat the effectivity of the law on June 30, 2001, events that then unfolded were swift and overwhelming that Congress just did not have the time to act on the measures.

Some of these intervening events were the Senate Blue Ribbon Committee investigation into the *jueteng* scandal, the impeachment of President Estrada by the House of Representatives, the aborted impeachment proceedings in the Senate, the leadership reorganization in both Houses of Congress, the "EDSA Dos" and "EDSA Tres" uprisings, the campaign period and the May 2001 elections.

The imposition of a much higher income requirement for the creation of a city virtually delivered a lethal blow to the aspirations of the 24 municipalities to attain economic growth and progress. To them, it was unfair; like any sport – changing the rules in the middle of the game.

Undaunted, they came back during the Twelfth Congress (from June 2001 to June 2004) appealing for fairness and justice. They filed House Joint Resolution No. 29 seeking exemption from the higher income requirement of RA 9009. They were successful in the House all the way through the Senate. Here, they found a staunch ally in the person of my dear friend and colleague Sen. Bobby Barbers as chair of the Committee on Local Government. Several public hearings, caucuses, dialogues and informal discussions

notwithstanding, the committee report was only good up to plenary debates. For the second time, time ran out from them.

For many of the municipalities whose Cityhood Bills are now under consideration, this year, at the closing days of the Thirteenth Congress, marks their ninth year appealing for fairness and justice. House Joint Resolution No. 1 which was sent by the House to the Senate for concurrence embodies their unfailing hope that their lawmakers would give them their rightful due.

I, for one, share their view that fairness dictates that they should be given a legal remedy by which they could be allowed to prove that they have all the necessary qualifications for city status using the criteria set forth under the Local Government Code prior to its amendment by RA 9009. Hence, when House Joint Resolution. No. 1 reached the Senate and was referred to the Committee on Local Government in March 2005, I immediately set the public hearing the following month. On July 25, 2006, I filed Committee Report No. 84 after over a year of determining the sentiments of our colleagues and considering the positions taken by the concerned sectors both for and against the resolution. On September 6, I delivered the sponsorship speech and was interpellated by Senators Aquilino Pimentel, Jr. and Sergio Osmeña III on September 12. Although I had made myself available for interpellation from anyone almost every session day since then, it was only last October 12 that the Senate agreed to proceed with the committee and individual amendments. On the same day, the Senate approved the measure on Second Reading, without prejudice to a motion for reconsideration by any member who was not on the floor that day.

After a month-long break, on November 7, the approval was reconsidered to give way to further questions from Senators Pimentel and Biazon. By November 14, the measure had reverted to the period of individual amendments. This was when the then acting majority leader, Senator Compañera Pia Cayetano, informed the Body that Senator Pimentel and the proponents of House Joint Resolution No. 1 have agreed to the proposal of the Minority Leader for the House to first approve the individual Cityhood Bills of the qualified municipalities, along with the provision exempting each of them from the higher income requirement of RA 9009. Prior to that, on the initiative of the Senate President, and in his presence, this Representation and Senator Pimentel had come up with an agreement with the proponents to pre-qualify the municipalities. This led to

the certification issued by the proponents short-listing fourteen (14) municipalities deemed to be qualified for city-status.

Acting on the suggestion of Senator Pimentel, the proponents lost no time in working for the approval by the House of Representatives of their individual Cityhood Bills, each containing a provision of exemption from the higher income requirement of RA 9009. On the last session day of last year, December 21, the House transmitted to the Senate the Cityhood Bills of twelve out of the 14 pre-qualified municipalities. Your Committee immediately conducted the public hearing last January 10, and the committee reports were filed on January 25.

The whole process I enumerated spanning three Congresses brings us to where we are today. I sincerely hope that time would not run out for them the third time around.

In essence, the Cityhood Bills now under consideration will have the same effect as that of House Joint Resolution No. 1 because each of the 12 bills seeks exemption from the higher income requirement of RA 9009. The proponents are invoking the exemption on the basis of justice and fairness.

Each of the 12 municipalities has all the requisites for conversion into a component city based on the old requirements set forth under Section 450 of the Local Government Code, prior to its amendment by RA 9009, namely:

1. An average annual income, as certified by the Department of Finance, of at least ₱20 million for the last two consecutive years based on 1991 constant prices, and if it has either of the following requisites:

    1.1 A contiguous territory of at least 100 square kilometers, as certified by the Lands Management Bureau; or

    1.2 A population of not less than 150,000 inhabitants, as certified by the National Statistics Office.

Allow me now to place on record the qualification of each of the 12 municipalities based on these requirements. The average regular income for the years 2000 and 2001 (prior to the effectivity of RA 9009) based on 1991 constant prices was duly certified by the Bureau of Local Government Finance, the land area by the Lands Management Bureau, and the population (based on the 2000 Census) by the National Statistics Office:

Municipalities	(House Bill-Committee Report)	Income	Land Area	Population
1. Baybay, Leyte	(H. No. 5973-CR 218)	₱29.8M	459.34 km²	86,179
2. Tayabas, Quezon	(H. No. 5930-CR 219)	₱24.7M	230.95 km²	64,449
3. Catbalogan, Samar	(H. No. 5998-CR 220)	₱28.3M	274.22 km²	76,324
4. Lamitan, Basilan	(H. No. 6601-CR 221)	₱22.1M	354.95 km²	54,433
5. Tandag, Surigao del Sur	(H. No. 5999-CR 222)	₱21.7M	291.73 km²	39,222
6. Tabuk, Kalinga	(H. No. 6005-CR 223)	₱29.9M	700.25 km²	63,507
7. Batac, Ilocos Norte	(H. No. 6004-CR 224)	₱28.3M	161.06 km²	45,534
8. Carcar, Cebu	(H. No. 6002-CR 225)	₱25.7M	116.78 km²	78,726
9. Bayugan, Agusan del Sur	(H. No. 5991-CR 226)	₱32.5M	668.77 km²	89,999
10. Cabadbaran, Agusan Del Norte	(H. No. 5992-CR 227)	₱21.9M	311.02 km²	51,905
11. Borongan, Eastern Samar	(H. No. 5990-CR 228)	₱25.4M	475.00 km²	48,638
12. Bogo, Cebu	(H. No. 5997-CR 229)	₱22.0M	103.52km²	57,509

Based on these data, it is clear that all the 12 municipalities under consideration are qualified to become cities prior to RA 9009. All of them satisfy the mandatory requirement on income and one of the two optional requirements of territory.

It must also be noted that except for Tandag and Lamitan, which are both second-class municipalities in terms of income, all the rest are categorized by the Department of Finance as first-class municipalities with gross income of at least ₱70 million as per Commission on Audit Report for 2005. Moreover, Tandag and Lamitan, together with Borongan, Catbalogan, and Tabuk, are all provincial capitals.

The more recent income figures of the 12 municipalities, which would have increased further by this time, indicate their readiness to take on the responsibilities of cityhood.

Moreover, the municipalities under consideration are leading localities in their respective provinces. Borongan, Catbalogan, Tandag, Batac and Tabuk are ranked number one in terms of income among all the municipalities in their respective provinces; Baybay and Bayugan are number two; Bogo and Lamitan are number three; Carcar, number four; and Tayabas, number seven. Not only are they pacesetters in their respective provinces, they are also among the frontrunners in

their regions – Baybay, Bayugan and Tabuk are number two income earners in Regions VIII, XII, and CAR, respectively; Catbalogan and Batac are number three in Regions VIII and I, respectively; Bogo, number five in Region VII; Borongan and Carcar are both number six in Regions VIII and VII, respectively. This simply shows that these municipalities are viable.

It is for these reasons that I once again appeal to my distinguished colleagues for their kind consideration and approval of the Cityhood Bills of the 12 municipalities whose application for city status was overtaken by events beyond their control. They have longed for so long a time now, ever hoping that their elected representatives in this Chamber would see the reasonableness of their appeal. I believe they have already bent over backwards in recognition of the valid sentiments of their colleagues in the League of Cities. You will note that out of the original 24 municipalities, we only have before us nearly as half.

Our people from these 12 municipalities deserve a straightforward response from us on this matter they deem important. Even those who oppose the exemption expect that the Senate would once and for all put a closure to the issue. There is ample time if we choose to measure up to our mandate as representatives of the people. I am confident that we will not fail them the third time.[139] (Underscoring supplied)

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[139] *Supra* note 2, at 1238-1240.

It may be observed that **Baybay, Leyte**; **Mati, Davao Oriental**; **El Salvador, Misamis Oriental**; and **Naga, Cebu** are not included in the municipalities enumerated by Senator Alfredo Lim in his sponsorship speech. However, the list mentioned by Senator Lim should not be interpreted to be an exclusive list.

In fact, House Joint Resolution No. 1 expressly includes the four (4) omitted municipalities in the list of municipalities that had pending bills before R.A. No. 9009 was passed and were compliant with the ₱20,000,000.00 income requirement prescribed by the old Section 450 of the Local Government Code.

To recall also, upon the prodding of Senator Aquilino Pimentel, Jr. during the Senate session on November 26, 2006, sixteen (16) out of the twenty-four (24) municipalities enumerated by House Joint Resolution No. 1 (*i.e.*, the sixteen [16] respondent municipalities, including Baybay, Leyte; Mati, Davao Oriental; El Salvador, Misamis Oriental; and Naga, Cebu) filed their individual cityhood bills which eventually lapsed into law when President Gloria Macapagal-Arroyo chose not to sign them.

B. The classification rests on substantial distinctions. What distinguishes respondent municipalities from other municipalities is that the latter had pending cityhood bills before the passage of R.A. No. 9009. In the words of Senator Lim, the peculiar conditions of respondent municipalities, which led to their exemption from the increased ₱100,000,000.00 income requirement of R.A. No. 9009, is that the imposition of a much higher income requirement on those that were qualified to become cities before the enactment of R.A. No. 9009 was "unfair; like any sport – changing the rules in the middle of the game." Thus, "fairness dictates that they should be given a legal remedy by which they should be allowed to prove that they have all the necessary qualifications for city status using the criteria set forth under the Local Government Code prior to its amendment by R.A. No. 9009." Truly, the peculiar conditions of respondent municipalities, which are actual and real, furnish sufficient grounds for legislative classification.

It is not the province of the Court to delve into the wisdom of legislative enactments. The only function of courts is the interpretation of laws. The principle of separation of powers prevents them from reinventing laws.[140] By the very nature of the function of the Legislature, it is that branch of government that is vested with being the judge of the necessity, adequacy, wisdom, reasonableness, and expediency of any law.[141] Courts are bereft of any power to take away the prerogatives of the legislature in the guise of construing or interpreting the law.[142] In making choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Courts do not sit to resolve the merits of conflicting theories. That is the prerogative of the political departments. It is settled that questions regarding the wisdom, morality, or practicability of statutes, are not addressed to the judiciary. They may be

[140] *Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) v. The Secretary, Department of Interior and Local Government*, G.R. No. 143076, June 10, 2003, 403 SCRA 558, 572-573.

[141] *Ichong v. Hernandez*, 101 Phil. 1155 (1957).

[142] *Republic v. Go Bon Lee*, 111 Phil. 805 (1961); *Tañada v. Cuenco*, 103 Phil. 1051 (1957); *De los Santos v. Mallare*, 87 Phil. 289 (1950).

addressed only by the legislative and executive departments, to which the function belongs in our scheme of government. That function is exclusive, to which courts have no business of prying into. Whichever way the legislative and executive branches decide, they are answerable only to their own conscience and their constituents who will ultimately judge their acts, and not the courts of justice.[143]

Courts cannot question the wisdom of the classification made by Congress. This is the prerogative of the Legislature. The power of the Legislature to make distinctions and classifications among persons is neither curtailed nor denied by the equal protection clause of the Constitution. Legislative power admits of a wide scope of discretion. A law can be violative of the constitutional limitation only when the classification is without reasonable basis.

> Courts do not sit to determine the wisdom of statutes, or fashion remedies that Congress has specifically chosen not to extend. With questions of wisdom, propriety, appropriateness, necessity, policy, fairness, or expediency of legislation or regulations, the courts simply have no concern.
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> xxx xxx xxx
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> The courts should similarly be unconcerned with questions of legislative motivation. Indeed, the factfinding process and motivation of legislative bodies is generally entitled to a presumption of regularity and deferential review by the judiciary x x x.[144]

True, courts are given that awesome power to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[145] There is none here.

C. The classification is germane to the purpose of the law. The exemption of respondent municipalities from the ₱100,000,000.00 income requirement of R.A. No. 9009 was

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[143] *Magtajas v. Pryce Properties Corporation, Inc.*, G.R. No. 111097, July 20, 1994, 234 SCRA 255, 268.

[144] 16A Am. Jur. 2d, Constitutional Law, § 271.

[145] CONSTITUTION (1987), Art. VIII, Sec. 1

unquestionably designed to insure that fairness and justice were accorded to respondent municipalities, as their cityhood bills were not enacted by Congress in view of intervening events and for reasons beyond their control. The equal protection clause does not merely prohibit Congress from passing discriminatory laws. The equal protection clause also commands Congress to pass laws which would positively promote equality or reduce existing inequalities. This was what Congress actually did in enacting the cityhood laws. These laws positively promote equality and reduce the existing inequality between respondent municipalities and the "other thirty-two (32) municipalities" whose cityhood bills were enacted during the 11th Congress.

D. The classification is not limited to existing conditions only. The non-retroactive effect of R.A. No. 9009 is not limited in application to conditions existing at the time of its enactment. It is intended to apply for all time as long as the conditions set there exist. It is applicable as long as the concerned municipalities have filed their respective cityhood bills before the effectivity of R.A. No. 9009, and qualify for conversion into city under the original version of Section 450 of the Local Government Code.

The common exemption clause in the cityhood laws is an application of the non-retroactive effect of R.A. No. 9009. **It is not a declaration of certain rights but a mere declaration of prior qualification and/or compliance with the non-retroactive effect of R.A. No. 9009**.

Curiously, petitioners and petitioners-in-intervention do not question the constitutionality of R.A. No. 9009. In fact, they use R.A. No. 9009 to argue for the alleged unconstitutionality of the cityhood laws. This is absurd, considering that **the cityhood laws only expressed the intent of R.A. No. 9009 to exempt respondent municipalities from the income requirement of ₱100,000,000.00**.

Petitioners and petitioners-in-intervention, however, invite the attention of the Court to *Mayflower Farms, Inc. v. Ten Eyck.* [146] In that case, the Milk Control Act of 1933 authorized

[146] 297 US 266 (1936).

a board to fix minimum prices for sales of fluid milk by dealers to stores in cities where there are more than one million inhabitants with a differential of 1% quart in favor of dealers "not having a well-advertised trade name." The Act was good for one year. An amended act, effective April 1, 1934, placing milk control under the jurisdiction of a division of the Department of Agriculture and Markets, contained a similar provision on the differential. The pertinent section, as it stood at the time of the appellant's application for a license, is as follows:

> It shall not be unlawful for any milk dealer who since April tenth, nineteen hundred thirty-three has been engaged continuously in the business of purchasing and handling milk not having a well advertised trade name in a city of more than one million inhabitants to sell fluid milk in bottles to stores in such city at a price not more than one cent per quart below the price of such milk sold to stores under a well advertised trade name, and such lower price shall also apply on sales from stores to consumers; provided that in no event shall the price of such milk not having a well advertised trade name, be more than one cent per quart below the minimum price fixed (by the board) for such sales to stores in such a city.[147]

Appellant Mayflower did not have a well-advertised trade name. However, its application for license was denied because although it had not been continuously in the business of dealing in milk since April 10, 1933, it had sold and was selling to stores milk at a price a cent below the established minimum price. The issue then centered on "whether the provision denying the benefit of the differential to all who embark in the business after April 10, 1933, works a discrimination which has no foundation in the circumstances of those engaging in the milk business in New York City, and is therefore so unreasonable as to deny appellant the equal protection of the laws in violation of the Fourteenth Amendment."[148]

In support of the argument that the questioned act did not violate the equal protection clause, appellees referred to the

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[147] *Mayflower Farms, Inc. v. Ten Eyck, id.* at 271-272.

[148] *Id.* at 272.

Court "a host of decisions to the effect that a regulatory law may be prospective in operation and may except from its sweep those presently engaged in the calling or activity to which it is directed. Examples are statutes licensing physicians and dentists, which apply only to those entering the profession subsequent to the passage of the act and exempt those then in practice, or zoning laws which exempt existing buildings, or laws forbidding slaughter houses within certain areas, but excepting existing establishments."[149]

The cases cited by appellees, however, were held to be inapplicable to the questioned Act. This was so because the questioned Act, "on its face, x x x is not a regulation of a business or an activity in the interest of, or for the protection of, the public, but an attempt to give an economic advantage to those engaged in a given business at an arbitrary date as against all those who enter the industry after that date."[150]

In finally ruling that the questioned Act violated the equal protection clause, the United States Supreme Court, through Mr. Justice Owen Roberts, held that "appellees do not intimate that the classification bears any relation to the public health or welfare generally; that the provision will discourage monopoly; or that it was aimed at any abuse, cognizable by law, in the milk business."[151] Thus, "[i]n the absence of any such showing, we have no right to conjure up possible situations which might justify the discrimination. The classification is arbitrary and unreasonable and denies the appellant the equal protection of the law."[152]

Petitioners and petitioners-in-intervention claim that like the Milk Control Act of 1933, the cityhood laws should also be declared unconstitutional because "there is no compelling or countervailing State policy, constitutional provision or even

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[149] *Id.* at 274.

[150] *Id.*

[151] *Id.*

[152] *Id.*

statutory or public policy that underlies the exemption clause in the cityhood laws."[153]

The argument is untenable. The Milk Control Act of 1933 was declared unconstitutional because the time was based on an arbitrary date. It did not have any relation to the public welfare generally. There was no causal connection between time and the purpose of the law.

What we have here is different. There is a causal connection between time, *i.e.*, the Eleventh Congress when the cityhood bills of respondent municipalities were filed, and the purpose of the law, which is justice and fairness.

Respondent municipalities and the other thirty-two (32) municipalities, which had already been elevated to city status, were all found to be qualified under the old Section 450 of the Local Government Code and had pending cityhood bills during the Eleventh Congress. As such, both respondent municipalities and the other thirty-two (32) municipalities are under like circumstances and conditions. There is thus no cogent reason why an exemption from the ₱100,000,000.00 cannot be given to respondent municipalities. Otherwise, unfairness and injustice will be committed against them.

The equal protection of the law clause proscribes undue favor and individual favor and individual or class privilege as well as hostile discrimination or the possession of inequality. The equal protection clause is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. Neither does equal protection demand absolute equality among residents. It merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.[154]

An analogy may be found in the Constitution. Citizenship may be granted to those born before January 17, 1973, of Filipino

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[153] Memorandum of Petitioners, p. 62.

[154] *Ichong v. Hernandez*, *supra* note 141, citing 2 Cooley, Constitutional Limitations, 824-825.

mothers, who elect Philippine citizenship upon reaching the age of majority. Citizenship, however, is denied to those who, although born before January 17, 1973, of Filipino mothers, did not elect Philippine citizenship upon reaching the age of majority.[155] In like manner, Congress has the power to carry out the intent of R.A. No. 9009 by making a law which exempts municipalities from the ₱100,000,000.00 income requirement imposed by R.A. No. 9009 if their cityhood laws were pending when R.A. No. 9009 was passed, and were compliant with the income threshold requirement of ₱20,000,000.00 imposed by then Section 450 of the Local Government Code.

Even if the classification of the cityhood laws is limited to existing conditions only, this does not automatically mean that they are unconstitutional. The general rule is that a classification must not be based on existing conditions only. It must also be made for future acquisitions of the class as other subjects acquire the characteristics which form the basis of the classification. The exception is when the statute is curative or remedial, and thus temporary.[156]

Here, the cityhood laws are curative or remedial statutes. They seek to prevent the great injustice which would be committed to respondent municipalities. Again, the cityhood laws are not contrary to the spirit and intent of R.A. No. 9009 because Congress intended said law to be prospective, not retroactive, in application. Indeed, to deny respondent municipalities the same rights and privileges accorded to the other thirty-two (32) municipalities when they are under the same circumstances, is tantamount to denying respondent municipalities the protective mantle of the equal protection clause. In effect, petitioners and petitioners-in-intervention are creating an absurd situation in which an alleged violation of the equal protection clause of the Constitution is remedied by another violation of the equal protection clause. That the Court cannot sustain.

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[155] CONSTITUTION (1987), Art. IV, Sec. 1(3) provides that "[t]hose born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority"; are citizens of the Philippines.

[156] 16B Am. Jur. 2d, Constitutional Law, § 846.

E. The classification applies equally to all members of the same class. The cityhood laws, in carrying out the clear intent of R.A. No. 9009, apply to municipalities that had pending cityhood bills before the passage of R.A. No. 9009 and were compliant with then Section 450 of the Local Government Code that prescribed an income requirement of ₱20,000,000.00.

In sum, a statutory discrimination will not be set aside on the ground of denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it.[157] Class legislation which discriminates against some and favors others is prohibited. But a classification on a reasonable basis, which is not made arbitrarily or capriciously, is permissible.[158] Thus, in *Lopez v. Commission on Elections*,[159] the Court rejected the claim that there was denial of the equal protection provision of the Constitution, unless Presidential Decree No. 824, which created Metropolitan Manila, was to be construed in such a way that, along with the rest of other cities and municipalities, there would be an election for Sangguniang Bayan. The Court reasoned, thus:

x x x There is no need to set anew the compelling reasons that called for the creation of Metropolitan Manila. It is quite obvious that under the conditions then existing – still present and, with the continued growth of population, attended with more complexity – what was done was a response to a great public need. The government was called upon to act. Presidential Decree No. 824 was the result. It is not a condition for the validity of the Sangguniang Bayans provided for in the four cities and thirteen municipalities that the membership be identical with those of other cities or municipalities. There is ample justification for such a distinction. It does not by any means come under the category of what Professor Gunther calls suspect

[157] *Metropolitan Casualty Ins. Co. v. Brownell,* 294 US 580, 584, 79 L. Ed. 1070, 1072, 55 S. Ct. 538 (1935); *Rast v. Van Deman & L. Co.,* 240 US 342, 357, 60 L. Ed. 679, 687, 36 S. Ct. 370, LRA 1917A, 421, Ann. Cas. 1917B, 455 (1916); *O'Gorman & Young v. Hartford F. Ins. Co.,* 282 US 251, 257, 75 L. Ed. 324, 328, 51 S. Ct. 130, 72 ALR 1163 (1931); *Williams v. Baltimore,* 289 US 36, 42, 77 L. Ed. 1015, 1021, 53 S. Ct. 431 (1933).

[158] *People v. Vera,* 65 Phil. 56 (1937).

[159] G.R. Nos. 56022 & 56124, May 31, 1985, 136 SCRA 633.

classification. There is thus no warrant for the view that the equal protection guarantee was violated.[160]

As a last ditch effort, petitioners and petitioners-in-intervention allege that respondents are not yet ready to become cities. This contention, however, is belied by the sponsorship speech by Senator Lim of Senate Bill No. 1[161] and that by the respective Congressmen[162] who introduced what eventually became the

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[160] *Lopez v. Commission on Elections, id.* at 644-645.

[161] See note 139.

[162] Memorandum of COMELEC through the Office of the Solicitor General, p. 37.

Batac, Ilocos Norte – It is the biggest municipality of the 2nd District of Ilocos Norte, 2nd largest and most progressive town in the province of Ilocos Norte and the natural convergence point for the neighboring towns to transact their commercial ventures and other daily activities. A growing metropolis, Batac is equipped with amenities of modern living like banking institutions, satellite cable systems, telecommunications systems. Adequate roads, markets, hospitals, public transport systems, sports, and entertainment facilities. [Explanatory Note of House Bill No. 5941, introduced by Rep. Imee R. Marcos.]

El Salvador, Misamis Oriental – It is located at the center of the Cagayan-Iligan Industrial Corridor and home to a number of industrial companies and corporations. Investment and financial affluence of El Salvador is aptly credited to its industrious and preserving people. Thus, it has become the growing investment choice even besting nearby cities and municipalities. It is home to Asia Brewery as distribution port of their product in Mindanao. The Gokongwei Group of Companies is also doing business in the area. So, the conversion is primarily envisioned to spur economic and financial prosperity to this coastal place in North-Western Misamis Oriental. [Explanatory Note of House Bill No. 6003, introduced by Rep. Augusto H. Bacullo.]

Cabadbaran, Agusan del Norte – It is the largest of the eleven (11) municipalities in the province of Agusan del Norte. It plays strategic importance to the administrative and socio-economic life and development of Agusan del Norte. It is foremost in terms of trade, commerce, and industry. Hence, the municipality was declared as the new seat and capital of the provincial government of Agusan del Norte pursuant to Republic Act No. 8811 enacted into law on August 16, 2000. Its conversion will certainly promote, invigorate, and reinforce the economic potential of the province in establishing itself as an agro-industrial center in the Caraga region and accelerate the development of the area. [Explanatory Note of House Bill No. 3094, introduced by Rep. Ma. Angelica Rosedell M. Amante.]

Borongan, Eastern Samar – It is the capital town of Eastern Samar and the development of Eastern Samar will depend to a certain degree on its urbanization. It will serve as a catalyst for the modernization and progress of adjacent towns considering the frequent interactions between the populace. [Explanatory Note of House Bill No. 2640, introduced by Rep. Marcelino C. Libanan.]

Lamitan, Basilan – Before Basilan City was converted into a separate province, Lamitan was the most progressive part of the city. It has been for centuries the center of commerce and the seat of the Sultanate of the Yakan people of Basilan. The source of its income is agro-industrial and others notably copra, rubber, coffee and host of income generating ventures. As the most progressive town in Basilan, Lamitan continues to be the center of commerce catering to the municipalities of Tuburan, Tipo-Tipo and Sumisip. [Explanatory Note of House Bill No. 5786, introduced by Rep. Gerry A. Salapuddin.]

Catbalogan, Samar – It has always been the socio-economic-political capital of the Island of Samar even during the Spanish era. It is the seat of government of the two congressional districts of Samar. Ideally located at the crossroad between Northern and Eastern Samar, Catbalogan also hosts trade and commerce activates among the more prosperous cities of the Visayas like Tacloban City, Cebu City and the cities of Bicol region. The numerous banks and telecommunication facilities showcases the healthy economic environment of the municipality. The preeminent and sustainable economic situation of Catbalogan has further boosted the call of residents for a more vigorous involvement of governance of the municipal government that is inherent in a city government. [Explanatory Note of House Bill No. 2088, introduced by Rep. Catalino V. Figueroa.]

Bogo, Cebu – Bogo is very qualified for a city in terms of income, population and area among others. It has been elevated to the Hall of Fame being a five-time winner nationwide in the clean and green program. [Explanatory Note of House Bill No. 3042, introduced by Rep. Clavel A. Martinez.]

Tandag, Surigao del Sur – This over 350 year old capital town the province has long sought its conversion into a city that will pave the way not only for its own growth and advancement but also help in the development of its neighboring municipalities and the province as a whole. Furthermore, it can enhance its role as the province's trade, financial and government center. [Explanatory Note of House Bill No. 5940, introduced by Rep. Prospero A. Pichay, Jr.]

Bayugan, Agusan del Sur – It is a first class municipality and the biggest in terms of population in the entire province. It has the most progressive and thickly populated area among the 14 municipalities that comprise the province. Thus, it has become the center for trade and commerce in Agusan del Sur. It has a more developed infrastructure and facilities than other municipalities

cityhood laws.[163] *Contra factum non valet argumentum*. There is no argument against facts. ***Walang pakikipagtalo laban sa totoo***.

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in the province. [Explanatory Note of House Bill No. 1899, introduced by Rep. Rodolfo "Ompong" G. Plaza.]

Carcar, Cebu – Through the years, Carcar metamorphosed from rural to urban and can now boast of its manufacturing industry, agricultural farming, fishing and prawn industry and its thousands of large and small commercial establishments contributing to the bulk of economic activities in the municipality. Based on consultation with multi-sectoral groups, political and non-government agencies, residents and common folk in Carcar, they expressed their desire for the conversion of the municipality into a component city. [Explanatory Note of House Bill No. 3990, introduced by Rep. Eduardo R. Gullas.]

Guihulngan, Negros Oriental – Its population is second highest in the province, next only to the provincial capital and higher than Canlaon City and Bais City. Agriculture contributes heavily to its economy. There are very good prospects in agricultural production brought about by its favorable climate. It has also the Tanon Strait that provides a good fishing ground for its numerous fishermen. Its potential to grow commercially is certain. Its strategic location brought about by its existing linkage networks and the major transportation corridors traversing the municipality has established Guihulngan as the center of commerce and trade in this part of Negros Oriental with the first congressional district as its immediate area of influence. Moreover, it has beautiful tourist spots that are being availed of by local and foreign tourists. [Explanatory Note of House Bill No. 3628, introduced by Rep. Jacinto V. Paras.]

Tayabas, Quezon – It flourished and expanded into an important politico-cultural center in Tagalog region. For 131 years (1179-1910), it served as the *cabecera* of the province which originally carried the *cabecera*'s own name, Tayabas. The locality is rich in culture, heritage and trade. It was at the outset one of the more active centers of coordination and delivery of basic, regular and diverse goods and services within the first district of Quezon Province. [Explanatory Note of House Bill No. 3348, introduced by Rep. Rafael P. Nantes.]

Tabuk, Kalinga – It not only serves as the main hub of commerce and trade, but also the cultural center of the rich customs and traditions of the different municipalities in the province. For the past several years, the income of Tabuk has been steadily increasing, which is an indication that its economy is likewise progressively growing. [Explanatory Note of House Bill No. 3068, introduced by Rep. Laurence P. Wacnang.]

[163] Available information on **Baybay, Leyte**; **Mati, Davao Oriental**; and **Naga, Cebu** shows their economic viability, thus:

Covering an area of 46,050 hectares, **Baybay [Leyte]** is composed of 92 *barangays*, 23 of which are in the *poblacion*. The remaining 69 are rural

It should not also be forgotten that petitioning cities and petitioners-in-intervention became cities under the old income

barangays. Baybay City is classified as a first class city. It is situated on the western coast of the province of Leyte. It has a Type 4 climate, which is generally wet. Its topography is generally mountainous in the eastern portion as it slopes down west towards the shore line. Generally an agricultural city, the common means of livelihood are farming and fishing. Some are engaged in hunting and in forestal activities. The most common crops grown are rice, corn, root crops, fruits, and vegetables. Industries operating include the Specialty Products Manufacturing, Inc. and the Visayan Oil Mill. Various cottage industries can also be found in the city such as bamboo and rattan craft, ceramics, dress-making, fiber craft, food preservation, mat weaving, metal craft, fine Philippine furniture manufacturing and other related activities. Baybay has great potential as a tourist destination, especially for tennis players. It is not only rich in biodiversity and history, but it also houses the campus of the Visayas State University (formerly the Leyte State University/Visayas State College of Agriculture/Visayas Agricultural College/Baybay National Agricultural School/Baybay Agricultural High School and the Jungle Valley Park). Likewise, it has river systems fit for river cruising, numerous caves for spelunking, forests, beaches, and marine treasures. This richness, coupled with the friendly Baybayanos, will be an element of a successful tourism program. Considering the role of tourism in development, Baybay City intends to harness its tourism potential. <http://en.wikipedia.org/wiki/Baybay City> (visited September 19, 2008).

Mati [Davao Oriental] is located on the eastern part of the island of Mindanao. It is one hundred sixty-five (165) kilometers away from Davao City, a one and a half-hour drive from Tagum City. Visitors can travel from Davao City through the Madaum diversion road, which is shorter than taking the Davao-Tagum highway. Travels by air and sea are possible, with the existence of an airport and seaport. Mati boasts of being the coconut capital of Mindanao if not the whole country. A large portion of its fertile land is planted to coconuts, and a significant number of its population is largely dependent on it. Other agricultural crops such as mango, banana, corn, coffee and cacao are also being cultivated, as well as the famous Menzi *pomelo* and Valencia oranges. Mati has a long stretch of shoreline and one can find beaches of pure, powder-like white sand. A number of resorts have been developed and are now open to serve both local and international tourists. Some of these resorts are situated along the coast of Pujada Bay and the Pacific Ocean. Along the western coast of the bay lies Mt. Hamiguitan, the home of the pygmy forest, where bonsai plants and trees grow,some of which are believed to be a hundred years old or more. On its peak is a lake, called "*Tinagong Dagat*," or hidden sea, so covered by dense vegetation a climber has to hike trails for hours to be able to reach it. The mountain is also host to rare species of flora and fauna, thus becoming a wildlife sanctuary for

requirement of either ₱10,000,000.00 by virtue of B.P. Blg. 337 or ₱20,000,000.00 by virtue of then Section 450 of the Local Government Code. And yet nobody doubted their capacity to become cities.

Summing Up

The majority holds that the cityhood laws are unconstitutional on seven grounds, namely: (1) applying R.A. No. 9009 to the

these life forms. <http://mati.wetpaint.com/?t=anon> accessed on September 19, 2008.

Mati is abundant with nickel, chromite, and copper. Louie Rabat, Chamber President of the Davao Oriental Eastern Chamber of Commerce and Industry, emphasized the big potential of the mining industry in the province of Davao Oriental. As such, he strongly recommends Mati as the mining hub intheRegion.(http:// ww.pia.gov.ph\ default.asp?m=12&sec=reader&rp=1&fi=p080115.htm&no.=9&date, accessed on September 19, 2008).

Naga [Cebu]: Historical Background – In the early times, the place now known as Naga was full of huge trees locally called as "Narra." The first settlers referred to this place as Narra, derived from the hudge trees, which later simply became Naga. Considered as one of the oldest settlements in the Province of Cebu, Naga became a municipality on June 12, 1829. The municipality has gone through a series of classifications as its economic development has undergone changes and growth. The tranquil farming and fishing villages of the natives were agitated as the Spaniards came and discovered coal in the uplands. Coal was the first export of the municipality, as the Spaniards mined and sent it to Spain. The mining industry triggered the industrial development of Naga. As the years progressed, manufacturing and other industries followed, making Naga one of the industrialized municipalities in the Province of Cebu.

Class of Municipality	1st class
Province	Cebu
Distance from Cebu City	22 kms.
Number of Barangays	28
No. of Registered Voters	44,643 as of May 14, 2007
Total No. of Precincts	237 (as of May 14, 2007)
Ann. Income (as of December 31, 2006)	PhP 112,219,718.35
Main Product	Agricultural, Indust. Agro-Industrial, Mining Product

<http://www.nagacebu.com/index.php? option=com.content &view= article&id=53:naga-facts-and-figures&catid=51:naga-facts-and-figures&Itemid=75> (visited September 19, 2008).

present case is a prospective, not a retroactive application, because R.A. No. 9009 took effect in 2001 while the cityhood bills became laws more than five (5) years later; (2) the Constitution requires that Congress shall prescribe all the criteria for the creation of a city in the Local Government Code and not in any other law; (3) the cityhood laws violate Section 6, Article X of the Constitution because they prevent a fair and just distribution of the national taxes to local government units; (4) the intent of members of Congress to exempt certain municipalities from the coverage of R.A. No. 9009 remained an intent and was never written into law; (5) the criteria prescribed in Section 450 of the Local Government Code, as amended by R.A. No. 9009, for converting a municipality into a city are clear, plain, and unambiguous, needing no resort to any statutory construction; (6) the deliberations of the 11th or 12th Congress on unapproved bills or resolutions are not extrinsic aids in interpreting a law passed in the 13th Congress because it is not a continuing body; and (7) even if the exemption in the cityhood laws were written in Section 450 of the Local Government Code, the exemption would still be unconstitutional for violation of the equal protection clause because the exemption is based solely on the fact that the 16 municipalities had cityhood bills pending in the 11th Congress when R.A. No. 9009 was enacted.

Anent the first ground, it must be pointed out that the cityhood bills were pending **before** the passage of R.A. No. 9009. Congress was well aware of such fact. Thus, Congress intended the hiked income requirement in R.A. No. 9009 not to apply to the cityhood bills which became the subject cityhood laws. This is the context of the reference to the prospective application of the said R.A. Congress intended the cityhood laws in question to be exempted from the income requirement of ₱100,000,000.00 imposed by R.A. No. 9009.

The second point is specious. It overlooks that R.A. No. 9009 **is now** Section 450 of the Local Government Code. The cityhood laws also merely carry out the intent of R.A. No. 9009 to exempt respondent municipalities from the income requirement of ₱100,000,000.00.

The third needs clarification. Article X, Section 6 of the Constitution speaks for itself. While it is true that local government units shall have a "**just share**" in the national taxes, it is qualified by the phrase "**as determined by law**."

As to the fourth point, **Congress meant not to incorporate its intent** in what eventually became R.A. No. 9009. To recall, Senate President Franklin Drilon asked if there would be an appropriate language to be crafted which would reflect the intent of Congress. Senator Aquilino Pimentel gave a categorical answer: "**I do not think it is necessary to put that provision because what we are saying here will form part of the interpretation of this bill.**"[164]

Neither is the fifth item persuasive. The dissent admits that **courts may resort to extrinsic aids of statutory construction like the legislative history of the law if the literal application of the law results in absurdity, impossibility, or injustice**.[165]

The sixth reason misses the point. It is immaterial if Congress is not a continuing body. The hearings and deliberations conducted during the 11th or 12th Congress may still be used as extrinsic aids or reference because **the same cityhood bills which were filed before the passage of R.A. No. 9009 were being considered during the 13th Congress**.

It does not matter if the officers of each Congress or the authors of the bills are different. In the end, **the rationale for exempting the cityhood bills from the ₱100,000,000.00 income requirement imposed by R.A. No. 9009 remains the same**: (1) the cityhood bills were pending before the passage of R.A. No. 9009, and (2) respondent municipalities were compliant with the ₱20,000,000.00 income requirement imposed by the old Section 450 of the Local Government Code, which was eventually amended by R.A. No. 9009.

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[164] See note 109.

[165] *Commissioner of Internal Revenue v. Solidbank Corporation*, 462 Phil. 96 (2003); *Republic v. Court of Appeals*, 359 Phil. 530 (1998).

What should not be overlooked is that the cityhood laws enjoy the presumption of constitutionality. Petitioners and petitioners-in-intervention bear the heavy burden of overcoming such presumption. However, the majority does exactly the opposite. **It shifts the *onus probandi* to respondent municipalities to prove that their cityhood laws are constitutional. That is violative of the basic rule of evidence**.[166]

On the last ground, the majority misreads the dissent. The exemption on the 16 municipalities is not only based on the fact that they had pending cityhood bills when R.A. No. 9009 was enacted. Aside from complying with the territory and population requirements of the Local Government Code, these municipalities also met the ₱20,000,000.00 income threshold of the old Section 450 of the Local Government Code.

A Parting Word

The decade-long quest of respondent municipalities for cityhood merits an approval, not rejection.

Section 10, Article X of the 1987 Constitution requires, aside from a plebiscite, that the criteria established in the Local Government Code should be followed in the creation of a city. R.A. No. 9009, which became Section 450 of the Local Government Code, prescribes an income threshold of ₱100,000,000.00. But the **intent** of R.A. No. 9009 is clear. Congress intended to exempt municipalities (1) that had pending cityhood bills before the passage of R.A. No. 9009; **and** (2) that were compliant with the income threshold of ₱20,000,000.00 under the old Section 450 of the Local Government Code. Respondent municipalities are covered by the twin criteria.

Thus, petitioners and petitioners-in-intervention cannot hardly claim the cityhood laws are unconstitutional on the ground they violate the criteria established in the Local Government Code.

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[166] The burdens of pleading and proof with regard to most facts have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs and who therefore naturally should be expected to bear the risk of failure of proof or persuasion. (McCormick on Evidence, Vol. II, p. 949.)

Neither may they claim that the cityhood laws violate the equal protection clause of the Constitution. Congress is given the widest latitude in making classifications and in laying down the criteria. Separation of powers prevents the Court from prying into the wisdom or judgment of Congress. Even if the Court did, there is no unreasonable classification here, much less grave abuse of discretion.

Admittedly, R.A. No. 9009 is geared towards making it very difficult for municipalities and cluster of *barangays* to convert into cities. The dissent is not contrary to that goal. The intent of Congress – to avert the mad rush of municipalities wanting to be converted into cities and to prevent this nation from becoming a nation of all cities and no municipalities – is preserved. A cluster of *barangays* or municipalities that had (1) no pending cityhood bills before the passage of R.A. No. 9009; **and** (2) that were not compliant with the income threshold of ₱20,000,000.00 imposed by the old Section 450 of the Local Government Code, cannot find refuge in the cityhood laws in their bid to become component cities. They now have to comply with the ₱100,000,000.00 income requirement imposed by R.A. No. 9009. In the alternative, they should seek the amendment of R.A. No. 9009 if they wish to lower the income requirement.

Disposition

WHEREFORE, I vote to **DISMISS** the petitions and petitions-in-intervention and to declare the cityhood laws **CONSTITUTIONAL**.

EN BANC

[A.M. No. 2008-13-SC. November 19, 2008]

RE: VEHICULAR ACCIDENT INVOLVING SC SHUTTLE BUS NO. 3 WITH PLATE NO. SEG-357 DRIVEN BY GERRY B. MORAL, DRIVER II-CASUAL

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT EMPLOYEE HOLDING TEMPORARY EMPLOYMENT CANNOT BE TERMINATED WITHIN THE PERIOD OF HIS EMPLOYMENT EXCEPT FOR CAUSE.— The pertinent laws applicable in this case are Sec. 2, Article IX (B) of the Constitution and Sec. 46 (a), Chapter 7 of the Civil Service Law, thus: Article IX (B) of the Constitution Sec. 2. x x x (3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law. x x x (6) Temporary employees of the Government shall be given such protection as may be provided by law. The Civil Service Law Sec. 46. *Discipline: General Provisions*. – (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process. Further, *Civil Aeronautics Administration v. IAC* held that "the mantle of protection against arbitrary dismissals is accorded to an employee even if he is a non-eligible and holds a temporary appointment." Hence, a government employee holding a casual or temporary employment cannot be terminated within the period of his employment except for cause.

2. ID.; ID.; ID.; APPLICATION IN CASE AT BAR.— In this case, Mr. Moral can be dismissed from employment if he is found guilty of gross neglect of duty which is punished with dismissal under Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations. However, in the Memorandum dated September 8, 2008, OAS Chief Administrative Officer Eden T. Candelaria stated that after a thorough evaluation of the statements and documents regarding the vehicular accident, the OAS "is convinced that the incident was purely accidental with no fault or negligence on our driver so far." The OAS reported that there was **no proof** submitted that Mr. Moral was negligent or

reckless in the performance of his duty. It attributed the accident to the malfunctioning of the brakes which was beyond the control of Mr. Moral. Malfunction or loss of brake is not a fortuitous event. Between the owner and his driver, on the one hand, and third parties such as commuters, drivers and pedestrians, on the other, the former is presumed to know about the condition of his vehicle and is duty bound to take care thereof with the diligence of a good father of the family. In this case, the OAS averred that it is the shuttle bus driver who conducts an overall check-up on the condition of the bus he is driving. It pointed out that Shuttle Bus No. 3 was roadworthy because it was in good running condition and its brakes functioned perfectly from the time it left the parking area in the afternoon of July 7, 2008 to pick up its regular employee-passengers until it reached the flyover of Crossing, Shaw Boulevard, Mandaluyong City where the accident happened. According to the OAS, there was no proof submitted showing that Mr. Moral was negligent or reckless in the performance of his duty. In view of the lack of evidence showing gross neglect of duty on the part of Mr. Moral, the Court cannot sustain the recommendation of OAS for the dismissal of Mr. Moral on the ground that he is merely a casual employee. Even a casual or temporary employee enjoys security of tenure and cannot be dismissed except for cause enumerated in Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations and other pertinent laws. However, Mr. Moral's services may no longer be engaged after termination of his employment contract as a temporary employee.

3. ID.; ID.; GOVERNMENT SHUTTLE BUS DRIVER; NOT A CONFIDENTIAL EMPLOYEE FOR LOSS OF TRUST AND CONFIDENCE TO APPLY.— The Court cannot uphold the recommendation of OAS that Mr. Moral be dismissed for loss of trust and confidence by the passengers of the bus because a driver is not a confidential employee as defined in *Civil Service Commission v. Salas*, thus: The occupant of a particular position could be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion, without fear of embarrassment or misgivings of possible betrayal of personal trust or confidential matters of state. Withal, where the position occupied is remote from that of the appointing

authority, the element of trust between them is no longer predominant.

R E S O L U T I O N

AZCUNA, *J.*:

This administrative matter arose from the vehicular accident which occurred on July 7, 2008 involving the Court's Shuttle Bus No. 3 driven by Gerry B. Moral, Driver II-Casual.

Ma. Theresa B. Andal, Legal Researcher III of the Judicial Supervision and Monitoring Division, Office of the Court Administrator and Shuttle Bus No. 3 designated-coordinator, alleged in a sworn statement that at around 5:40 p.m. of July 7, 2008, she and other Supreme Court employees were on board Shuttle Bus No. 3 bound for Antipolo, Rizal. The bus was then traveling on the long stretch of the flyover of Crossing, Shaw Boulevard, Mandaluyong City. Descending from the flyover, the bus accidentally bumped the rear portion of a public utility jeepney with Plate No. DWA-853 on a stop on the same lane and direction. Due to the strong impact, four passengers riding the jeepney were thrown out and injured. Three of those passengers were just clinging to the sides of the jeepney because all seats were taken. The bus' windshield was totally wrecked and its front portion was severely damaged.

Traffic Accident Report No. 07-1759 dated July 7, 2008 stated:

> Investigation conducted and as alleged by V1 driver of PUJ Jitney that he was on stop along Shaw blvd and facing east direction because of moderate traffic thereat. At that instance, a Supreme Court shuttle bus driven by Gerry Moral (V2) coming from behind dragged forward with unknown speed and narrated that his driven vehicle brakes malfunction[ed] causing him V2 to accidentally hit/bump the rear end portion of V1 by the front end portion of V2. And due to force of impact V1 surge forward same accident tally hit/bumped the rear end portion of V3 by the front end portion of V1. And again for the third time unaware of the incident the rear end portion of V4 Toyota Corolla driven by female driver also hit/bumped by the front end

portion of V3 Toyota Camry, which resulted damage to all four (4) vehicle. Right after the said incident three (3) hitching passengers (male) and one female passenger inside PUJ Jitney sustained injuries and [were] rushed to Polymedic hospital for treatment by immediate arrival of Rescue Ambulance.

The Office of Administrative Services (OAS) stated in its Memorandum dated September 8, 2008 that one person died due to the accident.

The matter was referred to the Shuttle Bus Committee for documentation purposes of insurance coverage. Thereafter, Mr. Moral was directed to make his own narration of the incident.

In compliance, Mr. Moral submitted his sworn statement dated July 9, 2008 which reads:

Ako po si Gerry B. Moral, SC Shuttle Bus Driver II. Pababa po ako ng Crossing Flyover, Shaw Boulevard, papuntang Antipolo City nang di ko inaasahan na biglang nagkaroon ng problema ang preno ng bus. Pag apak ko ng preno, ayaw kumapit. Pag apak ko uli, wala na. . .ayaw na huminto. Ginawa ko ang lahat para mapahinto ang bus. Naghandbrake na ako. Ang pangyayari ay tumatakbo ako ng humigit kumulang twenty (20) to twenty-five (25) k.p.h. Gumapang po ang bus pababa ng flyover nang maghandbrake ako. Sa kasamaang palad, inabot pa rin ang nakahinto na jeep na may nakasabit sa kanang bahagi na tatlong pasahero. Nasira po ang bumper at salamin sa harapan ng bus. Hindi ko po kagustuhan ang aksidente. Kung hindi lang lumusot ang preno ng bus, wala sanang namatay at nasaktan.

The OAS, as the initiatory authority to discipline shuttle bus drivers, issued a memorandum directing some employees who were on board the bus to submit their respective statements regarding the incident to determine the possibility of recklessness on the part of Mr. Moral as a ground for disciplinary action against him.

The OAS summarized their statements as follows:

Mr. Rolando U. Del Rosario, Typesetter II of the Printing Services, simply concurred with the driver's statements; Mr. Ricardo N. Lai, Jr., SC Supervising Judicial Staff Officer of the MISO stated that

he was seated at the second row of the bus. That he saw Mr. Moral flash the bus headlights as a warning while his right foot was stepping heavily on the break pedal. He stated that the bus was running at a speed of approximately 20 kph; Mr. Vicente L. Macafe, Jr., Chauffeur I of the Program Management Office, on the other hand, stated that he was seated at the back of the bus driver. That while the bus was on its way down from the flyover, he noticed that it had an accelerated speed when it hit the passenger jeepney. Some hitching and seated passengers were injured; Mr. Joderick R. Gonzalez, Data Entry Machine Operator, Office of ACA Villaror (sic), submitted his statement and alleged that the bus was not in its normal rate of speed. This was corroborated by Ms. Estrellita R. Gonzales, Court Stenographer III, Office of the Court Administrator, who recalled that before the accident happened the bus was purportedly traversing the flyover at high speed.

After a thorough evaluation of the statements submitted and documents gathered in relation to the vehicular accident, the OAS, in a Memorandum dated September 8, 2008, declared that it was convinced that the accident happened with no fault or negligence on the part of Mr. Moral. It attributed the accident to the malfunctioning of the brake of the bus which was beyond the driver's control. It stated:

> After a thorough evaluation of the respective claims, this Office is convinced that the incident was purely accidental with no fault or negligence on our driver so far.
>
> As indicated in the Traffic Accident Report, the bus with unknown speed suddenly lost its brakes which resulted to both damage to properties and injuries to victims. This Office would like to emphasize the roadworthiness of our shuttle buses, *i.e.* the said bus from the time it left the parking area in the afternoon to pick up its regular employee-passengers had perfect functioning brakes and in good running condition until the accident. It can assure that a driver of a Court's Shuttle Bus conducts an overall check-up on the condition of the bus he is driving. The passengers may just have presumed that the bus was purportedly traversing at high speed because it was descending the flyover making it difficult for Mr. Moral to control the bus due to the malfunctioning of the brakes which is beyond his control. Neither had they any point of comparison at hand whether the speed of the bus at that time it was descending was greater than

what is reasonable. Besides, as stated in the police report, there was a moderate traffic before the accident occurred. In doing the alleged negligent act or recklessness, if there was any, on the part of Mr. Moral, no proof has yet been submitted to support this allegation.

In this case, the reasonable care and caution which an ordinary prudent person would have used may be presumed in his favor. In fact, Mr. Moral applied all means within his ability to lessen the degree of damage to the passenger jeepney which may have resulted due to the impact of the impending collision. What clearly happened was an accident with no fault or negligence attache[d] to Mr. Moral.

The OAS stated that Mr. Moral is a casual employee of the Court. He was hired under pertinent civil service rules. He assumed the position of shuttle bus driver on July 1, 2008, after his appointment was included in the approved list of casual employees hired for the period covering July to December 2008.

The OAS recommends the immediate termination of Mr. Moral on the ground of loss of trust and confidence in him by the shuttle bus riders and that he has no security of tenure as a casual employee; hence, his services can be terminated anytime for cause.

The issue is whether or not Mr. Moral can be terminated from his casual employment due to the vehicular accident.

The pertinent laws applicable in this case are Sec. 2, Article IX (B) of the Constitution and Sec. 46 (a), Chapter 7 of the Civil Service Law, thus:

Article IX (B) of the Constitution

Sec. 2. x x x

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

xxx xxx xxx

(6) Temporary employees of the Government shall be given such protection as may be provided by law.

The Civil Service Law

Sec. 46. *Discipline: General Provisions*. – (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process.

Further, *Civil Aeronautics Administration v. IAC*[1] held that "the mantle of protection against arbitrary dismissals is accorded to an employee even if he is a non-eligible and holds a temporary appointment."

Hence, a government employee holding a casual or temporary employment cannot be terminated within the period of his employment except for cause.

In this case, Mr. Moral can be dismissed from employment if he is found guilty of gross neglect of duty which is punished with dismissal under Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations.

However, in the Memorandum dated September 8, 2008, OAS Chief Administrative Officer Eden T. Candelaria stated that after a thorough evaluation of the statements and documents regarding the vehicular accident, the OAS "is convinced that the incident was purely accidental with no fault or negligence on our driver so far." The OAS reported that there was **no proof** submitted that Mr. Moral was negligent or reckless in the performance of his duty. It attributed the accident to the malfunctioning of the brakes which was beyond the control of Mr. Moral.

Malfunction or loss of brake is not a fortuitous event.[2] Between the owner and his driver, on the one hand, and third parties such as commuters, drivers and pedestrians, on the other, the former is presumed to know about the condition of his vehicle and is duty bound to take care thereof with the diligence of a good father of the family.[3]

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[1] G.R. No. 70120, September 2, 1992, 213 SCRA 277, 280.

[2] *Thermochem Incorporated v. Naval*, G.R. No. 131541, October 20, 2000, 344 SCRA 76.

[3] *Ibid*.

In this case, the OAS averred that it is the shuttle bus driver who conducts an overall check-up on the condition of the bus he is driving. It pointed out that Shuttle Bus No. 3 was roadworthy because it was in good running condition and its brakes functioned perfectly from the time it left the parking area in the afternoon of July 7, 2008 to pick up its regular employee-passengers until it reached the flyover of Crossing, Shaw Boulevard, Mandaluyong City where the accident happened. According to the OAS, there was no proof submitted showing that Mr. Moral was negligent or reckless in the performance of his duty.

In view of the lack of evidence showing gross neglect of duty on the part of Mr. Moral, the Court cannot sustain the recommendation of OAS for the dismissal of Mr. Moral on the ground that he is merely a casual employee. Even a casual or temporary employee enjoys security of tenure and cannot be dismissed except for cause enumerated in Sec. 22, Rule XIV of the Omnibus Civil Service Rules and Regulations and other pertinent laws. However, Mr. Moral's services may no longer be engaged after termination of his employment contract as a temporary employee.

Further, the Court cannot uphold the recommendation of OAS that Mr. Moral be dismissed for loss of trust and confidence by the passengers of the bus because a driver is not a confidential employee as defined in *Civil Service Commission v. Salas*,[4] thus:

> The occupant of a particular position could be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion, without fear of embarrassment or misgivings of possible betrayal of personal trust or confidential matters of state. Withal, where the position occupied is remote from that of the appointing authority, the element of trust between them is no longer predominant.

WHEREFORE, respondent *GERRY B. MORAL* is *RETAINED* as shuttle bus driver until the end of the term of his temporary

[4] G.R. No. 123708, June 19, 1997, 274 SCRA 414, 428.

employment in the Court, *i.e.*, December of 2008, unless he is earlier dismissed for cause in another case.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

EN BANC

[A.M. No. P-08-2519. November 19, 2008]
(Formerly A.M. OCA IPI No. 05-2155-P)

Anonymous Letter-Complaint against ATTY. MIGUEL MORALES, Clerk of Court, Metropolitan Trial Court of Manila; And

[A.M. No. P-08-2520. November 19, 2008]
(Formerly A.M. OCA IPI No. 05-2156-P)

Anonymous Letter-Complaint against Clerk of Court ATTY. HENRY P. FAVORITO of the Office of the Clerk of Court, Clerk of Court ATTY. MIGUEL MORALES of Branch 17, Clerk of Court AMIE GRACE ARREOLA of Branch 4, Administrative Officer III WILLIAM CALDA of the Office of the Clerk of Court and Stenographer ISABEL SIWA of Branch 16, all of the Metropolitan Trial Court, Manila

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ANONYMOUS COMPLAINT; HOW TREATED.— An anonymous complaint is always received with great caution, originating as it does from an unknown author. Such a complaint, however does not justify outright dismissal for being baseless or unfounded for the allegations therein may be easily verified and may, without much difficulty, be substantiated and established by other competent evidence. Indeed, complainant's identity could hardly be material where the matter involved is of public interest.

2. ID.; ID.; COURT EMPLOYEES; CLERK OF COURT; PROPRIETY IN CONDUCT IN AND OUT OF COURT, STRESSED.— The Court has always stressed that all members of the judiciary should be free from any whiff of impropriety not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice shall be preserved.

3. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO BE SECURE IN PERSONS AND PROPERTIES AGAINST UNREASONABLE SEARCHES AND SEIZURES; EVIDENCE IN VIOLATION OF SAID RIGHT, INADMISSIBLE; EXCEPTION; CONSENTED WARRANTLESS SEARCH; ELUCIDATED.— It is undisputed that pleadings for private cases were found in Atty. Morales's personal computer in the MeTC-OCC and Atty. Morales could not provide any satisfactory explanation therefor. Atty. Morales, in defense, argues that since the pleadings were acquired from his personal computer which DCA Dela Cruz confiscated without any valid search and seizure order, such evidence should be considered as the fruits of a poisonous tree as it violated his right to privacy. Enshrined in our Constitution is the inviolable right of the people to be secure in their persons and properties against unreasonable searches and seizures, which is provided for under Section 2, Article III thereof. The exclusionary rule under Section 3(2), Article III of the Constitution also bars the admission of evidence obtained in violation of such right. The fact that the present case is administrative in nature, does not render the above principle

inoperative. As expounded in *Zulueta v. Court of Appeals,* **any violation of the aforestated constitutional right renders the evidence obtained inadmissible for any purpose in any proceeding.** There are exceptions to this rule. One of which is consented warrantless search. DCA Dela Cruz in his report claims that that they were able to obtain the subject pleadings *with the consent* of Atty. Morales. The Court finds however that such allegation on his part, even with a similar allegation from one of his staff, is not sufficient to make the present case fall under the category of a valid warrantless search. Consent to a search is not to be lightly inferred and must be shown by clear and convincing evidence. It must be voluntary in order to validate an otherwise illegal search, that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion. The burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given lies with the State. **Acquiescence in the loss of fundamental rights is not to be presumed and courts indulge every reasonable presumption against waiver of fundamental constitutional rights.** To constitute a valid consent or waiver of the constitutional guarantee against obtrusive searches, it must be shown that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) the said person had an actual intention to relinquish the right.

4. ID.; ADMINISTRATIVE LAW; COURT EMPLOYEES; PROHIBITED FROM ENGAGING DIRECTLY IN ANY PRIVATE BUSINESS, VOCATION, PROFESSION; ELUCIDATED.— Officials and employees of the judiciary are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure that full-time officers of the court render full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases. The nature of work of court employees requires them to serve with the highest degree of efficiency and responsibility and the entire time of judiciary officials and employees must be devoted to government service to ensure efficient and speedy administration of justice. Indeed, the Court has always stressed that court employees must strictly

observe official time and devote every second moment of such time to public service. And while the compensation may be meager, that is the sacrifice judicial employees must be willing to take. Many "moonlighting" activities pertain to legal acts that otherwise would not be countenanced if the actors were not employed in the public sector. And while moonlighting is not normally considered a serious misconduct, nonetheless, by the very nature of the position held, it amounts to a malfeasance in office.

5. **ID.; ID.; ID.; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE COMMITTED IN CASE AT BAR; PENALTY; CASE AT BAR.—** Court employee Siwa conducted her business within the court's premises, which placed the image of the judiciary, of which she is part, into bad light. Time and again, the Court has held that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, thus the conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum, and above suspicion so as to earn and keep the respect of the public for the judiciary. Siwa's infraction constitutes conduct prejudicial to the best interest of the service which, under Sec. 52 A (20) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, carries the penalty of suspension of 6 months and 1 day to 1 year for the first offense and dismissal for the second offense. Since this is her first offense and considering the October 12, 2005 Resolution of the Court in A.M. No. 12096-Ret. which approved Siwa's application for optional retirement, retaining only the amount of ₱30,000.00 from the money value of her earned leave credits pending resolution of the instant case, the Court finds she should be imposed the penalty of fine in the amount of ₱30,000.00.

6. **ID.; ID.; ID.; CLERK OF COURT OF THE OCC; DUTY TO PLAN, DIRECT, SUPERVISE AND COORDINATE ACTIVITIES OF ALL DIVISIONS, SECTIONS, UNITS IN THE OCC; FAILURE THEREOF WARRANTS A SANCTION.—** As to Siwa's lending and rediscounting activities, the Court finds that Atty. Favorito was remiss in addressing said matter which activity took place in the court's premises which was under his responsibility.

7. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; QUANTUM OF PROOF REQUIRED.— It is well-settled that in administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The complainant has the burden of proving, by substantial evidence, the allegations in the complaint. That is, in the absence of evidence to the contrary, what will prevail is that respondent has regularly performed his or her duties. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on and charges based on mere suspicion and speculation cannot be given credence.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court are two anonymous complaints: docketed as **A.M. No. P-08-2519** charging *Atty. Miguel Morales (Atty. Morales), Branch Clerk of Court, Branch 17, Metropolitan Trial Court (MeTC) of Manila* of misconduct; and **A.M. No. P-08-2520** charging *Atty. Morales, together with Isabel Siwa (Siwa), Court Stenographer, Branch 16; William Calda (Calda), Administrative Officer III, Office of the Clerk of Court (OCC); Amie Grace Arreola (Arreola), Branch Clerk of Court, Branch 4, and Atty. Henry P. Favorito (Atty. Favorito), Clerk of Court VI, OCC,* all of the MeTC, Manila of misconduct, graft and corruption and moonlighting.

A.M. No. P-08-2519

In an unsigned and undated letter which the Office of the Court Administrator (OCA) received on February 24, 2005, the writers, who claim to be employees of the OCC-MeTC of Manila, allege that Atty. Morales, then detailed at the OCC, was consuming his working hours filing and attending to personal cases, such as administrative cases against employees in his old

sala, using office supplies, equipment and utilities. The writers aver that Atty. Morales's conduct has demoralized them and they resorted to filing an anonymous complaint in fear of retaliation from Atty. Morales.[1]

Assistant Court Administrator (ACA) now Deputy Court Administrator (DCA) Reuben P. dela Cruz, conducted a discreet investigation on March 8, 2005 to verify the allegations of the complaint. However, since the office of Atty. Morales was located at the innermost section of the Docket/Appeals Section of the OCC, DCA Dela Cruz failed to extensively make an observation of the actuations of Atty. Morales. On March 16, 2005, a spot investigation was conducted by DCA Dela Cruz together with four NBI agents, a crime photographer and a support staff. The team was able to access the personal computer of Atty. Morales and print two documents stored in its hard drive, a Petition for Relief from Judgment for the case entitled, "*Manolo N. Blanquera, et al. v. Heirs of Lamberto N. Blanquera*" in the name of Atty. Jose P. Icaonapo, Jr. (Atty. Icaonapo) filed with the Court of Appeals, and a Pre-trial Brief for the case entitled, "*Pentacapital Investment Corp. v. Toyoharu Aoki, et al.*" also in the name of Atty. Icaonapo, which was filed before Branch 1, Regional Trial Court (RTC), Manila. Atty. Morales's computer was seized and taken to the custody of the OCA.[2] Upon Atty. Morales's motion however, the Court ordered the release of said computer with an order to the Management Information Systems Office of the Supreme Court to first retrieve the files stored therein.[3]

Atty. Morales filed a letter-complaint addressed to then Chief Justice Hilario G. Davide, Jr. against DCA Dela Cruz and his companions for alleged conspiracy and culpable violation

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[1] A.M. No. P-08-2519, *rollo*, p. 2.

[2] A.M. No. P-08-2519, *rollo*, pp. 4-23, 70-71.

[3] Per Resolution dated April 5, 2006, *id.* at 60, 33-34.

of Secs. 1,[4] 2[5] & 3[6] of Art. III of the Constitution relative to the spot investigation. Said letter-complaint was indorsed by the Chief Justice to the Court Administrator on March 31, 2005 for appropriate action.[7] Atty. Morales's wife, Francisca Landicho-Morales also filed a letter-complaint dated February 15, 2005 against Judge Crispin B. Bravo, Presiding Judge of MeTC Branch 16 Manila, Lenin Bravo, former Clerk of the said branch and Judge Cristina Javalera-Sulit, Presiding Judge of MeTC Branch 18, Manila for violations of the law and ethical standards which was indorsed by Chief Justice Davide to the Court Administrator for preliminary inquiry.[8] Although diligent efforts were made to ascertain from the OCA Legal Office the current status of Atty. Morales's case against DCA Dela Cruz, the same however, could not be determined.

Parenthetically, Atty. Favorito, together with more than a hundred employees of the MeTC Manila, wrote an undated letter to Chief Justice Davide assailing the spot investigation conducted by DCA Dela Cruz.[9] Said letter was indorsed by Chief Justice Davide to DCA Dela Cruz on March 28, 2005 for his comment.[10] No comment can be found in the records of herein administrative cases.

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[4] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[5] Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[6] Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[7] A.M. No. P-08-2519, *rollo*, p. 37.

[8] A.M. No. P-08-2519, *rollo*, p. 50.

[9] *Id.* at 38-43.

In a 1st Indorsement dated April 14, 2005, then Court Administrator Presbitero J. Velasco, Jr. (now Associate Justice of the Supreme Court) directed Atty. Morales to comment on the undated anonymous letter-complaint.[11]

In his Manifestation which the OCA received on April 27, 2005, Atty. Morales alleged that: the anonymous letter-complaint should not have been given due course as there is no truth to the allegations therein; the OCA took almost a year to act on the anonymous letter-complaint which did not have the proper indorsement from the Office of the Chief Justice; even though he brought to the OCC his personal computer, such act is not prohibited; he did not use his computer to write pleadings during office hours and neither did he use paper of the OCC; the "raid" conducted by DCA Dela Cruz without search and seizure orders violated his right to privacy and the articles seized therewith should be considered inadmissible.[12]

In a letter dated April 12, 2005, Atty. Morales applied for optional retirement[13] which the Court approved in its Resolution dated October 12, 2005 subject to the withholding of his benefits pending resolution of cases against him, the instant case included.[14]

A.M. No. P-08-2520

In another unsigned letter dated April 1, 2004, the writers who claim to be employees of the OCC-MeTC, Manila, charge Atty. Morales, Arreola, Atty. Favorito, Calda and Siwa of the

[10] *Id.* at 44.

[11] *Id.* at 24.

[12] A.M. No. P-08-2519, *rollo*, pp. 25-27.

[13] *Id.* at 51.

[14] See October 12, 2005 Resolution in A.M. No. 12097-Ret. (*Application for Separation Benefits under Section 11, Paragraph (b) of R.A. No. 8291 of Atty. Miguel C. Morales, Clerk of Court III, MeTC, Manila, Branch 17*). There were two other pending cases against Morales at the time of the Resolution: A.M. No. P-05-1950 and A.M. OCA IPI No. 03-1555-P. A Resolution was promulgated on August 30, 2006 in A.M. No. P-1950 entitled *Bravo v. Morales* (A.M. No. P-05-1950, August 30, 2006, 500 SCRA 154) where Morales was found guilty of conduct unbecoming a court employee and fined ₱2,000.00 while A.M. OCA IPI No. 03-1555-P was

following offenses: Atty. Morales and Arreola, who are both detailed in the OCC, leave the office after logging-in only to return in the afternoon, which acts are allowed by Atty. Favorito; Atty. Morales and Arreola were not given assignments and whenever they are at the office, they do nothing but play computer games; Siwa is also allowed by Atty. Favorito to lend money and rediscount checks during office hours using court premises; many people from different offices go to the OCC because of the business of Siwa; Atty. Favorito also allows two of Siwa's personal maids to use the OCC as their office in rediscounting checks; and Atty. Favorito and Calda charge ₱50.00 to ₱500.00 from sureties claiming said amounts to be processing fees without issuing receipts therefor.[15]

In the same spot investigation conducted by DCA De La Cruz on March 16, 2005, a partly hidden plastic box was discovered containing the amount of ₱65,390.00 and six commercial checks, which Siwa voluntarily opened to the team. These were also confiscated and turned over to the custody of the OCA.[16]

In a letter to then Chief Justice Davide dated April 12, 2005, Siwa requested that said money and personal belongings that were confiscated be returned to her immediately and that a formal investigation be conducted regarding DCA Dela Cruz's conduct during the spot investigation.[17] The seized items were later returned to Siwa[18] while her letter-complaint was indorsed by the Chief Justice to the Court Administrator on April 18, 2005 for appropriate action.[19] As with the complaint filed by Atty. Morales, however, the status of Siwa's complaint could not be ascertained despite diligent efforts at inquiring about the matter from the OCA Legal Office.

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dismissed on September 4, 2006.

[15] A.M. No. P-08-2520, *rollo*, pp. 1-2.

[16] A.M. No. P-08-2520, *rollo*, pp. 3, 10.

[17] *Id.* at 23-26.

[18] See OCA Memorandum dated November 7, 2007, A.M. No. P-08-2519, *rollo*, p. 121.

In a 1st Indorsement dated April 14, 2005, the OCA directed Atty. Morales, Atty. Favorito, Calda, Arreola and Siwa to comment on the letter-complaint.[20]

Atty. Morales submitted the same Manifestation he submitted in A.M. P-08-2519.

Siwa in her Comment avers that: the anonymous letter-complaint should not have been given due course as it contravened Sec. 46(c) of Executive Order No. 292 and the implementing rules; it was not subscribed and sworn to by the complainant and there is no obvious truth to the allegations therein; while she admits that she is involved in the business of rediscounting checks, such is a legitimate endeavor, in fact, there are other employees of the court engaged in the same business; she is also not aware of any rule prohibiting her from engaging in said endeavor; she does not use the OCC to conduct her business and she is mindful of her duties as a government employee; thus, she has a staff to do the encashment of the checks; there were rare occasions when her staff members were stationed at the corridors to lend cash to employees but while said occasions may have occurred during office hours, her staff cannot be blamed for the same since the employees go to them; she has never neglected her duty as a court stenographer — in fact, her last performance rating was "very satisfactory"; it is a known fact that because of the meager pay given to government employees, most augment their income by engaging in business; she should not be singled out for being enterprising and industrious; and it is unfair to accuse her of wrongdoing at a time when she has voluntarily retired from government service due to health reasons.[21]

A month after the incident, Siwa filed for optional retirement[22] which the Court approved in its Resolution[23] dated October 12,

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[19] A.M. No. P-08-2520, *rollo*, pp. 22.

[20] *Id.* at 57-61.

[21] A.M. No. P-08-2520, *rollo*, pp. 15-19.

[22] OCA Report dated June 14, 2005, *id.* at 75.

[23] *See* Third Division's October 12, 2005 Resolution in A.M. No. 12096-Ret. (Application for Retirement Benefits under Section 13-A of RA 8291 of Ms. Isabel A. Siwa, Court Stenographer II, MeTC, Manila, Branch 16).

2005, with the proviso that the amount of ₱30,000.00 shall be retained from the money value of her earned leave credits pending resolution of the present case.

Calda explains in his letter dated April 25, 2005 that: the fees of ₱50.00 and ₱500.00 were charged in connection with the filing of surety and cash bonds pursuant to Rule 141 of the Revised Rules of Court and that corresponding official receipts were issued; at nighttime, he is the one authorized to approve the filing of surety bonds since he is the highest ranking officer of a skeletal force detailed for night court duty; he has been with the MeTC for 16 years, rose in rank, was never involved in any controversy and would never tarnish his reputation.[24]

Arreola asserts that: her record of arrival and departure was always signed by her superiors without question because it reflected the correct entries; she is always in the office even when there is typhoon; and she has proven herself useful in the OCC by answering queries of litigants and verifications from other offices and attending to complaints.[25]

In compliance, Atty. Favorito adopted the comments of Atty. Morales, Calda and Arreola and denied that he committed the acts alluded to in the anonymous letter-complaint.[26] Atty. Favorito also incorporated in his comment a letter of the employees of the OCC-MTC Manila disowning the alleged anonymous complaint.[27]

In a Resolution dated July 27, 2005, the Court, upon recommendation of the OCA, consolidated the two complaints and referred the same to the Executive Judge of the MeTC, Manila for investigation, report and recommendation.[28]

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[24] A.M. No. P-08-2520, *rollo*, p. 47.

[25] *Id.* at 49-50.

[26] *Id.* at 34.

[27] *Id.* at 45.

[28] A.M. No. P-08-2519, *rollo*, p. 55.

Report of the Investigating Judge

In her Report dated September 1, 2006, MeTC Executive Judge Ma. Theresa Dolores C. Gomez-Estoesta states that discreet observation of the daily working activities of Atty. Morales and Siwa could no longer be done as the two had already availed themselves of their optional retirement; thus, random interviews with employees who had proximate working activities with them were resorted to, as well as perusal of court records.[29]

The following employees were interviewed: Rueben Duque, Clerk of Court, Branch 16, MeTC; Beneluz Dumlao, Records Officer I; Marilou Magbag, Clerk III; Estrella Rafael, Records Officer I; Lydia dela Cruz, Records Officer III; Raymundo Bilbao, Clerk III; Marie Joy Valle, Clerk IV, and Ma. Lizabeth Marcelino, Administrative Officer II, all of the OCC; Rosie Jose, freelance bondswoman, and Norberto D. Soriano, authorized representative of the Commonwealth Insurance Company.[30]

After conducting her investigation, Judge Estoesta found:

Insofar as Atty. Morales, Atty. Favorito, Calda and Arreola are concerned, the investigation immediately stumbled into a dead end. No one from the OCC personnel who were interviewed would give a categorical and positive statement affirming the charges against the said personnel. While almost all confirmed that Atty. Morales maintained his own computer and printer at the OCC, nobody could state for certain that what he worked on were pleadings for private cases. Rafael, who was seated right next to Atty. Morales at the OCC merely said that what preoccupied Atty. Morales were his own administrative cases. She did not notice Atty. Morales engage in private work in his computer although she saw Atty. Icaonapo drop by the office every now and then to personally see Atty. Morales. Rafael explained however that this could be because Atty. Icaonapo was the counsel of Atty. Morales in his administrative cases. While documents referring to private cases were found in the hard drive of the computer of Atty. Morales, and while the

[29] A.M. No. P-08-2519, *rollo*, pp. 68-69.

[30] *Id.* at 69.

writing style is similar to that of the Manifestation he filed in this case, still no definite conclusion could be drawn that he has composed the said pleadings at the OCC during official working hours. A close examination of the Pre-Trial Brief signed by Atty. Icaonapo and filed with the RTC Branch 1, Manila also revealed that the paper and the printer used were not the same as that used in the office of Atty. Morales.[31]

There was also no evidence to support charges of extortion against Atty. Favorito and Calda. Two bondsmen who were randomly interviewed denied that Atty. Favorito and Calda exacted illegal sums from them. The amounts they charged could actually refer to legal fees.[32]

As to Arreola, the charge against her also has no basis. The interviewees were unanimous in saying that Arreola was always around the office, and that while she fetched her son from a nearby school, she did so during lunch or after office hours. Random checks on Arreola also revealed that she was always at the OCC and at Branch 30 where she was reassigned.[33]

As to Siwa, she candidly admitted that she was engaged in lending and discounting activities at her station, through her own staff which she had maintained for said purpose. Because of her business, a number of employees, even those from other government agencies, usually huddled at her station to hold transactions. Branch Clerk of Court Ruben Duque relates that a number of people would often go to their office looking for Siwa for lending and rediscounting. Assuming that Siwa is not prohibited from engaging in said business, still it has distracted her from her duties as a stenographer. A random check on the court records of Branch 16 showed that Siwa had not yet submitted a complete transcription of 7 stenographic notes in 5 cases, 3 of which already had decisions rendered. In one case, the testimonies of two prosecution witnesses had to be re-taken to fill in the gap which not only wasted precious time of the court

[31] A.M. No. P-08-2519, *rollo*, pp. 70-71.

[32] *Id.* at 71-72.

[33] *Id.* at 72.

but also distressed the efforts of the prosecution in the presentation of its case.[34]

Judge Estoesta recommended as follows:

1. In **OCA IPI No. 05-2155-P [now A.M. No. P-08-2519]**, with no substantial evidence taken to prove the charges in the anonymous letter-complaint filed against Atty. Miguel C. Morales, it is RECOMMENDED that the same be ordered dismissed;

2. In **OCA IPI No. 05-2156-P [now A.M. No. P-2520]**, likewise, with no substantial evidence taken to prove the charges in the anonymous letter-complaint filed against Atty. Miguel C. Morales, Atty. Henry P. Favorito, William Calda and Amie Grace Arreola, it is RECOMMENDED that the same be ordered dismissed insofar as said court employees are concerned; and

3. In **OCA IPI No. 05-2156-P [now A.M. No. P-08-2520]** insofar as it concerns Ms. Isabel Siwa, it is RECOMMENDED that she be directed to explain why she still has stenographic notes pending for transcription despite having already availed of an optional retirement pay.[35]

The report was referred to the OCA for its evaluation, report and recommendation.[36]

OCA Report and Recommendation

The OCA, through ACA Antonio H. Dujua, in its November 7, 2007 Memorandum, states that it does not entirely concur with the findings and recommendation of Judge Estoesta.

Instead the OCA submits the following findings.

On Atty. Morales: The allegation that Atty. Morales had been using his personal computer to draft pleadings for private counsels was established in the spot inspection on March 16, 2005. The hard drive of Atty. Morales's computer yielded a pre-trial brief

[34] A.M. No. P-08-2519, *rollo*, pp. 72-75.

[35] *Id.* at 75.

[36] *Id.* at 119.

and a petition for relief from judgment with the name of Atty. Icaonapo. The said pre-trial brief was the same pleading that was submitted to RTC Branch 1, Manila by Atty. Icaonapo on February 10, 2003. Atty. Morales in his Manifestation dated April 25, 2005 failed to refute the evidence that emanated from his computer and instead chided the OCA for confiscating the same.

On Siwa: While she insisted that the anonymous letter should not have been given due course, she admitted in her April 28, 2005 Manifestation to being involved in the business of rediscounting checks, claiming that she was not the only employee engaged in the same, and that she maintained her own personnel to do the rediscounting which stretched to the premises of the MeTC-OCC where Atty. Favorito is the Clerk of Court.[37]

The OCA concluded that: Atty. Morales and Siwa should be found guilty of gross misconduct. Atty. Morales, for preparing pleadings for private counsels and litigants; and Siwa, for engaging in the business of rediscounting checks during office hours; gross misconduct carries the penalty of dismissal from the service even for the first offense, and while Atty. Morales and Siwa have already left the judiciary, the Court can still direct the forfeiture of their benefits; Atty. Favorito should also be held liable for neglect of duty because as Clerk of Court of the MeTC-OCC, he was negligent in allowing the nefarious activities of Atty. Morales and Siwa to happen right inside the confines of the MeTC-OCC.[38]

On Arreola and Calda: The OCA agrees with Judge Estoesta that the charges against them should be dismissed for lack of concrete evidence.[39]

The OCA then recommended:

(a) That (resigned) Clerk of Court Miguel C. Morales, Branch 17, and (retired) Court Stenographer Isabel A. Siwa, Branch 16,

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[37] A.M. No. P-08-2519, *rollo*, pp. 122-124.

[38] A.M. No. P-08-2519, *rollo*, pp. 124.

[39] *Id.*

both of the Metropolitan Trial Court, Manila be found GUILTY of Gross Misconduct with forfeiture of the benefits due them excluding accrued leave credits;

(b) That Clerk of Court Henry P. Favorito of the MeTC-OCC, Manila be found GUILTY of Simple Neglect of Duty and suspended without pay for a period of one (1) month and one (1) day, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely; and

(c) That the charges made in the April 1, 2004 anonymous letter against Clerk of Court Amie Grace A. Arreola, Branch 4 and Administrative Officer III William Calda, OCC, both of the MeTC, Manila be DISMISSED for lack of merit.[40]

The Court's Ruling.

The Court partly adopts the findings and recommendations of the OCA with some modifications.

An anonymous complaint is always received with great caution, originating as it does from an unknown author. Such a complaint, however does not justify outright dismissal for being baseless or unfounded for the allegations therein may be easily verified and may, without much difficulty, be substantiated and established by other competent evidence. Indeed, complainant's identity would hardly be material where the matter involved is of public interest.[41]

Liability of Atty. Morales.

The two anonymous letters charge Atty. Morales with the following offenses: attending to personal cases while using official time, office supplies, equipment and utilities, leaving the office after logging-in in the morning only to return in the afternoon, and playing computer games whenever he was at the office.

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[40] *Id.* at 25.

[41] *Re: Anonymous Complaint Against Angelina Casareno-Rillorta, Officer-in-Charge, Office of the Clerk of Court*, A.M. No. P-05-2063, October 27, 2006, 505 SCRA 537, 543; *Anonymous Complaint Against Pershing T. Yared, Sheriff III, Municipal Trial Court in Cities, Canlaon City*, A.M. No. P-05-2015, June 28, 2005, 461 SCRA 347, 355.

It is undisputed that pleadings for private cases were found in Atty. Morales's personal computer in the MeTC-OCC and Atty. Morales could not provide any satisfactory explanation therefor. Such fact, by itself, could already make Atty. Morales liable for simple misconduct for it hints of impropriety on his part. The Court has always stressed that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice shall be preserved.[42]

Atty. Morales, in defense, argues that since the pleadings were acquired from his personal computer which DCA Dela Cruz confiscated without any valid search and seizure order, such evidence should be considered as the fruits of a poisonous tree as it violated his right to privacy.

Both the Investigating Justice and the OCA failed to discuss this matter. The Court however finds it proper to squarely address such issue, without prejudice to the outcome of the administrative case filed by Atty. Morales against DCA Dela Cruz regarding the same incident. The finding of guilt or exoneration of Atty. Morales hinges on this very crucial question: Are the pleadings found in Atty. Morales's personal computer admissible in the present administrative case against him?

The Court answers in the negative.

Enshrined in our Constitution is the inviolable right of the people to be secure in their persons and properties against unreasonable searches and seizures, which is provided for under Section 2, Article III thereof.[43] The exclusionary rule under

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[42] *Salazar v. Limeta*, A.M. No. P-04-1908, August 16, 2005, 467 SCRA 27.

[43] Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the

Section 3(2), Article III of the Constitution also bars the admission of evidence obtained in violation of such right.[44] The fact that the present case is administrative in nature does not render the above principle inoperative. As expounded in *Zulueta v. Court of Appeals*, [45] **any violation of the aforestated constitutional right renders the evidence obtained inadmissible *for any purpose in any proceeding***.

There are exceptions to this rule. One of which is consented warrantless search.[46]

DCA Dela Cruz in his report claims that that they were able to obtain the subject pleadings *with the consent* of Atty. Morales.[47] The Court finds however that such allegation on his part, even with a similar allegation from one of his staff,[48] is not sufficient to make the present case fall under the category of a valid warrantless search.

Consent to a search is not to be lightly inferred and must be shown by clear and convincing evidence.[49] It must be voluntary in order to validate an otherwise illegal search, that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion.[50] The burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given lies with the State.[51] **Acquiescence in the loss of**

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complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[44] *Caballes v. Court of Appeals*, G.R. No. 136292, January 15, 2002, 373 SCRA 221, 231.

[45] G.R. No. 107383, February 20, 1996, 253 SCRA 699, 704 citing Art. III, Sec. 3 (2) of the 1987 Constitution.

[46] *Caballes v. Court of Appeals*, *supra* note 44.

[47] A.M. No. P-08-2519, *rollo*, p. 5.

[48] Affidavit of Atty. Ryan A. Tuazon dated April 7, 2005, A.M. No. P-08-2520, *id.* at 89.

[49] *Caballes v. Court of Appeals*, *supra* note 44.

[50] *Id.*

[51] *Id.*

fundamental rights is not to be presumed and courts indulge every reasonable presumption against waiver of fundamental constitutional rights.[52] To constitute a valid consent or waiver of the constitutional guarantee against obtrusive searches, it must be shown that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) the said person had an actual intention to relinquish the right.[53]

In this case, what is missing is a showing that Atty. Morales had an actual intention to relinquish his right. While he may have agreed to the opening of his personal computer and the printing of files therefrom, in the presence of DCA Dela Cruz, his staff and some NBI agents during the March 16, 2005 spot investigation, it is also of record that Atty. Morales immediately filed an administrative case against said persons questioning the validity of the investigation, specifically invoking his constitutional right against unreasonable search and seizure.

While Atty. Morales may have fallen short of the exacting standards required of every court employee, unfortunately, the Court cannot use the evidence obtained from his personal computer against him for it violated his constitutional right.

As the Court has staunchly declared:

> The Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power.
>
> The right against unreasonable search and seizure in turn is at the top of the hierarchy of rights, next only to, if not on the same plane as, the right to life, liberty and property, which is protected by the due process clause. This is as it should be for, as stressed by a couple

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[52] *People v. Tudtud,* G.R. No. 144037, September 26, 2003, 412 SCRA 142, 168.

[53] *Caballes v. Court of Appeals*, *supra* note 44; *People v. Tudtud*, *supra* note 52.

of noted freedom advocates, the right to personal security which, along with the right to privacy, is the foundation of the right against unreasonable search and seizure "includes the right to exist, and the right to enjoyment of life while existing."

xxx xxx xxx

> Unreasonable searches and seizures are the menace against which the constitutional guarantees afford full protection. While the power to search and seize may at times be necessary to the public welfare, still it may be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.[54]

And as there is no other evidence, apart from the pleadings, retrieved from the unduly confiscated personal computer of Atty. Morales, to hold him administratively liable, the Court has no choice but to dismiss the charges herein against him for insufficiency of evidence.

Liability of Siwa.

The Court agrees with the OCA that Siwa should be administratively disciplined for engaging in the business of lending and rediscounting checks.

Siwa admits engaging in the business of lending and rediscounting checks, claiming that it was a legitimate endeavor needed to augment her meager income as a court employee; that she is not aware of any rule prohibiting her from engaging in the business of rediscounting checks; that there are other employees engaged in the same business; and that she employs her own staff to do the encashment of the checks as she always attends to and never neglects her duties as a stenographer.[55]

Siwa is clearly mistaken.

Officials and employees of the judiciary are prohibited from engaging directly in any private business, vocation, or profession

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[54] *People v. Tudtud, supra* note 52, at 168-169.

[55] A.M. No. P-08-2520, *rollo*, pp. 17-18.

even outside office hours to ensure that full-time officers of the court render full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases.[56] The nature of work of court employees requires them to serve with the highest degree of efficiency and responsibility and the entire time of judiciary officials and employees must be devoted to government service to ensure efficient and speedy administration of justice.[57] Indeed, the Court has always stressed that court employees must strictly observe official time and devote every second moment of such time to public service.[58] And while the compensation may be meager, that is the sacrifice judicial employees must be willing to take.

As pronounced by the Court in *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*:

> Government service demands great sacrifice. One who cannot live with the modest salary of a public office has no business staying in the service. He is free to seek greener pastures elsewhere. The public trust character of the office proscribes him from employing the facilities or using official time for private business or purposes.[59]

Siwa's offense is compounded by the fact that she was previously verbally instructed by her superior, MeTC Branch 16 Presiding Judge Crispin B. Bravo, to stop using court premises for her business. But she ignored the same, prompting the latter to issue a written Memorandum dated January 18, 2005 asking her to explain why she was still using the office in "transacting/attending" to her lending and rediscounting business when she was already verbally instructed to desist therefrom in December 2004.[60]

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[56] *Benavidez v. Vega*, A.M. No. P-01-1530, December 13, 2001, 372 SCRA 208, 212.

[57] *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*, A.M. No. P-93-811, June 2, 1994, 232 SCRA 707.

[58] *Anonymous v. Grande*, AM No. P-06-2114, December 5, 2006, 509 SCRA 495, 501.

[59] *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*, *supra* note 57, at 713.

[60] A.M. No. P-08-2520, *rollo*, p. 05.

Siwa apologized and promised not to let it happen again, in her letter dated January 21, 2005.[61] Siwa also admitted that she was using her house-helper in the rediscounting of checks and allowed the latter to use the court premises in the conduct of the same.[62]

Her allegation that she never neglected her duty as a stenographer is also belied by the findings of the Investigating Judge, who in her random check of records, discovered that Siwa had not yet submitted a complete transcription of 7 stenographic notes in 5 cases (3 criminal and 2 civil cases), in three of which decisions were already rendered.[63] In one case, the testimonies of the prosecution witnesses had to be re-taken.[64] Thus, contrary to Siwa's assertion, she was not able to satisfactorily perform her duties as a court stenographer while engaging in private business.

Her argument that her business is a legal endeavor also cannot excuse her from liability. Many "moonlighting" activities pertain to legal acts that otherwise would be countenanced if the actors were not employed in the public sector. And while moonlighting is not normally considered a serious misconduct, nonetheless, by the very nature of the position held, it amounts to a malfeasance in office.[65]

Siwa conducted her business within the court's premises, which placed the image of the judiciary, of which she is part, in a bad light. Time and again, the Court has held that the image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat; thus the conduct of a person serving the judiciary must, at all times, be

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[61] *Id.* at 06.

[62] *Id.* at 10.

[63] *See* Report, A.M. No. P-08-2519, *rollo*, pp. 73-74. Crim. Case Nos. 257579-CR; 344073-CR; 311894-896-CR; Civil Case Nos. 159097-CV; 168109-CV.

[64] *See* Report, A.M. No. P-08-2519, *rollo*, pp. 75, 89. Crim. Case Nos. 257579-CR; 344073-CR; 311894-896-CR; Civil Case Nos. 159097-CV; 168109-CV.

[65] *Baron v. Anacan*, A.M. No. P-04-1816, June 20, 2006, 491 SCRA 313, 320.

characterized by propriety and decorum, and be above suspicion so as to earn and keep the respect of the public for the judiciary.[66]

Siwa's infraction constitutes conduct prejudicial to the best interest of the service which, under Sec. 52 A (20) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, carries the penalty of suspension of 6 months and 1 day to 1 year for the first offense and dismissal for the second offense. Since this is her first offense and considering the October 12, 2005 Resolution of the Court in A.M. No. 12096-Ret. which approved Siwa's application for optional retirement, retaining only the amount of ₱30,000.00 from the money value of her earned leave credits pending resolution of the instant case, the Court finds she should be imposed the penalty of fine in the amount of ₱30,000.00.

Liability of Atty. Favorito.

There is no evidence to show that Atty. Favorito knows or should have known that Atty. Morales had copies of pleadings for private cases in his personal computer for which Atty. Favorito could be held liable for neglect of duty as supervisor. As to Siwa's lending and rediscounting activities, however, the Court finds that Atty. Favorito was remiss in addressing said matter which activity took place in the court's premises which was under his responsibility.

Clarifications, however, should be made.

The OCA in its Memorandum dated November 7, 2007 stated that:

x x x in her April 28, 2005 Manifestation, Siwa admitted to being involved in the business of rediscounting checks, claiming that 'she is not the only employee engaged in the same business.' Respondent [Siwa] even had the audacity to admit that she 'maintained my own personnel' to do the rediscounting which stretched to the premises

[66] *Id.* at 323.

of the MeTC-OCC, where respondent Favorito is the Clerk of Court.[67] (Emphasis supplied)

A review of the records, however, would show that what Siwa submitted is not a "Manifestation" but a "Comment" dated April 28, 2005 and there, instead of stating that her rediscounting activities stretched to the premises of the MeTC-OCC, she actually denied that she used the OCC to conduct said business. Pertinent portions of said Comment reads:

> 4.1. Respondent admits that she is involved in the business of rediscounting checks x x x.
>
> xxx xxx xxx
>
> 4.2. Respondent, however, denies that she uses the Office of the Clerk of Court to conduct this business x x x.
>
> 4.3. There are other occasions when the said staff will be stationed at the corridors to lend emergency cash to employees in need. The said occasions may have occurred during office hours, for which, the respondent's staff may not be blamed since it was the employees themselves who go to them. However, these instances were rare. It should also be emphasized that these transactions occurred outside of the offices and within the common or public areas.[68] (Emphasis supplied)

Thus, Siwa never admitted that her business stretched to the premises of the OCC-MeTC but only claimed that her staff used "corridors" which were "common or public areas" for their transactions.

Still, Atty. Favorito failed to address such matter and to prevent such activities from taking place, even if they were conducted in the corridors, since such areas are still part of the court's premises. As Clerk of Court of the OCC, it is Atty. Favorito's duty to plan, direct, supervise and coordinate the activities of all divisions/sections/units in the OCC.[69] He should therefore

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[67] A.M. No. P-08-2519, *rollo*, pp. 123-124.

[68] A.M. No. P-08-2520, *rollo*, p. 17.

[69] 2002 Manual for Clerks of Court, Chapter VII, D(1).

be reprimanded for his failure to duly supervise and prevent such activities from happening within his area of responsibility.

Liability of Atty. Favorito and Calda on the extortion charges.

On the claim that Atty. Favorito and Caldo extorted money from sureties without issuing receipts therefor, the Court finds no cogent reason to deviate from the findings of the Investigating Judge and the OCA.

Investigating Judge Estoesta found that:

> x x x the charges of "*extortion*" levelled against Atty. Henry P. Favorito and Mr. William Calda x x x suffered from loose ends.
>
> Random interviews with two (2) bondsmen denied that Atty. Favorito and Mr. Calda exacted such amounts.
>
> The ₱50.00 and ₱500.00 specified to as "*processing fee*" could actually refer to the Legal Fees mandated under Section 8 (o) and Section 21 (c) of Rule 141, as follows x x x
>
> Here, it is obvious that the anonymous letter-complainant has no understanding whatsoever of the legal fees charged by Office of the Clerk of Court.
>
> *This actually hints of the fact that said anonymous letter-complainant may not be a personnel of the Office of the Clerk of Court after all.*
>
> The extortion charge slapped against Atty. Favorito and Mr. Calda, therefore, rings empty.[70]

Such finding was affirmed by the OCA in its Memorandum dated November 7, 2007 which recommended the dismissal of said charges against Atty. Favorito and Calda for lack of concrete proof. [71]

Liability of Arreola on absence during office hours.

As with the extortion charges against Atty. Favorito and Calda, the Court finds no sufficient evidence to hold Arreola administratively liable.

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[70] A.M. No. P-08-2519, *rollo*, pp. 71-72.

[71] *Id.* at 124.

As reported by Judge Estoesta:

x x x the charge against Ms. Amie Grace Arreola regarding her habit of leaving the office after logging-in found no concrete corroboration.

The interviewees were actually unanimous in saying that Ms. Arreola was not prone to such habit as she is always around the office. Ms. Arreola may have been known to fetch her son at a nearby school but she has always done so during lunch hours and after office hours.

As a matter of fact, at a time when the MeTC was stricken by a debilitating brown-out schedule in the afternoon sometime [in] July 2006, Ms. Arreola was still around, having been one of the skeletal force who volunteered to stay on. The undersigned has personally seen her around 5:30 p.m. of the same day.

As a matter of fact, several random checks on Ms. Arreola by the undersigned herself revealed that she has always been around at the OCC and at Branch 30 where she was re-assigned as Branch Clerk of Court. At times, personal visits were made, interspersed by telephone calls between 8:00 a.m. to 10:30 a.m. where Ms. Arreola proved herself to be always at the office.

Needless to say, therefore, the charge against Ms. Arreola is certainly without basis.[72]

The OCA agreed with the said finding and likewise recommended the dismissal of the charges against Arreola.[73]

It is well-settled that in administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The complainant has the burden of proving, by substantial evidence, the allegations in the complaint. That is, in the absence of evidence to the contrary, what will prevail is that respondent has regularly performed his or her duties.[74] Reliance on mere allegations, conjectures and

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[72] A.M. No. P-08-2519, *rollo*, p. 72.

[73] *Id.* at 72.

[74] *Re: Anonymous Complaint Against Angelina Casareno-Rillorta*, *supra* note 41.

suppositions will leave an administrative complaint with no leg to stand on, and charges based on mere suspicion and speculation cannot be given credence.[75]

Since there is no proof, apart from the allegations of the letter-complaint, to hold Atty. Favorito, Calda and Arreola liable for the aforestated charges against them, the Court deems it proper to dismiss said charges for lack of merit.

Other matters.

In view of the initial findings of Investigating Judge Estoesta that Siwa was remiss in her duty of transcribing stenographic notes assigned to her, the OCA is hereby directed to conduct an audit investigation on Siwa's transcription of stenographic notes to determine the full extent of the notes she failed to transcribe on time. If warranted, such matter shall be treated as a separate case to be given a new docket number and assigned to another *ponente* for evaluation.

The OCA should also report on the status of the complaint filed by Atty. Morales which the Court received on March 31, 2005, the complaint of Isabel Siwa dated April 12, 2005, and the letter-complaint of Atty. Favorito together with other MeTC employees which the Court received on March 28, 2005, against DCA Dela Cruz, regarding the spot investigation conducted on March 16, 2005 regarding this case.

WHEREFORE, the Court finds *Isabel Siwa*, Court Stenographer of Branch 16, Metropolitan Trial Court, Manila, *GUILTY* of conduct prejudicial to the best interest of the service and is *FINED* in the amount of ₱30,000.00 to be deducted from the money value of her leave credits which was set aside per Resolution dated October 12, 2005 in A.M. No. 12096-Ret. entitled *Application for Retirement Benefits under Section 13-A of R.A. No. 8291 of Ms. Isabel A. Siwa, Court Stenographer II, MeTC, Manila, Branch 16*.

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[75] *Mikrostar Industrial Corp. v. Mabalot,* A.M. No. P-05-2097, December 15, 2005, 478 SCRA 6, 11.

Atty. Henry P. Favorito, Clerk of Court of the Office of the Clerk of Court is *REPRIMANDED* for his failure to supervise the lending and rediscounting activites of Siwa which took place in the court's premises. The extortion charges against him are *DISMISSED* for lack of merit.

The charges against *Atty. Miguel Morales*, former Branch Clerk of Court, Branch 17, are *DISMISSED* for insufficiency of evidence. Deputy Court Administrator Reuben de la Cruz is advised to be more circumspect in the performance of his duties.

The charges against *William Calda*, Administrative Officer of the Office of the Clerk of Court, and *Amie Grace Arreola*, formerly Branch Clerk of Court of Branch 4 now Clerk of Court of Branch 30, both of the Metropolitan Trial Court of Manila, are DISMISSED for lack of merit.

The *Office of the Court Administrator* is *DIRECTED* to conduct an audit investigation on Isabel Siwa's transcription of stenographic notes in view of the finding of Judge Ma. Theresa Dolores C. Gomez-Estoesta in her Investigation Report dated September 1, 2006 in A.M. No. P-08-2519 and A.M. P-08-2520 (formerly A.M. OCA IPI No. 05-2155-P and A.M. OCA IPI No. 05-2156-P) that Siwa has not submitted a complete transcription of stenographic notes in several cases assigned to her. Said matter shall be treated as a separate case, to be given a new docket number and assigned to a new *ponente* for final resolution.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

SECOND DIVISION

[A.M. No. P-08-2572. November 19, 2008]

(Formerly OCA I.P.I. No. 08-2950-P)

JUDGE ILUMINADA P. CABATO, *complainant, vs.* **FELIX S. CENTINO, Process Server, Regional Trial Court, Branch 59, Baguio City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; HABITUAL ABSENTEEISM, ABHORRED.— Under Section 23(q) of the Omnibus Civil Service Rules and Regulations, an officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year. Administrative Circular No. 14-2002 reiterates the said Civil Service rule on habitual absenteeism. Worth stressing, by reason of the nature and functions of their office, officials and employees of the judiciary must faithfully observe the constitutional canon that public office is a public trust. This duty calls for the observance of prescribed office hours and the efficient use of official time 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 respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.

2. ID.; ID.; ID.; ID.; PROPER PENALTY; MITIGATED IN CASE AT BAR.— Under Administrative Circular No. 14-2002 and Section 23(q) of the Omnibus Civil Service Rules and Regulations, habitual absenteeism is penalized by suspension for six months and one day to one year for the first offense. Nonetheless, we agree with the lower penalty proposed by the OCA. The OCA aptly considered Centino's act to reform as a

mitigating circumstance. As confirmed by Judge Cabato, Centino has returned to work, reports regularly, and submits his DTR and leave applications. This is not the first time that we imposed a lower penalty. We have mitigated the imposable penalty for humanitarian reasons. We have also considered length of service in the judiciary, acknowledgment of infraction, remorse, and family circumstances in determining the penalty. Here, we considered Centino's length of service, acknowledgment of his infraction, and apology to determine the appropriate penalty. **WHEREFORE**, we find Felix S. Centino, Process Server, Regional Trial Court, Branch 59, Baguio City, *GUILTY* of habitual absenteeism, and *SUSPEND* him for three months without pay effective upon notice hereof. He is *STERNLY WARNED* that the same or similar act or acts of disobedience in the future will be dealt with more severely.

R E S O L U T I O N

QUISUMBING, *J.*:

Before the Court is the complaint[1] of Judge Iluminada P. Cabato of the Regional Trial Court (RTC), Branch 59, Baguio City, charging Felix S. Centino, Process Server detailed at Branch 59, with gross misconduct and serious misbehavior.

It appears that Centino was absent for 10.5 days in May 2006, 6 days in April 2006, 8.5 days in March 2006, 8.5 days in February 2006, and 31.5 days in 2005. On June 9, 2006, Judge Cabato issued a memorandum requiring Centino to explain his 65 absences without approved leave and failure to submit his Daily Time Records (DTR) within 72 hours from receipt of the memorandum.[2] Centino failed to submit his answer within the time allowed. Judge Cabato issued another memorandum directing Centino to show cause why he should not be charged administratively, and also to explain why he was likewise absent without approved leave from June 1 to 27, 2006.[3] Again, Centino

[1] *Rollo*, pp. 5-7.

[2] *Id.* at 9-11.

[3] *Id.* at 13.

failed to submit the required explanation. Thus, Judge Cabato filed the instant complaint.

Judge Cabato alleged that Centino's indifference to her memoranda and failure to submit the required applications for leave and DTRs constitute gross misconduct and serious misbehavior.[4] Attached to her complaint were copies of the attendance log sheets[5] of the RTC, Branch 59, and a certification[6] issued by the RTC Clerk of Court that Centino submitted his last DTR in October 2005 and last applications for leave on September 9 and 16, 2005.

In his comment, Centino averred that he tried to reconstruct his DTR and leave application forms, but could not locate his records anymore. He sought forgiveness for his failure to apply for leave of absence and submit his DTR from February to May 2006, citing serious domestic problems with his wife and children as reason for noncompliance with Civil Service rules. He vowed not to repeat his violation and stressed that he has, in fact, reported back to work since November 2006 and has regularly complied with the rules. He likewise pleaded for compassion in view of his 22 years of service.[7]

It likewise appears on record that on January 19, 2007, the Office of the Court Administrator (OCA) indorsed to Judge Cabato for signature and/or comment Centino's Bundy Cards and leave applications for the period February to September 2006. Judge Cabato commented that said Bundy Cards and leave applications were never submitted to her for signature and that Centino's failure to file them was the reason for the instant complaint. Judge Cabato also confirmed Centino's return and regular submission of DTR.[8]

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[4] *Id.* at 7.

[5] *Id.* at 36-124.

[6] *Id.* at 17.

[7] *Id.* at 34.

[8] *Id* at 134.

[9] *Id.* at 133.

Acting on this information, the OCA, Leave Division, informed Centino that his leave applications were acted upon as follows: his absence for 21 days from June 1 to 30, 2006 were credited to his available sick leave credits, while his absence for 167.5 days from February 1 to May 31 and from July 1 to October 31, 2006 were treated as vacation leave without pay.[9] The OCA, Leave Division, also issued a certification that Centino incurred 22 unauthorized absences in August 2006, 21 in September 2006 and 7 in November 2006.[10]

On September 11, 2008, the OCA submitted a memorandum[11] to this Court finding Centino guilty of habitual absenteeism and recommending that he be suspended for three months without pay.

We adopt the recommendation.

Centino incurred more than 2.5 days of unauthorized absences per month for four months in the first semester of 2006. As borne by the records and detailed in Judge Cabato's first memorandum, Centino was absent for 8.5 days in February 2006, 8.5 days in March 2006, 6 days in April 2006 and 10.5 days in May 2006. Centino admitted he did not seek approval for these absences. The RTC Clerk of Court also certified that Centino filed his last application for leave in September 2005.

Under Section 23(q)[12] of the Omnibus Civil Service Rules and Regulations,[13] an officer or employee in the civil service

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[10] *Id.* at 132.

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

[12] SEC 23. Administrative offenses with its (sic) corresponding penalties are classified into grave, less grave, and light, depending on the gravity of its (sic) nature and effects of said acts on the government service.

The following are grave offenses with its corresponding penalties:

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(q) Frequent unauthorized absences or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours

1st Offense – Suspension for six (6) months and one (1) day to one (1) year

2nd Offense – Dismissal

shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three months in a semester or at least three consecutive months during the year.

Administrative Circular No. 14-2002[14] reiterates the said Civil Service rule on habitual absenteeism. Worth stressing, by reason of the nature and functions of their office, officials and employees of the judiciary must faithfully observe the constitutional canon that public office is a public trust. This duty calls for the observance of prescribed office hours and the efficient use of official time 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 respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[15]

Under Administrative Circular No. 14-2002 and Section 23(q) of the Omnibus Civil Service Rules and Regulations, habitual absenteeism is penalized by suspension for six months and one day to one year for the first offense. Nonetheless, we agree with the lower penalty proposed by the OCA. The OCA aptly considered Centino's act to reform as a mitigating circumstance.

An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the Leave Law for at least three (3) months in a semester or at least three (3) consecutive months during the year.

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[13] IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292 AND OTHER PERTINENT CIVIL SERVICE LAWS. Effective February 14, 1992.

[14] REITERATING THE CIVIL SERVICE COMMISSION'S POLICY ON HABITUAL ABSENTEEISM, issued by former Chief Justice Hilario G. Davide, Jr. Effective April 1, 2002.

[15] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual*, A.M. No. 2005-16-SC, September 22, 2005, 470 SCRA 569, 572; *Re: Habitual Absenteeism of Mr. Erwin A. Abdon, Utility Worker II*, A.M. No. 2007-13-SC, April 14, 2008, 551 SCRA 130, 132-133.

As confirmed by Judge Cabato, Centino has returned to work, reports regularly, and submits his DTR and leave applications.

This is not the first time that we imposed a lower penalty. We have mitigated the imposable penalty for humanitarian reasons. We have also considered length of service in the judiciary, acknowledgment of infraction, remorse, and family circumstances in determining the penalty.[16] Here, we considered Centino's length of service, acknowledgment of his infraction, and apology to determine the appropriate penalty. However, these additional mitigating circumstances cannot further affect the penalty recommended by the OCA because they are offset by Centino's disobedience to Judge Cabato's orders and the sheer number of his absences which could have resulted in his separation from the service. Centino's vacation leave without pay totaled 167.5 days from February 1 to May 31 and from July 1 to October 31, 2006. Section 57[17] of the Omnibus Rules on Leave[18] provides that leave without pay in excess of one month shall require the clearance of the proper head of department or agency. Centino, however, did not even submit his leave applications from February to September 2006 for approval or signature by his superior, Judge Cabato. Worse, Centino continuously incurred 43 unauthorized absences: 22 unauthorized absences in 22 working days[19] in August 2006 and 21 in 21 working days in September 2006. Under Section 63[20] of the Omnibus Rules on Leave, an

[16] *Re: Habitual Absenteeism of Mr. Fernando P. Pascual, id.* at 573.

[17] **Sec. 57.** ***Limit of leave without pay.*** – Leave without pay not exceeding one year may be granted, in addition to the vacation and/or sick leave earned. Leave without pay in excess of one month shall require the clearance of the proper head of department or agency.

[18] RULE XVI OF THE OMNIBUS RULES IMPLEMENTING BOOK V of EO 292.

[19] As reduced by one day. August 21, 2006, Monday, was declared non-working holiday (Ninoy Aquino Day), see www.gov.ph/faqs/holidays.asp., visited November 4, 2008 at 3:10 p.m.

[20] **Sec. 63.** ***Effect of absences without approved leave.*** – An official or an employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls…

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official or employee who is continuously absent without approved leave for at least 30 working days shall be considered on absence without official leave and shall be separated from the service or dropped from the rolls.

WHEREFORE, we find Felix S. Centino, Process Server, Regional Trial Court, Branch 59, Baguio City, *GUILTY* of habitual absenteeism, and *SUSPEND* him for three months without pay effective upon notice hereof. He is *STERNLY WARNED* that the same or similar act or acts of disobedience in the future will be dealt with more severely.

To enable us to determine the effectivity of the penalty imposed, Centino is *DIRECTED* to report the date of his receipt of this Resolution to this Court.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

SECOND DIVISION

[G.R. No. 156654. November 20, 2008]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **VICENTE LOPEZ, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; CONFINED ONLY TO QUESTIONS OF LAW; ISSUES ON THE EXISTENCE OF NEGLIGENCE, FRAUD AND BAD FAITH ARE QUESTIONS OF FACT.— A perusal of the issues readily shows that the same are questions of facts since its resolution

would entail a re-evaluation of the evidence presented before the trial court. Thus, we could not take cognizance of such issues considering the settled rule that our review under Rule 45 is confined to questions of law. It is true that there are several exceptions to the said rule; however, none finds application in this case. Moreover, we had already specifically held that issues on the existence of negligence, fraud and bad faith are questions of fact. We had also observed that PAL is also guilty of raising prohibited new matters and in changing its theory of defense since it is only in the present petition that it alleged the contributory negligence of Lopez.

2. ID.; ID.; ID.; NO COMPELLING REASON TO DEPART FROM THE UNIFORM FACTUAL FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS.— PAL's procedural lapses notwithstanding, we had nevertheless carefully reviewed the records of this case and found no compelling reason to depart from the uniform factual findings of the trial court and the Court of Appeals that: (1) it was the negligence of PAL which caused the downgrading of the seat of Lopez; and (2) the aforesaid negligence of PAL amounted to fraud or bad faith, considering our ruling in *Ortigas.*

3. CIVIL LAW; DAMAGES; MORAL DAMAGES; AMOUNT OF MORAL DAMAGES AWARDED BY THE TRIAL COURT, NOT CONSIDERED EXCESSIVE.— Moreover, we cannot agree with PAL that the amount of moral damages awarded by the trial court, as affirmed by the Court of Appeals, was excessive. In *Mercury Drug Corporation v. Baking,* we had stated that "there is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, since each case must be governed by its own peculiar facts. However, it must be commensurate to the loss or injury suffered." Taking into account the attending circumstances here, we believe that the amount of ₱100,000 awarded as moral damages is appropriate.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Celso A. Tabobo, Jr. for respondent.

R E S O L U T I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated June 20, 2002 and the Resolution[2] dated December 10, 2002 of the Court of Appeals in CA-G.R. CV No. 53360 which affirmed *in toto* the Decision[3] dated April 19, 1995 of the Regional Trial Court (RTC) of Manila, Branch 24 in Civil Case No. 92-60199. The RTC had ordered petitioner Philippine Airlines, Inc. (PAL) to pay respondent Vicente Lopez, Jr. ₱100,000 moral damages, ₱20,000 exemplary damages and ₱30,000 attorney's fees plus costs of suit.

The antecedent facts are as follows:

In a Complaint[4] dated February 11, 1992, filed with the RTC of Manila, Branch 24, Lopez claimed that PAL had unjustifiably downgraded his seat from business to economy class in his return flight from Bangkok to Manila last November 30, 1991, and that, in view thereof, PAL should be directed to pay him moral damages of at least ₱100,000, exemplary damages of at least ₱20,000, attorney's fees in the sum of ₱30,000, as well as the costs of suit.

To support his claim, Lopez averred that he purchased a Manila-Hongkong-Bangkok-Manila PAL business class ticket and that his return flight to Manila was confirmed by PAL's booking personnel in Bangkok on November 26, 1991. He also mentioned that he was surprised to learn during his check-in for the said return flight that his status as business class passenger was changed to economy class, and that PAL was not able to offer any valid explanation for the sudden change when he protested the change. Lopez added that although

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[1] *Rollo*, pp. 31-40. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Salvador J. Valdez, Jr. and Amelita G. Tolentino concurring.

[2] *Id.* at 28.

[3] Records, pp. 199-210. Penned by Judge Sergio D. Mabunay.

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

aggrieved, he nevertheless took the said flight as an economy class passenger because he had important appointments in Manila.

For its part, PAL denied any liability and claimed that whatever damage Lopez had suffered was due to his own fault. PAL explained that the terms and conditions of the contract of carriage required Lopez to reconfirm his booking for the Bangkok-to-Manila leg of his trip, and that he did not protest the economy seat given to him when the change in his accommodations was read to him by the person who received his phone reconfirmation. PAL also asserted that Lopez did not complain against his economy seat during the check-in and that he raised the issue only after the flight was over.[5] Thus, PAL prayed that the case be dismissed for lack of merit.[6]

In its Decision dated April 19, 1995, the trial court held PAL liable for damages. It said that PAL's contention that Lopez might have thought that he was holding an economy class ticket or that he waived his right to have a business class seat is untenable, considering that Lopez is an experienced businessman and a Bachelor of Science degree holder.

It also noted that the following showed that PAL's employees had been negligent in booking and confirming Lopez's travel accommodations from Bangkok to Manila: (1) the admission of PAL's booking personnel[7] that she affixed the validation sticker on Lopez's ticket on the basis of the passenger's name list showing that his reservation was for an economy class seat *without examining or checking* the latter's ticket during his booking validation; and (2) the admission of PAL's check-in clerk[8] at the Bangkok Airport that when Lopez checked-in for his return trip to Manila, she similarly gave Lopez an economy boarding pass based on the information found in the coupon of the ticket and the passenger manifest *without checking* the latter's

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[5] *Id.* at 15-16.

[6] *Id.* at 17.

[7] Ms. Chongchit Tiumtongbai.

[8] Ms. Choompoonoot Chinkumnon.

ticket. The trial court said that had PAL's employees examined his ticket in those instances, the error or oversight which might have resulted from the phoned-in booking could have been easily rectified.[9]

Thus, citing Articles 1733[10] and 2220[11] of the Civil Code and the case of *Ortigas, Jr. v. Lufthansa German Airlines*,[12] the trial court held that the inattention and lack of care on the part of the common carrier, in this case PAL, resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud, making it liable for damages.[13] The trial court likewise awarded attorney's fees in favor of Lopez after noting that Lopez was forced to litigate in order to assert his rights.[14]

The dispositive portion of the trial court's decision reads:

> Based on all the foregoing therefore, the Court finds in favor of the plaintiff and against the defendant and orders defendant to pay plaintiff, as prayed for in the complaint, the following amounts: ₱100,000.00 for moral damages; ₱20,000.00 for exemplary damages and ₱30,000.00 for attorney's fees and also to pay for the cost of suit. All amounts awarded to bear legal interest from date of this decision.
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> SO ORDERED.[15]

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[9] Records, p. 207.

[10] 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.

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[11] ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[12] No. L-28773, June 30, 1975, 64 SCRA 610.

[13] *Id.* at 643-644.

[14] *Rollo*, p. 35.

[15] Records, p. 210.

On appeal, the Court of Appeals affirmed *in toto* the trial court's decision after having been fully convinced of the negligence of PAL's employees and after finding PAL's defenses to be unworthy of belief and contrary to common observation and experience.

PAL moved for reconsideration but it was denied. Hence, this petition.

In our Resolution[16] dated September 26, 2007, we suspended the proceedings of this case and directed PAL to submit a status report on its then ongoing corporate rehabilitation. Pursuant to our directive, PAL submitted a Manifestation/Compliance[17] dated October 22, 2007, informing us of the Securities and Exchange Commission Order[18] dated September 28, 2007, which granted its request to exit from corporate rehabilitation. Thus, we now resolve the instant petition.

Petitioner contends that:

I.

THE COURT OF APPEALS ERRED IN NOT RULING THAT IN AN OPEN-DATED CONTRACT OF CARRIAGE, THE PARTIES ARE FREE TO AGREE ON THE TERMS THEREOF ON THE DATE LEFT OPEN.

II.

THE COURT OF APPEALS ERRED IN NOT RULING THAT RESPONDENT'S CONTRIBUTORY NEGLIGENCE PREVENTS HIM FROM RECOVERING DAMAGES FROM PETITIONER.

III.

THE COURT OF APPEALS ERRED IN NOT RULING THAT IN MORAL DAMAGES RECOVERABLE IN BREACHES OF CONTRACTS, THE TERMS "FRAUD" AND "BAD FAITH" HAVE REFERENCE TO WANTON, RECKLESS, OPPRESSIVE, OR MALEVOLENT CONDUCT.

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[16] *Rollo*, pp. 130-134.

[17] *Id.* at 135-137.

[18] *Id.* at 138-143.

IV.

THE COURT OF APPEALS ERRED IN NOT RULING THAT EXEMPLARY DAMAGES ARE NOT RECOVERABLE IN THE ABSENCE OF FRAUD OR BAD FAITH.

V.

THE COURT OF APPEALS ERRED IN NOT RULING THAT AWARD OF ATTORNEY'S FEES IS NOT PROPER IN THE ABSENCE OF GROSS AND EVIDENT BAD FAITH ON THE PART OF PETITIONER.[19]

Simply put, the issues are: (1) Did the Court of Appeals err in not ruling that Lopez agreed or allowed his business class seat to be downgraded to economy class? (2) Did the Court of Appeals err in not ruling that Lopez's alleged contributory negligence was the proximate cause of the downgrading of his seat? and (3) Did the Court of Appeals err in awarding moral damages, exemplary damages and attorney's fees in favor of Lopez in view of the alleged absence of fraud or bad faith of PAL?

A perusal of the aforesaid issues readily shows that the same are questions of facts since its resolution would entail a re-evaluation of the evidence presented before the trial court.[20] Thus, we could not take cognizance of such issues considering the settled rule that our review under Rule 45 is confined to questions of law. It is true that there are several exceptions[21] to the said rule; however, none finds application in this case.

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[19] *Id.* at 13-14.

[20] *Microsoft Corporation v. Maxicorp, Inc.*, G.R. No. 140946, September 13, 2004, 438 SCRA 224, 231.

[21] In *Rosario v. PCI Leasing and Finance, Inc.*, G.R. No. 139233, November 11, 2005, 474 SCRA 500, 506, we held that factual issues may be resolved by this Court in cases where (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are

Moreover, we had already specifically held that issues on the existence of negligence, fraud and bad faith are questions of fact.[22]

We had also observed that PAL is also guilty of raising prohibited new matters[23] and in changing its theory of defense[24] since it is only in the present petition that it alleged the contributory negligence of Lopez.

PAL's procedural lapses notwithstanding, we had nevertheless carefully reviewed the records of this case and found no compelling reason to depart from the uniform factual findings of the trial court and the Court of Appeals that: (1) it was the negligence of PAL which caused the downgrading of the seat of Lopez; and (2) the aforesaid negligence of PAL amounted to fraud or bad faith, considering our ruling in *Ortigas*.[25]

Moreover, we cannot agree with PAL that the amount of moral damages awarded by the trial court, as affirmed by the Court of Appeals, was excessive. In *Mercury Drug Corporation v. Baking*,[26] we had stated that "there is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, since each case must be governed by its own peculiar facts. However, it must be commensurate to the loss or injury suffered."[27] Taking into account the attending

not disputed by the respondents; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.

[22] See the cases of *Metro Manila Transit Corporation v. Court of Appeals*, G.R. No. 141089, August 1, 2002, 386 SCRA 126, 132; *Quesada v. Department of Justice*, G.R. No. 150325, August 31, 2006, 500 SCRA 454, 461; *Land Bank of the Philippines v. Pua*, G.R. No. 163197, March 30, 2005, pp. 1, 3-4 (Unsigned Resolution).

[23] *Mendoza v. Bautista*, G.R. No. 143666, March 18, 2005, 453 SCRA 691, 702.

[24] *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 159270, August 22, 2005, 467 SCRA 569, 584-585.

[25] *Ortigas, Jr. v. Lufthansa German Airlines*, *supra* note 12.

[26] G.R. No. 156037, May 25, 2007, 523 SCRA 184.

[27] *Id.* at 191.

circumstances here, we believe that the amount of ₱100,000 awarded as moral damages is appropriate.

WHEREFORE, the assailed Decision dated June 20, 2002 and Resolution dated December 10, 2002 of the Court of Appeals in CA-G.R. CV No. 53360 are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

SECOND DIVISION

[G.R. No. 172241. November 20, 2008]

PUREFOODS CORPORATION (now SAN MIGUEL PUREFOODS COMPANY, INC.), *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (2nd Division) and LOLITA NERI,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REGULAR AND CASUAL EMPLOYMENT; ARTICLE 280 OF THE LABOR CODE FINDS NO APPLICATION IN A TRILATERAL RELATIONSHIP INVOLVING A PRINCIPAL, AND AN INDEPENDENT CONTRACTOR, AND THE LATTER'S EMPLOYEES.— The Court agrees with Purefoods' argument that Art. 280 of the Labor Code finds no application in a trilateral relationship involving a principal, an independent job contractor, and the latter's employees. Indeed, the Court has ruled that said provision is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, *i.e.*, regular employees and

casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure; it does not apply where the existence of an employment relationship is in dispute. It is therefore erroneous on the part of the Court of Appeals to rely on Art. 280 in determining whether an employer-employee relationship exists between respondent Neri and Purefoods.

2. ID.; ID.; ID.; ID.; PERMISSIBLE JOB CONTRACTING OR SUBCONTRACTING; CONDITIONS THAT MUST BE MET.— Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. In this arrangement, the following conditions must be met: (a) the contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.

3. ID.; ID.; ID.; ID.; THE AGREEMENTS CONFIRM THAT PETITIONER HAD ENGAGED AN INDEPENDENT CONTRACTOR TO SUPPLY GENERAL PROMOTION SERVICES AND NOT MERE MANPOWER SERVICES TO IT.— The agreements confirm that D.L. Admark is an independent contractor which Purefoods had engaged to supply general promotion services, and not mere manpower services, to it. The provisions expressly permit D.L. Admark to handle and implement Purefoods' project, and categorically state that there shall be no employer-employee relationship between D.L. Admark's employees and Purefoods. While it may be true that complainants were required to submit regular reports and were introduced as Purefoods merchandisers, these are not enough

to establish Purefoods' control over them. Even if the report requirements are somehow considered as control measures, they were imposed only to ensure the effectiveness of the promotion services rendered by D.L. Admark. It would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement. Indeed, it would be foolhardy for any company to completely give the reins and totally ignore the operations it has contracted out.

4. ID.; ID.; ID.; ID.; THE PIECES OF EVIDENCE SUBMITTED BY RESPONDENT DO NOT SUPPORT HER CLAIM OF HAVING BEEN A REGULAR EMPLOYEE OF PETITIONER COMPANY.— The pieces of evidence submitted by Neri do not support her claim of having been a regular employee of Purefoods. We note that two "Statement of Earnings and Deductions" were issued for the same period, December 1989, and in one "Statement," someone deliberately erased the notation "January 1997," thereby casting doubt on the authenticity of the said documents. Even the identification cards presented by Neri are neither binding on Purefoods nor even indicative of her claimed employee status of Purefoods, issued as they were by the supermarkets concerned and not by Purefoods itself. Moreover, the check voucher issued by Purefoods marked "IN PAYMENT OF DL ADMARK DELI ATTENDANTS 12.00 PESOS ADJUSTMENT JAN 30, 1991 TO JUNE 22, 1992," signed and received by Neri, is proof that Purefoods never considered Neri as its own employee, but rather as one of D.L. Admark's deli attendants. We also note that Neri herself admitted in her *Sinumpaang Salaysay* and in the hearings that she applied with D.L. Admark and that she worked for Purefoods through D.L. Admark. Neri was aware from the start that D.L. Admark was her employer and not Purefoods. She had kept her contract with D.L. Admark, and inquired about her employment status with D.L. Admark.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and *Cruz* for petitioner.

Raneses Taquio Domingo and Associates for private respondent.

D E C I S I O N

TINGA, *J.*:

This is a Petition for Review of the Decision[1] and Resolution[2] of the Court of Appeals dated 2 November 2005 and 7 April 2006, respectively, in C.A. G.R. SP No. 65180, which upheld the National Labor Relations Commission's (NLRC) 22 November 2000 decision.[3]

The antecedents follow.

On 8 June 1992, Lolita Neri (Neri) originally filed a claim[4] for nonpayment of additional wage increase, regularization, nonpayment of service incentive leave, underpayment of 13th month pay, and nonpayment of premium pay for holiday and holiday pay against Purefoods Corporation (Purefoods). By 4 July 1992, however, Neri was dismissed from her work as a Deli-Attendant.[5] Subsequently, or on 13 July 1992, eleven (11) other complainants[6] joined forces with Neri and together they filed an amended complaint, with Neri charging Purefoods with illegal dismissal.[7] All the other complainants, save for Neri, were still working for Purefoods at the time of the filing of the amended complaint. On 31 August 1993, Labor Arbiter Arthur L. Amansec declared Neri and the complainants as Purefoods' regular employees; and Neri as having been illegally dismissed and entitled

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[1] *Rollo*, pp. 77-97; Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Renato C. Dacudao and Lucas P. Bersamin, concurring.

[2] *Id.* at 100-102.

[3] *Id.* at 126-144.

[4] Docketed as NLRC NCR Case No. 00-06-03149-92.

[5] Per complainants' Position Paper; *rollo*, pp. 175-184.

[6] NLRC records, Vol. 1, p. 11; Felix Quinsanos, Marciano M. Bane, Emeterio Dizon, Jr., Ronaldo Caduboy, Solores Marange, Jose Alvin Javier, Ferdie Cruz, Isabel Agapulco, Petronila Saculo, Ferdinand Leonardo and Claudine C. Guevarra. Amended Complaint.

[7] The complaint also asks for the additional relief of full backwages from the time of Neri's dismissal up to the date of actual reinstatement. Amended Complaint; *id.*

to reinstatement with payment of backwages.[8] Purefoods filed a partial appeal, praying that the claims of complainants be dismissed for lack of merit, or in the alternative, the case be remanded for formal hearing on the merits and to implead D.L. Admark as a party-respondent.[9] The NLRC granted the appeal and remanded the case for further hearings on the factual issues.[10]

The case was remanded to Labor Arbiter Felipe P. Pati, who, after finding that Neri is not an employee of petitioner, but rather of D.L. Admark, an independent labor contractor, dismissed the complaint on 14 December 1998.[11] On 15 March 1999, a memorandum on appeal was nominally filed by all the complainants; however, it was only Neri who verified the same.[12] On 22 November 2000, the NLRC ruled in complainants' favor and reversed and set aside the labor arbiter's decision. According to the NLRC, the pieces of evidence on record established the employer-employee relationship between Purefoods and Neri and the other complainants. It thus ordered Neri's reinstatement and the payment of backwages or of separation pay if reinstatement is not possible.[13] Purefoods moved for the reconsideration of the decision but its motion was denied for lack of merit.[14] Hence, its recourse to the Court of Appeals via a petition for *certiorari*.[15]

The Court of Appeals, relying on the case of *Escario v. NLRC*,[16] held that D.L. Admark is a legitimate independent contractor. However, it ruled that complainants are regular employees of Purefoods.[17] Citing Art. 280 of the Labor Code,

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[8] *Id.* at 210-219.

[9] *Id.* at 222-233.

[10] NLRC Resolution dated 23 June 1995; *id.* at 409-414.

[11] *Rollo*, pp. 103-111.

[12] *Id.* at 112-125-a.

[13] *Id.* at 126-144.

[14] Resolution dated 22 January 2001; *id.* at 155.

[15] *Id.* at 156-170.

[16] *Id.* at 91.

[17] *Id.* at 93-94.

the appellate court found that complainants were engaged to perform activities which are usually necessary or desirable in the usual business or trade of Purefoods, and that they were under the control and supervision of Purefoods' supervisors, and not of D.L. Admark's. It noted that in the Promotions Agreements between D.L. Admark and Purefoods, there was no mention of the list of D.L. Admark employees who will handle particular promotions for petitioner, and that complainants' periods of employment are not fully covered by the Promotions Agreements.[18]

The Court of Appeals pointed out that Purefoods did not present any evidence to support its claim that complainants were employees of D.L. Admark. It likewise failed to implead D.L. Admark, or even present a representative of D.L. Admark who could testify in its favor.[19] Finally, the Court of Appeals ruled that Neri was illegally dismissed, as there was no valid and just cause for terminating her employment and she was not given the requisite notice and hearing.[20]

Purefoods sought reconsideration[21] of the decision but its motion was denied on 7 April 2006, with the Court of Appeals making special note of the fact that it was only after it had issued the assailed decision that Purefoods introduced several affidavits in support of its case, particularly on the alleged spuriousness of the documents presented by respondent Neri.[22]

In the present petition for review,[23] Purefoods argues that the affidavits it attached to its motion for reconsideration before the Court of Appeals are not evidence presented for the first time, but rather just corroboration, clarification, and/or explanation of what it had advanced in the proceedings below. It likewise

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[18] *Id.* at 95.

[19] *Id.* at 96.

[20] *Id.*

[21] *Id.* at 172-174.

[22] *Id.* at 100-102.

[23] *Id.* at 2-76.

claims that the other complainants in this case are not entitled to the avails of the suit because they failed to verify the position paper and the memorandum on appeal. Purefoods maintains that Neri and the complainants are not employees of Purefoods, but of D.L. Admark, an independent job contractor. Thus, it cannot be held liable for illegal dismissal. Finally, it claims that Article 280 of the Labor Code is not applicable in a trilateral relationship involving a principal, an independent job contractor, and the latter's employees.[24]

This simple issue of determining employer-employee relationship between Purefoods and the complainants has been given differing answers by the lower tribunals, so much so that the Court will have to look into the factual matters involved. Deeply embedded in our jurisprudence is the rule that the findings of facts of quasi-judicial bodies like the NLRC are accorded great respect and, at times, even finality. There are, however, exceptions, among which is when there is a conflict between the factual findings of the NLRC and the Labor Arbiter.[25] Accordingly, this Court must of necessity review the records to determine which findings should be preferred as more conformable to the evidentiary facts.[26]

There is merit in the petition.

The Court agrees with Purefoods' argument that Art. 280 of the Labor Code[27] finds no application in a trilateral relationship

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

[25] *Atlas Fertilizer Corporation v. NLRC*, G.R. No. 120030, 17 June 1997, 273 SCRA 549, 557.

[26] *Casimiro v. Stern Real Estate, Inc.*, G.R. No. 162233, 10 March 2006, 484 SCRA 463.

[27] 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.

involving a principal, an independent job contractor, and the latter's employees. Indeed, the Court has ruled that said provision is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, *i.e.*, regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure; it does not apply where the existence of an employment relationship is in dispute.[28] It is therefore erroneous on the part of the Court of Appeals to rely on Art. 280 in determining whether an employer-employee relationship exists between respondent Neri and Purefoods.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[29] In this arrangement, the following conditions must be met: (a) the contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) the contractor has substantial capital or investment; and (c) the agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the

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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 (1) 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.

[28] *Coca-Cola Bottlers Phils., Inc. v. NLRC*, 366 Phil. 581, 590 (1999).

[29] *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, 11 November 2005, 474 SCRA 656, 667; See also Section 6 of Department Order No. 10 (Series of 1997)

right to self-organization, security of tenure, and social welfare benefits.[30]

To support its position that respondent is not its employee, Purefoods relies on the following: (i) the Promotions Agreements[31] it entered into with D.L. Admark; (ii) Department Order No. 10 (Series of 1997)[32] which defines legitimate contracting or subcontracting; and (iii) *Escario v. NLRC*[33] wherein the Court declared D.L. Admark as a legitimate labor contractor.

On the other hand, early on, Neri and the rest of the complainants admitted that they worked for petitioner through D.L. Admark.[34] However, they also averred that they were under the control and supervision of petitioner's employees—salesmen, poultry sales managers, deli supervisors—who give them work orders and to whom they submit weekly inventory reports and monthly competitive sales report. In support of these statements, Neri appended several documents (various Identification Cards, Certification from Rustan's Supermarkets stating that respondent Neri is from Purefoods, Memoranda to respondent Neri written by a supervisor from Purefoods, letters from Purefoods area sales managers introducing complainants as Purefoods Merchandisers).[35] Purefoods, meanwhile, claims that these documents must be taken in the context of the performance of the service contracted out—promotion of its products.[36]

In the first place, D.L. Admark's status as a legitimate independent contractor has already been established in *Escario*

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[30] Department of Labor and Employment, Department Order No. 10, Section 4(d) (i-iii).

[31] *Rollo*, p. 350-374.

[32] Amending the Rules Implementing Books III and VI of the Labor Code as Amended, promulgated on 30 May 1997.

[33] 388 Phil. 929 (2000).

[34] Affidavits of respondent and other employees; *rollo,* pp. 190-197.

[35] NLRC records, Vol. 1, pp. 175-187.

[36] *Rollo,* p. 56.

v. NLRC.[37] In the said case, complainants, through D.L. Admark, worked as merchandisers for California Manufacturing Corporation (CMC). They filed a case before the labor arbiter for the regularization of their employment status with CMC, and while the case was pending, D.L. Admark sent termination letters to complainants. The complainants thereafter amended their complaint to include illegal dismissal. The Court considered the following circumstances as tending to establish D.L. Admark's status as a legitimate job contractor:

> 1) The SEC registration certificate of D.L. Admark states that it is a firm engaged in promotional, advertising, marketing and merchandising activities.
>
> 2) The service contract between CMC and D.L. Admark clearly provides that the agreement is for the supply of sales promoting merchandising services rather than one of manpower placement.
>
> 3) D.L. Admark was actually engaged in several activities, such as advertising, publication, promotions, marketing and merchandising. It had several merchandising contracts with companies like Purefoods, Corona Supply, Nabisco Biscuits, and Licron. It was likewise engaged in the publication business as evidenced by its magazine the "Phenomenon."
>
> 4) It had its own capital assets to carry out its promotion business. It then had current assets amounting to ₱6 million and is therefore a highly capitalized venture. It had an authorized capital stock of ₱500,000.00. It owned several motor vehicles and other tools, materials and equipment to service its clients. It paid rentals of ₱30,020 for the office space it occupied.[38]

Moreover, applying the four-fold test used in determining employer-employee relationship, the Court found that: the employees therein were selected and hired by D.L. Admark; D.L. Admark paid their salaries, as evidenced by the payroll prepared by D.L. Admark and sample contribution forms; D.L. Admark had the power of dismissal as it admitted that it was the one who terminated the employment of the employees; and

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[37] *Supra* note 33.

[38] 388 Phil. 929, 939-940 (2000).

finally, it was D.L. Admark who exercised control and supervision over the employees.[39]

Furthermore, it is evident from the Promotions Agreements entered into by Purefoods that D.L. Admark is a legitimate labor contractor. A sample agreement reads in part:

WHEREAS, The FIRST PARTY is engaged in the general promotion business;

WHEREAS, The SECOND PARTY will launch its "Handog sa Graduates" promotion project;

WHEREAS, The FIRST PARTY has offered its services to the SECOND PARTY, in connection with the said promotion project, and the latter has accepted the said offer;

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the mutual convenience between them, the parties have agreed as follows:

1. The FIRST PARTY shall handle and implement the "Handog sa Graduates" promotion project of the SECOND PARTY, said project to last from February 1, 1992 to July 31, 1992.

2. The FIRST PARTY shall indemnify the SECOND PARTY for any loss or damage to the latter's properties, if such loss or damage is due to the fault or negligence of the FIRST PARTY or its agents or employees.

3. There shall be no employer-employee relationship between the FIRST PARTY or its agents or employees and the SECOND PARTY.

4. In consideration for the services to be rendered by the FIRST PARTY to the SECOND PARTY, the latter shall pay the former the amount of Two Million Six Hundred Fifty Two Thousand pesos only (₱2,652,000.00) payable as follows:

xxx xxx xxx[40]

[39] 388 Phil. 929, 940-941 (2000).

[40] The other Promotions Agreements are similarly written, except for the name of the project, amount involved and the dates covered.

The agreements confirm that D.L. Admark is an independent contractor which Purefoods had engaged to supply general promotion services, and not mere manpower services to it. The provisions expressly permit D.L. Admark to handle and implement Purefoods' project, and categorically state that there shall be no employer-employee relationship between D.L. Admark's employees and Purefoods. While it may be true that complainants were required to submit regular reports and were introduced as Purefoods merchandisers, these are not enough to establish Purefoods' control over them. Even if the report requirements are somehow considered as control measures, they were imposed only to ensure the effectiveness of the promotion services rendered by D.L. Admark. It would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.[41] Indeed, it would be foolhardy for any company to completely give the reins and totally ignore the operations it has contracted out.

Significantly, the pieces of evidence submitted by Neri do not support her claim of having been a regular employee of Purefoods. We note that two "Statement of Earnings and Deductions"[42] were issued for the same period, December 1989, and in one "Statement," someone deliberately erased the notation "January 1997," thereby casting doubt on the authenticity of the said documents. Even the identification cards[43] presented by Neri are neither binding on Purefoods nor even indicative of her claimed employee status of Purefoods, issued as they were by the supermarkets concerned and not by Purefoods itself. Moreover, the check voucher issued by Purefoods marked "IN PAYMENT OF DL ADMARK DELI ATTENDANTS 12.00 PESOS ADJUSTMENT JAN. 30, 1991 TO JUNE 22, 1992,"[44] signed and received by Neri, is proof that Purefoods never

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[41] *Insular Life Assurance Co., Ltd. v. NLRC*, G.R. No. 84484, 15 November 1989, 179 SCRA 459, 464-465.

[42] NLRC Records, pp. 605-606.

[43] *Id.* at 608.

[44] *Id.* at 607.

considered Neri as its own employee, but rather as one of D.L. Admark's deli attendants.

We also note that Neri herself admitted in her *Sinumpaang Salaysay* and in the hearings that she applied with D.L. Admark[45] and that she worked for Purefoods through D.L. Admark.[46] Neri was aware from the start that D.L. Admark was her employer and not Purefoods. She had kept her contract with D.L. Admark, and inquired about her employment status with D.L. Admark. It was D.L. Admark, as her employer, which had the final say in, and which actually effected, her termination.

Purefoods argues that the Court of Appeals erred in denying the affidavits it attached to its motion for reconsideration on the ground that these were presented for the first time, and additionally states that the affidavits are just corroboration, clarification and/or explanation of what it had already argued in its previous pleadings. The point is not pivotal.[47] After all, there is no need for such supporting affidavits. Purefoods had already disputed the authenticity and veracity of the pieces of evidence presented by Neri in the earlier proceedings, plausibly and successfully as it turned out ultimately. Verily, this Court earlier

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[45] See Neri's testimony during the hearing before the labor arbiter; TSN dated 18 February 1998; NLRC records, Vol. 1, pp. 548-549:

ATTY. SASING: What do you mean yes, did you apply with Purefoods?
WITNESS: No, I did not.
ATTY. SASING : As a matter of fact you applied with what you called an agency?
WITNESS: Yes.
ATTY. SASING: And this agency is what you in your *Sinumpaang Salaysay* are Admark Agency?
WITNESS: Yes.
ATTY. SASING: And it was with this agency that you submit your vacations and all documents, bonds?
WITNESS: Yes.

[46] *Rollo,* pp. 190-191; In her *Sinumpaang Salaysay*, Neri stated that:

1. *Na ako ay namasukan sa Purefoods Corporation sa pamamagitan ng Admark Agency noong Setyembre 1986 at ang unang naging trabaho ko ay bilang isang Poultry Merchandiser*;

[47] *Cansino v. Court of Appeals*, 456 Phil. 686 (2003).

debunked the documents as not sufficient to establish the purported employer-employee relationship.

On to another matter. We agree with Purefoods that it is only Neri who could have been entitled to the avails of the suit, if at all. While there are twelve complainants in the amended complaint, only seven (7) out of the twelve (12) had verified it.[48] Thereafter, when the case was remanded to the labor arbiter for further proceedings, it was only Neri who verified the memorandum on appeal. It was also only Neri who presented evidence and testified during the hearings conducted by the labor arbiter. This is most evident in Neri's *Formal Offer of Exhibits for Complainant*[49] wherein the only pieces of evidence offered were the position paper, her *Sinumpaang Salaysay*, her signature, a copy of the Collective Bargaining Agreement, and a computation of her claims. Significantly, all of the exhibits were offered to support Neri's claims only; there was no mention of the other complainants. It being very clear that it was only Neri who had participated in the appeal and presented evidence, the NLRC erred in including the other complainants as prevailing parties in its decision. Otherwise stated, considering that it is only Neri who had appealed the case and participated in the proceedings up to the present petition, it is only she who should be entitled to the avails of this suit, if any should be due.

In view of the foregoing, we hold that Neri is not an employee of Purefoods, but that of D.L. Admark. In the absence of employer-employee relations between Neri and Purefoods, the complaint for illegal dismissal and other monetary claims must fail.

WHEREFORE, the Petition is *GRANTED*. The Decision and Resolution of the Court of Appeals dated 2 November 2005 and 7 April 2006, respectively, in C.A. G.R. SP No. 65180 are *REVERSED* and *SET ASIDE*. Respondent Neris' complaint docketed as NLRC NCR Case No. 00-06-03149-92 is *DISMISSED*.

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[48] Emeterio Dizon, Jr., Marciano Bane, Lolita Neri, Ronaldo Caloboy, Felix Quinsanos, Claudine Guevarra, and Jose Alvin J. Javier; *rollo*, p. 184.

[49] NLRC records, Vol. 1, p. 584.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173608. November 20, 2008]

JESUS GERALDO and AMADO ARIATE, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; DYING DECLARATION; REQUIREMENTS FOR ADMISSIBILITY.— A dying declaration is admissible as evidence if the following circumstances are present: (a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death.

2. ID.; ID.; ID.; ID.; IT HAS NOT BEEN ESTABLISHED THAT THE VICTIM WOULD HAVE BEEN COMPETENT TO TESTIFY HAD HE SURVIVED THE ATTACK AND THERE IS NO SHOWING THAT HE HAD OPPORTUNITY TO SEE HIS ASSAILANT.— There is no dispute that the victim's utterance to his children related to the identities of his assailants. As for the victim's consciousness of impending death, it is not necessary to prove that he stated that he was at the brink of death; it suffices that, judging from the nature and extent of his injuries, the seriousness of his condition was so apparent

to him that it may safely be inferred that such *ante mortem* declaration was made under consciousness of an impending death. The location of the victim's two gunshot wounds, his gasping for breath, and his eventual death before arriving at the hospital meet this requirement. It has not been established, however, that the victim would have been competent to testify had he survived the attack. There is no showing that he had the opportunity to see his assailant. Among other things, there is no indication whether he was shot in front, the *post-mortem* examination report having merely stated that the points of entry of the wounds were at the "right lumbar area" and the "right iliac area." "Lumbar" may refer to "the loins" or "the group of vertebrae lying between the thoracic vertebrae and the sacrum," or to "the region of the abdomen lying on either side of the umbilical region and above the corresponding iguinal." "Iliac" relates to the "ilium," which is "one of the three bones composing either lateral half of the pelvis being in man broad and expanded above and narrower below where it joins with the ischium and pubis to form part of the actabulum." At all events, even if the victim's dying declaration were admissible in evidence, it must identify the assailant with certainty; otherwise it loses its significance.

3. ID.; ID.; PROOF OF GUILT; PROSECUTION FAILED TO DISCHARGE THE BURDEN OF PROVING THAT PETITIONERS WERE, AT THE MATERIAL TIME, THE ONLY ONES IN THE *BARANGAY* WHO BORE THE ALLEGED NICKNAMES AND ALIASES.— In convicting petitioners, the trial court, as stated earlier, relied on the testimony of the victim's daughter Mirasol, which was corroborated by her brother Arnel, that the "Badjing" and "Amado" mentioned by the victim as his assailants are herein petitioners whom they claimed to know because they live in the same *barangay*. The Court of Appeals believed too the siblings' testimonies, holding that. It is not necessary that the victim further identify that "Badjing" was in fact Jesus Geraldo or that "Amado" was Amado Ariate. There was never an issue as to the identity of the accused. There was no other person known as "Badjing" or "Amado" in their neighborhood or in their barangay. **Accused-appellants never presented any proof that a person in their locality *had the same aliases or names as they***. It is not uncommon that even an eight-year-old child can identify that Jesus Geraldo was known as "Badjing" and

that Amado Ariate was "Amado". Contrary, however, to the immediately-quoted ruling of the appellate court, it is the prosecution, not petitioners, which had the burden of proving that petitioners were, at the material time, the *only* ones in the barangay who bore such nicknames or aliases. This, the prosecution failed to discharge.

4. ID.; ID.; DEFENSE OF ALIBI AND DENIAL ASSUMES IMPORTANCE IN THE ABSENCE OF MOTIVE.— When there is doubt on the identity of the malefactors, motive is essential for their conviction. The Court notes that in their affidavits supporting the criminal complaint, the victim's wife and children Mirasol and Arnel proffered not knowing any possible motive for petitioners to shoot the victim. At the trial, no evidence of any motive was presented by the prosecution. Petitioners' defense of denial and alibi thus assumes importance. Specifically with respect to petitioner Ariate, the victim's wife admitted that Ariate accompanied her family in bringing the victim to the hospital. While non-flight does not necessarily indicate innocence, under the circumstances obtaining in the present case, Ariate's spontaneous gesture of immediately extending assistance to the victim after he was advised by the *Barangay Kagawad* of the victim's fate raises reasonable doubt as to his guilt of the crime charged.

APPEARANCES OF COUNSEL

Limuel L. Auza for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners Jesus Geraldo and Amado Ariate were, by Information dated December 23, 2002 filed on December 27, 2002 before the Regional Trial Court of Surigao del Sur, charged with Homicide allegedly committed as follows:

x x x [O]n the 1st day of July, 2002 at about 3:00 o'clock early morning, more or less, at Sitio Tinago, Barangay Bunga, municipality of Lanuza, province of Surigao del Sur, Philippines, and within the

jurisdiction of this Honorable Court, the above-named accused, conspiring and mutually helping one another, armed with xxx handguns and with intent to kill, did, then and there, willfully, unlawfully and feloniously sho[o]t one ARTHUR U.[1] RONQUILLO, thereby hitting and inflicting upon the latter wounds described hereunder:

POINT OF ENTRY:

1. Right lumbar area
2. Right iliac area

POINT OF EXIT

1. Left lateral area of abdomen
2. Right hypogastric area

which wounds have caused the instantaneous death of said ARTHUR U. RONQUILLO, to the damage and prejudice of his heirs in the following amount:

₱50,000.00 – as life indemnity of the victim;
10,000.00 – as moral damages;
10,000.00 – as exemplary damages; and
40,000.00 – as actual damages.

CONTRARY TO LAW.[2]

At 3:00 a.m. of July 1, 2002, his wife, daughter Mirasol, and son Arnel, among other persons, on being informed of the shooting of Arthur Ronquillo (the victim), repaired to where he was, not far from his residence, and found him lying on his side and wounded. Although gasping for breath, he was able to utter to Mirasol, within the hearing distance of Arnel, that he was shot by Badjing[3] and Amado.

Petitioners who were suspected to be the "Badjing" and "Amado" responsible for the shooting of the victim were subjected to paraffin tests at the Philippine National Police (PNP) Crime

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[1] "O" in some parts of the records.

[2] Records, p. 4.

[3] Sometimes spelled "Bajing."

Laboratory in Butuan City. In the PNP Chemistry Report No. C-002-2002-SDS,[4] the following data are reflected:

xxx xxx xxx

TIME AND DATE RECEIVED : 1105H 03 July 2002
REQUESTING PARTY/UNIT : Chief of Police
Lanuza Police Station
Lanuza, Surigao del Sur

SPECIMEN SUBMITTED :

Paraffin casts taken from the left and the right hands of the following named living persons:

A = Jesus Geraldo Jr. alias Bajing
B = Amado Ariate

xxx xxx xxx

PURPOSE OF LABORATORY EXAMINATION

To determine the presence of gunpowder residue, Nitrates. xxx

FINDINGS:

Qualitative examination conducted on specimens A and B gave NEGATIVE results for powder residue, Nitrates. x x x

CONCLUSION:

Specimens A and B do not reveal the presence of gunpowder residue, Nitrates. x x x

REMARKS:

The original copy of this report is retained in this laboratory for future reference.

TIME AND DATE COMPLETED:

1700H 03 July 2002

xxx xxx xxx (Underscoring supplied)

In a document dated July 1, 2002 and denominated as "Affidavit"[5] which was subscribed and sworn to before Clerk

[4] Exhibit "3", records, p. 29.

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

of Court II Manuel A. Balasa, Sr. on July 26, 2002, the victim's son Arnel gave a statement in a question and answer style that herein petitioners Jesus Geraldo and Amado Ariate were the ones who shot his father.

In another document dated July 4, 2002 also denominated as "Affidavit"[6] which was subscribed and sworn to also before the same Clerk of Court II Balasa on July 26, 2002, Mirasol also gave a statement in a question and answer style that her father uttered that herein petitioners shot him.

At the witness stand, Mirasol echoed her father's declaration that "Badjing" and "Amado" shot him. Arnel substantially corroborated Mirasol's statement.[7]

Upon the other hand, petitioners gave their side of the case as follows:

Petitioner Ariate, a *barangay tanod* of Bunga, declared that *Barangay Kagawad* Omboy Roz (Roz) woke him up at 3:00 a.m. of July 1, 2002 and informed him that the victim was shot. He and Roz thus borrowed a tricycle, proceeded to the crime scene and, along with others, brought the victim to the hospital where he was pronounced dead on arrival. Ariate submitted himself to a paraffin test and tested negative for gunpowder residue/nitrates.[8]

Petitioner Geraldo declared that he slept in his house located also in Barangay Bunga, Lanuza at 9:30 p.m. of June 30, 2002 and woke up at 4:00 a.m. the following day. At 6:30 a.m., on seeing many people in the vicinity of the 45-meter away house of one Josita Bongabong where the victim's body was found, he inquired and learned that the victim was shot. Policemen subsequently went to his house and advised him to take a paraffin test. He obliged and was tested at the PNP Crime Laboratory and was found negative for gunpowder residue/nitrates.[9]

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

[7] TSN, March 12, 2003, p. 18.

[8] *Supra* note 4.

[9] *Ibid.*

In the course of the testimony of Ariate, his counsel presented the PNP Chemistry Report reflecting the negative results of the paraffin test on him and Geraldo. The trial court restrained the presentation of the document, however, as reflected in the following transcript of stenographic notes taken on March 21, 2003:

xxx xxx xxx

Q I am showing to you [Ariate] a copy of the result of the paraffin test attached to the record of this case.

COURT

Is it covered in the Pre-trial Order? You cannot do that. That is why I told you; lay your cards on the table.

ATTY. AUZA

May I ask for the court's reconsideration.

COURT

Denied. I am warning you, all of you.

ATTY. AUZA

With the denial of our motion for reconsideration, I move to tender exclusive evidence. He would have identified this result. The paraffin test, which [forms] part of the affidavit of this witness attached to the record of this case on page 29. May I ask that this will be marked as Exhibit "3" for the defense.

COURT

Mark it. (Marked).[10] (Underscoring supplied)

As shown from the above-quoted transcript of the proceedings, the trial court restrained the presentation of the result of the paraffin tests because the same was not covered in the Pre-trial Order. In the Pre-trial Order,[11] the trial court noted the parties' agreement "that witnesses not listed in this Pre-trial Order shall not be allowed to testify as additional witnesses." Significantly,

[10] TSN, March 21, 2003, p. 7.

[11] Records, pp. 95-96.

there was no agreement to disallow the presentation of documents which were not reflected in the Pre-trial Orders. At all events, oddly, the trial court allowed the marking of the PNP Chemistry Report as Exhibit "3".[12]

When petitioner Geraldo's turn to present the same PNP Chemistry Report came, the trial court ruled:

COURT

> That is the problem in the Pre-Trial Brief if the exhibits are not stated. I will set aside that Order and in the interest of justice I will allow the accused to submit, next time I will not any more consider exhibits not listed in the Pre-trial Order.[13] (Underscoring supplied)

The version of the defense was in part corroborated by witnesses.

The trial court, passing on the demeanor of prosecution witness— the victim's eight-year old daughter Mirasol, observed:

> . . . She talks straightforward, coherent and clear, very intelligent, with child mannerism[s]. While testifying she was criss-crossing her hands, touching anything within her reach, innocent and simple, pressing of[f] and on her stomach but she talks with correct grammar. No doubt, this Court was convinced of her testimony which was corroborated by her brother Arnel Ronquillo.[14]

On the nature and weight of the dying declaration of the victim, the trial court observed:

> A dying declaration may be xxx oral or in writing. As a general rule, a dying declaration to be admissible must be made by the declarant while he is conscious of his impending death. However, even if a declarant did not make a statement that he was on the brink of death, the degree and seriousness of the wound and the fact that death supervened shortly afterwards may be considered as substantial evidence that the declaration was made by the victim with full

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[12] *Supra* note 3.

[13] TSN, April 10, 2003, p. 18.

[14] Records, p. 243.

realization that he was in a dying condition; *People vs. Ebrada,* 296 SCRA 353.

Even assuming that the declaration is not admissible as a dying declaration, it is still admissible as part of the *res gestae* since it was made shortly after the startling occurrence and under the influence thereof, hence, under the circumstances, the victim evidently had no opportunity to contrive.[15] (Underscoring supplied)

Finding for the prosecution, the trial court convicted petitioners, disposing as follows:

WHEREFORE, finding the accused JESUS GERALDO *y* CUBERO and AMADO ARIATE y DIONALDO guilty beyond reasonable doubt of the crime of Homicide penalized under Article 249 of the Revised Penal Code and with the presence of one (1) aggravating circumstance of night time and applying the Indeterminate Sentence Law, the maximum term of which could be properly imposed under the rules of said code and the minimum which shall be within the range of the penalty next lower to that prescribe[d] by the code for the offense, hereby sentences each to suffer the penalty of TEN (10) YEARS and ONE (1) DAY of *Prision Mayor* minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Reclusion Temporal* maximum (sic) as maximum, with all the accessory penalties provided for by law. To pay the heirs of the victim the amount of ₱50,000.00 as life indemnity, ₱100,000.00 as moral damages and ₱20,000.00 as exemplary damages. The claim for actual damages is denied, there being no evidence to support the same.

The bail bond put up by the accused Jesus Geraldo and Amado Ariate are ordered cancelled and to pay the cost.

SO ORDERED.[16] (Underscoring supplied)

The Court of Appeals, by Decision of June 30, 2006,[17] affirmed with modification the trial court's decision. It found that the trial court erred in appreciating nocturnity as an aggravating

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[15] *Id.* at 243-244.

[16] *Id.* at 246.

[17] Penned by Justice Rodrigo F. Lim, Jr. with the concurrence of Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr. CA *rollo*, pp. 78-91.

circumstance. And it reduced the award of moral damages[18] to ₱50,000, and deleted the award of exemplary damages. Thus the Court of Appeals disposed:

> WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED save for the modification of the penalty imposed. Accordingly, accused-appellants are each hereby sentenced to suffer an indeterminate penalty of Eight (8) years, Five (5) Months and One (1) Day of *prision mayor* medium as minimum, to Seventeen (17) Years and Four (4) Months of *reclusion temporal* medium as maximum, with all accessory penalties provided by law, and to jointly and solidarily pay the heirs of the victim the amount of ₱50,000.00 as indemnity and ₱50,000.00 as moral damages.
>
> SO ORDERED.[19] (Italics in the original)

Hence, the present Petition[20] raising the following issues:

> I
>
> WHETHER OR NOT THE **IDENTIT[IES]** OF THE ACCUSED-APPELLANTS AS THE ALLEGED ASSAILANT HAS BEEN ADEQUATELY ESTABLISHED AS PER EVIDENCE ON RECORD?
>
> II
>
> WHETHER OR NOT THE IDENTIT[IES] OF THE ACCUSED-APPELLANTS HAD BEEN ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT?[21] (Emphasis and underscoring supplied)

Petitioners argue:

> With due respect, herein petitioners disagree with the holding of the Honorable Court of Appeals that "It is not necessary that the victim further identify that "Badjing" was in fact Jesus Geraldo or that "Amado" was Amado Ariate" because, [so petitioners contend], it is the **obligation of the prosecution** to establish with moral certainty that indeed the persons they identified as the as the

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[18] *Id.* at 90.

[19] *Id.* at 90-91.

[20] *Rollo*, pp. 3-14.

[21] *Id.* at 7.

(sic)assailant of Arthur O. Ronquillo were really the ones who perpetrated the crime.

Admittedly, prosecution witnesses were able to identify positively herein petitioners as the alleged assailant[s] of Arthur O. Ronquillo. But said **identification is based on the assumption** that they were the very same "BADJING AMADO" and/or "BADJING AND AMADO" referred to by their deceased father in his dying declaration.

What the Honorable Court of Appeals failed to consider is that, just because the victim declared that it was "BADJING AMADO" and/or "BADJING AND AMADO" who shot him does not necessarily follow that herein petitioners were really the perpetrators in the absence of proof that the "BADJING" referred to by him is Jesus Geraldo and that the "AMADO" is Amado Ariate. It would have been a different story had the prosecution witnesses [been] eyewitnesses because proof that the "BADJING AMADO" and/or "BADJING AND AMADO" referred to by the victim and the persons identified by the prosecution witnesses are the same is unnecessary.

Herein petitioners believe, that even assuming that there are no other "BADJING" or "AMADO" in the *barangay*, still it does not follow that the person[s] referred to by the dying declarant as his assailant were Jesus Geraldo alias "BADJING" and Amado Ariate alias "AMADO". Although, it is inconceivable how the Honorable Court of Appeals arrived at the said conclusion that there are no other "BADJING AMADO" and/or "BADJING AND AMADO" in the *barangay* absent any proof to that effect from the prosecution.[22] (Underscoring in the original)

The petition is impressed with merit.

The trial court relied on the dying declaration of the victim as recounted by his daughter Mirasol and corroborated by his son Arnel.

A dying declaration is admissible as evidence if the following circumstances are present: (a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived;

[22] *Id.* at 9-10.

and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death.[23]

There is no dispute that the victim's utterance to his children related to the identities of his assailants. As for the victim's consciousness of impending death, it is not necessary to prove that he stated that he was at the brink of death; it suffices that, judging from the nature and extent of his injuries, the seriousness of his condition was so apparent to him that it may safely be inferred that such *ante mortem* declaration was made under consciousness of an impending death.[24] The location of the victim's two gunshot wounds, his gasping for breath, and his eventual death before arriving at the hospital meet this requirement.[25]

It has not been established, however, that the victim would have been competent to testify had he survived the attack. There is no showing that he had the opportunity to see his assailant. Among other things, there is no indication whether he was shot in front, the post-mortem examination report having merely stated that the points of entry of the wounds were at the "right lumbar area" and the "right iliac area."[26] "Lumbar" may refer to "the loins" or "the group of vertebrae lying between the thoracic vertebrae and the sacrum,"[27] or to "the region of the abdomen lying on either side of the umbilical region and above the corresponding iguinal."[28] "Iliac" relates to the "ilium," which is "one of the three bones composing either lateral half of the pelvis being in man broad and expanded above and narrower

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[23] *Vide* RULES OF COURT, Rule 130, Section 37; *People v. Manguera*, G.R. No. 139906, March 5, 2003, 398 SCRA 618, 626-627.

[24] *Vide People v. Macalino*, G.R. No. 79387, August 31, 1989, 177 SCRA 185, 193. Citations omitted.

[25] *Vide id.* at 193: "That his demise came swiftly upon his arrival at the hospital further emphasizes the victim's realization of the hopelessness of his recovery."

[26] Exhibit "A", records, p. 26.

[27] Dictionary.

[28] *Ibid.*

below where it joins with the ischium and pubis to form part of the actabulum."[29]

At all events, even if the victim's dying declaration were admissible in evidence, it must identify the assailant with certainty; otherwise it loses its significance.[30]

In convicting petitioners, the trial court, as stated earlier, relied on the testimony of the victim's daughter Mirasol, which was corroborated by her brother Arnel, that the "Badjing" and "Amado" mentioned by the victim as his assailants are herein petitioners whom they claimed to know because they live in the same *barangay*.[31] The Court of Appeals believed too the siblings' testimonies, holding that

> It is not necessary that the victim further identify that "Badjing" was in fact Jesus Geraldo or that "Amado" was Amado Ariate. There was never an issue as to the identity of the accused. There was no other person known as "Badjing" or "Amado" in their neighborhood or in their *barangay*. **Accused-appellants never presented any proof that a person in their locality** had the same *aliases* or names as they. It is not uncommon that even an eight-year-old child can identify that Jesus Geraldo was known as "Badjing" and that Amado Ariate was "Amado."[32] (Underscoring supplied)

Contrary, however, to the immediately-quoted ruling of the appellate court, it is the prosecution, *not* petitioners, which had the burden of proving that petitioners were, at the material time, the **only** ones in the barangay who bore such nicknames or *aliases*. This, the prosecution failed to discharge.

When there is doubt on the identity of the malefactors, motive is essential for their conviction.[33] The Court notes that in their

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[29] *Ibid.*

[30] *Vide People v. Ador*, G.R. Nos. 140538-39, June 14, 2004, 432 SCRA 1, 21; *People v. Contega*, G.R. No. 133579, May 31, 2000, 332 SCRA 730, 741.

[31] TSN, March 12, 2003, pp. 7, 14, 18-19.

[32] *Rollo*, p. 25.

[33] *Vide People v. Rapeza*, G.R. No. 169431, April 4, 2007, 520 SCRA 596, 633. Citations omitted.

affidavits supporting the criminal complaint, the victim's wife and children Mirasol and Arnel proffered not knowing any possible motive for petitioners to shoot the victim.[34] At the trial, no evidence of any motive was presented by the prosecution. Petitioners' defense of denial and alibi thus assumes importance.

Specifically with respect to petitioner Ariate, the victim's wife admitted that Ariate accompanied her family in bringing the victim to the hospital.[35] While non-flight does not necessarily indicate innocence, under the circumstances obtaining in the present case, Ariate's spontaneous gesture of immediately extending assistance to the victim after he was advised by the *Barangay Kagawad* of the victim's fate raises reasonable doubt as to his guilt of the crime charged.[36]

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated June 30, 2006 affirming with modification the Decision of Branch 41 of the Surigao del Sur Regional Trial Court is *REVERSED* and *SET ASIDE*. Petitioners Jesus Geraldo and Amado Ariate are *ACQUITTED* of the charge of Homicide for failure of the prosecution to establish their guilt beyond reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is directed to cause the immediate release of petitioners unless they are being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice hereof.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[34] Records, pp. 13-21.

[35] *Vide* TSN, April 10, 2003, p. 25.

[36] *Vide Buenaventura v. People*, G.R. No. 148079, June 27, 2006, 493 SCRA 223, 230-231.

SECOND DIVISION

[G.R. No. 173856. November 20, 2008]

DAO HENG BANK, INC., now BANCO DE ORO UNIVERSAL BANK, *petitioner, vs.* **SPS. LILIA and REYNALDO LAIGO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; A COURT CAN DISMISS A COMPLAINT ON THE GROUND OF INSUFFICIENCY OF CAUSE OF ACTION EVEN WITHOUT A HEARING BY TAKING INTO ACCOUNT THE DISCUSSIONS IN SAID MOTION TO DISMISS AND THE DISPOSITION THERETO.— Generally, the presence of a cause of action is determined from the facts alleged in the complaint. Even if a complaint states a cause of action, however, a motion to dismiss for insufficiency of cause of action may be granted if the evidence discloses facts sufficient to defeat the claim and enables the court to go beyond the disclosures in the complaint. In such instances, the court can dismiss a complaint on this ground, even without a hearing, by taking into account the discussions in said motion to dismiss and the disposition thereto.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; BEING LIKENED TO A CONTRACT OF SALE, *DACION EN PAGO* IS GOVERNED BY THE LAW ON SALES; THE PARTIAL EXECUTION OF A CONTRACT OF SALE TAKES THE TRANSACTION OUT OF THE PROVISIONS OF THE STATUTE OF FRAUDS SO LONG AS THE ESSENTIAL REQUISITES OF CONSENT OF THE CONTRACTING PARTIES, OBJECT AND CAUSE OF THE OBLIGATION CONCUR AND ARE CLEARLY ESTABLISHED TO BE PRESENT.— *Dacion en pago* as a mode of extinguishing an existing obligation partakes of the nature of sale whereby property is alienated to the creditor in satisfaction of a debt in money. It is an objective novation of the obligation, hence, common consent of the parties is required in order to extinguish the obligation. . . . In *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who

accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered the purchase price. In any case, common consent is an essential prerequisite, be it sale or novation, to have the effect of totally extinguishing the debt or obligation. Being likened to that of a contract of sale, *dacion en pago* is governed by the law on sales. The partial execution of a contract of sale takes the transaction out of the provisions of the Statute of Frauds so long as the essential requisites of consent of the contracting parties, **object and cause** of the obligation *concur* and are clearly established to be present.

3. ID.; ID.; ID.; NO PERFECTED *DACION EN PAGO* IN CASE AT BAR; FACTS SHOW THE EXISTENCE OF A MORTGAGE CONTRACT.— Respondents claim that petitioner's commissioning of an appraiser to appraise the value of the mortgaged properties, his services for which they and petitioner paid, and their delivery to petitioner of the titles to the properties constitute partial performance of their agreement to take the case out of the provisions on the Statute of Frauds. There is no concrete showing, however, that after the appraisal of the properties, petitioner approved respondents' proposal to settle their obligation *via dacion en pago.* The delivery to petitioner of the titles to the properties is a usual condition *sine qua non* to the execution of the mortgage, both for security and registration purposes. For if the title to a property is not delivered to the mortgagee, what will prevent the mortgagor from again encumbering it also by mortgage or even by sale to a third party. Finally, that respondents did not deny proposing to redeem the mortgages, as reflected in petitioner's June 29, 2001 letter to them, dooms their claim of the existence of a perfected *dacion en pago.*

APPEARANCES OF COUNSEL

Sumalpong Matibag Magturo Banzon and Buenaventura for petitioner.

Aquino Lorres & Associates for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The Spouses Lilia and Reynaldo Laigo (respondents) obtained loans from Dao Heng Bank, Inc. (Dao Heng) in the total amount of ₱11 Million, to secure the payment of which they forged on October 28, 1996, November 18, 1996 and April 18, 1997 three Real Estate Mortgages covering two parcels of land registered in the name of respondent "Lilia D. Laigo, . . . married to Reynaldo Laigo," one containing 569 square meters and the other containing 537 square meters.

The mortgages were duly registered in the Registry of Deeds of Quezon City.

The loans were payable within 12 months from the execution of the promissory notes covering the loans. As of 2000, respondents failed to settle their outstanding obligation, drawing them to verbally offer to cede to Dao Heng one of the two mortgaged lots by way of *dacion en pago*. To appraise the value of the mortgaged lands, Dao Heng in fact commissioned an appraiser whose fees were shouldered by it and respondents.

There appears to have been no further action taken by the parties after the appraisal of the properties.

Dao Heng was later to demand the settlement of respondents' obligation by letter of August 18, 2000[1] wherein it indicated that they had an outstanding obligation of ₱10,385,109.92 inclusive of interests and other charges. Respondents failed to heed the demand, however.

[1] Records, p. 29.

Dao Heng thereupon filed in September 2000 an application to foreclose the real estate mortgages executed by respondents. The properties subject of the mortgage were sold for ₱10,776,242 at a public auction conducted on December 20, 2000 to Banco de Oro Universal Bank (hereafter petitioner) which was the highest bidder.

It appears that respondents negotiated for the redemption of the mortgages for by a June 29, 2001 letter[2] to them, petitioner, to which Dao Heng had been merged, through its Vice President on Property Management & Credit Services Department, advised respondent Lilia Laigo as follows:

> This is to formally advise you of the bank's *response to your proposal pertaining to the redemption* of the two (2) foreclosed lots located in Fairview, Quezon City as has been relayed to you last June 13, 2001 as follows:
>
> 1. Redemption price shall be **P11.5MM** plus 12% interest based on diminishing balance payable in staggered payments up to January 2, 2002 as follows:
>
> a. ₱3MM – immediately upon receipt of this approval
>
> b. Balance payable in staggered payments (plus interest) up to January 2, 2002
>
> 2. Release Values for Partial Redemption:
>
> a. TCT No. 92257 (along Commonwealth) ₱7.500 MM*
>
> b. TCT No. N-146289 (along Regalado) ₱4.000 MM*
>
> * excluding 12% interest
>
> 3. Other Conditions:
>
> a. Payments shall be covered by post dated checks
>
> b. TCT No. 92257 shall be the first property to be released upon payment of the first ₱7.5MM plus interest
>
> c. Arrangement to be covered by an Agreement
>
> If you are agreeable to the foregoing terms and conditions, please affix your signature showing your conformity thereto at the space

[2] *Id.* at 38.

provided below. (Emphasis and underscoring in the original; italics supplied)

Nothing was heard from respondents, hence, petitioner by its Manager, Property Management & Credit Services Department, advised her by letter of December 26, 2001[3] that in view of their failure to conform to the conditions set by it for the redemption of the properties, it would proceed to consolidate the titles immediately after the expiration of the redemption period on January 2, 2002.

Six days before the expiration of the redemption period or on December 27, 2001, respondents filed a complaint before the Regional Trial Court (RTC) of Quezon City, for Annulment, Injunction with Prayer for Temporary Restraining Order (TRO), praying for the annulment of the foreclosure of the properties subject of the real estate mortgages and for them to be allowed "to deliver by way of '*dacion en pago*' one of the mortgaged properties as full payment of [their] mortgaged obligation" and to, in the meantime, issue a TRO directing the defendant-herein petitioner to desist from consolidating ownership over their properties.

By respondents' claim, Dao Heng verbally agreed to enter into a *dacion en pago*.

In its Opposition to respondents' Application for a TRO,[4] petitioner claimed that there was no meeting of the minds between the parties on the settlement of respondents' loan *via dacion en pago*.

A hearing on the application for a TRO was conducted by Branch 215 of the RTC of Quezon City following which it denied the same.

Petitioner thereupon filed a Motion to Dismiss the complaint on the ground that the claim on which respondents' action is founded is unenforceable under the Statute of Frauds and the complaint states no cause of action. Respondents opposed the

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

[4] *Id.* at 13-18.

motion, contending that their delivery of the titles to the mortgaged properties constituted partial performance of their obligation under the *dacion en pago* to take it out from the coverage of the Statute of Frauds.

The trial court granted petitioner's Motion to Dismiss in this wise:

> [P]laintiffs' claim must be based on a document or writing evidencing the alleged *dacion en pago*, otherwise, the same cannot be enforced in an action in court. The Court is not persuaded by plaintiffs' contention that their case is an exception to the operation of the rule on statute of frauds because of their partial performance of the obligation in the dacion en pago consisting of the delivery of the titles of the properties to the defendants. As correctly pointed out by the defendants, the **titles were not delivered to them pursuant to the** *dacion en pago* **but by reason of the execution of the mortgage loan agreement**. If indeed a dacion en pago agreement was entered into between the parties, it is inconceivable that a written document would not be drafted considering the magnitude of the amount involved.[5] (Emphasis and underscoring supplied)

Respondents assailed the dismissal of their complaint *via* Petition for Review before this Court which referred it to the Court of Appeals for disposition.

Reversing the trial court's dismissal of the complaint, the appellate court, by Decision of January 26, 2006,[6] reinstated respondents' complaint.[7]

In ordering the reinstatement of respondents' complaint, the appellate court held that the complaint states a cause of action, respondents having alleged that there was partial performance of the agreement to settle their obligation *via dacion en pago* when they agreed to have the properties appraised to thus place

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[5] *Id.* at 120.

[6] Penned by Justice Monina Arevalo-Zenarosa, with the concurrence of Justices Andres B. Reyes, Jr. and Rosmari D. Carandang. CA *rollo*, pp. 113-124.

[7] *Id.* at 124.

their agreement within the exceptions provided under Article 1403[8] of the Civil Code on Statute of Frauds. Thus the appellate court ratiocinated:

> Particularly, in seeking exception to the application of the Statute of Frauds, petitioners[-herein respondents] averred partial performance of the supposed verbal *dacion en pago*. In paragraph 5 of their complaint, they stated: "As part of the agreement, defendant Dao Heng Bank had the mortgaged property appraised to determine which of the two shall be delivered as full payment of the mortgage obligation; Also as part of the deal, plaintiffs for their part paid ₱5,000.00 for the appraisal expense. As reported by the appraiser commissioned by Defendant Dao Heng, the appraised value of the mortgaged properties were as follows: x x x" Having done so, petitioners are at least entitled to a reasonable opportunity to prove their case in the course of a full trial, to which the respondents may equally present their evidence in refutation of the formers' case. (Underscoring supplied)

Petitioner's Motion for Reconsideration having been denied by the appellate court by Resolution of July 19, 2006, the present petition was filed faulting the appellate court in ruling:

I.

. . . THAT THE COMPLAINT ALLEGED A SUFFICIENT CAUSE OF ACTION DESPITE THE ALLEGATIONS, AS WELL AS ADMISSIONS FROM THE RESPONDENTS, THAT THERE WAS NO PERFECTED *DACION EN PAGO* CONTRACT;

II.

. . . THAT THE ALLEGED *DACION EN PAGO* IS NOT UNENFORCEABLE UNDER THE STATUTE OF FRAUDS, DESPITE THE ABSENCE OF A WRITTEN & BINDING CONTRACT;

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[8] Article 1403. The following contracts are unenforceable unless they are ratified: x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents: x x x

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein; x x x

III.

. . . THAT THE COMPLAINT SUFFICIENTLY STATED A CAUSE OF ACTION.[9]

Generally, the presence of a cause of action is determined from the facts alleged in the complaint.

In their complaint, respondents alleged:

xxx xxx xxx

4. Sometime in the middle of the year 2000, defendant Dao Heng Bank as the creditor bank agreed to the full settlement of plaintiffs' mortgage obligation of ₱9 Million through the assignment of one of the two (2) mortgaged properties;

[5] As part of the agreement, defendant Dao Heng Bank had the mortgaged properties appraised to determine which of the two (2) mortgaged properties shall be delivered as full payment of the mortgage obligation; Also as part of the deal, plaintiffs for their part paid ₱5,000.00 for the appraisal expense; As reported by the appraiser commissioned by defendant Dao Heng, the appraised value of the mortgaged properties were as follows:

(a) Property No. 1 – T.C.T. No. 92257: ₱12,518,000.00 L2A Blk 12 Don Mariano Marcos Ave., Fairview, QC

(b) Property No. 2 – T.C.T. No. 146289: ₱8,055,000.00 L36 Blk 87 Regalado Ave. Cor. Ipil St., Neopolitan, QC

[6] Sometime in December, year 2000, the protest of plaintiffs notwithstanding and in blatant breach of the agreed "*Dacion en Pago*" as the mode of full payment of plaintiffs' mortgage obligation, defendant Dao Heng Bank proceeded to foreclose the mortgaged properties above-described and sold said properties which were aggregately valued at more than ₱20 Million for only ₱10,776,242.00, an unconscionably very low price; (Underscoring supplied)

Even if a complaint states a cause of action, however, a motion to dismiss for insufficiency of cause of action may be granted if the evidence discloses facts sufficient to defeat the claim and enables the court to go beyond the disclosures in the

[9] *Rollo*, p. 32.

complaint. In such instances, the court can dismiss a complaint on this ground, even without a hearing, by taking into account the discussions in said motion to dismiss and the disposition thereto.[10]

In its Opposition to respondents' application for the issuance of a TRO,[11] petitioner, responding to respondents' allegation that it agreed to the settlement of their obligation *via* the assignment of one of the two mortgaged properties, alleged that there was no meeting of the minds thereon:

> 4. Plaintiffs' claim that defendant Dao Heng Bank[s] foreclosure sale of the mortgaged properties was improper because there was an agreement to dacion one of the two (2) mortgaged properties as full settlement of the loan obligation and that defendant Dao Heng Bank and Banco de Oro were already negotiating and colluding for the latter's acquisition of the mortgaged [properties] for the unsconscionably low price of ₱10,776.242.00 are clearly **WITHOUT BASIS**. Quite to the contrary, there was no meeting of the minds between defendant Dao Heng Bank and the plaintiffs to *dacion* any of the mortgaged properties as full settlement of the loan. Although there was a PROPOSAL and NEGOTIATIONS to settle the loan by way of *dacion*, nothing came out of said proposal, much less did the negotiations mature into the execution of a *dacion en pago* instrument. Defendant Dao Heng Bank found the offer to settle by way of *dacion* not acceptable and thus, it opted to foreclose on the mortgage.
>
> The law clearly provides that "the debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value, or more valuable than that which is due" (Article 1244, New Civil Code). "The oblige is entitled to demand fulfillment of the obligation or performance as stipulated" (*Palmares v. Court of Appeals*, 288 SCRA 422 at p. 444 [1998]). "The power to decide whether or not to foreclose on the mortgage is the sole prerogative of the mortgagee" (*Rural Bank of San Mateo, Inc. vs. Intermediate*

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[10] Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, Vol. 1 (2005), citing *Tan v. Director of Forestry, et al.*, L-24548, Oct. 27, 1983, 210 Phil. 244.

[11] *Supra* note 4.

Appellate Court, 146 SCRA 205, at 213 [1986]) Defendant Dao Heng Bank merely opted to exercise such prerogative.[12] (Emphasis in the original; capitalization and underscoring supplied)

Dacion en pago as a mode of extinguishing an existing obligation partakes of the nature of sale whereby property is alienated to the creditor in satisfaction of a debt in money.[13] It is an objective novation of the obligation, hence, common consent of the parties is required in order to extinguish the obligation.

. . . In *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such the elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In its modern concept, what actually takes place in *dacion en pago* is an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered the purchase price. In any case, **common consent** is an essential prerequisite, *be it sale or novation*, to have the effect of totally extinguishing the debt or obligation."[14] (Emphasis, italics and underscoring supplied; citation omitted)

Being likened to that of a contract of sale, *dacion en pago* is governed by the law on sales.[15] The partial execution of a contract of sale takes the transaction out of the provisions of the Statute of Frauds so long as the essential requisites of **consent** of the contracting parties, **object** and **cause** of the obligation *concur* and are clearly established to be present.[16]

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[12] Records, pp. 15-16.

[13] CIVIL CODE, Article 1245.

[14] *Filinvest Credit Association v. Philippine Acetylene Co.*, 197 Phil. 394, 402-403 (1982).

[15] *Supra* note 13 at Article 1245.

[16] *Vda. de Jomoc v. Court of Appeals*, G.R. No. 92871, August 2, 1991, 200 SCRA 74, 77-78.

Respondents claim that petitioner's commissioning of an appraiser to appraise the value of the mortgaged properties, his services for which they and petitioner paid, and their delivery to petitioner of the titles to the properties constitute partial performance of their agreement to take the case out of the provisions on the Statute of Frauds.

There is no concrete showing, however, that after the appraisal of the properties, petitioner approved respondents' proposal to settle their obligation *via dacion en pago.* The delivery to petitioner of the titles to the properties is a usual condition *sine qua non* to the execution of the mortgage, both for security and registration purposes. For if the title to a property is not delivered to the mortgagee, what will prevent the mortgagor from again encumbering it also by mortgage or even by sale to a third party.

Finally, that respondents did not deny proposing to redeem the mortgages,[17] as reflected in petitioner's June 29, 2001 letter to them, dooms their claim of the existence of a perfected *dacion en pago*.

WHEREFORE, the Court of Appeals Decision of January 26, 2006 is *REVERSED and SET ASIDE.* The Resolution of July 2, 2002 of the Regional Trial Court of Quezon City, Branch 215 dismissing respondents' complaint is *REINSTATED.*

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

[17] *Supra* note 2.

SECOND DIVISION

[G.R. No. 177356. November 20, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHBERT AMODIA *y* BABA, MARIO MARINO *y* PATNON, and ROY LO-OC *y* PENDANG,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REVEALING THE IDENTITY OF THE PERPETRATORS OF A CRIME DOES NOT NECESSARILY IMPAIR THE CREDIBILITY OF A WITNESS, ESPECIALLY WHERE SUFFICIENT EXPLANATION IS GIVEN.— Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. In this case, the prosecution eyewitness explained that he did not immediately report the incident to the police because the assailants threatened to hurt him. What made this threat appear so real was the fact that accused-appellants lingered within the vicinity of the crime for a couple of hours after the mauling incident. After the authorities had discovered the victim, however, he volunteered to relate what he had seen. It took him only two days before giving his statement. This delay, if it can be considered as one, is hardly unreasonable or unjustified under the circumstances.

2. ID.; ID.; NON-FLIGHT OF ASSAILANTS CANNOT BE SINGULARLY CONSIDERED AS EVIDENCE OR AS MANIFESTATION DETERMINATIVE OF INNOCENCE.— Also untenable is accused-appellants' contention that non-flight of the assailants signified innocence. Unlike flight of an accused, which is competent evidence against the accused as having a tendency to establish the accused's guilt, non-flight is simply inaction, which may be due to several factors. It cannot be singularly considered as evidence or as a manifestation determinative of innocence.

3. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; CANNOT PREVAIL AGAINST THE POSITIVE TESTIMONY OF THE PROSECUTION EYEWITNESS.— weighed against the positive testimony of the prosecution eyewitness, accused-appellants' defenses of denial and alibi lose ground. As correctly ruled by the trial court and affirmed by the CA: In a situation like this, the rule well settled in this jurisdiction is that positive identification of the accused, when categorical and consistent and without any showing of ill-motive on the part of an eye-witness testifying on the matter, prevails over denial of [the] accused, which if not substantiated by clear and convincing evidence, [is] negative and self serving evidence undeserving of weight in law. The Court is not prepared to depart from said rule as the plain denial of the accused of the crime cannot gain judicial acceptance nor can it be equated with evidentiary force and value for want of clear and convincing proof to sustain the same. Besides, the fact remains that the three accused were together, at one instance, at about 3:00 a.m. of June 10, 2003 at the very site where Bartina was lying bloodied on the ground and ignored his need to be brought to the hospital to save his precious life.

4. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; ALTHOUGH THE VICTIM WAS UNQUESTIONABLY OUTNUMBERED, IT WAS NOT SHOWN THAT ACCUSED-APPELLANTS DELIBERATELY APPLIED THEIR COMBINED STRENGTH TO WEAKEN THE DEFENSE OF THE VICTIM AND GUARANTEE THE EXECUTION OF THE CRIME.— We do not, however, agree that the qualifying circumstance of abuse of superior strength had been sufficiently proved. To appreciate the attendant circumstance of abuse of superior strength, what should be considered is whether the aggressors took advantage of their combined strength in order to consummate the offense. Mere superiority in number is not enough to constitute superior strength. There must be clear proof that the assailants purposely used excessive force out of proportion to the defense available to the person attacked. In this case, although the victim was unquestionably outnumbered, it was not shown that accused-appellants deliberately applied their combined strength to weaken the defense of the victim and guarantee the execution of the crime. Notably, accused-appellants took turns in boxing the victim. When the victim fell, the prosecution witness was

able to hold him, preventing accused-appellants from further hurting him. Then accused-appellants simply turned away. To be sure, had accused-appellants really intended to use their superior strength to kill the victim, they would have finished off the victim, and probably even the lone prosecution eyewitness. To stress, qualifying circumstances must be proved as clearly as the crime itself. In order to appreciate the attendant circumstance of abuse of superior strength, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event.

5. ID.; ID.; CIVIL LIABILITY; TRIAL COURT FAILED TO AWARD MORAL DAMAGES; MORAL DAMAGES IS GRANTED WITHOUT NEED OF FURTHER PROOF OTHER THAN THE FACT OF KILLING.— As regards the award of damages, it was proper for the trial court to grant civil indemnity in favor of the heirs of the victim. Civil indemnity in homicide and murder cases requires no proof other than the fact of death as a result of the crime and proof of accused-appellant's responsibility for it. The trial court, however, failed to award moral damages. Moral damages is granted without need of further proof other than the fact of the killing. Thus, moral damages of PhP50,000 is additionally awarded in favor of the heirs of the victim.

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.*:

The Case

This is an appeal from the January 23, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01628 entitled

[1] *Rollo*, pp. 2-9. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Andres B. Reyes, Jr. and Noel G. Tijam.

People of the Philippines v. Johbert Amodia y Baba, et al. The CA Decision affirmed the August 24, 2005 Decision [2] of the Quezon City Regional Trial Court (RTC), Branch 89 in Criminal Case No. Q-03-118165, which found accused-appellants Johbert Amodia, Mario Marino, and Roy Lo-oc guilty of the crime of murder.

The Facts

On June 10, 2003 at about 3:00 a.m., Richard Avila Roda, an Assistant Manager of Nognog Videoke Restaurant in Quezon City, went out of the restaurant to invite customers. Once out of the restaurant, he saw seven persons mauling someone. He noticed that three of the attackers, whom he later identified as accused-appellants Amodia, Marino, and Lo-oc, were regular customers of their restaurant. The other four were unknown to him; so was the victim. He saw Lo-oc hold the shoulders of the victim while Marino and Amodia took turns in beating the victim. One of their companions had a knife, who, upon seeing Roda, threatened to kill him. As a result of the beating, the victim fell on the ground. Roda immediately approached the victim and saw blood oozing out of the back of his head. One of the maulers was about to deliver another blow on the victim but Roda was able to stop him by saying, "*Hindi na kayo naawa*." Accused-appellants then went inside the restaurant and drank one bottle of beer each. Roda did not immediately report the incident because he was threatened by accused-appellants who were still hanging around the area. He later went home with the owner of the restaurant.[3]

Later, in the early morning of the same day, he saw the body of the victim still in the place where he fell. There were already some *barangay tanod*s and police officers investigating the incident. The victim, later identified as Jaime Bartina, was then brought to the Quezon City General Hospital.[4] Someone then informed Cornelia Bartina, the live-in partner of the victim,

[2] CA *rollo*, pp. 18-23. Penned by Judge Elsa I. De Guzman.

[3] *Rollo*, pp. 3-4.

[4] *Id.* at 4.

that the latter was brought to the hospital. She immediately went to the hospital where she found Jaime still alive, but noticed that blood was dripping from his mouth which stained his clothes. Jaime died at around 5 o'clock in the afternoon of June 10, 2003.

On June 12, 2003, upon the advice of a person from the La Loma Police Station, Roda went to Camp Karingal in Quezon City to report what he had witnessed. The police then filed an investigation report which became the basis for the filing of an Information against accused-appellants. The Information that charged them with murder reads:

> That on or about the 10th day of June, 2003, in Quezon City, Philippines, the said accused, JOHBERT AMODIA *y* BABA, a minor, 17 years old, conspiring and confederating with MARIO MARINO *y* PATNON and ROY LO-OC *y* PENDANG and four (4) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill, qualified by evident premeditation, and treachery, taking undue advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of JAIME BARTINA *y* PLATITAS, by then and there mauling him, causing the said victim to [fall] on the ground, hitting his head on a concrete fence, thereby inflicting upon him serious and mortal injuries, which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said JAIME BARTINA *y* PLATITAS.
>
> CONTRARY TO LAW.[5]

Accused-appellants pleaded not guilty to the charge against them. They denied involvement in the death of the victim and averred alibi as their defense. Lo-oc declared that he had been drinking alcohol at Abdul Videoke Bar in the early morning of June 10, 2003, having been dismissed from work and abandoned by his wife. According to Lo-oc, at around one to three o'clock in the morning, he went out of the bar and saw a man slumped on the ground asking for help. He lifted the man and saw that he was soaked in his own blood. At this time, Amodia and

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

Marino, who were pedicab drivers, passed by the area. Lo-oc called on the two to help him bring the wounded man to the hospital. The two, however, refused because pedicabs were not allowed to travel along the national highway. Consequently, Lo-oc just placed Bartina on a sitting position beside the wall and left him. He then went back to the bar and continued drinking. He did not report the incident to the authorities.[6]

Marino and Amodia corroborated the testimony of Lo-oc and insisted too their non-participation in the crime.

On August 24, 2005, the RTC rendered a Decision, the dispositive part of which reads:

> WHEREFORE, premises considered, judgment is rendered finding accused JOHBERT AMODIA *y* BABA, MARIO MARINO *y* PATNON, and ROY LO-OC *y* PENDANG guilty [beyond reasonable doubt] of the crime of Murder.
>
> The penalty for murder is *reclusion perpetua* to death (Art. 248 RPC). Considering that Johbert Amodia was still a minor at the time of the commission of the crime, he is entitled to a privilege mitigating circumstance of one degree lower. Hence, the penalty for the crime committed by Johbert Amodia is *reclusion temporal*. Applying the Indeterminate Sentence Law, he is sentenced to Eight (8) years and One (1) day of *prision mayor* as minimum to Fourteen (14) years, Eight (8) months and One (1) day of *reclusion temporal* as maximum.
>
> With respect to accused Mario Marino and Roy Lo-oc, they are each sentenced to *reclusion perpetua* there being no aggravating nor mitigating circumstance. All accused are ordered to jointly and severally pay the heirs of the victim the sum of [PhP] 27,909.00 as actual damages and [PhP] 50,000.00 as indemnity.
>
> Further, the period of their preventive imprisonment is credited in full in their favor if they abide by Art. 29 of the Revised Penal Code.
>
> Without costs.
>
> SO ORDERED.[7]

[6] *Id.* at 5.

[7] *Supra* note 2, at 23.

The case was appealed to the CA.

The Ruling of the CA

In a Decision dated January 23, 2007, the appellate court affirmed the trial court's decision. It gave credence to the positive testimony of the prosecution eyewitness who, according to the CA, was not actuated by improper motive to testify against accused-appellants. It also dismissed accused-appellants' denial and alibi, as by their own account, all of them were together in the crime scene with the bloodied victim at the time the crime happened, thus, reinforcing the testimony of the prosecution eyewitness.

The CA, moreover, held that the killing was qualified by the circumstance of abuse of superior strength. It found that accused-appellants took advantage of their superior strength when they conspired with four other assailants in mauling the unarmed and defenseless victim.

Hence, we have this appeal.

The Issues

In a Resolution dated August 15, 2007, this Court required the parties to submit supplemental briefs if they so desired. On October 10, 2007, accused-appellants, through counsel, signified that they were no longer filing a supplemental brief. Thus, the issues raised in accused-appellants' Brief dated April 17, 2006 are now deemed adopted in this present appeal:

I.

The court *a quo* gravely erred in giving full weight and credence to the incredible testimony of the prosecution witness.

II.

The trial court gravely erred in convicting the accused-appellants despite the fact that their guilt was not proven beyond reasonable doubt.

III.

Assuming *arguendo* that the accused-appellants are guilty in Criminal Case No. Q-03-118165, the trial court erred in convicting them of the crime of murder.[8]

In essence, the case involves the credibility of the prosecution eyewitness and the proper designation of the crime committed.

The Ruling of the Court

The appeal is partly meritorious.

Accused-appellants' conviction is anchored on the positive testimony of the prosecution eyewitness which accused-appellants dismiss as full of inconsistencies. They allege that it was unbelievable that a person who had witnessed a crime and who was genuinely willing to help the victim should simply go home without immediately reporting the matter to the authorities. Moreover, they claim that it was improbable that the assailants would hang around within the area of the crime to drink three rounds of beer instead of immediately fleeing.

We are not convinced. Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. [9] In this case, the prosecution eyewitness explained that he did not immediately report the incident to the police because the assailants threatened to hurt him. What made this threat appear so real was the fact that accused-appellants lingered within the vicinity of the crime for a couple of hours after the mauling incident. After the authorities had discovered the victim, however, he volunteered to relate what he had seen. It took him only two days before giving his statement. This delay, if it can be considered as one, is hardly unreasonable or unjustified under the circumstances.

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[8] CA *rollo*, p. 37.

[9] *People v. Castillo*, G.R. No. 118912, May 28, 2004, 430 SCRA 40, 49; *People v. Abendan*, G.R. Nos. 132026-27, June 28, 2001, 360 SCRA 106, 123.

Also untenable is accused-appellants' contention that non-flight of the assailants signified innocence. Unlike flight of an accused, which is competent evidence against the accused as having a tendency to establish the accused's guilt, non-flight is simply inaction, which may be due to several factors.[10] It cannot be singularly considered as evidence or as a manifestation determinative of innocence.[11]

Thus, weighed against the positive testimony of the prosecution eyewitness, accused-appellants' defenses of denial and alibi lose ground. As correctly ruled by the trial court and affirmed by the CA:

> In a situation like this, the rule well settled in this jurisdiction is that positive identification of the accused, when categorical and consistent and without any showing of ill-motive on the part of an eye witness testifying on the matter, prevails over denial of [the] accused, which if not substantiated by clear and convincing evidence, [is] negative and self serving evidence undeserving of weight in law. The Court is not prepared to depart from said rule as the plain denial of the accused of the crime cannot gain judicial acceptance nor can it be equated with evidentiary force and value for want of clear and convincing proof to sustain the same. Besides, the fact remains that the three accused were together, at one instance, at about 3:00 a.m. of June 10, 2003 at the very site where Bartina was lying bloodied on the ground and ignored his need to be brought to the hospital to save his precious life.[12]

We do not, however, agree that the qualifying circumstance of abuse of superior strength had been sufficiently proved. To appreciate the attendant circumstance of abuse of superior strength, what should be considered is whether the aggressors took advantage of their combined strength in order to consummate the offense.[13] Mere superiority in number is not enough to

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[10] *People v. Toralba*, G.R. No. 139411, August 9, 2001, 362 SCRA 491, 500; *People v. Omar*, G.R. No. 120656, March 3, 2000, 327 SCRA 221, 229.

[11] *People v. Abacia*, G.R. Nos. 135552-53, June 21, 2001, 359 SCRA 342, 348.

[12] *Supra* note 1, at 7-8.

[13] *People v. Hernandez*, G.R. No. 139697, June 15, 2004, 432 SCRA 104, 122-123; *People v. Abejuela*, G.R. No. 134484, January 30, 2002, 375

constitute superior strength.[14] There must be clear proof that the assailants purposely used excessive force out of proportion to the defense available to the person attacked.[15]

In this case, although the victim was unquestionably outnumbered, it was not shown that accused-appellants deliberately applied their combined strength to weaken the defense of the victim and guarantee the execution of the crime. Notably, accused-appellants took turns in boxing the victim. When the victim fell, the prosecution witness was able to hold him, preventing accused-appellants from further hurting him. Then accused-appellants simply turned away. To be sure, had accused-appellants really intended to use their superior strength to kill the victim, they would have finished off the victim, and probably even the lone prosecution eyewitness.

To stress, qualifying circumstances must be proved as clearly as the crime itself. In order to appreciate the attendant circumstance of abuse of superior strength, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is further necessary to analyze the incidents and episodes constituting the total development of the event.[16]

As regards the award of damages, it was proper for the trial court to grant civil indemnity in favor of the heirs of the victim. Civil indemnity in homicide and murder cases requires no proof other than the fact of death as a result of the crime and proof

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SCRA 236, 246; *People v. Cardel*, G.R. No. 105582, July 19, 2000, 336 SCRA 144, 160.

[14] *People v. Gregorio*, G.R. No. 153781, September 24, 2003, 412 SCRA 90, 99; *People v. Sansaet*, G.R. No. 139330, February 6, 2002, 376 SCRA 426, 433; *People v. Sia*, G.R. No. 137457, November 21, 2001, 370 SCRA 123, 137.

[15] *People v. Lobrigas*, G.R. No. 147649, December 17, 2002, 394 SCRA 170, 180; *People v. Mondijar*, G.R. No. 141914, November 21, 2002, 392 SCRA 356, 367; *Sansaet, supra*.

[16] *People v. Cañete*, G.R. No. 120495, March 12, 1998, 287 SCRA 490, 501.

of accused-appellant's responsibility for it.[17] The trial court, however, failed to award moral damages. Moral damages is granted without need of further proof other than the fact of the killing.[18] Thus, moral damages of PhP 50,000 is additionally awarded in favor of the heirs of the victim.

WHEREFORE, the Court *AFFIRMS* the January 23, 2007 Decision of the CA in CA-G.R. CR-H.C. No. 01628 with *MODIFICATIONS* to read as follows:

WHEREFORE, premises considered, judgment is rendered finding accused-appellants JOHBERT AMODIA *y* BABA, MARIO MARINO *y* PATNON, and ROY LO-OC *y* PENDANG guilty beyond reasonable doubt of the crime of *HOMICIDE*.

Considering that Johbert Amodia was still a minor at the time of the commission of the crime, he is entitled to a privilege mitigating circumstance of one degree lower. Hence, the penalty for the crime committed by Johbert Amodia is *prision mayor*. Applying the Indeterminate Sentence Law, he is sentenced to two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to eight (8) years, eight (8) months and one (1) day of *prision mayor* as maximum.

With respect to accused-appellants Mario Marino and Roy Lo-oc, they are each sentenced to eight (8) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. All accused are ordered to jointly and severally pay the heirs of the victim the sum of PhP 27,909 as actual damages, **PhP 50,000 as moral damages**, and PhP 50,000 as civil indemnity.

Further, the period of their preventive imprisonment is credited in full in their favor if they abide by Art. 29 of the Revised Penal Code.

Without costs.

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[17] *People v. Whisenhunt*, G.R. No. 123819, November 14, 2001, 368 SCRA 586, 610.

[18] *People v. Geral*, G.R. No. 145731, June 26, 2003, 405 SCRA 104, 111; *People v. Cabote*, G.R. No. 136143, November 15, 2001, 369 SCRA 65, 78; citing *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180507. November 20, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR BAJADA *y* BAUTISTA, VICTOR CALISAY *y* LOYAGA, and JOHN DOE,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES BETWEEN SWORN STATEMENTS AND TESTIMONIES OF WITNESSES DOES NOT AFFECT CREDIBILITY.— The inconsistencies in the sworn statements and testimony of the prosecution witness, Asaytono, referred to by accused-appellant Bajada do not affect her credibility. The details which she supplied to the police and to the investigating judge are trivial compared to the testimony she gave in open court. What is important is that in all three statements, *i.e.*, sworn statement before the police, sworn statement before Judge Bercales, and testimony in open court, Asaytono consistently and clearly identified accused-appellants as the perpetrators. The essential facts do not differ: three men entered and robbed the house of Villamayor and stabbed him and Asaytono, and Asaytono witnessed the stabbing and recognized two of the accused because she was familiar with the latter's physical attributes.

2. ID.; ID.; ID.; INCONSISTENCIES BETWEEN SWORN STATEMENTS AND TESTIMONIES IN COURT DO NOT MILITATE AGAINST A WITNESS' CREDIBILITY SINCE SWORN STATEMENTS ARE GENERALLY CONSIDERED

INFERIOR TO TESTIMONIES GIVEN IN OPEN COURT.— Also, the Solicitor General correctly pointed out that the defense counsel did not confront Asaytono with these alleged inconsistencies. In *People v. Castillano, Sr.*, we held that: Before the credibility of a witness and the truthfulness of his testimony can be impeached by evidence consisting of his prior statements which are inconsistent with his present testimony, the cross-examiner must lay the predicate or the foundation for impeachment and thereby prevent an injustice to the witness being cross-examined. The witness must be given a chance to recollect and to explain the apparent inconsistency between his two statements and state the circumstances under which they were made. This Court held in *People v. Escosura* that the statements of a witness prior to her present testimony cannot serve as basis for impeaching her credibility unless her attention was directed to the inconsistencies or discrepancies and she was given an opportunity to explain said inconsistencies. This is in line with Section 13, Rule 132 of the Revised Rules of Court which states: Section 13. How witness impeached by evidence of inconsistent statements. — Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing, they must be shown to the witness before any question is put to him concerning them. More controlling is our ruling in *People v. Alegado* where we held that inconsistencies between the sworn statement and the testimony in court do not militate against the witness' credibility since sworn statements are generally considered inferior to the testimony in open court.

3. ID.; ID.; ID.; TRIAL COURT'S FINDINGS REGARDING CREDIBILITY OF WITNESSES ARE ACCORDED THE HIGHEST DEGREE OF RESPECT.— Asaytono was able to sufficiently identify Bajada as one of the perpetrators to the satisfaction of the trial court. Asaytono's familiarity with Bajada cannot be denied; she has known Bajada and Calisay for more than a year prior to the incident. The two accused were also frequent visitors at the victim's house. Hence, Asaytono was acquainted with Bajada's physical features. The trial court found her testimony to be credible, frank,

straightforward, and consistent throughout the trial. We see no reason to disturb this finding since trial courts are in a unique position to observe the demeanor of witnesses. The trial court's findings regarding the witness' credibility are accorded the highest degree of respect.

4. ID.; ID.; ID.; NO ILL MOTIVE COULD BE ASCRIBED TO THE PROSECUTION WITNESS.— Bajada could not ascribe any plausible ill motive against the witness. His accusation against Asaytono that the latter was interested in inheriting from Villamayor is self-serving and uncorroborated. Even Bajada's own stepson, Calisay, stated that there was no prior misunderstanding between him and Asaytono and that he did not know any reason why Asaytono would accuse them of a crime. The letters allegedly written by an eyewitness who was afraid to testify in trial cannot be given probative value. The letters accused Asaytono as one of the culprits—a defense which was already dismissed by the courts *a quo*. There was no evidence to support such allegation. The said letters were belatedly submitted, uncorroborated, and cannot be admitted in evidence.

5. ID.; ID.; DEFENSE OF ALIBI; REJECTED; AS APPELLANT HIMSELF ADMITTED THAT IT WAS POSSIBLE FOR HIM TO BE AT THE SCENE AT AROUND THE TIME THE OFFENSE WAS COMMITTED.— Bajada's alibi likewise deserves no merit. For alibi to prosper, it must be shown that the accused was somewhere else at the time of the commission of the offense and that it was physically impossible for the accused to be present at the scene of the crime at the time of its commission. Bajada himself admitted, however, that the travel time from Bayate, Liliw, Laguna to the crime scene is only 15 minutes by jeep. Hence, it was possible for him to be at the crime scene at or around the time the offense was committed.

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 February 7, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01043 which affirmed the conviction of and death penalty for accused-appellants for the crime of robbery with homicide. Said judgment was originally handed down on October 30, 2001[2] by the Regional Trial Court (RTC), Branch 28 in Sta. Cruz, Laguna in Criminal Case No. SC-8076.

The Facts

An information dated January 21, 2000 was filed against accused-appellants Nestor Bajada y Bautista, Victor Calisay *y* Loyaga, and John Doe which accused them of committing robbery with homicide and serious physical injuries, as follows:

> That on or about 11:30 o'clock in the evening of December 22, 1999, at Brgy. Calumpang, Municipality of Liliw, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain, without the knowledge and consent of the owner thereof, and by means of violence and intimidation upon person, enter the house of one ANTONIO C. VILLAMAYOR, and once inside, did then and there willfully, unlawfully and feloniously, take, steal and carry away the following valuables, to wit:
>
> | | | | |
> |---|---|---|---|
> | Cash Money | - | PhP | 20,000.00; |
> | Assorted jewelry | - | | 80,000.00; |
> | $500.00 (current rate $1.00=40.00) - some pertinent documents | | | 20,000.00; and |
>
> with the total amount of (sic) HUNDRED TWENTY THOUSAND (PhP 120,000.00) PESOS, Philippine Currency, for their own personal use and benefit, owned and belonging to said Antonio C. Villamayor, and in the course of the said occasion, above-named accused while

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[1] *Rollo*, pp. 3-20. Penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Elvi John S. Asuncion and Mariflor P. Punzalan Castillo.

[2] CA *rollo*, pp. 25-38. Penned by Judge Fernando M. Paclibon, Jr.

conveniently armed with a handgun and bladed weapon, conspiring, confederating and mutually helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously, kick, attack, assault and stab ANTONIO C. VILLAMAYOR, resulting [in] his instantaneous death, and also inflicted upon ANABELLE ASAYTONO, stab wound on her left chest, thus, accused had commenced all the acts of execution which could have produced the crime of Homicide, as a consequence, but nevertheless, did not produce it by reason/cause independent of the will of the accused, which prevented her death, to the damage and prejudice of the herein surviving heirs of Antonio Villamayor and offended party, Anabelle Asaytono.

CONTRARY TO LAW. [3]

Bajada and Calisay pleaded not guilty to the charge.

During trial, the prosecution sought to establish the following facts: Bajada and Calisay were overseers at Antonio C. Villamayor's farm in Bayate, Laguna. As overseers, they visited Villamayor's house in Liliw, Laguna at least four times a week to deliver vegetables from the farm.[4]

On December 22, 1999, around 11:30 p.m., while 81-year old Villamayor was at home with his 24 year-old live-in partner, Anabelle Asaytono, they heard someone call for Villamayor asking for coffee. The caller introduced himself as "Hector," Villamayor's grandson, but Asaytono recognized the voice as Bajada's. As Villamayor opened the door, the caller, "Hector," pushed the door open with the barrel of a two-foot long gun. Asaytono recognized "Hector" as Bajada because of his average physique, repulsive smell, the black bonnet which he often wore at work, the deep-set eyes, mouth, a lump on his cheek, and the green shirt which was given to him by Villamayor. Asaytono likewise recognized one of the men as Calisay, noting his hair cut, eye bags, and voice. Calisay wore a red handkerchief across his face and carried a 14-inch knife in his right hand. The third unidentified man, John Doe, wore a bonnet and carried a 2½ foot long gun with a magazine.[5]

[3] *Id.* at 11-12.

[4] *Rollo*, p. 5.

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

Upon entering the house, John Doe said, "There are many people in Calumpang who are angry at you because you are a usurer engaged in 5-6, so give me PhP 100,000 right now." John Doe made Villamayor sit down but when the latter refused, John Doe made him lie face down on the floor and kicked his back several times. Meanwhile, Bajada pointed his gun at Asaytono and demanded for money. Asaytono denied having any money. She was then made to lie face down on the ground and was kicked. John Doe asked from Villamayor the key to the cabinet which was a meter away from the latter. Villamayor brought out a key from his pocket and handed it to Bajada. Asaytono, who was able to stand up, saw the three accused unlock Villamayor's cabinet and took out its contents which consisted of documents and clothes. Accused-appellants also opened the drawer and took jewelry valued at PhP 80,000 and the PhP 20,000 and USD 500 cash.[6]

Thereafter, Bajada pushed Asaytono towards Villamayor, laying her head sideways on Villamayor's head. In this position, Asaytono was able to see Calisay repeatedly stab Villamayor on the back. Calisay then stabbed Asaytono on her left breast. Asaytono pretended to be dead as she lied on Villamayor who was still moving. The three men then hurriedly left the house. Asaytono stood up and saw through the three men move towards the rice field. She noticed that Villamayor's dog wagged its tail as it followed the three men, the way it did when accused-appellants would visit Villamayor.[7]

Assured that the men had left the area, Asaytono ran to the house of her neighbor, Cristy Samparada, for help. After telling about incident to her neighbor, Asaytono lost consciousness and regained the same after two days at the Philippine General Hospital (PGH) in Manila. Dr. Michael Baccay, the attending physician, testified that Asaytono suffered pneumochemo thorax, or the presence of air and blood in the thoracic cavity of the left lung, which could cause death in six to eight hours if left untreated. Dr. Marilou Cordon, the medico-legal officer, testified

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

[7] *Id.* at 7.

that Villamayor's death was caused by hypovolemic shock secondary to stab wounds. She opined that the stab wounds may have been caused by a single bladed knife inflicted by one person. She added that the stab which pierced the right lung may have caused his instantaneous death due to blood loss.[8]

The incident was reported to the police of Liliw, Laguna on December 22, 1999. Based on the information given by Villamayor's daughter, Perlita, PO2 Ronald Pana invited Bajada for questioning on December 26. The following day, the police also invited Calisay for questioning. Thereafter, PO2 Pana and his team went to PGH to interview Asaytono. On December 28, 1999, Asaytono gave her sworn statement to the police officers of Liliw, Laguna and identified Bajada and Calisay as the perpetrators of the crime. The following day, she reiterated her statement during the preliminary investigation conducted by Judge Renato Bercales of the Municipal Circuit Trial Court (MCTC) in Magdalena, Laguna.

The defense presented Bajada, Calisay, and Editha Loyaga Calisay as witnesses. Bajada is Calisay's stepfather, while Editha is Bajada's live-in partner and Calisay's mother. Bajada and Calisay denied committing the crime and offered an alibi. They said they were husking coconuts until around 11:00 p.m. on December 22, 1999. They went to sleep afterwards in view of the work they had to do at Villamayor's farm on the following day. Editha corroborated this alibi alleging that she helped accused-appellants in gathering young coconuts on the night in question. Calisay testified that he learned about the death of Villamayor from Villamayor's nephew when he and Editha chanced upon him in town. Calisay and his mother thereafter went to the funeral parlor to see the body of Villamayor. When they got home, they informed Bajada of the news. Bajada went to see the remains of Villamayor to know the circumstances surrounding the latter's death. Bajada was arrested in the wake, questioned by the police, and eventually charged with the crime.[9]

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[8] *Id.* at 8.

[9] CA *rollo*, pp. 31-32.

Bajada testified that he had known Villamayor for two years and had a good relationship with the latter and Asaytono. He believed that Asaytono accused him as the perpetrator because he dissuaded Villamayor from visiting Asaytono's relatives in Bicol since Villamayor was too old and frail to travel. This was allegedly overheard by Asaytono. Bajada added that Villamayor fully trusted him with the secret that Asaytono will not inherit any land from Villamayor. Bajada also alleged that Asaytono accused him of the crime because he warned Villamayor not to leave money in the house because Bajada suspected Asaytono's motives. Calisay added that Asaytono used to get angry whenever Bajada would get money from Villamayor. Calisay, however, testified that he did not see any ill motive on the part of Asaytono when she testified against accused-appellants.

On October 30, 2001, the RTC rendered judgment, the dispositive portion of which reads:

> WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, the Court finds both the accused NESTOR BAJADA and VICTOR CALISAY as **GUILTY BEYOND REASONABLE DOUBT** as co-principals of the offense of **ROBBERY WITH HOMICIDE** as defined and punished under paragraph No. (1) of Article 294 of the Revised Penal Code as amended by the Death Penalty Law (RA 7659) and as charged in the Information and taking into consideration the two (2) aggravating circumstances enumerated hereinbefore without any mitigating circumstance that would offset the same, hereby sentences both the said accused to suffer the SUPREME PENALTY OF DEATH and to pay the heirs of the deceased Antonio Villamayor the sum of ₱50,000.00 as death indemnity and the sum of ₱78,620.00 as reasonable expenses incurred by reasons of said death and to pay the cost of the instant suit.[10]

Accused-appellants filed their brief before this Court on April 3, 2003, docketed as G.R. No. 153218. On September 21, 2004, we transferred the case to the CA in accordance with *People v. Mateo*.[11]

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[10] *Supra* note 2, at 37-38.

[11] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

The Ruling of the CA

In their appeal before the CA, accused-appellants reiterated their defenses of denial and alibi. They claimed that Asaytono's testimonies in court on March 30, 2000 and April 4 and 6, 2000 were inconsistent to the statements she gave to the police on December 28, 1999, and with the statements given to MCTC Judge Bercales on December 29, 1999. These alleged inconsistencies referred to the identity of the caller, the state of intoxication of accused-appellants, and the manner of identification of accused-appellants as the perpetrators of the crime.

The CA held that Asaytono's testimony was categorical and straightforward, and her identification of accused-appellants was consistent. Having worked with accused-appellants in the farm for a year, she can readily identify their facial features, voices, physique, and smell. According to the CA, the details which were lacking in her sworn statement but which she supplied in open court only served to strengthen her testimony. The CA did not lend credence to accused-appellants' defense of alibi since it was possible for them to be at the crime scene—they claimed that they slept at 11:00 p.m. while the incident happened at 11:30 p.m.; and the victims' house was only 15 minutes away by jeep from the farm.

The CA, however, disagreed with the trial court's finding of the aggravating circumstances of dwelling and additional serious physical injury. It said that the information failed to specifically allege the aggravating circumstance of dwelling; hence, it cannot be appreciated even if proved during trial. Also, applying *People v. Abdul*, the appellate court held that the homicides or murders and physical injuries committed on occasion or by reason of the robbery are merged in the composite crime of "robbery with homicide."[12] It concluded that absent any mitigating or aggravating circumstances, the penalty should be reduced to *reclusion perpetua*. The dispositive portion of the CA's judgment reads:

WHEREFORE, the instant appeal is DISMISSED. The Decision, dated 30 October 2001, of the Regional Trial Court of Sta. Cruz,

[12] G.R. No. 128074, July 13, 1999, 310 SCRA 246, 269.

Laguna, Branch 28, is *hereby* **AFFIRMED with MODIFICATION**. Accused-appellants are found guilty beyond reasonable doubt of robbery with homicide. Considering that there are neither mitigating nor aggravating circumstance which attended the commission of the crime, accused-appellants are, *hereby*, sentenced to suffer the penalty of ***reclusion perpetua***.[13]

Bajada's motion for reconsideration was denied in a resolution dated July 24, 2007. The Public Attorney's Office filed a Notice of Appeal; however, per verification, there was neither a motion for reconsideration nor appeal on behalf of Calisay. Thus, on August 24, 2007, the CA granted Bajada's notice of appeal and entered judgment insofar as Calisay was concerned.[14]

Assignment of Error

In the instant appeal, accused-appellant Bajada reiterates his defenses and assigns the following error:

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE WITHOUT THEIR GUILT HAVING BEEN PROVED BEYOND REASONABLE DOUBT.

Bajada asserts that the lower court erred in convicting him and his co-accused based on the testimony in open court of the prosecution witness, Asaytono. Such testimony is allegedly inconsistent with the December 28, 1999 sworn statement given to the police and the December 29, 1999 statement given before MCTC Judge Bercales during the preliminary investigation. In her December 28, 1999 sworn statement, Asaytono mentioned that she recognized Bajada as the caller though the latter misrepresented himself as "Hector." Asaytono also said that while the three accused were inside the house, they smelled like they had *lambanog*, a native wine. These facts, Bajada alleges, were never mentioned in the preliminary investigation and in court. Moreover, while Asaytono told the police that she was able to identify the two accused because of the fluorescent lamp at the kitchen, she failed to mention what parts of accused-

[13] *Supra* note 1, at 19-20.

[14] *Rollo*, pp. 21-22.

appellants' faces were covered by the bonnet and kerchief. She supplied these details only during the preliminary investigation and examination in open court. Furthermore, when Asaytono sought the help of her neighbor, Samparada, she only told the latter that three persons robbed their house and stabbed her and Villamayor, without identifying Bajada and Calisay as the perpetrators. Bajada believes that the manner of identification is suspicious since he and his co-accused were identified only after their arrest and detention based on the statements of random witnesses and not by Asaytono.[15] Lastly, Bajada tries to discredit Asaytono by pointing out that as a paramour of Villamayor, she had no compunction about seducing an 81-year-old man to meet her financial needs. Her alleged interest in inheriting from Villamayor led her to cause the latter's death and find a fall guy for it; hence, she accused Bajada and Calisay.[16] Bajada and Calisay also sent a letter entitled "Petition" addressed to former Chief Justice Artemio Panganiban. Said letter alleged that an eyewitness who was afraid to testify revealed to Bajada that it was Asaytono's live-in partner and the children of Villamayor who were responsible for the crime. Two handwritten letters from the said eyewitness were attached to the "Petition."

The Court's Ruling

The appeal has no merit.

The inconsistencies in the sworn statements and testimony of the prosecution witness, Asaytono, referred to by accused-appellant Bajada do not affect her credibility. The details which she supplied to the police and to the investigating judge are trivial compared to the testimony she gave in open court. What is important is that in all three statements, *i.e.*, sworn statement before the police, sworn statement before Judge Bercales, and testimony in open court, Asaytono consistently and clearly identified accused-appellants as the perpetrators. The essential facts do not differ: three men entered and robbed the house of Villamayor and stabbed him and Asaytono, and Asaytono

[15] CA *rollo*, pp. 48-67.

[16] *Id.* at 131-136.

witnessed the stabbing and recognized two of the accused because she was familiar with the latter's physical attributes.

Also, the Solicitor General correctly pointed out that the defense counsel did not confront Asaytono with these alleged inconsistencies. In *People v. Castillano, Sr.*, we held that:

> Before the credibility of a witness and the truthfulness of his testimony can be impeached by evidence consisting of his prior statements which are inconsistent with his present testimony, the cross-examiner must lay the predicate or the foundation for impeachment and thereby prevent an injustice to the witness being cross-examined. The witness must be given a chance to recollect and to explain the apparent inconsistency between his two statements and state the circumstances under which they were made. This Court held in *People v. Escosura* that the statements of a witness prior to her present testimony cannot serve as basis for impeaching her credibility unless her attention was directed to the inconsistencies or discrepancies and she was given an opportunity to explain said inconsistencies.[17]

This is in line with Section 13, Rule 132 of the Revised Rules of Court which states:

> Section 13. How witness impeached by evidence of inconsistent statements.—Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing, they must be shown to the witness before any question is put to him concerning them.

More controlling is our ruling in *People v. Alegado* where we held that inconsistencies between the sworn statement and the testimony in court do not militate against the witness' credibility since sworn statements are generally considered inferior to the testimony in open court.[18]

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[17] G.R. No. 139412, April 2, 2003, 400 SCRA 401, 416.

[18] G.R. No. 80532, November 8, 1993, 227 SCRA 514, 520.

In any case, Asaytono was able to sufficiently identify Bajada as one of the perpetrators to the satisfaction of the trial court. Asaytono's familiarity with Bajada cannot be denied; she has known Bajada and Calisay for more than a year prior to the incident. The two accused were also frequent visitors at the victim's house. Hence, Asaytono was acquainted with Bajada's physical features. The trial court found her testimony to be credible, frank, straightforward, and consistent throughout the trial. We see no reason to disturb this finding since trial courts are in a unique position to observe the demeanor of witnesses.[19] The trial court's findings regarding the witness' credibility are accorded the highest degree of respect.

Furthermore, Bajada could not ascribe any plausible ill motive against the witness. His accusation against Asaytono that the latter was interested in inheriting from Villamayor is self-serving and uncorroborated. Even Bajada's own stepson, Calisay, stated that there was no prior misunderstanding between him and Asaytono and that he did not know any reason why Asaytono would accuse them of a crime. The letters allegedly written by an eyewitness who was afraid to testify in trial cannot be given probative value. The letters accused Asaytono as one of the culprits—a defense which was already dismissed by the courts *a quo*. There was no evidence to support such allegation. The said letters were belatedly submitted, uncorroborated, and cannot be admitted in evidence.

Bajada's alibi likewise deserves no merit. For alibi to prosper, it must be shown that the accused was somewhere else at the time of the commission of the offense and that it was physically impossible for the accused to be present at the scene of the crime at the time of its commission.[20] Bajada himself admitted, however, that the travel time from Bayate, Liliw, Laguna to the crime scene is only 15 minutes by jeep. Hence, it was

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[19] *People v. Cabareño*, G.R. No. 138645, January 16, 2001, 349 SCRA 297, 304.

[20] *People v. Torrefiel*, G.R. No. 115431, April 18, 1996, 256 SCRA 369, 375; citations omitted.

possible for him to be at the crime scene at or around the time the offense was committed.

The appellate court correctly reduced the penalty to *reclusion perpetua*. The aggravating circumstance of dwelling was not specifically alleged in the information. As regards the additional charge of "serious physical injuries," we held in *Abdul* [21] that this is merged in the crime of robbery with homicide.

WHEREFORE, the February 7, 2006 Decision of the CA in CA-G.R. CR-H.C. No. 01043 is *AFFIRMED IN TOTO*. No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Tinga, and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182348. November 20, 2008.]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARLOS DELA CRUZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— The elements in illegal possession of dangerous drug are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. On the third element, we have held that the possession must be with knowledge of the accused or

[21] *Supra* note 12.

that *animus possidendi* existed with the possession or control of said articles. Considering that as to this knowledge, a person's mental state of awareness of a fact is involved, we have ruled that: Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. *Animus possidendi,* as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.

2. ID.; ID.; ID.; ID.; PROSECUTION FAILED TO ESTABLISH POSSESSION OF *SHABU,* WHETHER IN ITS ACTUAL OR CONSTRUCTIVE SENSE; CASE AT BAR.— The prior or contemporaneous acts of accused-appellant show that: he was inside the nipa hut at the time the buy-bust operation was taking place; he was talking to Boy Bicol inside the nipa hut; he was seen holding a shotgun; when PO1 Calanoga, Jr. pointed his firearm at accused-appellant, the latter dropped his shotgun; and when apprehended, he was in a room which had the seized *shabu,* digital weighing scale, drug paraphernalia, ammunition, and magazines. Accused-appellant later admitted that he knew what the content of the seized plastic bag was. Given the circumstances, we find that the prosecution failed to establish possession of the *shabu,* whether in its actual or constructive sense, on the part of accused-appellant. The two buy-bust team members corroborated each other's testimonies on how they saw Boy Bicol talking to accused-appellant by a table inside the nipa hut. That table, they testified, was the same table where they saw the *shabu* once inside the nipa hut. This fact was used by the prosecution to show that accused-appellant exercised dominion and control over the *shabu* on the table. We, however, find this too broad an application of the concept of constructive possession. In *People v. Torres,* we held there was constructive possession of prohibited drugs even when the accused was not home when the prohibited drugs were found in the master's bedroom of his house. In *People v. Tira,* we sustained the conviction of the accused husband and wife for illegal possession of dangerous drugs. Their residence was searched and their bed was found to be concealing illegal drugs underneath. We held that the wife cannot feign ignorance of the drugs' existence as she had full access to the room, including the space under

the bed. In *Abuan v. People,* we affirmed the finding that the accused was in constructive possession of prohibited drugs which had been found in the drawer located in her bedroom. In all these cases, the accused was held to be in constructive possession of illegal drugs since they were shown to enjoy dominion and control over the premises where these drugs were found. In the instant case, however, there is no question that accused-appellant was not the owner of the nipa hut that was subject of the buy-bust operation. He did not have dominion or control over the nipa hut. Neither was accused-appellant a tenant or occupant of the nipa hut, a fact not disputed by the prosecution. The target of the operation was Boy Bicol. Accused-appellant was merely a guest of Boy Bicol. But in spite of the lack of evidence pinning accused-appellant to illegal possession of drugs, the trial court declared the following: It cannot be denied that when the accused was talking with Boy Bicol he knew that the *shabu* was on the table with other items that were confiscated by the police operatives. The court [surmises] that the accused and boy Bicol were members of a gang hiding in that nipa hut where they were caught red-handed with prohibited items and dangerous [drugs]. The trial court cannot assume, based on the prosecution's evidence, that accused-appellant was part of a gang dealing in illegal activities. Apart from his presence in Boy Bicol's nipa hut, the prosecution was not able to show his participation in any drug-dealing. He was not even in possession of drugs in his person. He was merely found inside a room with *shabu,* not as the room's owner or occupant but as a guest. While he allegedly pointed a firearm at the buy-bust team, the prosecution curiously failed to produce the firearm that accused-appellant supposedly used. The prosecution in this case clearly failed to show all the elements of the crime absent a showing of either actual or constructive possession by the accused-appellant.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; NOT APPLICABLE IN CASE AT BAR.— Since accused-appellant was not in possession of the illegal drugs in Boy Bicol's nipa hut, his subsequent arrest was also invalid. Rule 113 of the Rules on Criminal Procedure on warrantless arrest. The warrantless arrest of accused-appellant was effected under Sec. 5 (a), arrest of a suspect *in flagrante delicto.* For this type of warrantless arrest to be valid, two requisites must concur: (1) the person to be arrested must execute an overt

act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. Accused-appellant's act of pointing a firearm at the buy-bust team would have been sufficient basis for his arrest *in flagrante delicto*; however, the prosecution was not able to adequately prove that accused-appellant was committing an offense. Although accused-appellant merely denied possessing the firearm, the prosecution's charge was weak absent the presentation of the alleged firearm. He was eventually acquitted by the trial court because of this gaffe. His arrest, independent of the buy-bust operation targeting Boy Bicol, was therefore not lawful as he was not proved to be committing any offense. In sum, we find that there is insufficient evidence to show accused-appellant's guilt beyond reasonable doubt. Having ruled on the lack of material or constructive possession by accused-appellant of the seized *shabu* and his succeeding illegal arrest, we deem it unnecessary to deal with the other issue raised.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the November 29, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02286 entitled *People of the Philippines v. Carlos Dela Cruz* which affirmed the September 16, 2005 Decision of the Regional Trial Court (RTC), Branch 77 in San Mateo, Rizal in Criminal Case Nos. 6517 (Illegal Possession of Firearm and Ammunition) and 6518 (Possession of Dangerous Drug). The RTC found accused-appellant Carlos Dela Cruz guilty beyond reasonable doubt of violation of Section 11(2) of Republic Act No. (RA) 9165 or *The Comprehensive Dangerous Drugs Act of 2002*.

The Facts

On November 15, 2002, charges against accused-appellant were made before the RTC. The Informations read as follows:

Criminal Case No. 6517

That, on or about the 20th day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a private citizen, without any lawful authority, did then and there willfully, unlawfully, and knowingly have in his possession and under his custody and control One (1) Gauge Shotgun marked ARMSCOR with Serial No. 1108533 loaded with four (4) live ammunition, which are high powered firearm and ammunition respectively, without first securing the necessary license to possess or permit to carry said firearm and ammunition from the proper authorities.

Criminal Case No. 6518

That on or about the 20th day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control one (1) heat-sealed transparent plastic bag weighing 49.84 grams of white crystalline substance, which gave positive results for Methamphetamine Hydrochloride, a dangerous drug.[1]

Accused-appellant entered a not guilty plea and trial ensued.

The facts, according to the prosecution, showed that in the morning of October 20, 2002, an informant tipped off the Drug Enforcement Unit of the Marikina Police Station that wanted drug pusher Wifredo Loilo *alias* "Boy Bicol" was at his nipa hut hideout in San Mateo, Rizal. A team was organized to arrest Boy Bicol. Once there, they saw Boy Bicol by a table talking with accused-appellant. They shouted "Boy Bicol *sumuko ka na may* warrant of arrest *ka.* (Surrender yourself Boy Bicol you have a warrant of arrest.)" Upon hearing this, Boy Bicol engaged them in a shootout and was fatally shot. Accused-appellant was seen holding a shotgun through a window. He

[1] *Rollo,* p. 3.

dropped his shotgun when a police officer pointed his firearm at him. The team entered the nipa hut and apprehended accused-appellant. They saw a plastic bag of suspected *shabu*, a digital weighing scale, drug paraphernalia, ammunition, and magazines lying on the table. PO1 Calanoga, Jr. put the markings "CVDC," the initials of accused-appellant, on the bag containing the seized drug.

Accused-appellant was subsequently arrested. The substance seized from the hideout was sent to the Philippine National Police crime laboratory for examination and tested positive for methamphetamine hydrochloride or *shabu*. He was thus separately indicted for violation of RA 9165 and for illegal possession of firearm.

According to the defense, accused-appellant was at Boy Bicol's house having been asked to do a welding job for Boy Bicol's motorcycle. While accused-appellant was there, persons who identified themselves as police officers approached the place, prompting accused-appellant to scamper away. He lied face down when gunshots rang. The buy-bust team then helped him get up. He saw the police officers searching the premises and finding *shabu* and firearms, which were on top of a table or drawer.[2] When he asked the reason for his apprehension, he was told that it was because he was a companion of Boy Bicol. He denied under oath that the gun and drugs seized were found in his possession and testified that he was only invited by Boy Bicol to get the motorcycle from his house.[3]

The RTC acquitted accused-appellant of illegal possession of firearm and ammunition but convicted him of possession of dangerous drugs. The dispositive portion of the RTC Decision reads:

> WHEREFORE, the Court based on insufficiency of evidence hereby ACQUITS accused CARLOS DELA CRUZ *Y* VICTORINO in Criminal Case No. 6517 for violation of P.D. 1866 as amended by RA 8294.

[2] *Id.* at 5.

[3] CA *rollo*, p. 17.

In Criminal Case No. 6518 for Possession of Dangerous Drug under Section 11, 2nd paragraph of Republic Act 9165, the Court finds said accused CARLOS DELA CRUZ *Y* VICTORINO, GUILTY beyond reasonable doubt and is hereby sentenced to Life Imprisonment and to Pay a Fine of FOUR HUNDRED THOUSAND PESOS (₱400,000.00).

SO ORDERED.[4]

On December 7, 2005, accused-appellant filed a Notice of Appeal of the RTC Decision.

In his appeal to the CA, accused-appellant claimed that: (1) the version of the prosecution should not have been given full credence; (2) the prosecution failed to prove beyond reasonable doubt that he was guilty of possession of an illegal drug; (3) his arrest was patently illegal; and (4) the prosecution failed to establish the chain of custody of the illegal drug allegedly in his possession.

The CA sustained accused-appellant's conviction.[5] It pointed out that accused-appellant was positively identified by prosecution witnesses, rendering his uncorroborated denial and allegation of frame-up weak. As to accused-appellant's alleged illegal arrest, the CA held that he is deemed to have waived his objection when he entered his plea, applied for bail, and actively participated in the trial without questioning such arrest.

On the supposedly broken chain of custody of the illegal drug, the appellate court held that accused-appellant's claim is unpersuasive absent any evidence showing that the plastic sachet of *shabu* had been tampered or meddled with.

On December 20, 2007, accused-appellant filed his Notice of Appeal of the CA Decision.

On June 25, 2008, this Court required the parties to submit supplemental briefs if they so desired. The parties later signified

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[4] *Id.* at 26. Penned by Judge Francisco C. Rodriguez, Jr.

[5] *Rollo*, p. 18. The Decision was penned by Associate Justice Sixto C. Marella, Jr. and concurred in by Associate Justices Mario L. Guariña III and Japar B. Dimaampao.

their willingness to submit the case on the basis of the records already with the Court.

Accused-appellant presents the following issues before us:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL CREDENCE TO THE VERSION OF THE PROSECUTION

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 11, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE COMMISSION OF THE OFFENSE CHARGED BEYOND REASONABLE DOUBT

III

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE PATENT ILLEGALITY OF HIS ARREST

IV

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 11, ARTICLE II, RA 9165 DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE ILLEGAL DRUG ALLEGEDLY FOUND IN HIS POSSESSION

Accused-appellant claims that the presence of all the elements of the offense of possession of dangerous drug was not proved beyond reasonable doubt since both actual and constructive possessions were not proved. He asserts that the *shabu* was not found in his actual possession, for which reason the prosecution was required to establish that he had constructive possession over the *shabu*. He maintains that as he had no control and dominion over the drug or over the place where it was found, the prosecution likewise failed to prove constructive possession.

The Court's Ruling

The appeal has merit.

The elements in illegal possession of dangerous drug are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[6] On the third element, we have held that the possession must be with knowledge of the accused or that *animus possidendi* existed with the possession or control of said articles.[7] Considering that as to this knowledge, a person's mental state of awareness of a fact is involved, we have ruled that:

> Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. *Animus possidendi*, as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.[8]

The prior or contemporaneous acts of accused-appellant show that: he was inside the nipa hut at the time the buy-bust operation was taking place; he was talking to Boy Bicol inside the nipa hut; he was seen holding a shotgun; when PO1 Calanoga, Jr. pointed his firearm at accused-appellant, the latter dropped his shotgun; and when apprehended, he was in a room which had the seized *shabu*, digital weighing scale, drug paraphernalia, ammunition, and magazines. Accused-appellant later admitted that he knew what the content of the seized plastic bag was.[9]

Given the circumstances, we find that the prosecution failed to establish possession of the *shabu*, whether in its actual or constructive sense, on the part of accused-appellant.

The two buy-bust team members corroborated each other's testimonies on how they saw Boy Bicol talking to accused-

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[6] *People v. Naquita*, G.R. No. 180511, July 28, 2008.

[7] *People v. Lagata*, G.R. No. 135323, June 25, 2003, 404 SCRA 671, 676; citing *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003, 395 SCRA 419.

[8] *Lagata*, *supra*; citing *People v. Burton*, 335 Phil. 1003, 1024-1025 (2000).

[9] *Rollo*, p. 50.

appellant by a table inside the nipa hut. That table, they testified, was the same table where they saw the *shabu* once inside the nipa hut. This fact was used by the prosecution to show that accused-appellant exercised dominion and control over the *shabu* on the table. We, however, find this too broad an application of the concept of constructive possession.

In *People v. Torres*,[10] we held there was constructive possession of prohibited drugs even when the accused was not home when the prohibited drugs were found in the master's bedroom of his house.

In *People v. Tira*,[11] we sustained the conviction of the accused husband and wife for illegal possession of dangerous drugs. Their residence was searched and their bed was found to be concealing illegal drugs underneath. We held that the wife cannot feign ignorance of the drugs' existence as she had full access to the room, including the space under the bed.

In *Abuan v. People*,[12] we affirmed the finding that the accused was in constructive possession of prohibited drugs which had been found in the drawer located in her bedroom.

In all these cases, the accused was held to be in constructive possession of illegal drugs since they were shown to enjoy dominion and control over the premises where these drugs were found.

In the instant case, however, there is no question that accused-appellant was not the owner of the nipa hut that was subject of the buy-bust operation. He did not have dominion or control over the nipa hut. Neither was accused-appellant a tenant or occupant of the nipa hut, a fact not disputed by the prosecution. The target of the operation was Boy Bicol. Accused-appellant was merely a guest of Boy Bicol. But in spite of the lack of evidence pinning accused-appellant to illegal possession of drugs, the trial court declared the following:

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[10] G.R. No. 170837, September 12, 2006, 501 SCRA 591, 610-611.

[11] G.R. No. 139615, May 28, 2004, 430 SCRA 134, 152-153.

[12] G.R. No. 168773, October 27, 2006, 505 SCRA 799, 818-819.

It cannot be denied that when the accused was talking with Boy Bicol he knew that the *shabu* was on the table with other items that were confiscated by the police operatives. The court [surmises] that the accused and boy Bicol were members of a gang hiding in that nipa hut where they were caught red-handed with prohibited items and dangerous [drugs].[13]

The trial court cannot assume, based on the prosecution's evidence, that accused-appellant was part of a gang dealing in illegal activities. Apart from his presence in Boy Bicol's nipa hut, the prosecution was not able to show his participation in any drug-dealing. He was not even in possession of drugs in his person. He was merely found inside a room with *shabu*, not as the room's owner or occupant but as a guest. While he allegedly pointed a firearm at the buy-bust team, the prosecution curiously failed to produce the firearm that accused-appellant supposedly used.

The prosecution in this case clearly failed to show all the elements of the crime absent a showing of either actual or constructive possession by the accused-appellant.

Since accused-appellant was not in possession of the illegal drugs in Boy Bicol's nipa hut, his subsequent arrest was also invalid. Rule 113 of the Rules on Criminal Procedure on warrantless arrest provides:

Sec. 5. *Arrest without warrant; when lawful*.—A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

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[13] CA *rollo*, p. 25.

The warrantless arrest of accused-appellant was effected under Sec. 5(a), arrest of a suspect *in flagrante delicto*. For this type of warrantless arrest to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[14]

Accused-appellant's act of pointing a firearm at the buy-bust team would have been sufficient basis for his arrest *in flagrante delicto*; however, the prosecution was not able to adequately prove that accused-appellant was committing an offense. Although accused-appellant merely denied possessing the firearm, the prosecution's charge was weak absent the presentation of the alleged firearm. He was eventually acquitted by the trial court because of this gaffe. His arrest, independent of the buy-bust operation targeting Boy Bicol, was therefore not lawful as he was not proved to be committing any offense.

In sum, we find that there is insufficient evidence to show accused-appellant's guilt beyond reasonable doubt. Having ruled on the lack of material or constructive possession by accused-appellant of the seized *shabu* and his succeeding illegal arrest, we deem it unnecessary to deal with the other issue raised.

WHEREFORE, the appeal is *GRANTED*. The CA Decision dated November 29, 2007 in CA-G.R. CR-H.C. No. 02286 is *REVERSED* and *SET ASIDE*. Accused-appellant Carlos Dela Cruz is *ACQUITTED* of violation of Sec. 11(2) of RA 9165 in Criminal Case No. 6518 of the RTC, Branch 77 in San Mateo, Rizal.

SO ORDERED.

Quisumbing (Chairperson), Carpio-Morales, Tinga, and *Brion, JJ.*, concur.

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[14] *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 422.

FIRST DIVISION

[A.C. No. 5851. November 25, 2008]

GRACE DELA CRUZ-SILLANO, *complainant, vs.* **ATTY. WILFREDO PAUL D. PANGAN,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; RESPONDENT VIOLATED HIS OATH AS A LAWYER AND THE CODE OF PROFESSIONAL RESPONSIBILITY WHEN HE NOTARIZED A SPECIAL POWER OF ATTORNEY IN THE ABSENCE OF THE AFFIANT; PRACTICE OF AUTHENTICATING DOCUMENTS WITHOUT REQUIRING PHYSICAL PRESENCE OF AFFIANTS UNDERMINES THE INTEGRITY OF A NOTARY PUBLIC AND DEGRADES THE FUNCTION OF NOTARIZATION.— The complaint before us is an administrative case where a fact is deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept to justify a conclusion. Aside from his lame objections, respondent does not categorically deny notarizing the questioned Special Power of Attorney in the absence of the affiant. The seriousness of respondent's omission is not lessened by his claim that he "has always accommodated his relatives in their legal problems for free." The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is

the party's free act and deed. Notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantial public interest, such that only those who are qualified or authorized may act as notaries public. Notarization of a private document converts the document into a public one making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. As a lawyer commissioned to be a notary public, respondent is mandated to discharge his sacred duties which are dictated by public policy and, as such, impressed with public interest. Faithful observance and utmost respect of the legal solemnity of an oath in an acknowledgment or jurat is sacrosanct. Respondent's failure to perform his duty as a notary public resulted not only in damaging complainant's rights but also in undermining the integrity of a notary public and in degrading the function of notarization. Hence, respondent should be liable for such negligence, not only as a notary public but also as a lawyer. Respondent must accept the consequences of his professional indiscretion. Thus, under the facts and circumstances of the case, respondent's notarial commission should not only be suspended but respondent must also be suspended from the practice of law.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a complaint filed by Grace Dela Cruz-Sillano (complainant) against Atty. Wilfredo Paul D. Pangan (respondent) for disbarment for having conspired in forging a Special Power of Attorney.

The Facts

The facts in the Report and Recommendation of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) read as follows:

Respondent is accused of forging the signature of an affiant [Zenaida A. Dela Cruz] in a Special Power of Attorney (SPA). The affiant in this SPA is the mother of complainant. The SPA appears to have authorized a certain Ronaldo F. Apostol to "process, claim, receive and encash checks representing my (affiant's) benefits arising from my insurance policy with the Insular Life Assurance Company Ltd." Consequently, respondent also stands accused of notarizing a document in the absence of the affiant. Complainant specifically alleges:

> "That on March 15, 1999, Atty. Pangan conspiring and confederating with the other accused R.F. Apostol falsified and forged a document denominated as a Special Power of Attorney (by forgering [sic] the signature of my deceased mother and notarizing the same), which empowered the accused Ronaldo F. Apostol to process, receive claim and encash check representing benefits arising from the insurance policy of my deceased mother Zenaida Apostol de la Cruz (of which I am the beneficiary). The accused successfully encash [sic] the check in the amount of ₱71,033.53 to my damage and prejudice."

The charge of forgery is premised on complainant's claim that when the SPA was notarized on 15 March 1999, the affiant therein was bedridden in the United States, who was sick with malignant cancer of the lungs, and that, in fact, the alleged affiant died on 27 May 1999 also in the United States. Complainant specifically alleges:

> "The accused being both blood relatives were well aware that my deceased mother who resides in the U.S. of A has been bedridden for several months as she was diagnosed to be suffering from Malignant Cancer of the Lungs, prior to her death on May 27, 1999. Hence for obvious reasons, my deceased mother could not have on March 15, 1999 executed, prepared and signed the Special Power of Attorney and sworn to the same before Atty. Pangan. xxx"

In his comment Atty. Pangan claims that the "act of notarizing was done in accordance with law and practice." Moreover, respondent emphasized that:

> "4. Respondent has no participation in the submission and processing of the insurance proceeds. Respondent Notary Public could not have made use of the alleged falsified document.

> He cannot be considered as having benefited from the falsified document as he was never a grantee nor a beneficiary [in] said document. He did not benefit from the insurance proceeds. He never conspired with anyone in the commission of any crime much less has taken advantage of his position as notary public to defraud any person or entity."[1]

The IBP's Report and Recommendation

In a Report[2] dated 8 July 2005, IBP Commissioner for Bar Discipline Doroteo B. Aguila (Commissioner Aguila) found respondent guilty of notarizing the SPA in the absence of affiant. Commissioner Aguila found that respondent violated the Code of Professional Responsibility and recommended respondent's suspension from the practice of law for 30 days, and that he be barred from acting as notary public, if he is presently one, or from being given a commission to act as such, for a period of one year from the effectivity of the recommended penalty.

In a Resolution[3] dated 22 October 2005, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Commissioner Aguila. The IBP Board of Governors suspended respondent from the practice of law for one year.

Respondent filed a motion for reconsideration dated 12 December 2005 before the IBP Board of Governors. In a Resolution dated 28 January 2006, the IBP Board of Governors resolved to deny respondent's motion for reconsideration since the Board had no jurisdiction to consider and resolve a matter already endorsed to this Court.

The Ruling of the Court

We sustain the findings of the IBP and adopt its recommendations. Respondent violated his oath as a lawyer and the Code of Professional Responsibility when he made it appear that Zenaida A. Dela Cruz personally appeared before

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[1] *Rollo*, pp. 80-81.

[2] *Id.* at 80-83.

[3] *Id.* at 77.

him and executed a Special Power of Attorney in favor of Ronaldo Apostol.

Respondent Notarized a Special Power of Attorney in the Absence of the Affiant

Section 1 of Public Act No. 2103 or the Notarial Law provides:

> Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

The Code of Professional Responsibility provides:

> Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.
>
> Rule 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Moreover, Section 2(b) of Rule IV of the Rules on Notarial Practice of 2004 emphasizes the necessity of the affiant's personal appearance before the notary public:

> A person shall not perform a notarial act if the person involved as signatory to the instrument or document –
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

In the present case, respondent does not deny notarizing the questioned Special Power of Attorney. Moreover, instead of exculpating respondent, the affidavits presented by respondent

prove that affiant was not in the personal presence of respondent at the time of the notarization.

Ronaldo F. Apostol, respondent's co-accused in the criminal complaint for estafa through falsification filed before the Regional Trial Court of Makati City, executed an affidavit absolving respondent from any wrongdoing.

1. I was appointed by my Aunt Zenaida Apostol-Dela Cruz to process and claim her benefits arising from her insurance policy with the Insular Life Assurance Company, Ltd.;

2. Pursuant to this authority I caused the preparation of a Special Power of Attorney authorizing me to process, claim, receive and encash said insurance policy;

3. I proceeded to the law office of a distant relative – Atty. Wilfredo Paul D. Pangan to have the said Special Power of Attorney notarized;

4. Atty. Pangan was, however, not present in their office so I asked the staff how I can facilitate the notarization of the said document;

5. **The staff told me that as long as the grantor will appear in their office they can vouched [sic] the due execution of the document and they will just include the documents among the "*for signature*" so that Atty. Pangan can sign them when he comes back from a hearing**;

6. I left the law office and fetch [sic] an aunt of mine. When I returned to the office, I told the staff that my aunt is too sick to alight from the car;

7. Being a known relative of Atty. Pangan in the law office **I was able to convince the staff that said aunt was indeed the one who executed the document**;

8. **The following day I returned to the law office and the staff gave me the notarized Special Power of Attorney**;

9. That I have not paid for said notarization as I have been engaging the services of Atty. Pangan for free;

10. When a feud between me and my cousin who is in the United States developed and their [sic] was a lack of communication between us, I was surprised that the matter of claiming the insurance policy was brought when almost everybody in our immediate family knew

that I caused the claiming of the said insurance and hold it in trust until we can communicate with my cousin;

11. In fairness to Atty. Pangan, he has nothing to do with whatever wrongdoings I have committed in the claiming of the insurance policy;

12. The claiming was done in good faith as no one else in the immediate family can process the same;

xxx xxx xxx.[4] (Emphases added)

Laila N. Mesiano and Manolito F. Farnal, members of the staff of respondent's law office, also executed a joint affidavit in ostensible support for respondent.

2. Among our duties is to prepare notarial documents for signature of our two (2) notaries public, Atty. Tiburcio A. Edaño, Jr. and Atty. Wilfredo Paul D. Pangan;

3. The two are very strict in requiring the personal appearance of signatories to documents especially in documents requiring acknowledgments;

4. Even those documents which were left by clients for notarials and those which we brought to them while they were having hearing in the nearby Hall of Justice were notarized only if we will vouched [sic] that the said client indeed personally appeared in our office and executed the said document;

5. This practice in notarizing documents are relaxed only in cases where mere jurat were required;

xxx xxx xxx.[5]

Respondent's comment gives us an insight as to how the present administrative complaint arose:

6. If there was fraud, it may not have even been committed in the execution of the Special Power of Attorney nor in the processing of the claim but in the way the insurance proceeds was shared. Will complainant question the execution of the alleged document had the grantee turned over to her the insurance proceed [*sic*]? If respondent has conspired with said grantee in the commission of

[4] *Id.* at 66.

[5] *Id.* at 65.

the fraudulent act, he would not have notarized the document and let other notary public do the notarizing.

7. Respondent has always accommodated his relatives in their legal problems for free. The imputation upon him of any wrong doings in his practice as notary public is only a result of the existing feud between the heirs of the deceased and her relatives.[6]

In his defense, respondent objected to the evidence presented against him thus:

All the exhibits were not properly identified and their execution were not proven by the complainant.

In fact the original nor a certified true copy of the questioned Special Power of Attorney was never presented. The complainant never appeared to identify her complaint affidavit. The Certificate of Death is a mere xerox copy. The alleged record of the criminal case allegedly filed were mere xerox copies and the alleged passport was not properly identified by the issuing authority.

In view if the foregoing, it is respectfully submitted that the said exhibits are inadmissible in evidence.

The purpose for which the said exhibits was [sic] being offered is likewise being objected to.

The records of the criminal case does [sic] not prove that the accused have committed the crime charged. They are presumed innocent until proven otherwise.

The death certificate of the alleged signatory does not show that she could not have signed the alleged document as the face of the questioned document showed that it was executed before the alleged passing of the signatory.

The passport does not readily show that the signatory could not have signed the said document nor will it conclusively tell that the signatory could not have signed the said document.

The hospital records does [sic] not show that the signatory could not have possibly executed the said document.

The check voucher does not show that the herein respondent was not a party thereto.

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

The questioned Special Power of Attorney alone does not prove that the signature appearing thereon in [sic] not the signature of the signatory.[7]

The complaint before us is an administrative case where a fact is deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept to justify a conclusion.[8] Aside from his lame objections, respondent does not categorically deny notarizing the questioned Special Power of Attorney in the absence of the affiant. The seriousness of respondent's omission is not lessened by his claim that he "has always accommodated his relatives in their legal problems for free."

The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[9]

Notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantial public interest, such that only those who are qualified or authorized may act as notaries public. Notarization of a private document converts the document into a public one making it admissible in court without further proof of

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[7] *Id*. at 85.

[8] Sec. 5, Rule 133, Rules of Court.

[9] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 16 (2002).

its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

As a lawyer commissioned to be a notary public, respondent is mandated to discharge his sacred duties which are dictated by public policy and, as such, impressed with public interest. Faithful observance and utmost respect of the legal solemnity of an oath in an acknowledgment or jurat is sacrosanct.[10]

Respondent's failure to perform his duty as a notary public resulted not only in damaging complainant's rights but also in undermining the integrity of a notary public and in degrading the function of notarization. Hence, respondent should be liable for such negligence, not only as a notary public but also as a lawyer.[11] Respondent must accept the consequences of his professional indiscretion. Thus, under the facts and circumstances of the case, respondent's notarial commission should not only be suspended but respondent must also be suspended from the practice of law.

WHEREFORE, the Court finds respondent Atty. Wilfredo Paul D. Pangan *GUILTY* of violating the Code of Professional Responsibility. Accordingly, the Court *SUSPENDS* him from the practice of law for one year; *REVOKES* his incumbent notarial commission, if any; and *PROHIBITS* him from being commissioned as a notary public for one year, effective immediately, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

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[10] *Arrieta v. Llosa,* 346 Phil. 932, 937-938 (1997).

[11] *Follosco v. Atty. Mateo*, 466 Phil. 305, 313 (2004).

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Corona, Azcuna, and *Tinga,*[*] *JJ.,* concur.

THIRD DIVISION

[A.M. No. MTJ-08-1720. November 25, 2008]

(Formerly A.M. OCA IPI No. 02-1267-MTJ)

LOLITA ANDRADA, *complainant, vs.* **HON. EMMANUEL G. BANZON, Presiding Judge, Municipal Trial Court, Mariveles, Bataan,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; COMPLAINANT FAILED TO ADDUCE EVIDENCE TO SUPPORT THE CHARGES AGAINST RESPONDENT JUDGE FOR GRAVE MISCONDUCT, GRAVE ABUSE OF AUTHORITY, OPPRESSION, AND GROSS IGNORANCE OF THE RULES.— It is an established rule in administrative cases that complainant bears the *onus* of establishing or proving the averments in his complaint by substantial evidence. In the instant case, complainant failed to adduce evidence to support the charges against respondent Judge Emmanuel G. Banzon. Well-settled is the rule that unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, respondent judge may not be held administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication

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[*] As replacement of Justice Teresita J. Leonardo-De Castro who is on official leave per Special Order No. 539.

of cases. Further, to hold a judge administratively accountable for every erroneous rule or decision he renders would be nothing short of harassment and would make his position doubly unbearable. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of the administration of justice can be infallible in his judgment. In *Ong v. Rosete*, the High Court eloquently stated that, "[t]he Court will not shirk from its responsibility of imposing discipline upon erring members of the bench. At the same time, however, the Court should not hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice. This Court could not be the instrument that would destroy the reputation of any member of the bench, by pronouncing guilt on mere speculation."

APPEARANCES OF COUNSEL

Alfredo L. Bentulan for complainant.

R E S O L U T I O N

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

Lolita Andrada filed an administrative complaint charging respondent Hon. Emmanuel G. Banzon, Presiding Judge, Municipal Trial Court (MTC) in Mariveles, Bataan, with grave misconduct, grave abuse of authority, oppression, and gross ignorance of the Rules on Contempt under Rule 71 of the Rules of Court. The Court referred the case to Court of Appeals Justice Rosmari D. Carandang "for investigation, report and recommendation."

On June 22, 1999, Nestor Soria filed an ejectment case against complainant Lolita Andrada and her spouse Faustino Andrada. The case, docketed as Civil Case No. 99-830, was raffled off to the sala of respondent Judge Emmanuel G. Banzon. After summary proceedings, the case was resolved in favor of Soria and the spouses Andrada were ordered to vacate the premises. This judgment was affirmed in *toto* by the Regional Trial Court,

Branch IV, in Balanga, Bataan. After finality of the decision, the records of the case were remanded to the MTC for execution.

The first writ of execution dated January 16, 2001 was returned unsatisfied because the spouses Andrada refused to vacate the premises. An *alias* writ of execution was issued by Judge Banzon on August 6, 2001. The second *alias* writ was returned executed but the spouses Andrada put up temporary structures in front of Soria's house, preventing him from entering the premises. This prompted Soria to file a "Motion to Cite Defendants in Contempt."

Judge Banzon issued an Order dated June 5, 2002 granting the motion, but did not cite the Andradas in contempt of court and merely gave them a period of five (5) days to vacate the premises. Lolita Andrada filed a notice of appeal. Judge Banzon refused to accept the notice of appeal. Consequently, Lolita Andrada filed the instant administrative complaint against respondent Judge for grave abuse of authority, oppression, and gross ignorance of the Rules on Contempt under Rule 71 of the Rules of Court.

In his comment, respondent Judge admitted that he issued the assailed June 5, 2002 Order. However, he denied the allegation that he refused to accept Andrada's appeal. He informed her that she could not appeal from the Order of June 5, 2002 since it is interlocutory in character. He further asserted that even if his assailed order could be appealed, the notice of appeal could not be entertained since Andrada failed to pay the required appellate docket fee.

Findings and Conclusion of the Investigating Justice

This investigating Officer finds that the complainant failed to adduce sufficient and convincing evidence to substantiate the charge that respondent Judge Emmanuel G. Banzon committed grave abuse of authority, oppression and gross ignorance of the law.

In charging respondent judge, complainant primarily based her claim on the alleged refusal of respondent judge to accept her notice of appeal of the Order dated June 5, 2002 granting the motion to cite them in contempt of court. She averred that the notice of

appeal is a proper remedy to assail the questioned Order pursuant to Section 11, Rule 71 of the Rules of Court.

To be liable for grave abuse of authority and oppressive conduct, it must be sufficiently shown that the judge deals with lawyers and litigants in a cavalier and arrogant attitude. It should likewise be shown that the judge used intemperate, harsh and disparaging language indicative of his lack of courtesy and civility, and not a desire to instill proper decorum and discipline.

In this case, respondent judge denied the allegation that he refused to accept complainant's notice of appeal. Yet, he admitted that he *informed* complainant that she could not appeal from an interlocutory order but she refused to believe relying on the erroneous advice of her counsel. The actuation of respondent judge in merely "*informing*" complainant that a notice of appeal is not the proper remedy can in no way be indicative of grave abuse of authority nor oppressive conduct on the part of respondent judge. Moreover, the record is bereft of evidence that respondent judge informed or instructed complainant of the erroneous notice of appeal in a discourteous manner with the intemperate use of cruel language.

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Anent the charge of gross ignorance of the law, the same should likewise fail. To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence but, more importantly, he must be moved by bad faith, fraud, dishonesty or corruption. For to hold a judge administratively accountable for every erroneous ruling or decision he renders, would be intolerable.

In the instant case, there is nothing to show that respondent judge was prompted by malice or corrupt motive in refusing to accept the notice of appeal nor is there clear evidence that respondent judge is ignorant of the law, as a notice of appeal is indeed not the proper remedy to question the Order of June 5, 2002.

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Since the assailed Order is merely interlocutory, this order cannot be the subject of appeal. The respondent judge did not err in this respect. An interlocutory order determines incidental matters that do not touch on the merits of the case or put an end to the proceedings.

The proper remedy to question an improvident interlocutory order is a petition for *certiorari* under Rule 65 of the Rules of Court. To avail of the special civil action for *certiorari*, it must be clearly shown that the court issued said order without or in excess of jurisdiction or with grave abuse of discretion.

The reliance of complainant on Section 11, Rule 71 of the Rules of Court is therefore misplaced. Said provision speaks that a judgment or final order of the court in a case of indirect contempt may be appealed to the proper court as in criminal cases. There is no judgment or final order of indirect contempt to speak of in this case. The appeal allowed under Section 11, Rule 71 is with respect to final orders declaring a person guilty of indirect contempt and imposing punitive sanctions provided under Section 7 thereof.

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RECOMMENDATION:

On the basis of the foregoing findings/conclusion, there being no evidence adduced by the complainant to support her claim that respondent Judge Emmanuel Banzon committed grave abuse of authority, oppression and gross ignorance of the law, the undersigned hereby recommends that the instant administrative case be **DISMISSED** for lack of merit.[1]

We agree with the findings of the investigating Justice.

It is an established rule in administrative cases that complainant bears the *onus* of establishing or proving the averments in his complaint by substantial evidence.[2] In the instant case, complainant failed to adduce evidence to support the charges against respondent Judge Emmanuel G. Banzon.

Well-settled is the rule that unless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, respondent judge may not be held administratively liable for gross misconduct,

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[1] Report and Recommendation of Justice Rosmari D. Carandang, pp. 1-13.

[2] *Sinnot v. Barte*, A.M. No. RTJ-99-1453, December 14, 2001, 337 SCRA 162.

ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, particularly in the adjudication of cases.

Further, to hold a judge administratively accountable for every erroneous rule or decision he renders would be nothing short of harassment and would make his position doubly unbearable. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of the administration of justice can be infallible in his judgment.[3]

In *Ong v. Rosete*,[4] the High Court eloquently stated that, "[t]he Court will not shirk from its responsibility of imposing discipline upon erring members of the bench. At the same time, however, the Court should not hesitate to shield them from unfounded suits that only serve to disrupt rather than promote the orderly administration of justice. This Court could not be the instrument that would destroy the reputation of any member of the bench, by pronouncing guilt on mere speculation."[5]

ACCORDINGLY, the administrative charges are *DISMISSED.*

SO ORDERED.

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

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[3] *Cordero v. Enriquez,* 467 Phil. 611, 620 (2004).

[4] A.M. No. MTJ-04-1538, October 22, 2004, 441 SCRA 150.

[5] *Ong v. Rosete, id.* at 160-161.

THIRD DIVISION

[A.M. No. RTJ-08-2108. November 25, 2008]
(Formerly OCA I.P.I. No. 08-2-93-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **Judge ORLANDO P. DOYON, Branch Clerk of Court, Atty. CUSTODIO B. COMPENDIO, JR., and Clerks-in-Charge NOEL B. ALBIVA and JEANNETTE T. SAYAS, all of the Regional Trial Court, Branch 34, Cabadbaran, Agusan del Norte,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PUBLIC OFFICERS; JUDGES; UNDUE DELAY IN RENDERING DECISIONS AND RESOLUTIONS CONSTITUTES GROSS INEFFICIENCY AND WARRANTS IMPOSITION OF ADMINISTRATIVE SANCTION.— As correctly found by the OCA, Judge Doyon is guilty of undue delay in rendering decisions and resolutions. The Constitution requires trial judges to dispose of all cases or matters within three months. The New Code of Judicial Conduct also provides in Canon 6, Section 5 thereof that judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. The reason for this rule is that justice delayed is justice denied. Undue delay in the disposition of cases results in a denial of justice which, in turn, brings the courts into disrepute and ultimately erodes the faith and confidence of the public in the judiciary. Thus, the failure of judges to render judgments within the required period constitutes gross inefficiency and warrants the imposition of administrative sanction.

2. ID.; ID.; ID.; ID.; A JUDGE CANNOT TAKE REFUGE BEHIND THE INEFFICIENCY OR MISMANAGEMENT OF HIS PERSONNEL; A JUDGE IS RESPONSIBLE FOR MANAGING HIS COURT EFFICIENTLY TO ENSURE PROMPT DELIVERY OF COURT SERVICES.— In this case, Judge Doyon failed to resolve and decide within the

reglementary period nine motions and six cases submitted for decision. While the OCA found that he failed to decide SP. 43-04, a copy of an Order which was belatedly filed shows that the case was resolved on April 21, 2005. Judge Doyon's explanation that the undue delay was caused by the failure of Atty. Compendio to apprise him of the cases or incidents pending resolution cannot exculpate him from liability. A judge cannot take refuge behind the inefficiency or mismanagement of his personnel. He is responsible, not only for the dispensation of justice but also for managing his court efficiently to ensure the prompt delivery of court services. Since he is the one directly responsible for the proper discharge of his official functions, he should know the cases submitted to him for decision, especially those pending for more than 90 days.

3. ID.; ID.; ID.; ID.; RESPONDENT'S CLAIM THAT THE ADMINISTRATIVE CASE WAS FILED AFTER HIS COMPULSORY RETIREMENT CANNOT FREE HIM FROM LIABILITY.— Judge Doyon's claim that the administrative case was filed after his compulsory retirement also cannot free him from liability. In *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 54, Lapu-Lapu City* and *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*, audit investigations were conducted before the judges' compulsory retirements. However the cases were treated as administrative complaints only after the judges had compulsorily retired. The Court still held them liable for undue delay and imposed on them fines, which were deducted from their retirement benefits.

4. ID.; ID.; CLERKS OF COURT; RESPONDENT BRANCH CLERK OF COURT IS LIABLE FOR NEGLECT OF DUTY FOR HIS FAILURE TO ASSIST HIS PRESIDING JUDGE IN THE MANAGEMENT OF THE CALENDAR OF THE COURT AND ALL OTHER MATTERS NOT INVOLVING THE EXERCISE OF DISCRETION OR JUDGMENT OF CASES.— As to Atty. Compendio, the Court finds him liable for simple neglect of duty. As branch clerk of court, his duty is to assist his presiding judge in the management of the calendar of the court and all other matters not involving the exercise

of discretion or judgment of cases. Clerks of court must diligently supervise and manage court dockets and records. Their duties include conducting periodic docket inventory and ensuring that the records of each case are accounted for. They share in the duty to efficiently manage the court system; thus, they are expected to act promptly on their assigned tasks to prevent the clogging of cases in court and to assist in the administration of justice without delay. While they are not guardians of judges' responsibilities, they are expected to assist in the speedy disposition of justice. Clerks of Court also exercise general supervision over all court personnel, enforce regulations, initiate investigations of erring employees and recommend appropriate action to the judge. In this case, Judge Doyon claims that he incurred delay in resolving cases and incidents due to the failure of Atty. Compendio to properly apprise him of the status of their court's cases. The judicial audit team also found that the court's dockets were not updated; the bundy clock was not immediately installed and used; there were sums of money that were not immediately deposited in violation of A.C. No. 3-2000; the certificates of arraignment were not signed by the accused or by their counsel contrary to the form provided for in the 2002 Manual for Clerks of Court; and, Clerks Sayas and Albiva failed to immediately comply with the OCA's memoranda despite clear instructions to Atty. Compendio to ensure such compliance.

5. ID.; ID.; COURT PERSONNEL; CLERKS-IN-CHARGE; FAILURE TO IMMEDIATELY COMPLY WITH THE OFFICE OF THE COURT ADMINISTRATOR'S (OCA) MEMORANDA CONSTITUTES NEGLECT OF DUTY.— As to Clerks-in-Charge Sayas and Albiva, the Court finds unbelievable their claim that they merely misunderstood the OCA's memoranda; thus, their failure to immediately comply with the same. Memorandum dated May 30, 2005 is short, simple and could easily be understood by any ordinary court employee. And if it were true that they misunderstood the same, their receipt of the January 2, 2007 Memorandum as well as the third memorandum dated October 30, 2007, which called their attention to their failure to comply with the first memorandum,

should have prompted them to seek help in understanding the directives. They did not make any effort in clarifying the matter, however, and it was only in May 2008 that they approached their new Legal Researcher who explained to them that what was required of them by the Court was the updating of entries in their respective docket books and the submission of proof of compliance therewith; and that what they repeatedly sent to the OCA, *i.e.*, the semi-annual docket inventory reports, were not the ones required of them. In view of these circumstances, the Court finds them guilty of simple neglect of duty, which is defined as the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. It carries the penalty of suspension of one month and one day to six months for the first offense and dismissal for the second. Because of the fact that this is their first administrative infraction since they entered the judiciary in March 1998, which serve to mitigate their penalty, the recommended penalty of ₱5,000.00 fine to be imposed on each of them is proper.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

A judicial audit was conducted on April 29, 2005 at the Regional Trial Court (RTC), Branch 34, Cabadbaran, Agusan del Norte presided by Judge Orlando F. Doyon (Judge Doyon) who was to retire on January 11, 2006 at the age of 70.

In a Memorandum dated May 30, 2005, the audit team reported that there were six civil cases[1] and nine criminal cases[2] where no action was made for a considerable length of time; three

[1] Case Nos. 02-2005, "*Sps. Emboy v. Municipal Government of Santiago*"; 03-2005, "*Enong v. Burias*"; 24-2002 "*DBP v. Sps. Cabrera*"; 4676 "*J. Dejolde v. Heirs of R. Cebrina*"; SP 19-04, "Deodel Butuan Montoc"; SP 31-04 "*C. Jackson v. A. Jackson*."

[2] Case Nos. 2003-77, "*People of the Philippines v. Maglasang*"; 03-110 "*People of the Philippines v. G. Orteza, J. Orteza*"; 03-154 "*People of the Philippines v. Coquit";* 2004-84, "*People of the Philippines v. Basig*"; 03-45, "*People of the Philippines v. V. Aguillon*"; 02-76 "*People of the*

cases[3] had pending incidents which were already beyond the period to resolve; eight cases[4] were already beyond the reglementary period to decide; six cases[5] had pending incidents and two cases[6] were due for decision but were still within the reglementary period.[7] The audit team also noted that there was no bundy clock in the court even though one was delivered a year before; the criminal and civil docket books were not updated; certificates of arraignment were not signed by the accused or his counsel in cases where the accused already entered his plea; and there were undeposited collections in the sum of ₱48,000.37[8] in violation of Administrative Circular (A.C.) No. 3-2000[9] which states that collections amounting to ₱500.00 should be deposited immediately.[10]

Based on said findings, then Deputy Court Administrator (DCA) (now retired Court Administrator) Christopher O. Lock issued three memoranda, all dated May 30, 2005: (1) to Judge

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Philippines v. G.Sudario"; 2004-116 "*People of the Philippines v. Santisas*"; 2003-99 "*People of the Philippines v. Cabugaten*"; 00-19 "*People of the Philippines. v. T. Martinez.*"

[3] Case Nos. 2004-54, "*Pp. v. Ibay*"; 07-2003 "*Lor v. Edan*"; 6-2001 "*Heirs of J. Galve v. Heirs of P. Cervantes, Jr.*"

[4] Case Nos. 2000-46 "*People of the Philippines v. Delquime*"; Sp. Civil 03 "*Heirs of Ramo v. Heirs of Ramo*"; 2000-01 "*Morada et al. v. Cosina*"; 998 "*Udarbe v. Ybaya et al*"; Sp. Proc. 14-03 "Sps. Sanchez"; 18-2003 "*C. Loon v. F. Buyser-Loon*"; 01-03 "*Napuli v. Napuli*"; SP 07-04 "Sps. Aquino."

[5] Case Nos. 2004-130 "*People of the Philippines. v. Saunay*"; 99-11, 9912 "*People of the Philippines. v. C. Bihag, F. Homido, N. Udarbe, P. Arienza, S. Curato, E. Amarte*"; 11-2003 "*Mercado v. Bansas Sr. et al.*"; 04-2004 "*Heirs of S. Junio v. Junio et al.*"; 6-2002 "*Engr. L. Ballesteros v. G. Aguisola, et al.*" 22-2002 "*Rosales v. Rosales.*"

[6] Case Nos. 7440, "*People of the Philippines v. Endoy, A. Pasciencia*"; SP 43-04 "C. Bihag."

[7] *Rollo,* pp. 1-5.

[8] See also *Rollo,* pp. 17, 20.

[9] Dated June 15, 2000, "Re: Guidelines in the Allocation of the Legal Fees Collected Under Rule 141 of the Rules of Court, as Amended, Between the General Fund and the Judiciary Development Fund."

[10] *Rollo,* p. 6.

Doyon directing him to take appropriate action on the cases where no action was taken for a considerable length of time; resolve with dispatch pending incidents and cases that were already beyond the period to resolve; decide within the reglementary period the cases already submitted for decision; and submit copies of the resolutions/decisions to the Office of the Court Administrator (OCA);[11] (2) to Atty. Custodio B. Compendio Jr., Clerk of Court VI, directing him to apprise Judge Doyon regarding cases submitted for resolution/decision and those requiring immediate action; order and supervise the updating of docket books; attach certificates of arraignment duly signed by the accused and his counsel; explain why the bundy clock was not installed and why he and the staff did not comply with OCA Circular No. 7-2003 on the mandatory use of bundy clocks in all courts; inform the Court whether the amount of ₱48,000.37 was immediately deposited, furnish the OCA documents showing the same, and explain why no disciplinary sanction should be imposed on him for failure to strictly comply with A.C. No. 3-2000;[12] (3) to Noel B. Albiva and Jeanette T. Sayas, Clerks-in-Charge of criminal and civil cases, directing them to update the entries in their docket books and submit proof of compliance within 60 days from notice with a warning that continued failure to do the same may prove valid grounds for the imposition of administrative sanction.[13]

Atty. Compendio submitted his compliance dated August 22, 2005 stating that as soon as he received the May 30, 2005 Memorandum, he apprised Judge Doyon of the cases submitted for resolution/decision and is continuously doing so; he ordered and personally supervised the updating of their docket books; the bundy clock was not installed right away because nobody in their office was capable of installing it, and until the arrival of the bundy cards, they kept it in a safe place to avoid damage; eventually they were able to set it up and have used the same since June 1, 2005; they have already deposited the amount of

[11] *Id.* at 12-16.

[12] *Rollo*, pp. 17-18.

[13] *Id.* at 19.

₱48,000.37 and will send the supporting documents within one week; the failure to immediately deposit said amount was due to the heavy work load of Sayas; however, necessary measures were already undertaken in order to comply with A.C. No. 3-2000; they did not require the accused and their counsels to sign the certificates of arraignment because such was not required by the Rules of Court; he requests clarification on the matter and promises to comply with further directives of the OCA.[14]

Judge Doyon retired from the service on January 11, 2006.[15]

In a Memorandum to Atty. Compendio dated January 2, 2007, DCA Reuben P. De la Cruz (DCA Dela Cruz) reminded him to be cognizant of A.C. No. 3-2000 as amended;[16] he should be familiar with the provisions and forms provided in the 2002 Revised Manual for Clerks of Court; and, he should inform the OCA whether Judge Doyon has acted on the cases subject of Memorandum dated May 30, 2005.[17]

Atty. Elizabeth S. Tanchoco, head of the audit team, reported[18] that the form for certificate of arraignment as provided in the 2002 Revised Manual for Clerks of Court had blanks provided for the signature of the accused and his/her counsel.[19]

DCA De la Cruz also sent a Memorandum to Albiva and Sayas dated January 2, 2007 directing them to show cause why they should not be disciplinarily charged for their failure to comply with the May 30, 2005 Memorandum.[20]

In a letter dated January 19, 2007, Atty. Compendio informed DCA De la Cruz that Judge Doyon already acted upon the cases subject of the May 30, 2005 memorandum except Civil Cases

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

[15] See *Rollo*, p. 25.

[16] By Administrative Circular No. 35-2004 dated August 20, 2004.

[17] *Rollo*, p. 31.

[18] Memorandum dated January 2, 2007.

[19] *Rollo*, p. 29.

[20] *Id.* at 32.

Nos. 4676 and 6-2001 which he already reminded Judge Doyon about.[21]

Atty. Compendio resigned on September 15, 2007.[22]

DCA De La Cruz issued a Memorandum dated October 30, 2007 to Albiva and Sayas stating that since both of them had not yet complied with the directive of the OCA in the Memorandum dated January 2, 2007, they were given 10 days to comply with the same, otherwise, the OCA would be constrained to initiate appropriate administrative proceedings against them.[23] In a Memorandum of even date, DCA De la Cruz also directed Atty. Compendio to furnish the OCA copies of the orders, resolutions and decisions mentioned in his January 19, 2007 letter and inform the OCA if A.C. No. 3-2000 had been complied with.[24]

Judge Doyon sent a letter dated March 18, 2007 to DCA De la Cruz attaching copies of resolutions and orders corresponding to the cases mentioned in the May 30, 2005 Memorandum.[25]

In a Memorandum dated February 12, 2008, the OCA through Court Administrator Zenaida N. Elepaño recommended that:

1. Judge Orlando P. Doyon be ordered to pay a FINE of FIFTY THOUSAND PESOS (₱50,000.00) PESOS to be deducted from his retirement benefits;

2. Branch Clerk of Court, Atty. Custodio B. Compendio Jr. be FINED the amount of FIVE THOUSAND (₱5,000.00) PESOS for neglect of duty and inefficiency with a WARNING that a

[21] *Id.* at b33.

[22] *Id.* at 224.

[23] *Id.* at 38.

[24] *Rollo*, p. 39. In a Memorandum dated October 30, 2007, DCA De la Cruz furnished Judge Dax G. Xenos, who succeeded Judge Doyon as Presiding Judge of RTC Br. 34, a copy of the Memorandum dated January 2, 2007 which the OCA issued to Atty. Compendio, Albiva and Sayas, since the OCA had not yet received the compliances of the three personnel regarding the said memo.

[25] *Id.* at 42-199.

repetition of the same infractions in the future would be dealt with more severely; and

3. Clerks-in-Charge Mr. Albiva and Ms. Sayas be each FINED the amount of FIVE THOUSAND (₱5,000.00) PESOS for a clear and continued disregard to lawful directives of the Office of the Court Administrator.[26]

The OCA in said memorandum found that Judge Doyon failed to resolve within the reglementary period nine motions submitted for resolution,[27] incurred delay in deciding six cases submitted for decision,[28] failed to decide SP. 43-04 which was submitted for decision as early as July 18, 2005 and no action was taken in Crim. Case No. 2004-116 wherein a warrant of arrest was issued on August 16, 2004.[29]

The OCA also found that Atty. Compendio was negligent in supervising court dockets and assisting Judge Doyon in the preparation and submission of the latter's compliance; that he failed to furnish the Court copies of the decisions in SP Civil Case No. 03, "*Heirs of Ramo v. Heirs of Ramo*" and Civil Case No. 2000-01, "*Morada v. Cosina*" and merely provided a copy of the transmittal letters to the Court of Appeals (CA) without providing information whether these cases were decided within the required period; and that although he stated that he ordered the updating of the docket books of Albiva and Sayas, the compliance of the two still remained wanting.[30] The OCA likewise found that Albiva and Sayas failed to submit their compliance even though memoranda dated May 30, 2005, January 2, 2007 and October 30, 2007 contained warnings on

[26] *Id.* at 210-211.

[27] Case Nos. 2004-130 (delay of 19 days); 99-11 &99-12 (224 days); 2004-54 (148 days); 11-2003 (221 days); 6-2002 (84 days); 22-2002 (201 days); 07-2003 (63 days) and 6-2001 (425 days), *id.* at 206-207.

[28] Case Nos. 7440 (delay of 202 days); 998 (270 days); SP Proc. 14-03 (100 days); 18-2003 (171 days); 01-03 (57 days), and SP 07-04 (8 days), *id.* at 207-208.

[29] *Id.* at 208.

[30] *Rollo*, p. 210.

the possible imposition of administrative sanctions on the continued non-compliance with the same.[31]

The Court noted the said Memorandum and redocketed the instant case as a regular administrative matter in the Resolution dated March 19, 2008.[32] In the Resolution dated August 6, 2008, the Court directed Judge Doyon, Atty. Compendio and Clerks Sayas and Albiva to explain their infractions as specified in the OCA Memorandum dated February 12, 2008.[33]

Judge Doyon submitted a Manifestation dated September 2, 2008 stating that: the instant case was filed after his compulsory retirement; he received a copy of the charges only on August 29, 2008; on March 18, 2007, he submitted copies of decisions, resolutions and orders of cases to DCA De la Cruz; if some of the decisions, resolutions and orders were beyond the reglementary period, it was because Clerk of Court Compendio, who had already resigned, failed to apprise him of cases for decision and/or resolution; if his inaction constituted an infraction of rules or regulations of the court, he was willing to be fined in an amount deductible from his retirement benefits; he prayed that this case be finally resolved so that he could be given his retirement benefits and he could pay his mortgages.[34]

Sayas and Albiva submitted a letter, with a 1st Indorsement dated June 5, 2008 by the Presiding Judge of the RTC Branch 34, Dax Gonzaga Xenos,[35] stating that they immediately complied with the memoranda of the Court; however, they inadvertently failed to manifest the same to the OCA for which they sincerely apologized. Attached to said letter was a certification issued by Clerk of Court Atty. Fernando R. Fudalan, Jr., stating that the entries in the court's dockets were updated as of the date of said letter, June 5, 2005. They also manifested that in view of

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[31] *Id.*

[32] *Id.* at 217.

[33] *Id.* at 219-222.

[34] *Rollo*, pp. 360-361.

[35] *Id.* at 227-229.

the resignation of Atty. Compendio effective September 2007, they attached, in his behalf, certified true copies of the decisions and orders issued by Judge Doyon as required of him, including the orders in SP. 43-04 and Crim. Case No. 2004-116. They prayed that this letter and its attachments be considered as substantial compliance with the Court's memoranda and that the administrative case against them be dropped.[36]

Albiva and Sayas also submitted a Comment[37] on the August 29, 2008 Resolution of the Court, stating that they immediately endeavored to comply in good faith with the same by updating and preparing the court's semi-annual docket inventory reports covering the required period; however, they finished the reports within 6 months, instead of the 2-month period given by the Court; they attached the official receipt from the LBC dated January 14, 2006, the date the docket inventory reports were sent to the OCA; as to the Memorandum dated January 2, 2007, they sent a letter-compliance dated January 19, 2007 to the DCA manifesting in good faith their long-time compliance with the May 30, 2005 Memorandum; anent the Memorandum dated October 30, 2007, they presumed that compliance with the same was already retroactively carried over in their letter dated January 2, 2007; in Judge Xenos's letter to the DCA dated February 4, 2008, they again attached their January 19, 2007 letter attesting compliance; after receiving the March 19, 2008[38] Resolution of the Court, Siwa started to experience pregnancy bleedings and eventually had a miscarriage on June 6, 2008, a day after they finished gathering documents to be attached to their letter; in May 2008, they approached their new Legal Researcher who explained to them that what was required of them by the Court was the updating of entries in their respective docket books; it was only then that they realized that they misunderstood the memoranda and that what

[36] *Id.* at 229-230, 257-260.

[37] Dated September 2, 2008.

[38] Which resolved to note the Memorandum dated February 12, 2008 of the OCA and redocket the administrative case as a regular administrative matter.

they repeatedly sent as compliance to the OCA, *i.e.*, the semi-annual docket inventory reports, were not the ones required of them; they humbly submit that at the time they received the memorandum dated May 30, 2005, they had already updated their docket books in compliance with the judicial audit in April 2005; what remained was the submission to the OCA of docket inventory reports covering the period of July 2003 to June 2005; realizing their mistake, they immediately requested their Clerk of Court for a certification attesting to the fact that their docket books are updated up to the present time. They pray for mercy in the consideration of their case since they are breadwinners of their respective families.[39]

The Court agrees with the OCA's findings except as to the recommended penalty for Judge Doyon.

As correctly found by the OCA, Judge Doyon is guilty of undue delay in rendering decisions and resolutions.

The Constitution requires trial judges to dispose of all cases or matters within three months.[40] The New Code of Judicial Conduct[41] also provides in Canon 6, Section 5 thereof that judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

The reason for this rule is that justice delayed is justice denied.[42] Undue delay in the disposition of cases results in a denial of justice which, in turn, brings the courts into disrepute and ultimately erodes the faith and confidence of the public in the judiciary.[43] Thus, the failure of judges to render judgments

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[39] *Rollo*, pp. 365-368.

[40] Art. VIII, Section 15(1) of the 1987 Constitution.

[41] A.M. No. 03-05-01-SC, which took effect on June 1, 2004.

[42] *Re: Cases Left Undecided by Retired Judge Benjamin A. Bongolan of the Regional Trial Court, Branch 2, Bangued, Abra*, A.M. No. 98-12-392-RTC, October 20, 2005, 473 SCRA 428.

[43] *Id.* at 432.

within the required period constitutes gross inefficiency and warrants the imposition of administrative sanction.[44]

In this case, Judge Doyon failed to resolve and decide within the reglementary period nine motions and six cases submitted for decision.[45] While the OCA found that he failed to decide SP. 43-04, a copy of an Order which was belatedly filed shows that the case was resolved on April 21, 2005.[46]

Judge Doyon's explanation that the undue delay was caused by the failure of Atty. Compendio to apprise him of the cases or incidents pending resolution cannot exculpate him from liability. A judge cannot take refuge behind the inefficiency or mismanagement of his personnel.[47] He is responsible, not only for the dispensation of justice but also for managing his court efficiently to ensure the prompt delivery of court services.[48] Since he is the one directly responsible for the proper discharge of his official functions, he should know the cases submitted to him for decision, especially those pending for more than 90 days.[49]

Judge Doyon's claim that the administrative case was filed after his compulsory retirement also cannot free him from liability. In *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 54, Lapu-Lapu City*[50] and *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*,[51] audit investigations were conducted before the judges' compulsory

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[44] *Id.*

[45] *Rollo,* p. 208.

[46] *Id.* at 257-259. Parenthetically, Crim. Case No. 2004-116 which the OCA found had no action since 2004, was archived per Order dated December 13, 2006 issued by Judge Francisco F. Macalang, see *rollo*, p. 260.

[47] *Visbal v. Sescon*, A.M. No. RTJ-04-1890, October 11, 2005, 472 SCRA 233.

[48] *Id.* at 238-239.

[49] *Id.* at 439.

[50] A.M. No. 05-8-539, November 11, 2005, 474 SCRA 455.

[51] A.M. No. 05-2-101-RTC, April 26, 2005, 457 SCRA 1.

retirements. However the cases were treated as administrative complaints only after the judges had compulsorily retired. The Court still held them liable for undue delay and imposed on them fines, which were deducted from their retirement benefits.[52]

Undue delay in rendering a decision or order is a less serious charge under A.M. No. 01-8-10-SC and is punishable by any of the following sanctions: (1) suspension from office without salary and other benefits for not less than one nor more than three months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

Considering however the number of resolutions and decisions involved in this case, and considering further that this is his first administrative infraction in his 11 years of service in the judiciary,[53] the Court finds that a fine of ₱20,000.00 to be deducted from his retirement benefits is in order.[54]

As to Atty. Compendio, the Court finds him liable for simple neglect of duty. As branch clerk of court, his duty is to assist his presiding judge in the management of the calendar of the court and all other matters not involving the exercise of discretion or judgment of cases.[55] Clerks of court must diligently supervise and manage court dockets and records.[56] Their duties include conducting periodic docket inventory and ensuring that the records of each case are accounted for.[57] They share in the duty to

[52] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 54, Lapu-Lapu City*, *supra* note 50; *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*, *supra* note 51.

[53] Having entered the judiciary on November 10, 1997 per Records Division, OCA-OAS.

[54] See *Office of the Court Administrator v. Bagundang*, A.M. No. RTJ-05-1937**,** January 22, 2008, 542 SCRA 153; *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 136, Makati City*, A.M. No. 00-7-320-RTC, November 17, 2004, 442 SCRA 414.

[55] *Bernaldez v. Avelino*, A.M. No. MTJ-07-1672, July 9, 2007, 527 SCRA 156.

[56] *Id.* at 21.

[57] *Office of the Court Administrator v. Go*, A.M. No. MTJ-07-1667, September 27, 2007, 534 SCRA 156.

efficiently manage the court system; thus, they are expected to act promptly on their assigned tasks to prevent the clogging of cases in court and to assist in the administration of justice without delay.[58] While they are not guardians of judges' responsibilities, they are expected to assist in the speedy disposition of justice.[59] Clerks of Court also exercise general supervision over all court personnel, enforce regulations, initiate investigations of erring employees and recommend appropriate action to the judge.[60]

In this case, Judge Doyon claims that he incurred delay in resolving cases and incidents due to the failure of Atty. Compendio to properly apprise him of the status of their court's cases. The judicial audit team also found that the court's dockets were not updated; the bundy clock was not immediately installed and used; there were sums of money that were not immediately deposited in violation of A. C. No. 3-2000; the certificates of arraignment were not signed by the accused or by their counsel contrary to the form provided for in the 2002 Manual for Clerks of Court; and, Clerks Sayas and Albiva failed to immediately comply with the OCA's memoranda despite clear instructions to Atty. Compendio to ensure such compliance.

Simple neglect of duty, under the Uniform Rules on Administrative Cases in the Civil Service, Civil Service Commission Memorandum Circular No. 19, s. 1999, Rule IV, Section 52, B (1) carries the penalty of suspension of one month and one day to six months for the first offense and dismissal for the second offense. The fact that Judge Doyon has resigned from office does not warrant the dismissal of the administrative case against him while he was still in the service and does not preclude the finding of any administrative liability to which he shall still be answerable.[61] That this is his first offense, however, since he started service in the judiciary on July 2, 1998, should

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[58] *Bernaldez v. Avelino, supra* note 55.

[59] *Id.*

[60] *Office of the Court Administrator v. Trocino,* A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262.

[61] *Baquerfo v. Sanchez,* A.M. No. P-05-1974, April 6, 2005, 455 SCRA 13.

be considered in his favor.[62] Under the circumstances, a fine in the amount of ₱5,000.00, as recommended by the OCA, is reasonable.[63]

As to Clerks-in-Charge Sayas and Albiva, the Court finds unbelievable their claim that they merely misunderstood the OCA's memoranda; thus, their failure to immediately comply with the same. Memorandum dated May 30, 2005 is short, simple and could easily be understood by any ordinary court employee.[64] And if it were true that they misunderstood the same, their receipt of the January 2, 2007 Memorandum[65] as well as the third memorandum dated October 30, 2007,[66] which called their attention to their failure to comply with the first memorandum, should have prompted them to seek help in understanding the directives. They did not make any effort in clarifying the matter, however, and it was only in May 2008 that they approached their new Legal Researcher who explained to them that what was required of them by the Court was the updating of entries in their respective docket books and the submission of proof of compliance therewith; and that what they repeatedly sent to the OCA, *i.e.*, the semi-annual docket inventory reports, were not the ones required of them.

In view of these circumstances, the Court finds them guilty of simple neglect of duty, which is defined as the failure to give

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[62] Per Records Division, *OCA-OAS; Bernaldez v. Avelino*, *supra* note 55.

[63] See *Office of the Court Administrator v. Go*, *supra* note 57; *Office of the Court Administrator v. Trocino*, *supra* note 60.

[64] The Memorandum reads:

"Anent the Report of the Team which conducted the judicial audit and physical inventory of cases on April 29, 2005 at that court, you are hereby DIRECTED to UPDATE the entries in the respective docket books assigned to you and SUBMIT PROOF of your compliance within sixty (60) days from notice hereof, with WARNING that continued failure to do the same may prove valid grounds for the imposition of administrative sanction." *rollo*, p. 19.

[65] *Id.* at 32.

[66] *Id.* at 38.

attention to a task, or the disregard of a duty due to carelessness or indifference.[67] It carries the penalty of suspension of one month and one day to six months for the first offense and dismissal for the second.[68] Because of the fact that this is their first administrative infraction since they entered the judiciary in March 1998,[69] which serve to mitigate their penalty, the recommended penalty of ₱5,000.00 fine to be imposed on each of them is proper.

WHEREFORE, the Court finds *Judge Orlando F. Doyon* of the Regional Trial Court, Branch 34, Cabadbaran, Agusan del Norte, *GUILTY* of undue delay in rendering decisions and orders for which he is *FINED ₱20,000.00* to be deducted from his retirement benefits. *Atty. Custodio B. Compendio, Jr.,* Clerk of Court VI of the same branch is *GUILTY* of simple neglect of duty for which he is *FINED ₱5,000.00* to be taken from whatever sums may be due him as retirement, leaves or other benefits. Clerks-in-Charge *Noel B. Albiva and Jeanette T. Sayas* are *GUILTY* of simple neglect of duty and *FINED ₱5,000.00 each* with *WARNING* that the commission of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be attached to all of their service records.

SO ORDERED.

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

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[67] *Office of the Court Administrator v. Garcia-Rañoco,* A.M. No. P-03-1717, March 6, 2008.

[68] Uniform Rules on Administrative Cases in the Civil Service, Civil Service Commission Memorandum Circular No. 19, s. 1999, Rule IV, Section 52, B (1).

[69] March 2, 1998 for Albiva and March 16, 1998 for Sayas, Per Records Division, OCA-OAS.

THIRD DIVISION

[G.R. No. 164510. November 25, 2008]

SPOUSES SANTIAGO and RUFINA TANCHAN, *petitioners, vs.* **ALLIED BANKING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; PETITIONER'S OPPOSITION TO THE WRIT OF THE PRELIMINARY ATTACHMENT WAS TIMELY FILED.— Under Section 13, Rule 57 of the Rules of Court, a party whose property has been ordered attached may file a motion "with the court in which the action is pending" for the discharge of the attachment on the ground that it has been improperly issued or enforced. In addition, said party may file, under Section 20, Rule 57, a claim for damages on account of improper attachment within the following periods: Sec. 20. *Claim for damages on account of improper, irregular or excessive attachment.* — An application for damages on account of improper, irregular or excessive attachment **must be filed before the trial or before appeal is perfected or before the judgment becomes executory**, with due notice to the attaching obligee or his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case. xxx Records reveal that the RTC issued the writ of preliminary attachment on November 3, 1998, and as early as March 23, 1999, in their Amended Answer with Counterclaim, petitioners already sought the discharge of the writ. Moreover, after the RTC rendered its Decision on August 3, 2001 but before appeal therefrom was perfected, petitioners filed on August 23, 2001 a Motion to Lift the Writ of Preliminary Attachment, reiterating their objection to the writ and seeking payment of damages for its wrongful issuance. Clearly, petitioners' opposition to the writ was timely.

2. ID.; ID.; ID.; NO FACTUAL BASIS FOR THE ISSUANCE OF WRIT OF PRELIMINARY ATTACHMENT AGAINST THE PROPERTIES OF PETITIONERS.— A writ of preliminary attachment is too harsh a provisional remedy to be issued based

on mere abstractions of fraud. Rather, the rules require that for the writ to issue, there must be a recitation of clear and concrete factual circumstances manifesting that the debtor practiced fraud upon the creditor at the time of the execution of their agreement in that said debtor had a pre-conceived plan or intention not to pay the creditor. Being a state of mind, fraud cannot be merely inferred from a bare allegation of non-payment of debt or non-performance of obligation. As shown in *Ng Wee*, the requirement becomes all the more stringent when the application for preliminary attachment is directed against a defendant officer of a defendant corporation, for it will not be inferred from the affiliation of one to the other that the officer participated in or facilitated in any fraudulent practice attributed to the corporation. There must be evidence clear and convincing that the officer committed a fraud or connived with the corporation to commit a fraud; only then may the properties of said officer, along with those of the corporation, be held under a writ of preliminary attachment. There is every reason to extend the foregoing rule, by analogy, to a mere surety of the defendant. A surety's involvement is marginal to the principal agreement between the defendant and the plaintiff; hence, in order for the surety to be subject to a proceeding for issuance of a writ of preliminary attachment, it must be shown that said surety participated in or facilitated the fraudulent practice of the defendant, such as by offering a security solely to induce the plaintiff to enter into the agreement with the defendant. There is neither allegation nor innuendo in the Complaint of respondent or the Affidavit of Elumbaring that petitioners as sureties or officers of Foremost participated in or facilitated the commission of fraud by Foremost, *et al*. against respondent. In fact, there is no mention of petitioners, much less a recital of their role or influence in the execution of the loan agreements. The RTC cited an allegation that petitioners are disposing/concealing their properties with intent to defraud respondent, but there is no hint of such scheme in the five paragraphs of the Complaint or in the four corners of the Affidavit of Elumbaring. All that is alleged is that Foremost obtained loans from respondent but failed to pay the same, but as the Court has repeatedly held, no fraud can be inferred from a mere failure to pay a loan. In fine, there was no factual basis for the issuance of a writ of preliminary attachment against the properties of petitioners.

The immediate dissolution of the writ is called for.

3. ID.; ID.; ID.; ABSENT EVIDENCE OF MALICE, THE ATTACHING PARTY CANNOT BE HELD LIABLE FOR MORAL DAMAGES; CASE AT BAR.— In so ruling, however, the Court does not go so far as to grant petitioners' claim for moral damages. A wrongful attachment may give rise to liability for moral damages but evidence must be adduced not only of the torment and humiliation brought upon the defendant by the attaching party but also of the latter's bad faith or malice in causing the wrongful attachment, such as evidence that the latter deliberately made false statements in its application for attachment. Absent such evidence of malice, the attaching party cannot be held liable for moral damages. In the present case, petitioners cite the allegations made by respondent in its application for attachment as evidence of bad faith. However, the allegations in question contain nothing but the stark truth that Foremost obtained loans and that it failed to pay. The Court fails to see any malice in such bare allegations as would make respondent liable to petitioners for moral damages.

4. ID.; ID.; ID.; IT IS CLEAR FROM THE ALLEGATIONS IN THE COMPLAINT THAT WHAT RESPONDENT SOUGHT WAS THE PAYMENT OF THE DEFICIENCY AMOUNT UNDER THE SUBJECT PROMISSORY NOTES.— There is no question that a mortgage creditor has a single cause of action against a mortgagor debtor, which is to recover the debt; but it has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security. An election of the first bars recourse to the second; otherwise, there would be multiplicity of suits in which the debtor would be tossed from one venue to another, depending on the location of the mortgaged properties and the residence of the parties. On the other hand, a creditor who elects to foreclose on the mortgage may yet file an independent civil action for recovery of whatever deficiency may remain in the outstanding obligation of the debtor, after deducting the price obtained in the sale of the mortgaged properties at public auction. The complaint, though, must specifically allege that what is being sought is the recovery of the deficiency, or that in the pre-trial, such claim be raised as an issue. Contrary to petitioners' argument, it is clear from

the allegations in the Complaint that what respondent sought was the payment of the deficiency amount under the subject promissory notes. In particular, while the Promissory Note, Exhibit "H", is for the amount of Php16,500,000.00, what respondent sought to recover was only Php7,582,945.85, consistent with the fact that part of said promissory note has been satisfied from the proceeds of the extra-judicial foreclosure. While the exact phrase "deficiency account" is not employed in the Complaint, the intention of respondent to recover the same is borne out by its allegations. More importantly, in the Pre-trial Order issued by the RTC, the right of respondent to recover the deficiency account under the subject promissory notes was raised as a specific issue.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.

Francisco Gerardo C. Llamas and Mary Jane E. Misoles for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

By way of Petition for Review under Rule 45 of the Rules of Court, spouses Santiago and Rufina Tanchan (petitioners) seek the modification of the June 15, 2004 Decision[1] of the Court of Appeals (CA) which affirmed the August 3, 2001 Decision[2] and August 8, 2002 Order[3] of Branch 137, Regional Trial Court (RTC), Makati in Civil Case No. 98-2468.[4]

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[1] Penned by Associate Justice Mariano C. del Castillo, and concurred in by Associate Justices Roberto A. Barrios and Magdangal M. de Leon, *rollo*, p. 41.

[2] Records, p. 347.

[3] *Id.* at 409.

[4] Entitled, "Allied Banking Corporation, *Plaintiff-Appellee versus* Cebu Foremost Construction, Inc., Santiago Tanchan, Jr., Rufina C. Tanchan, Henry Tanchan and Ma. Julie Ann Tanchan, *Defendants-Appellants*."

The relevant facts are of record.

For value received, Cebu Foremost Construction, Inc. (Foremost), through its Chairman and President Henry Tanchan (Henry) and his spouse, Vice-President and Treasurer Ma. Julie Ann Tanchan (Ma. Julie Ann) executed and delivered to Allied Banking Corporation (respondent) seven US$ promissory notes,[5] including Promissory Note No. 0051-97-03696[6] (**Exhibit "G"**) for US$379,000.00, at 9.50% interest rate per annum, due on February 9, 1998.

Foremost also issued to respondent several Philippine peso promissory notes[7] covering various loans in the aggregate amount of Php28,900,000.00, including Promissory Note No. 0051-97-03688 (**Exhibit "H"**) for Php16,500,000.00, at an interest rate of 14.5% per annum, due on February 9, 1998.[8]

All the foregoing promissory notes are secured by two Continuing Guaranty/ Comprehensive Surety Agreements (CG/ CSA) executed in the personal capacities of spouses Henry and Ma. Julie Ann (Spouses Tanchan) and Henry's brother, herein petitioner Santiago Tanchan (Santiago),[9] for himself and as attorney-in-fact of his wife and co-petitioner Rufina Tanchan (Rufina) under a Special Power of Attorney, dated April 30, 1993, which grants Santiago authority to:

> x x x borrow and/or contract debts and obligations involving, affecting or creating a charge or liability on, or which may involve, affect or create a liability on the Property and/or my interest therein, whether or not such debt/s or obligation/s contracted or to be contracted will benefit me or the family, and to sign, execute and deliver in my name to or in favor of any party, under such terms and conditions as my attorney-in-fact may deem necessary, appropriate

[5] Promissory Notes No. 0051-96-09495, No. 0051-96-17617, 0051-96-19008, 0051-96-24801, 0051-96-00603, 0051-97-02444, records, pp. 15-26.

[6] Exhibit "G", *id.* at 27-28.

[7] Promissory Notes No. 0051-97-03335, No. 0051-97-05478, No. 0051-97-05680, No. 0051-97-09783, No. 0051-97-13871, *id.* at 184-190.

[8] Exhibit "H", *id.* at 29-30.

[9] See dorsal portions of Exhibit "J" and Exhibit "I", *id.* at 31-32.

or convenient, any and all documents instruments or contract/s (including without limitations, promissory notes, loan agreements, assignments, surety or guaranty undertakings, security agreements) involving, affecting or creating a charge or liability on the Property."[10]

The liability of the sureties under both CG/CSAs is limited to Php150,000,000.00.[11]

Exhibit "G" and all the Philippine peso promissory notes, including Exhibit "H", are secured not only by the two CG/CSAs but also by a Real Estate Mortgage executed on February 14, 1997 by Henry, for himself and as the legal guardian of the minors Henry Paul L. Tanchan and Don Henry L. Tanchan; his wife Ma. Julie Ann; and Spouses Pablo and Milagros Lim, over real properties registered in their names under Transfer Certificates of Title No. 115804, No. 111149, No. 110672 and No. 3815, all located in Cebu City.[12]

In separate final demand letters, both dated May 14, 1998, respondent sought from Foremost payment of US$1,054,000.00, as the outstanding principal balance, exclusive of interest and charges, of its obligations under the seven US$ promissory notes, and PhP28,900,000.00 under its Philippine peso promissory notes.[13] Separate demands for payment were also made upon Spouses Tanchan[14] and the petitioners[15] as sureties.

In a letter dated April 6, 1998, Foremost offered to cede to respondent, by way of *dacion en pago*, the mortgaged real properties in full payment of its loan obligations.[16]

On August 3, 1998, respondent instituted the extra-judicial foreclosure of the real estate mortgage to satisfy its claim against

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[10] Exhibit "N", *id.* at 141.

[11] Exhibits "I" and "J", records, pp. 31-32.

[12] Exhibit "5", *id.* at 145-146.

[13] Exhibit "K", *id.* at 139.

[14] *Id.* at 194.

[15] Exhibit "K", *id.* at 139.

[16] Exhibit "3", *id.* at 143.

Foremost in the aggregate "amount of Php55,578,826.77, inclusive of interest, other charges and attorney's fees, equivalent to 10% of the total amount due as of May 3, 1998, plus the costs and expenses of foreclosure."[17] At the public auction sale, respondent's bid of only Php37,745,283.67 for all the mortgaged properties, including the buildings and improvements thereon,[18] was adjudged the sole and highest bid.

On October 13, 1998, respondent filed with the RTC a Complaint for Collection of Sum of Money with Petition for Issuance of Writ of Preliminary Injunction against Foremost, Spouses Tanchan and herein petitioners (collectively referred to as Foremost, et al.), praying that they be ordered to pay, jointly and severally, the following amounts:[19]

Promissory Note	Amount
0051-96-09495	US$ 80,000.00 plus interest at the rate of 11.4% per annum from December 29, 1997 until fully paid and a penalty charge on the unpaid interest at the rate of 1% per month reckoned from December 29, 1997 until fully paid and a penalty charge on the unpaid principal reckoned from May 28, 1998 until fully paid.
0051-96-17617	US$110,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month, all reckoned from December 29, 1997 until fully paid.
0051-96-19008	US$250,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month all reckoned from November 30, 1997 until fully paid.
0051-96-24801	US$115,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month all reckoned from December 29, 1997 until fully paid.

[17] Exhibit "W", *id.* at 179.

[18] Exhibit "O", records, p. 134.

[19] Complaint, *id.* at 8-10.

0051-96-00603	US$75,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month all reckoned from December 29, 1997 until fully paid.
0051-97-02444	US$45,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month all reckoned from December 29, 1997 until fully paid.
0051-97-03696 (Exhibit "G")	***US$379,000.00*** plus interest at the rate of 11.4% per annum reckoned from January 8, 1998 until fully paid and a penalty charge at the rate of 1% per month from February 9, 1998 until fully paid.
0051-97-03688 (Exhibit "H")	***PhpP7,466,795.67*** plus interest at the rate of 20% per annum and a penalty charge at the rate of 3% per month from August 10, 1998. (Emphasis supplied)

Respondent also prayed for payment of attorney's fees equivalent to 25% of the total amount due, expenses and costs of suit.

In support of its application for issuance of a writ of preliminary attachment, respondent submitted an Affidavit executed by Elmer Elumbaring (Elumbaring), Branch Cashier/Loans Supervisor, Cebu, Jakosalem Branch, stating that:

4. Defendants [Foremost, *et al*.] committed fraud in contracting the obligations upon which the action is brought in that: a) to induce plaintiff [respondent] to grant the credit accommodation they represented to the plaintiff [respondent] that they were in a financial position to pay their obligations on maturity date in consideration of which plaintiff [respondent] granted the credit accommodations. It turned out, however, that they were not in such financial position when they failed to pay their obligations on maturity date; b) they falsely represented that the proceeds of the Loan would be used as additional working capital in consideration of which, plaintiff [respondent] granted the loans but when defendants [Foremost, *et al*.] received the said proceeds, they diverted the same to a purpose other than that for which they were intended as shown by the fact that defendants [Foremost, *et al*.] were not able to fully pay the obligations at its maturity date;

5. There is no security whatsoever for the claim plaintiff [respondent] seeks to enforce by this action, and only by the issuance of a writ of preliminary attachment can its interest be protected.[20]

The application for writ of preliminary attachment was granted by the RTC in an Order dated November 3, 1998, to wit:

WHEREFORE, finding plaintiff's [respondent's] application for the issuance of a writ of preliminary attachment sufficient in form and substance, and the ground set forth therein being among those allowed by the Rules (Rule 57, Sec. 1 [e]), let a Writ of Preliminary Attachment issue against the properties of defendants Cebu Foremost Construction, Incorporated, Santiago Tanchan, Jr., Rufina C. Tanchan, Henry Tanchan and Ma. Julie Ann T. Tanchan, upon plaintiff's [respondent's] filing of a bond in the amount of FIFTY-FOUR MILLION (₱54,000,000.00) PESOS, conditioned to answer for whatever damage that the said defendants [Foremost, et al.] may suffer by reason of the issuance of said writ should the Court finally adjudge that plaintiff [respondent] was not entitled thereto.

SO ORDERED.[21]

Thus, armed with a writ of attachment,[22] the sheriff levied several parcels of land registered in the name of Foremost, *et al*.[23]

In their Amended Answer with Counterclaim,[24] Foremost, *et al.* acknowledged the authenticity and due execution of the promissory notes but denied liability for the amounts alleged in the Complaint, the computation of which they dispute due to the arbitrariness of the imposition of new interest rates. They impugned the cause of action of respondent to collect the amount due under Exhibit "G" and Exhibit "H" in view of the bank's

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[20] Records, p. 13.

[21] *Id.* at 34.

[22] *Id.* at 46.

[23] *Id.* at 80.

[24] Records, p. 93.

prior extra-judicial foreclosure of the securities thereon, which recourse bars collection of the amounts due on the same promissory notes.[25]

Foremost, et al. questioned the inclusion of Rufina as a party-defendant even when she was not bound by the CG/CSAs which her husband Santiago signed in excess of his authority under the special power of attorney to contract loans for the family but not to guarantee loans obtained by third persons.[26]

The issuance of the writ of preliminary attachment was likewise objected to by Foremost on the ground that it contracted the loans in good faith but was prevented from paying the same only because of the economic crisis that beset the country. On the part of Spouses Tanchan and herein petitioners, they claim that they had no personal participation or influence in the loan transactions except to ensure its payment; hence, they could not have practiced fraud upon respondent because they did not personally contract the loans with it.[27] Thus, each sought payment of Php100,000,000.00 as moral damages for the emotional and mental vexation visited upon them by respondent in causing the unwarranted preliminary attachment of their properties.[28]

At the pre-trial, respondent submitted an Amended Pre-trial Brief where it admitted that Foremost's Exhibit "G" and Exhibit "H" were among those secured by the real estate mortgage[29] that it earlier foreclosed, but the proceeds of the foreclosure sale satisfied only part of the amounts due on said promissory notes and left a deficiency which is now the subject of their complaint.[30]

The RTC issued a Pre-trial Order which limited the issues to be resolved to the following:

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[25] *Id.* at 94.

[26] *Id.*

[27] *Id.* at 95.

[28] *Id.* at 96.

[29] Records, p. 105.

[30] *Id.* at 106.

1. Does the [respondent] have a cause of action with respect to the promissory notes marked as [Exhibits] G[31] and H[32]?
2. Is [petitioner] Rufina C. Tanchan liable on the basis of the Continuing Guaranty/Comprehensive Surety Agreements because of her authority from [sic] Santiago Tanchan, Jr. was limited to borrow money only for the benefit of the family?
3. Is the unilateral increase of the interest rate of [respondent] valid?
4. What is the amount and nature of the damages that should be adjudged against the losing party in favor of the prevailing party?[33]

As directed by the RTC in its Pre-trial Order, both parties presented affidavits in lieu of direct examination of their witnesses.

For respondent, Fresnido Bandilla (Bandilla), Manager, Legal Department, testified that the obligations of Foremost which were secured by the real estate mortgage had amounted to Php61,155,339.36 as of the date of the foreclosure sale, and that with respondent's bid of only Php37,745,283.67 being adjudged the lone and highest bid, there remained an unpaid balance of Php23,415,115.69.[34] Elumbaring corroborated Bandilla's testimony.[35]

On the other hand, Henry averred that even in the wake of the Asian financial crisis, Foremost struggled to meet interest payments on its loan obligations with respondent, but the point came when there were no more construction jobs to be had, and Foremost was constrained to default on its obligations.[36]

Santiago testified that he and his spouse could not have defrauded respondent because they did not directly contract the loans with it but merely acted as sureties. Thus, the issuance

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[31] Promissory Note No. 0051-97-03696, *id.* at 191.

[32] Promissory Note No. 0051-97-03688, *id.* at 183.

[33] *Id.* at 452.

[34] Affidavit, *id.* at 156-157.

[35] Exhibits "P" thru "T", *id.* at 171-175.

[36] Affidavit, records, p. 256. See also TSN, September 27, 1999, pp. 7-9.

of the writ of attachment against their properties was arbitrary, and brought upon them social humiliation and emotional torment.[37]

After the parties submitted their respective memoranda,[38] the RTC rendered its August 31, 2001 Decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered ordering defendants Cebu Foremost Construction, Inc., Santiago Tanchan, Jr., Rufina C. Tanchan, Henry Tanchan and Ma. Julie Ann Tanchan, solidarily, [to] pay plaintiff Allied Banking Corporation the following amounts: (1) US $80,000.00, plus 8.75 % interest per annum from 7 June 1996 to 6 May 1997, 9.5% interest per annum from 7 May 1997 until fully paid, and 1% penalty per month on the amount due from maturity date and until fully paid; (2) US $110,00.00, plus 8.75% interest per annum from 24 September to 29 May 1997, 9.5% interest per annum from 30 May 1997 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid; (3) US $570,000.00, plus 8.75% interest per annum from 8 October 1996 to 29 May 1997, 9.5% interest per annum from 30 May 1997 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid; (4) US $115,000.00 plus 9.5% interest per month from 12 December 1996 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid; (5) US $75,000.00, plus 9.5% interest per annum from 7 January 1997 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid; (7) US $379,000.00, plus 9.5% interest per annum from 12 February 1997 to 8 December 1997, 11.4% interest per annum from 9 December 1997 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid; (8) ₱7,582,945.85, plus 28.5% interest per annum, and 3% penalty per month, from the foreclosure sale on 10 August 1998 until fully paid; (9) attorney's fees equivalent to 10% of the amount due plaintiff. However, the liability of defendants' Santiago Tanchan, Jr., Rufina C. Tanchan, Henry Tanchan and Ma. Julie Ann T. Tanchan is limited to ₱150,00,000.00 (sic) only.
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> Defendants' counterclaims are dismissed for lack of sufficient merit.

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[37] Affidavit, *id.* at 262. See also TSN, September 27, 1999, pp. 4-6.

[38] *Id.* at 297 and 319.

SO ORDERED.[39]

Foremost, *et al*. filed a Motion for Partial Reconsideration of Decision on the ground that respondent failed to state a cause of action for the payment of any deficiency account under Exhibit "G" and Exhibit "H". Its Complaint does not contain any allegation regarding a deficiency account; nor even an allusion to the foreclosure sale conducted in partial satisfaction of said promissory notes. Although in its Amended Pre-trial Brief, respondent mentioned that a deficiency account remained after the foreclosure of the real estate mortgage, such statement did not have the effect of amending the Complaint itself. Neither did the testimonies of Bandilla and Elumbaring about a deficiency account take the place of a specific allegation of such cause of action in the Complaint. Thus, in the absence of an allegation in the Complaint of a cause of action for the payment of a deficiency account, the RTC had no factual or legal basis to grant such claim.[40]

Spouses Tanchan and herein petitioners also filed a Motion to Lift the Writ of Preliminary Attachment.[41]

The RTC denied the Motion to Lift the Writ of Attachment in an Order[42] dated September 25, 2001, and the Motion for Partial Reconsideration, in an Order[43] dated August 8, 2002.

Foremost, *et al*. appealed to the CA under the following assignment of errors:

1. The lower court erred in not holding that having opted to extra-judicially foreclose the real estate mortgage which was executed to secure the promissory notes marked as Exhibits "G" and "H", the [respondent] is barred from filing an action for collection of the same;

2. The lower court erred in not holding that Rufina Tanchan did not authorize her husband, Santiago J. Tanchan, Jr. to sign the Continuing

[39] *Id*. at 353-354.

[40] Records, pp. 364-365.

[41] *Id*. at 355.

[42] *Id*. at 406.

[43] *Id*. at 409.

Guaranty/ Comprehensive Surety Agreement marked as Exhibit "I"; and

3. The lower court erred in not lifting the writ of preliminary attachment and granting the claim for damages of the individual defendants by virtue of the wrongful issuance of the writ of preliminary attachment.[44]

The CA dismissed the appeal in the June 15, 2004 Decision assailed herein.

Only petitioners took the present recourse to raise the following issues:

I. Whether or not the petitioners as mere sureties of the loans obtained by Cebu Foremost Construction, Inc. were guilty of fraud in incurring the obligations so that a writ of preliminary attachment may be issued against them?

II. Whether or not the respondent may claim for deficiency judgment on its seventh and eight causes of action, not having alleged in its complaint that said loans were secured by a real estate mortgage and after the foreclosure there was a deficiency as in fact in its complaint, the respondent sought full recovery of the promissory notes subject of its seventh and eighth cause of action?

III. Whether or not the lower court and the Court of Appeals erred in not awarding petitioners damages for the wrongful issuance of a writ of preliminary attachment against them?[45]

Being interrelated, the first and third issues will be resolved jointly.

The issues involve the validity of the writ of preliminary attachment as against the properties of petitioners only, but not as against the properties of Foremost and Spouses Tanchan, neither of whom appealed before the Court. The discussion that follows, therefore, shall pertain only to the effect of the writ on petitioners.

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[44] Brief for Defendants-Appellants, CA *rollo*, pp. 23-24.

[45] Memorandum for Petitioner, *rollo*, p. 125.

One of the grounds cited by the CA in refusing to discharge the writ of attachment is that "it is now too late for [petitioners] to question the validity of the writ" because they waited three long years to have it lifted or discharged.[46]

Under Section 13, Rule 57 of the Rules of Court, a party whose property has been ordered attached may file a motion "with the court in which the action is pending" for the discharge of the attachment on the ground that it has been improperly issued or enforced. In addition, said party may file, under Section 20, Rule 57, a claim for damages on account of improper attachment within the following periods:

> Sec. 20. *Claim for damages on account of improper, irregular or excessive attachment*. - An application for damages on account of improper, irregular or excessive attachment ***must be filed before the trial or before appeal is perfected or before the judgment becomes executory***, with due notice to the attaching obligee or his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.
>
> If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.[47] (Emphasis supplied)

Records reveal that the RTC issued the writ of preliminary attachment on November 3, 1998,[48] and as early as March 23, 1999, in their Amended Answer with Counterclaim, petitioners already sought the discharge of the writ.[49] Moreover, after the

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[46] CA Decision, CA *rollo*, p. 94.

[47] See *Carlos v. Sandoval*, G.R. No. 135830, September 30, 2005, 471 SCRA 266.

[48] Records, p. 34.

[49] *Id.* at 94.

RTC rendered its Decision on August 3, 2001 but before appeal therefrom was perfected, petitioners filed on August 23, 2001 a Motion to Lift the Writ of Preliminary Attachment, reiterating their objection to the writ and seeking payment of damages for its wrongful issuance.[50]

Clearly, petitioners' opposition to the writ was timely.

The question now is whether petitioner has a valid reason to have the writ discharged and to claim damages.

It should be borne in mind that the questioned writ of preliminary attachment was issued by the RTC under Section 1(d), Rule 57 of the Rules of Court, to wit –

> Sec. 1. *Grounds upon which attachment may issue*. - A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:
>
> xxx xxx xxx
>
> (d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;
>
> xxx xxx xxx

and on the basis solely of respondent's allegations in its Complaint "that defendants [Foremost, et al.] failed to pay their obligations on maturity dates, with the amount of US$1,054,000.00 and Php7,466,795.69 remaining unpaid; that defendants are disposing/concealing their properties with intent to defraud the plaintiff and/or are guilty of fraud in the performance of their obligations; and that there is no security whatsoever for the claim sought to be enforced."[51]

Petitioners argue that the foregoing allegations are not sufficient to justify issuance of the writ, especially in the absence of findings

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[50] *Id.* at 355.

[51] Complaint, records, pp. 8-10.

that they, as sureties, participated in specific fraudulent acts in the execution and performance of the loan agreements with respondent.[52]

In refusing to lift the writ, the RTC held that the lack of a specific factual finding of fraud in its decision is not among the grounds provided under Sections 12 and 13, Rule 57 of the Rules of Court for the discharge of the writ.[53] The CA agreed for the reason that the RTC's affirmative action on the complaint filed by respondent signifies its agreement with the allegations found therein that Foremost, *et al.*, including herein petitioners, committed fraudulent acts in procuring loans from respondent.[54]

Both courts are in error.

The present case fits perfectly into the mold of *Allied Banking Corporation v. South Pacific Sugar Corporation*,[55] where a writ of preliminary attachment issued in favor of Allied Banking Corporation was discharged by the lower courts for lack of evidence of fraud. In sustaining the discharge of the writ, the Court held:

> Moreover, even a cursory examination of the bank's complaint will reveal that it cited no factual circumstance to show fraud on the part of respondents. The complaint only had a general statement in the Prayer for the Issuance of a Writ of Preliminary Attachment, reproduced in the attached affidavit of petitioner's witness Go who stated as follows:
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> xxx xxx xxx
>
> 4. Defendants committed fraud in contracting the obligations upon which the present action is based and in the performance thereof. Among others, defendants induced plaintiff to grant the subject loans to defendant corporation by willfully and deliberately misrepresenting that, one, the proceeds of the loans would be used as additional working capital and, two, they would

[52] Memorandum, *rollo*, pp. 126-127.

[53] RTC Decision, records, p. 407.

[54] CA Decision, *rollo*, pp. 54-55.

[55] G.R. No. 163692, February 4, 2008, 543 SCRA 585.

> be in a financial position to pay, and would most certainly pay, the loan obligations on their maturity dates. In truth, defendants had no intention of honoring their commitments as shown by the fact that upon their receipt of the proceeds of the loans, they diverted the same to illegitimate purposes and then brazenly ignored and resisted plaintiff's lawful demands for them to settle their past due loan obligations
>
> xxx xxx xxx
>
> ***Such general averment will not suffice to support the issuance of the writ of preliminary attachment. It is necessary to recite in what particular manner an applicant for the writ of attachment was defrauded*** x x x.
>
> Likewise, written contracts are presumed to have been entered into voluntarily and for a sufficient consideration. Section 1, Rule 131 of the Rules of Court instructs that each party must prove his own affirmative allegations. To repeat, in this jurisdiction, fraud is never presumed. Moreover, written contracts such as the documents executed by the parties in the present case, are presumed to have been entered into for a sufficient consideration. (Citations omitted)

In the aforecited case — as in the present case — the bank presented the testimony of its account officer who processed the loan application, but the Court discarded her testimony for it did not detail how the corporation induced or deceived the bank into granting the loans.[56]

Also *apropos* is *Ng Wee v. Tankiansee*[57] where the appellate court was questioned for discharging a writ of preliminary attachment to the extent that it affected the properties of respondent Tankiansee, a corporate officer of Wincorp, both defendants in the complaint for damages which petitioner Ng Wee had filed with the trial court. In holding that the appellate court correctly spared respondent Tankiansee from the writ of preliminary attachment, the Court cited the following basis:

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[56] *Allied Banking Corporation v. South Pacific Sugar Corporation, supra* note 55.

[57] G.R. No. 171124, February 13, 2008, 545 SCRA 263.

In the instant case, petitioner's October 12, 2000 Affidavit is bereft of any factual statement that respondent committed a fraud. The affidavit narrated only the alleged fraudulent transaction between Wincorp and Virata and/or Power Merge, which, by the way, explains why this Court, in G.R. No. 162928, affirmed the writ of attachment issued against the latter. ***As to the participation of respondent in the said transaction, the affidavit merely states that respondent, an officer and director of Wincorp, connived with the other defendants in the civil case to defraud petitioner of his money placements. No other factual averment or circumstance details how respondent committed a fraud or how he connived with the other defendants to commit a fraud in the transaction sued upon. In other words, petitioner has not shown any specific act or deed to support the allegation that respondent is guilty of fraud.***

The affidavit, being the foundation of the writ, must contain such particulars as to how the fraud imputed to respondent was committed for the court to decide whether or not to issue the writ. Absent any statement of other factual circumstances to show that respondent, at the time of contracting the obligation, had a preconceived plan or intention not to pay, or without any showing of how respondent committed the alleged fraud, the general averment in the affidavit that respondent is an officer and director of Wincorp who allegedly connived with the other defendants to commit a fraud, is insufficient to support the issuance of a writ of preliminary attachment x x x. ***Verily, the mere fact that respondent is an officer and director of the company does not necessarily give rise to the inference that he committed a fraud or that he connived with the other defendants to commit a fraud. While under certain circumstances, courts may treat a corporation as a mere aggroupment of persons, to whom liability will directly attach, this is only done when the wrongdoing has been clearly and convincingly established***. (Emphasis supplied)

Indeed, a writ of preliminary attachment is too harsh a provisional remedy to be issued based on mere abstractions of fraud.[58] Rather, the rules require that for the writ to issue, there must be a recitation of clear and concrete factual circumstances manifesting that the debtor practiced fraud upon the creditor at the time of the execution of their agreement in that said debtor

[58] *PCL Industries Manufacturing Corporation v. Court of Appeals*, G.R. No. 147970, March 31, 2006, 486 SCRA 214.

had a pre-conceived plan or intention not to pay the creditor.[59] Being a state of mind, fraud cannot be merely inferred from a bare allegation of non-payment of debt or non-performance of obligation.[60]

As shown in *Ng Wee*, the requirement becomes all the more stringent when the application for preliminary attachment is directed against a defendant officer of a defendant corporation, for it will not be inferred from the affiliation of one to the other that the officer participated in or facilitated in any fraudulent practice attributed to the corporation. There must be evidence clear and convincing that the officer committed a fraud or connived with the corporation to commit a fraud; only then may the properties of said officer, along with those of the corporation, be held under a writ of preliminary attachment.

There is every reason to extend the foregoing rule, by analogy, to a mere surety of the defendant. A surety's involvement is marginal to the principal agreement between the defendant and the plaintiff; hence, in order for the surety to be subject to a proceeding for issuance of a writ of preliminary attachment, it must be shown that said surety participated in or facilitated the fraudulent practice of the defendant, such as by offering a security solely to induce the plaintiff to enter into the agreement with the defendant.

There is neither allegation nor innuendo in the Complaint of respondent or the Affidavit of Elumbaring that petitioners as sureties or officers of Foremost participated in or facilitated the commission of fraud by Foremost, et al. against respondent. In fact, there is no mention of petitioners, much less a recital of their role or influence in the execution of the loan agreements. The RTC cited an allegation that petitioners are disposing/ concealing their properties with intent to defraud respondent, but there is no hint of such scheme in the five paragraphs of

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[59] *FCY Construction Group, Inc. v. Court of Appeals*, G.R. No. 123358, February 1, 2000, 324 SCRA 270, citing *Liberty Insurance Corporation v. Court of Appeals*, G.R. No. 104405, May 13, 1993, 222 SCRA 37.

[60] *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 115678, February 23, 2001, 352 SCRA 616.

the Complaint[61] or in the four corners of the Affidavit of Elumbaring.[62] All that is alleged is that Foremost obtained loans from respondent but failed to pay the same, but as the Court has repeatedly held, no fraud can be inferred from a mere failure to pay a loan.[63]

In fine, there was no factual basis for the issuance of a writ of preliminary attachment against the properties of petitioners. The immediate dissolution of the writ is called for.

In so ruling, however, the Court does not go so far as to grant petitioners' claim for moral damages. A wrongful attachment may give rise to liability for moral damages but evidence must be adduced not only of the torment and humiliation brought upon the defendant by the attaching party but also of the latter's bad faith or malice in causing the wrongful attachment,[64] such as evidence that the latter deliberately made false statements in its application for attachment.[65] Absent such evidence of malice, the attaching party cannot be held liable for moral damages.[66]

In the present case, petitioners cite the allegations made by respondent in its application for attachment as evidence of bad faith. However, the allegations in question contain nothing but the stark truth that Foremost obtained loans and that it failed to pay. The Court fails to see any malice in such bare allegations as would make respondent liable to petitioners for moral damages.

To recapitulate, the Court partly dissolves the writ of preliminary attachment for having wrongfully issued against the

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[61] Complaint, records, pp. 7-8.

[62] *Id.* at 13-14.

[63] *Philippine National Construction Corporation v. Hon. Dy*, G.R. No. 156887, October 3, 2005, 472 SCRA 1.

[64] *Yu v. Ngo Yet Te*, G.R. No. 155868, February 6, 2007, 514 SCRA 423; *D.M. Wenceslao and Associates, Inc. v. Readycon*, G.R. No. 154106, June 29, 2004, 433 SCRA 251.

[65] *Philippine Commercial Industrial Bank v. Alejandro*, G.R. No. 175587, September 21, 2007, 533 SCRA 738.

[66] *California Bus Lines, Inc. v. State Investment House, Inc.*, G.R. No. 147950, December 11, 2003, 418 SCRA 297.

properties of petitioners who were not shown to have committed fraud in the execution of the loan agreements between Foremost and respondent, but declines to award moral damages to petitioners in the absence of evidence that respondent acted with malice in causing the wrongful issuance of the writ.

The second issue involves that portion of the August 3, 2001 RTC Decision awarding respondent "(7) US $379,000.00, plus 9.5% interest per annum from 12 February 1997 to 8 December 1997, 11.4% interest per annum from 9 December 1997 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid" under Promissory Note No. 0051-97-03696, and "(8) ₱7,582,945.85, plus 28.5% interest per annum, and 3% penalty per month, from the foreclosure sale on 10 August 1998 until fully paid" under Promissory Note No. 0051-97-03688.

Petitioners argue that respondent is barred from claiming any amount under the Promissory Notes, Exhibits "G" and "H", because it had already elected to foreclose on the mortgage security, and it failed to allege in its pleadings that a deficiency remained after the public auction sale of the securities and that what it is seeking is the payment of such deficiency.[67]

There is no question that a mortgage creditor has a single cause of action against a mortgagor debtor, which is to recover the debt; but it has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security.[68] An election of the first bars recourse to the second; otherwise, there would be multiplicity of suits in which the debtor would be tossed from one venue to another, depending on the location of the mortgaged properties and the residence of the parties.[69] On the other hand, a creditor who elects to foreclose on the mortgage may yet file an independent

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[67] Memorandum for Petitioner, *rollo*, p. 125.

[68] *Bank of America, NT & SA v. American Realty Corporation*, G.R. No. 133876, December 29, 1999, 321 SCRA 659.

[69] *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*, G.R. No. 138145, June 15, 2006, 490 SCRA 560.

civil action for recovery of whatever deficiency may remain in the outstanding obligation of the debtor, after deducting the price obtained in the sale of the mortgaged properties at public auction.[70] The complaint, though, must specifically allege that what is being sought is the recovery of the deficiency,[71] or that in the pre-trial, such claim be raised as an issue.[72]

Contrary to petitioners' argument, it is clear from the allegations in the Complaint that what respondent sought was the payment of the deficiency amount under the subject promissory notes. In particular, while the Promissory Note, Exhibit "H", is for the amount of Php16,500,000.00, what respondent sought to recover was only Php7,582,945.85, consistent with the fact that part of said promissory note has been satisfied from the proceeds of the extra-judicial foreclosure. While the exact phrase "deficiency account" is not employed in the Complaint, the intention of respondent to recover the same is borne out by its allegations.

More importantly, in the Pre-trial Order issued by the RTC, the right of respondent to recover the deficiency account under the subject promissory notes was raised as a specific issue.

WHEREFORE, the petition is *PARTLY GRANTED*. The June 15, 2004 Decision of the Court of Appeals is *MODIFIED* to the effect that the November 3, 1998 Writ of Preliminary Attachment is *LIFTED* and *DISSOLVED* insofar as it affects the properties of petitioners Spouses Santiago and Rufina Tanchan.

No costs.

SO ORDERED.

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

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[70] *Quirino Gonzales Logging Concessionaire v. Court of Appeals*, G.R. No. 126568, April 30, 2003, 402 SCRA 181.

[71] *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*, *supra* note 69.

[72] *PCI Leasing & Finance, Inc. v. Dai*, G.R. No. 148980, September 21, 2007, 533 SCRA 611.

FIRST DIVISION

[G.R. Nos. 166309-10. November 25, 2008]

REPUBLIC OF THE PHILIPPINES, represented by the COMMISSIONER OF CUSTOMS, *petitioner, vs.* **UNIMEX MICRO-ELECTRONICS GmBH,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PARTIES MUST ACCEPT AND RESPECT THE FINAL AND EXECUTORY DECISION OF THE SUPREME COURT.— Parties must accept and respect the final and executory decision of this Court. They should know when enough is enough. They are not at liberty to continue filing clarificatory motions in disregard of a previous directive that no further pleadings would be entertained.

2. ID.; ID.; ID.; A STATEMENT OF THE COURT THAT NO FURTHER PLEADINGS WOULD BE ENTERTAINED IS A DECLARATION THAT THE COURT HAS ALREADY CONSIDERED ALL ISSUES PRESENTED BY THE PARTIES AND THAT IT HAS ADJUDICATED THE CASE WITH FINALITY; IT MUST BE STRICTLY OBSERVED BY THE PARTIES AND SHOULD NOT BE CIRCUMVENTED BY FILING MOTIONS ILL-DISGUISED AS REQUEST FOR CLARIFICATION.— In view of the resolution dated December 10, 2007 which ordered that no further pleadings would be entertained, the Court expunged respondent's motion for further clarification from the records and noted without action petitioner's motion for clarification in resolutions dated January 30, 2008 and April 16, 2008. In total disregard of the foregoing, however, respondent filed yet another urgent motion for the immediate resolution of all [alleged] pending issues for clarification. **The motion is denied. No issue remains pending in this case. Likewise, no issue needs to be further clarified.** The expunction of respondent's motion for further clarification and the notation without action of petitioner's motion for clarification meant that the said motions were denied. Moreover, the Court has sufficiently

and clearly explained the basis of its action in this case in its March 9, 2007 decision and December 10, 2007 resolution. A statement of this Court that no further pleadings would be entertained is a declaration that the Court has already considered all issues presented by the parties and that it has adjudicated the case with finality. It is a directive to the parties to desist from filing any further pleadings or motions. Like all other orders of this Court, it must be strictly observed by the parties. It should not be circumvented by filing motions *ill-disguised as requests for clarification.*

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Policarpio Pañgulayan and Azura Law Office for respondent.

R E S O L U T I O N

CORONA, *J.*:

Parties must accept and respect the final and executory decision of this Court. They should know when enough is enough. They are not at liberty to continue filing clarificatory motions in disregard of a previous directive that no further pleadings would be entertained.

These cases were decided on March 9, 2007. The dispositive portion of the decision read:

WHEREFORE, the assailed decisions of the Court of Appeals in CA-G.R. SP Nos. 75359 and 75366 are hereby **AFFIRMED with MODIFICATION**. Petitioner Republic of the Philippines, represented by the Commissioner of the Bureau of Customs, upon payment of the necessary customs duties by respondent Unimex Micro-Electronics GmBH, is hereby ordered to pay respondent the value of the subject shipment in the amount of Euro 669,982.565. Petitioner's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of actual payment.

SO ORDERED.

The decision became final and executory on August 2, 2007 and entry of judgment of the March 9, 2007 decision was made on November 7, 2007.

Upon motion of respondent Unimex Micro-Electronics GmBH, an elucidation of the March 9, 2007 decision was made in a resolution dated December 10, 2007 where the Court explained:

> legal interest on the amount awarded at the rate of 6% per annum from September 5, 2001 up to the finality of the decision may be imposed and that, thereafter, the legal interest shall be 12% per annum until the value of the shipment is fully paid.

The December 10, 2007 resolution also included a directive to the parties that no further pleadings would be entertained. Despite this, however, respondent filed another motion for further clarification on the manner of determining the reckoning point of the imposition of the 6% legal interest while petitioner Republic of the Philippines filed a motion for clarification of the resolution dated December 10, 2007 (to which motion respondent filed a comment/opposition).

In view of the resolution dated December 10, 2007 which ordered that no further pleadings would be entertained, the Court expunged respondent's motion for further clarification from the records and noted without action petitioner's motion for clarification in resolutions dated January 30, 2008 and April 16, 2008.

In total disregard of the foregoing, however, respondent filed yet another urgent motion for the immediate resolution of all [alleged] pending issues for clarification.

The motion is denied. **No issue remains pending in this case. Likewise, no issue needs to be further clarified.**

The expunction of respondent's motion for further clarification and the notation without action of petitioner's motion for clarification meant that the said motions were denied. Moreover, the Court has sufficiently and clearly explained the basis of its action in this case in its March 9, 2007 decision and December 10, 2007 resolution.

A statement of this Court that no further pleadings would be entertained is a declaration that the Court has already considered all issues presented by the parties and that it has adjudicated the case with finality. It is a directive to the parties to desist from filing any further pleadings or motions. Like all other orders of this Court, it must be strictly observed by the parties. It should not be circumvented by filing motions **ill-disguised as requests for clarification**.

WHEREFORE, the urgent motion for the "immediate resolution of all pending issues for clarification" is hereby *DENIED*. The parties, their respective counsels, agents or representatives are hereby *WARNED* not to file any further pleadings or motions in this case under pain of contempt.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Tinga, JJ.,*[*] concur.

FIRST DIVISION

[G.R. No. 167357. November 25, 2008]

88 MART DUTY FREE, INC., *petitioner, vs.* **FERNANDO U. JUAN as herein represented by EDUARDO A. GONZALES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS TO THE SUPREME COURT; ISSUE IS LIMITED TO QUESTIONS OF LAW; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— Time and again, we have held that the jurisdiction of this Court in

[*] As replacement of Justice Teresita J. Leonardo-De Castro who is on official leave per Special Order No. 539.

a petition for review on *certiorari* under Rule 45 is limited only to questions of law, save for certain exceptions, none of which is present in this case. Petitioner tried to make it appear that the issue pertaining to the contract of sale came within the purview of the exceptions to the general rule by alleging that the lower courts "overlooked certain facts, which, if properly considered, (would) justify a different conclusion." However, a perusal of the petition reveals that it was not so much about certain facts being "overlooked" as it was about both courts' decision to give credence to respondent's version of the facts. Both the RTC and the CA competently ruled on the issue of perfection of the contract of sale as they properly laid down both the factual and legal bases for their respective decisions. Thus, we see no reason to disturb their findings on the existence of a perfected contract of sale. However, on the alleged impropriety of the issuance of the writ of preliminary attachment, the CA erred in holding that it was properly issued. Although this matter could be considered a question of fact, it, however, fell within the exceptions to the general rule. The inference of the CA was manifestly mistaken.

2. ID.; PROVISIONAL REMEDIES; ATTACHMENT; ISSUANCE OF THE WRIT OF ATTACHMENT IS NOT PROPER IN THE ABSENCE OF FRAUD IN INCURRING THE OBLIGATION OR IN THE PERFORMANCE THEREOF.— We find nothing in the RTC and CA decisions that justified the issuance of the writ of attachment. In fact, both the RTC and the CA ruled in their respective decisions that there was no fraud on petitioner's part in incurring the obligation or in the performance thereof. As such, petitioner's liability was predicated only on the non-fulfillment of its obligation under the contract of sale. Thus, the only logical conclusion that can be drawn is that the same was improperly issued. It must be noted that petitioner filed a supplemental reply and *omnibus motion with leave of court to discharge the preliminary attachment* in this Court. With our finding that the assailed writ was improperly issued, we thereby grant petitioner's motion to discharge the same.

APPEARANCES OF COUNSEL

Mendoza Arzaga-Mendoza Law Firm and *Law Firm of Pangalangan Cabrera Lee Mitmug and Associates* for petitioner.

De Leon & Elayda Law Offices for respondent.

R E S O L U T I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the March 11, 2005 decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 72913.

In June 1, 1995, petitioner 88 Mart Duty Free, Inc.'s chief executive officer and general manager, Jean Lui, met respondent Fernando U. Juan at the latter's restaurant[2] in Subic. They got to talking about business matters. Lui manifested interest in the contents of a container van (consisting of assorted imported food items and other non-perishable goods owned by respondent) as these were items which Lui was selling at the 88 Mart. Subsequently, Lui agreed to purchase the whole shipment for US$39,165.

That same day, respondent delivered to David Manalo, Lui's employee, the invoices, complete shipping documents and packing list covering the items.

Thereafter, the shipment was transferred in the name of petitioner, as per letter of SBMA[3] Port Authority Officer-in-Charge Ferdinand L. Hernandez, addressed to Commissioner of Customs Guillermo L. Parayno. The declaration of admission issued by the SBMA Port Authority also showed that petitioner applied for the shipment's entry into the SBMA.

After several days, respondent, through counsel, sent a letter to petitioner demanding payment of the purchase price agreed upon. Despite receipt thereof, petitioner refused to settle its obligations with respondent.

Respondent then instituted a complaint for sum of money and damages with a prayer for the issuance of a writ of preliminary

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[1] Penned by Associate Justice Perlita J. Tria Tirona (retired) and concurred in by Associate Justices Delilah Vidallon-Magtolis (retired) and Jose C. Reyes, Jr. of the Fourth Division of the Court of Appeals. *Rollo,* pp. 60-87.

[2] Nino Di Roma Restaurant.

[3] Subic Bay Metropolitan Authority.

attachment against petitioner and Lui in the Regional Trial Court (RTC) of Olongapo City, Branch 75.[4]

Petitioner and Lui denied that there was a perfected contract of sale between the parties. Lui claimed that he manifested interest in only some of the items offered by respondent, namely the Kool Aid and Vanilla Flintstones Cookies. However, he told respondent that he would purchase those items subject to verification on the competitiveness of respondent's price list and the condition of the goods. Upon Lui's discovery that his other suppliers quoted lower prices for the same items, he told Manalo to inform respondent that they were no longer interested in buying the goods. According to Lui, respondent even signified his assent to their withdrawal from the transaction by personally retrieving all the documents pertaining thereto.

Petitioner and Lui sought to justify the turnover of the documents covering the goods to them as having been made in pursuance of an arrangement between the parties. They explained that said documents were delivered to them as Lui agreed to assist and accommodate respondent in securing the required import permit. This was because petitioner was authorized by the SBMA rules to import the subject shipment, tax- and duty-

[4] It was docketed as Civil Case No. 307-0-95. *Rollo*, pp. 101-107.

In support of his application for the issuance of a writ of preliminary attachment, respondent alleged in his complaint:

"19. That the defendants are liable jointly and severally for the actual loss and damages as prayed for in the instant action;

20. That the defendants are removing their property and/or disposing of their properties with intent to defraud herein plaintiff;

21. That likewise defendants are guilty of fraud in contracting the obligation and concealing its conversion for its personal gain;

22. That there is sufficient cause of action against the defendants to warrant the issuance of a writ of preliminary attachment;

23. That in order to prevent this action to become moot and academic and/or nugatory by the fact that the defendants are removing their properties, concealing and/or disposing of their properties, it is imperative that a writ of preliminary attachment be issued at the commencement of this action to act as security for the satisfaction of any judgment that may be rendered in the above-entitled case."

free. Respondent, on the other hand, was not. According to petitioner and Lui, respondent merely used petitioner's name to facilitate the release of the container van to enable Lui to see and inspect the contents thereof before deciding on whether or not to purchase the goods.

During the course of the trial, the RTC granted several applications and/or motions filed by respondent, one of which ordered the issuance of a writ of preliminary attachment against petitioner's movable properties. Another RTC order allowed respondent to sell the perishable goods at public auction. During the public auction, the highest winning bid for the items fetched ₱165,000.

After trial on the merits, the court *a quo* ruled in respondent's favor. It held that there was a perfected contract of sale entered into between the parties. It also found that the contract was not subject to a suspensive condition. It reasoned that, if there really was such a condition, why then did Lui allow the goods to be declared in petitioner's name even before he could determine the competitiveness of respondent's prices *vis-à-vis* the prices offered by their other suppliers? Furthermore, Lui's proferred theory of accommodation was lame. It was inconceivable that an astute businessman like him would readily accede to such an arrangement with a stranger.

The RTC, however, concluded that his failure to abide by the contract was only because he belatedly realized that he could not make any profit after comparing prices with his regular suppliers. Thus, it refused to award moral and exemplary damages to respondent as fraud was not established. Lastly, it held petitioner and Lui solidarily liable for the obligation.

Petitioner and Lui moved for reconsideration. It was denied.

On appeal, the CA affirmed the RTC's decision with modifications. The appellate court held that the turn-over of the documents constituted a constructive delivery to petitioner of the goods subject of the sale and a transfer to it of the ownership over said goods. With the delivery of the goods, petitioner was bound to pay the purchase price thereof. The

CA also found that the RTC properly issued the writ of preliminary attachment. According to the appellate court, the grounds relied upon by the party seeking the issuance of said writ need not be proved as it may be sought and issued *ex parte*.

However, the CA stated that Lui could not be held solidarily liable with petitioner as there was no showing that the former, as a corporate officer, acted in bad faith or with gross or inexcusable negligence or that he acted outside the scope of his authority in dealing with respondent. Furthermore, petitioner could not be made to pay the entire purchase price as respondent was able to resell some of the goods at public sale for ₱165,000. Thus, he could hold petitioner liable only for the deficiency.

Hence, this petition.

The issues before us are: (1) whether or not there was a perfected contract of sale and (2) whether or not the issuance of the writ of preliminary attachment by the RTC was proper.

The petition is partly meritorious.

On the first issue, petitioner is clearly asking us to consider a question of fact that had already been raised in and satisfactorily established by the RTC and the CA. Time and again, we have held that the jurisdiction of this Court in a petition for review on *certiorari* under Rule 45 is limited only to questions of law, save for certain exceptions,[5] none of which is present in this case.

Petitioner tried to make it appear that the issue pertaining to the contract of sale came within the purview of the exceptions to the general rule by alleging that the lower courts "overlooked certain facts, which, if properly considered, (would) justify a different conclusion."[6] However, a perusal of the petition reveals that it was not so much about certain facts being "overlooked" as it was about both courts' decision to give credence to respondent's version of the facts.

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[5] *B & I Realty Co., Inc. v. Spouses Caspe*, G.R. No. 146972, 29 January 2008.

[6] See *Baricuatro v. CA*, 382 Phil. 15, 24 (2000).

Both the RTC and the CA competently ruled on the issue of perfection of the contract of sale as they properly laid down both the factual and legal bases for their respective decisions. Thus, we see no reason to disturb their findings on the existence of a perfected contract of sale.

However, on the alleged impropriety of the issuance of the writ of preliminary attachment, the CA erred in holding that it was properly issued. Although this matter could be considered a question of fact, it, however, fell within the exceptions to the general rule. The inference of the CA was manifestly mistaken.

We find nothing in the RTC and CA decisions that justified the issuance of the writ of attachment.[7] In fact, both the RTC

[7] The following are the grounds for the issuance of a writ of preliminary attachment:

SECTION 1. *Grounds upon which attachment may issue*. – At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, *quasi*-contract, *delict* or *quasi-delict* against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

and the CA ruled in their respective decisions[8] that there was no fraud on petitioner's part in incurring the obligation or in the performance thereof. As such, petitioner's liability was predicated only on the non-fulfillment of its obligation under the contract of sale. Thus, the only logical conclusion that can be drawn is that the same was improperly issued.[9]

It must be noted that petitioner filed a supplemental reply and *omnibus motion with leave of court to discharge the preliminary attachment* in this Court. With our finding that the assailed writ was improperly issued, we thereby grant petitioner's motion to discharge the same.

WHEREFORE, the petition is partly *GRANTED*. The March 11, 2005 decision of the Court of Appeals in CA-G.R. CV No. 72913 which affirmed the decision of the Regional Trial Court is *AFFIRMED WITH MODIFICATION* in that the writ of preliminary attachment issued by the Regional Trial Court is hereby declared improper. Accordingly, the said writ of preliminary attachment is hereby *DISCHARGED* but all other aspects of the CA decision are *AFFIRMED*.

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

[8] The RTC held:

x x x The existence of an alleged fraud in the transaction must be proved. It cannot be assumed. At most, the defendant Lui made a bad business judgment[,] hence, his refusal to pay the purchase price. x x x *Rollo*, pp. 88-94.

The CA impliedly agreed with the above finding of the RTC when, in its decision, it stated that it was affirming the factual findings of the RTC, except as to the latter's findings on petitioner and Lui's solidary liability to respondent and the amount of said liability. Furthermore, the CA even went on to state that respondent failed to prove his allegations (of fraud) in his application for issuance of the writ of preliminary attachment. Despite this declaration, the appellate court still held that such failure did not render the issuance of the writ improper.

[9] See *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, 3 October 2005, 472 SCRA 1; *Chiudian v. Sandiganbayan*, G.R. No. 139941, 19 January 2001, 349 SCRA 745; and *Uy v. CA*, G.R. No. 95550, 23 November 1992, 215 SCRA 859.

SO ORDERED.

Puno, C.J.(Chairperson), Carpio, Azcuna, and *Tinga, JJ.,*[*] concur.

SECOND DIVISION

[G.R. No. 167571. November 25, 2008]

LUIS PANAGUITON, JR., *petitioner, vs.* **DEPARTMENT OF JUSTICE, RAMON C. TONGSON and RODRIGO G. CAWILI,** *respondents.*

SYLLABUS

REMEDIAL LAW; PRESCRIPTION OF ACTIONS; FILING OF COMPLAINT BEFORE THE OFFICE OF THE CITY PROSECUTOR SIGNIFIED THE COMMENCEMENT OF THE PROCEEDINGS AND THUS EFFECTIVELY INTERRUPTED THE PRESCRIPTIVE PERIOD FOR THE OFFENSE; SUSTAINED.— There is no question that Act No. 3326, appropriately entitled *An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin,* is the law applicable to offenses under special laws which do not provide their own prescriptive periods. We agree that Act. No. 3326 applies to offenses under B.P. Blg. 22. An offense under B.P. Blg. 22 merits the penalty of imprisonment of not less than thirty (30) days but not more than one year or by a fine, hence, under Act No. 3326, a violation of B.P. 22 prescribes in four (4) years from the commission of the offense or, if the same be not known at the time, from the discovery thereof. Nevertheless, we cannot uphold the position that only the filing of a case in court can toll the running of the prescriptive period.

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[*] As replacement of Justice Teresita J. Leonardo-De Castro who is on official leave per Special Order No. 539.

> It must be pointed out that when Act No. 3326 was passed on 4 December 1926, preliminary investigation of criminal offenses was conducted by justices of the peace, thus the phraseology in the law, "institution of judicial proceedings for its investigation and punishment," and the prevailing rule at the time was that once a complaint is filed with the justice of the peace for preliminary investigation, the prescription of the offense is halted. xxx Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies. We rule and so hold that the offense has not yet prescribed. Petitioner's filing of his complaint-affidavit before the Office of the City Prosecutor on 24 August 1995 signified the commencement of the proceedings for the prosecution of the accused and thus effectively interrupted the prescriptive period for the offenses they had been charged under B.P. Blg. 22. Moreover, since there is a definite finding of probable cause, with the debunking of the claim of prescription there is no longer any impediment to the filing of the information against petitioner.

APPEARANCES OF COUNSEL

Kapunan Imperial Panaguiton & Bongolan for petitioner.
Posadas Law Firm for private respondents.

D E C I S I O N

TINGA, *J.*:

This is a Petition for Review[1] of the resolutions of the Court of Appeals dated 29 October 2004 and 21 March 2005 in CA G.R. SP No. 87119, which dismissed Luis Panaguiton, Jr.'s (petitioner's) petition for *certiorari* and his subsequent motion for reconsideration.[2]

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[1] *Rollo*, pp. 11-27.

[2] *Id.* at 28-29. The resolutions were penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Romeo A. Brawner and Magdangal M. De Leon, concurring.

The facts, as culled from the records, follow.

In 1992, Rodrigo Cawili (Cawili) borrowed various sums of money amounting to ₱1,979,459.00 from petitioner. On 8 January 1993, Cawili and his business associate, Ramon C. Tongson (Tongson), jointly issued in favor of petitioner three (3) checks in payment of the said loans. Significantly, all three (3) checks bore the signatures of both Cawili and Tongson. Upon presentment for payment on 18 March 1993, the checks were dishonored, either for insufficiency of funds or by the closure of the account. Petitioner made formal demands to pay the amounts of the checks upon Cawili on 23 May 1995 and upon Tongson on 26 June 1995, but to no avail.[3]

On 24 August 1995, petitioner filed a complaint against Cawili and Tongson[4] for violating Batas Pambansa Bilang 22 (B.P. Blg. 22)[5] before the Quezon City Prosecutor's Office. During the preliminary investigation, only Tongson appeared and filed his counter-affidavit.[6] Tongson claimed that he had been unjustly included as party-respondent in the case since petitioner had lent money to Cawili in the latter's personal capacity. Moreover, like petitioner, he had lent various sums to Cawili and in appreciation of his services, he was offered to be an officer of Roma Oil Corporation. He averred that he was not Cawili's business associate; in fact, he himself had filed several criminal cases against Cawili for violation of B.P. Blg. 22. Tongson denied that he had issued the bounced checks and pointed out that his signatures on the said checks had been falsified.

To counter these allegations, petitioner presented several documents showing Tongson's signatures, which were purportedly the same as those appearing on the checks.[7] He also showed

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[3] *Id.* at 30-31; Complaint-Affidavit.

[4] *Id.*

[5] An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes.

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

[7] *Id.* at 45-52; Affidavit of Adverse Claim, Affidavit of Withdrawal of Adverse Claim, Complaint-Affidavit.

a copy of an affidavit of adverse claim wherein Tongson himself had claimed to be Cawili's business associate.[8]

In a resolution dated 6 December 1995,[9] City Prosecutor III Eliodoro V. Lara found probable cause only against Cawili and dismissed the charges against Tongson. Petitioner filed a partial appeal before the Department of Justice (DOJ) even while the case against Cawili was filed before the proper court. In a letter-resolution dated 11 July 1997,[10] after finding that it was possible for Tongson to co-sign the bounced checks and that he had deliberately altered his signature in the pleadings submitted during the preliminary investigation, Chief State Prosecutor Jovencito R. Zuño directed the City Prosecutor of Quezon City to conduct a reinvestigation of the case against Tongson and to refer the questioned signatures to the National Bureau of Investigation (NBI).

Tongson moved for the reconsideration of the resolution, but his motion was denied for lack of merit.

On 15 March 1999, Assistant City Prosecutor Ma. Lelibet S. Sampaga (ACP Sampaga) dismissed the complaint against Tongson without referring the matter to the NBI per the Chief State Prosecutor's resolution. In her resolution,[11] ACP Sampaga held that the case had already prescribed pursuant to Act No. 3326, as amended,[12] which provides that violations penalized by B.P. Blg. 22 shall prescribe after four (4) years. In this case, the four (4)-year period started on the date the checks were dishonored, or on 20 January 1993 and 18 March 1993. The filing of the complaint before the Quezon City Prosecutor on 24 August 1995 did not interrupt the running of the prescriptive period, as the law contemplates judicial, and not administrative proceedings. Thus, considering that from 1993 to 1998, more

[8] *Id.* at 45-46.

[9] *Id.* at 53-55.

[10] *Id.* at 56-57.

[11] *Id.* at 58-62.

[12] *Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin.*

than four (4) years had already elapsed and no information had as yet been filed against Tongson, the alleged violation of B.P. Blg. 22 imputed to him had already prescribed.[13] Moreover, ACP Sampaga stated that the order of the Chief State Prosecutor to refer the matter to the NBI could no longer be sanctioned under Section 3, Rule 112 of the Rules of Criminal Procedure because the initiative should come from petitioner himself and not the investigating prosecutor.[14] Finally, ACP Sampaga found that Tongson had no dealings with petitioner.[15]

Petitioner appealed to the DOJ. But the DOJ, through Undersecretary Manuel A.J. Teehankee, dismissed the same, stating that the offense had already prescribed pursuant to Act No. 3326.[16] Petitioner filed a motion for reconsideration of the DOJ resolution. On 3 April 2003,[17] the DOJ, this time through then Undersecretary Ma. Merceditas N. Gutierrez, ruled in his favor and declared that the offense had not prescribed and that the filing of the complaint with the prosecutor's office interrupted the running of the prescriptive period citing *Ingco v. Sandiganbayan*.[18] Thus, the Office of the City Prosecutor of Quezon City was directed to file three (3) separate informations against Tongson for violation of B.P. Blg. 22.[19] On 8 July 2003, the City Prosecutor's Office filed an information[20] charging petitioner with three (3) counts of violation of B.P. Blg. 22.[21]

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[13] *Rollo*, pp. 59-60.

[14] *Id.* at 60; Nevertheless, it appears that a reinvestigation of the case was conducted for the purpose of referring the questioned signatures of Tongson. However, petitioner was unable to present the corresponding documents, particularly the original copies thereof, that could be referred to the NBI to rebut Tongson's defense of forgery.

[15] *Id.*

[16] *Id.* at 63-65.

[17] CA *rollo*, pp. 59-69.

[18] G.R. No. 102342, 3 July 1992, 211 SCRA 277.

[19] *Rollo*, pp. 66-76.

[20] Docketed as I.S. No. 95-12212.

[21] Per letter of the Office of the Clerk of Court, Metropolitan Trial Court of Quezon City dated 10 July 2003, informing petitioner of the filing of the

However, in a resolution dated 9 August 2004,[22] the DOJ, presumably acting on a motion for reconsideration filed by Tongson, ruled that the subject offense had already prescribed and ordered "the withdrawal of the three (3) informations for violation of B.P. Blg. 22" against Tongson. In justifying its sudden turnabout, the DOJ explained that Act No. 3326 applies to violations of special acts that do not provide for a prescriptive period for the offenses thereunder. Since B.P. Blg. 22, as a special act, does not provide for the prescription of the offense it defines and punishes, Act No. 3326 applies to it, and not Art. 90 of the Revised Penal Code which governs the prescription of offenses penalized thereunder.[23] The DOJ also cited the case of *Zaldivia v. Reyes, Jr.*,[24] wherein the Supreme Court ruled that the proceedings referred to in Act No. 3326, as amended, are judicial proceedings, and not the one before the prosecutor's office.

Petitioner thus filed a petition for *certiorari*[25] before the Court of Appeals assailing the 9 August 2004 resolution of the DOJ. The petition was dismissed by the Court of Appeals in view of petitioner's failure to attach a proper verification and certification of non-forum shopping. The Court of Appeals also noted that the 3 April 2003 resolution of the DOJ attached to the petition is a mere photocopy.[26] Petitioner moved for the reconsideration of the appellate court's resolution, attaching to said motion an amended Verification/Certification of Non-Forum Shopping.[27] Still, the Court of Appeals denied petitioner's motion, stating that subsequent compliance with the formal requirements would not *per se* warrant a reconsideration of its resolution. Besides, the Court of Appeals added, the petition

information charging him "for violation of B.P.Blg. 22 (3) counts, and requiring him to pay filing fees. *Id.* at 77.

[22] *Id.* at 78-83.

[23] *Rollo*, p. 79.

[24] *Supra* note 18.

[25] CA *rollo*, pp. 2-16.

[26] *Rollo*, p. 28.

[27] CA *rollo*, pp. 79-86.

is patently without merit and the questions raised therein are too unsubstantial to require consideration.[28]

In the instant petition, petitioner claims that the Court of Appeals committed grave error in dismissing his petition on technical grounds and in ruling that the petition before it was patently without merit and the questions are too unsubstantial to require consideration.

The DOJ, in its comment,[29] states that the Court of Appeals did not err in dismissing the petition for non-compliance with the Rules of Court. It also reiterates that the filing of a complaint with the Office of the City Prosecutor of Quezon City does not interrupt the running of the prescriptive period for violation of B.P. Blg. 22. It argues that under B.P. Blg. 22, a special law which does not provide for its own prescriptive period, offenses prescribe in four (4) years in accordance with Act No. 3326.

Cawili and Tongson submitted their comment, arguing that the Court of Appeals did not err in dismissing the petition for *certiorari*. They claim that the offense of violation of B.P. Blg. 22 has already prescribed per Act No. 3326. In addition, they claim that the long delay, attributable to petitioner and the State, violated their constitutional right to speedy disposition of cases.[30]

The petition is meritorious.

First on the technical issues.

Petitioner submits that the verification attached to his petition before the Court of Appeals substantially complies with the rules, the verification being intended simply to secure an assurance that the allegations in the pleading are true and correct and not a product of the imagination or a matter of speculation. He points out that this Court has held in a number of cases that

[28] *Id.* at 29.

[29] *Id.* at 106-126.

[30] *Id.* at 130-140.

a deficiency in the verification can be excused or dispensed with, the defect being neither jurisdictional nor always fatal.[31]

Indeed, the verification is merely a formal requirement intended to secure an assurance that matters which are alleged are true and correct—the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules in order that the ends of justice may be served,[32] as in the instant case. In the case at bar, we find that by attaching the pertinent verification to his motion for reconsideration, petitioner sufficiently complied with the verification requirement.

Petitioner also submits that the Court of Appeals erred in dismissing the petition on the ground that there was failure to attach a certified true copy or duplicate original of the 3 April 2003 resolution of the DOJ. We agree. A plain reading of the petition before the Court of Appeals shows that it seeks the annulment of the DOJ resolution dated 9 August 2004,[33] a certified true copy of which was attached as Annex "A".[34] Obviously, the Court of Appeals committed a grievous mistake.

Now, on the substantive aspects.

Petitioner assails the DOJ's reliance on *Zaldivia v. Reyes*,[35] a case involving the violation of a municipal ordinance, in declaring

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[31] *Id.* at 19.Citing *Shipside Incorporated v. Court of Appeals*, 20 February 2001, 352 SCRA 334, and *Commissioner of Internal Revenue v. La Suerte Cigar and Cigaret Factory*, 4 July 2002, 384 SCRA 117.

[32] *Sps. Hontiveros v. RTC*, Br. 25, Iloilo City, 368 Phil. 653, 666 (1999).

[33] CA *rollo*, p. 2. The third paragraph of the petition reads:

This is a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. Petitioner seeks the annulment of the Resolution of the Department of Justice (DOJ) dated 9 August 2004, which was rendered in excess of jurisdiction of with grave abuse of discretion amounting to lack or excess of jurisdiction.

[34] CA *rollo*, pp. 17-21. Petitioner thus complied with the requirement that the petition "shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof." (Rule 46, Sec. 3 of the Revised Rules of Court of the Philippines)

[35] *Supra* note 18.

that the prescriptive period is tolled only upon filing of the information in court. According to petitioner, what is applicable in this case is *Ingco v. Sandiganbayan*,[36] wherein this Court ruled that the filing of the complaint with the fiscal's office for preliminary investigation suspends the running of the prescriptive period. Petitioner also notes that the *Ingco* case similarly involved the violation of a special law, Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, petitioner notes.[37] He argues that sustaining the DOJ's and the Court of Appeals' pronouncements would result in grave injustice to him since the delays in the present case were clearly beyond his control.[38]

There is no question that Act No. 3326, appropriately entitled *An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin,* is the law applicable to offenses under special laws which do not provide their own prescriptive periods. The pertinent provisions read:

> Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) x x x; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) x x x
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> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

We agree that Act. No. 3326 applies to offenses under B.P. Blg. 22. An offense under B.P. Blg. 22 merits the penalty of imprisonment of not less than thirty (30) days but not more

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[36] 338 Phil. 1061 (1997).

[37] *Rollo,* p. 22.

[38] *Id.* at 23.

than one year or by a fine, hence, under Act No. 3326, a violation of B.P. Blg. 22 prescribes in four (4) years from the commission of the offense or, if the same be not known at the time, from the discovery thereof. Nevertheless, we cannot uphold the position that only the filing of a case in court can toll the running of the prescriptive period.

It must be pointed out that when Act No. 3326 was passed on 4 December 1926, preliminary investigation of criminal offenses was conducted by justices of the peace, thus, the phraseology in the law, "institution of judicial proceedings for its investigation and punishment,"[39] and the prevailing rule at the time was that once a complaint is filed with the justice of the peace for preliminary investigation, the prescription of the offense is halted.[40]

The historical perspective on the application of Act No. 3326 is illuminating.[41] Act No. 3226 was approved on 4 December 1926 at a time when the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace. Thus, the prevailing rule at the time, as shown in the cases of *U.S. v. Lazada*[42] and *People v. Joson*,[43] is that the prescription of the offense is tolled once a complaint is filed with the justice of the peace for preliminary investigation inasmuch as the filing of the complaint signifies the institution of the criminal proceedings against the accused.[44] These cases were followed by our declaration in *People v. Parao and Parao*[45] that the first step taken in the investigation or examination of offenses partakes the nature of a judicial proceeding which suspends the prescription of the offense.[46] Subsequently, in

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[39] Act No. 3326, Sec. 2.

[40] *People v. Joson*, 46 Phil. 509 (1924).

[41] See Concurring Opinion, Tinga, J.; *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, G.R. No. 135808, 6 October 2008.

[42] 9 Phil. 509 (1908).

[43] 46 Phil. 380 (1924).

[44] 9 Phil. 509, 511 (1908).

[45] 52 Phil. 712 (1929).

[46] *Id.* at 715.

People v. Olarte,[47] we held that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. In addition, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender,[48] and hence, the prescriptive period should be interrupted.

In *Ingco v. Sandiganbayan*[49] and *Sanrio Company Limited v. Lim*,[50] which involved violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and the Intellectual Property Code (R.A. No. 8293), which are both special laws, the Court ruled that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused. In the more recent case of *Securities and Exchange Commission v. Interport Resources Corporation, et al.*,[51] the Court ruled that the nature and purpose of the investigation conducted by the Securities and Exchange Commission on violations of the Revised Securities Act,[52] another special law, is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, and thus effectively interrupts the prescriptive period.

The following disquisition in the *Interport Resources* case[53] is instructive, thus:

While it may be observed that the term "judicial proceedings" in Sec. 2 of Act No. 3326 appears before "investigation and punishment"

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[47] 19 Phil. 494 (1967).

[48] *Id.* at 500.

[49] 338 Phil. 1061 (1997).

[50] G.R. No. 168662, 19 February 2008, 546 SCRA 303.

[51] *Supra* note 39.

[52] Presidential Decree No. 178.

[53] Concurring Opinion, Tinga, *J.* in *Securities and Exchange Commission v. Interport Resources Corporation, et al., supra* note 39.

in the old law, with the subsequent change in set-up whereby the investigation of the charge for purposes of prosecution has become the exclusive function of the executive branch, the term "proceedings" should now be understood either executive or judicial in character: executive when it involves the investigation phase and judicial when it refers to the trial and judgment stage. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription.[54]

Indeed, to rule otherwise would deprive the injured party the right to obtain vindication on account of delays that are not under his control.[55] A clear example would be this case, wherein petitioner filed his complaint-affidavit on 24 August 1995, well within the four (4)-year prescriptive period. He likewise timely filed his appeals and his motions for reconsideration on the dismissal of the charges against Tongson. He went through the proper channels, within the prescribed periods. However, from the time petitioner filed his complaint-affidavit with the Office of the City Prosecutor (24 August 1995) up to the time the DOJ issued the assailed resolution, an aggregate period of nine (9) years had elapsed. Clearly, the delay was beyond petitioner's control. After all, he had already initiated the active prosecution of the case as early as 24 August 1995, only to suffer setbacks because of the DOJ's flip-flopping resolutions and its misapplication of Act No. 3326. Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.

We rule and so hold that the offense has not yet prescribed. Petitioner 's filing of his complaint-affidavit before the Office of the City Prosecutor on 24 August 1995 signified the commencement of the proceedings for the prosecution of the accused and thus effectively interrupted the prescriptive period

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[54] *Id.*

[55] *People v. Olarte,* 19 Phil. 494, 500 (1967).

for the offenses they had been charged under B.P. Blg. 22. Moreover, since there is a definite finding of probable cause, with the debunking of the claim of prescription there is no longer any impediment to the filing of the information against petitioner.

WHEREFORE, the petition is *GRANTED*. The resolutions of the Court of Appeals dated 29 October 2004 and 21 March 2005 are *REVERSED* and *SET ASIDE*. The resolution of the Department of Justice dated 9 August 2004 is also *ANNULLED* and *SET ASIDE*. The Department of Justice is *ORDERED* to *REFILE* the information against the petitioner.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169365. November 25, 2008]

SPOUSES PEDRO SANTIAGO and LIWANAG SANTIAGO, *petitioners, vs.* **THE PEOPLE OF THE PHILIPPINES, CRISELDA MAS, ATTY. LORENZO O. NAVARRO, JR. and JESSE LANTORIA,** *respondents.*

[G.R. No. 169669. November 25, 2008]

SPOUSES PEDRO SANTIAGO and LIWANAG SANTIAGO, *petitioners, vs.* **ATTY. LORENZO O. NAVARRO, JR., CRISELDA MAS and JESSE LANTORIA,** *respondents.*

SYLLABUS

LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; TERMINATION THEREOF DUE TO THE DEATH OF THE LAWYER; EFFECT UPON THE SERVICE OF PETITIONS; CASE AT BAR.— With the death of Atty. Navarro, the lawyer-client relationship he had with Lantoria and Mas was terminated. Service of the petitions should also have been made directly on the respondents under the procedures laid down in Section 7, Rule 13 of the Rules. As matters now stand, neither Lantoria nor Mas was ever served a copy of the petitions, actually or constructively, while the petitioners-spouses openly profess that they have no way of securing or finding out the addresses of Lantoria and Mas. Mrs. Trinidad P. Navarro, on the other hand, is not a party to the consolidated cases and had fulfilled her obligation to this Court when she informed us that her husband had died. In light of these developments, we **RESOLVE** to **DENY** the consolidated petitions pursuant to Section 5, Rule 45 and Section 5(d), Rule 56 of the Rules of Court for the petitioners-spouses' failure to submit the required proof of service and their continued failure to effect service on the respondents. The "show cause" order issued to Mrs. Natividad P. Navarro is hereby **CANCELLED**.

APPEARANCES OF COUNSEL

Rolando P. Quimbo for petitioners.
The Solicitor General for public respondents.
Julito M. Briola for Atty. L. Navarro, Jr.

R E S O L U T I O N

BRION, *J.*:

These are consolidated petitions for review under Rule 45 of the 1997 Rules of Court of the Decisions of the Court of Appeals (*CA*) issued in CA-G.R. CR No. 21847 and CA-G.R. CR No. 45932, to wit:

(1) Decision dated March 9, 2005[1] issued by the Twelfth Division of the CA in CA-G.R. CR No. 21847 which reversed and set aside, on appeal, the order dated October 9, 1997 issued by Hon. Jaime N. Salazar, Jr. (*Judge Salazar*) of the Regional Trial Court (*RTC*), Branch 103, Quezon City, in Criminal Case Nos. Q-96-64931, Q-96-64932, Q-96-64934 and Q-96-64935 that granted the *Motion to Withdraw the Informations* for murder, frustrated murder and illegal possession of firearms;[2] and

(2) Decision dated May 14, 1998[3] issued by the Special Sixteenth Division of the CA in CA-G.R. CR No. 45932 which granted the petition for *certiorari* and annulled the order dated October 6, 1997 issued by Hon. Oscar Leviste of the RTC, Branch 97, Quezon City that granted the *Motion to Withdraw the Information* in Criminal Case No. 96-64933 for illegal possession of firearms and ammunitions against Pedro S. Santiago and Liwanag P. Santiago (petitioners-spouses).

The records of these consolidated cases show the developments described below.

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In the *Minute* Resolution dated November 21, 2005, we required respondents[4] People of the Philippines and Criselda Mas to file their Comment. The Office of the Solicitor General

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[1] G.R. No. 169669 *rollo*, pp. 131-139; penned by Associate Justice Lucenito N. Tagle (ret.) with Associate Justice Martin S. Villarama, Jr. and Associate Justice Regalado E. Maambong, concurring.

[2] Together with Oscar Lucañas and Alberto Lucañas who were the petitioners' co-respondents before the Department of Justice.

[3] G.R. No. 169669 *rollo*, pp. 35-47; penned by Associate Justice Eduardo G. Montenegro (ret.) with Associate Justice Salvador J. Valdez, Jr. (ret.) and Associate Justice Martin S. Villarama, Jr., concurring.

[4] As stated in petitioners-spouses *Motion for Extension of Time to File Petition for Certiorari under Rule 45* in the petition docketed as G.R. No. 169365.

(*OSG*), representing the People of the Philippines, filed its *Comment* as required, and prayed for the dismissal of the petition on the ground that the CA was correct in its findings and conclusions that no independent assessment of the evidence was made by Judge Salazar before he dismissed the criminal cases before him.[5]

The petitioners-spouses thereafter filed a Reply[6] to the OSG's *Comment;* they claimed that they erred in including the OSG as a party respondent, and stated that the respondents are actually Atty. Navarro, Lantoria and Mas.[7]

In the *Minute* Resolution dated September 6, 2006, we required Atty. Navarro *as counsel for respondent* Mas to show cause why he failed to file a comment in compliance with the order of the Court. On March 25, 2007, however, Atty. Navarro's widow (Mrs. Trinidad P. Navarro), through counsel and by way of a special appearance,[8] informed this Court that Atty. Navarro died on March 31, 2004.[9]

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[5] G.R. No. 169365 *rollo*, pp. 164-183.

[6] *Id.*, pp. 204-225; *Minute* Resolution dated June 7, 2006.

[7] The petitioners-spouses clarified as follows: "... However, it should be pointed out that the People of the Philippines was not actually impleaded as a respondent in the petition. Rather, in the *Motion for Extension of Time to File Petition for Certiorari Under Rule 45* filed by herein petitioners, the People of the Philippines was inadvertently included as a respondent in the caption of the motion. But, as explained in page 4 of the *Petition*, the inclusion of the People of the Philippines as a respondent in the caption of the aforesaid motion was an error since the position of the People of the Philippines, acting through the Secretary of Justice, is not inconsistent with the position of herein petitioners. Hence, petitioners did not include the People of the Philippines as a respondent in their *Petition*. It is, therefore, most respectfully submitted that the People of the Philippines may not be represented by the Office of the Solicitor General since it is not a party to the petition.

It should also be pointed out that in all the proceedings, pleadings, resolutions and the Decisions of the Court of Appeals in the appeal to said court . . . the People of the Philippines was a co-appellee of the petitioners . . ."; G.R. No. 169365 *rollo*, pp. 204-205.

[8] Atty. Julito M. Briola.

[9] G.R. No. 169365 *rollo*, pp. 259-261.

In our *Minute* Resolution of June 6, 2007, we reflected that we were waiting for the comments of respondents Lantoria and Mas. The Resolution was sent with attached copy of the petition at the addresses[10] furnished us by the petitioners-spouses.[11] On September 3, 2007, copies of our *Minute* Resolution dated June 6, 2007, along with the copies of the petition for review, were returned to this Court unserved with the notations - "*RTS party refused to accept. No such person at the said address*" and "*[p]lease indicate house number, street and barangay/ geographical area*." Subsequent verification made by the Court on the whereabouts of the two respondents from the petitioners-spouses, as well as from Mrs. Trinidad Navarro, proved unsuccessful.[12]

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In the *Minute* Resolution dated September 6, 2006, the Court required the respondents to file their Comment. No comment was filed in light of Atty. Navarro's death while copies of the petitions could not be served on respondents Lantoria and Mas. In a *Minute* Resolution dated November 26, 2007, the Court resolved:

> …to GRANT petitioners' prayer for them to be spared from further ascertaining the whereabouts of said respondents; however, should Mrs. Trinidad Navarro fail to inform the Court of the correct address of respondents Jesse Lantoria and Criselda Mas, the petitions will be dismissed as against them . . . [Underscoring supplied]

Mrs. Trinidad P. Navarro also failed to comply and submit the correct and present addresses of respondents Lantoria and Mas. On July 7, 2008, we resolved to issue a *show cause* order against her to explain why she should not be penalized for her failure to comply with the Court's directive.

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[10] A copy of the petition in G.R. No. 169365 was sent to respondent Lantoria using the address of Atty. Navarro and another copy sent to respondent Lantoria at Sta. Cruz, 2213 Zambales.

[11] G.R. No. 169365 *rollo*, pp. 291 and 319.

[12] *Id*., pp. 321-324 and 328.

Discussion and Ruling

A facial examination of the petitions shows that respondents Lantoria and Mas were never served copies of the petitions. Copies of *G.R. No. 169365* sent on October 10, 2005 were addressed to the OSG and to Atty. Navarro as *addressees* as shown from Registry Receipt Nos. 7104 and 7105.[13] Similarly, a copy of *G.R. No. 169669* was sent on November 2, 2005 to Atty. Navarro as the sole *addressee* under Registry Receipt No. 8602.[14] In both instances, Atty. Navarro was already dead when the petitions were sent at his address.

The petitioners-spouses and their counsel, Atty. Rolando P. Quimbo, admitted that they were aware of Atty. Navarro's death at the time copies of the petitions were *sent to him* at his residence. According to them, this was done for the purpose of expediency.[15] However, the facts on hand reveal that the whereabouts of Lantoria and Mas had been unknown all along and this was the reason why only Atty. Navarro's address was given to this Court. Thus, in their *Compliance (Re: Address of Parties*), they admitted that even when Atty. Navarro was still alive, the petitioners had already exerted their utmost effort in locating the whereabouts of Lantoria and Mas.[16]

With the death of Atty. Navarro, the lawyer-client relationship he had with Lantoria and Mas was terminated. Service of the petitions should also have been made directly on the respondents under the procedures laid down in Section 7, Rule 13 of the Rules.[17] As matters now stand, neither Lantoria nor Mas was

[13] *Id.*, p. 35.

[14] G.R. No. 169669 *rollo*, p. 34.

[15] *Id.*, p. 12; G.R. No. 169365 *rollo*, p. 12.

[16] G.R. No. 169365 *rollo*, p. 322.

[17] SEC. 7. *Service by mail* – Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

ever served a copy of the petitions, actually or constructively, while the petitioners-spouses openly profess that they have no way of securing or finding out the addresses of Lantoria and Mas. Mrs. Trinidad P. Navarro, on the other hand, is not a party to the consolidated cases and had fulfilled her obligation to this Court when she informed us that her husband had died.

In light of these developments, we *RESOLVE* to *DENY* the consolidated petitions pursuant to Section 5, Rule 45 and Section 5(d), Rule 56 of the Rules of Court for the petitioners-spouses' failure to submit the required proof of service and their continued failure to effect service on the respondents. The "show cause" order issued to Mrs. Natividad P. Navarro is hereby *CANCELLED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176152. November 25, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NIDO GARTE,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM, ENTITLED TO GREAT WEIGHT; RATIONALE.—A review of the records of the cases shows that AAA's testimony has satisfactorily met the test of credibility. Why AAA would impute serious charges against him, appellant could not advance any reason. In the recent case of *Campos v. People,* this Court once again

reiterated the following well-settled rule: . . . [A] rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father, if such were not true. Indeed, courts usually give greater weight to the testimony of a girl who fell victim to sexual assault, especially a minor, particularly in incestuous rape as in this case, because no woman would be willing to undergo a public trial and bear the concomitant shame, humiliation, and dishonor of exposing her own degradation were it not for the purpose of condemning injustice and ensuring that the offender is punished.

2. **CRIMINAL LAW; RAPE; ELEMENTS; MORAL ASCENDANCY AS A FATHER OF THE VICTIM REPLACES "FORCE AND INTIMIDATION."—** In any event, whether appellant used a gun or a knife to threaten AAA becomes immaterial as his moral ascendancy as a father over her replaces "force and intimidation." *People v. Radavia*, which was correctly cited by the Office of the Solicitor General, is instructive: . . . [T]he use of a knife or any other weapon for that matter is not an element of the crime of rape. As long as the evidence shows that force, violence or intimidation was used to have a carnal knowledge of the victim, the requisite components of the crime are deemed satisfied. It bears emphasizing that in a *rape committed by a father against his own daughter*, the former's moral ascendancy and influence sufficiently takes the place of violence or intimidation. Under the same circumstances, **proof of force and violence is not even essential,** because the moral and physical ascendancy of the father over his daughter is sufficient to cow her into submission to his bestial desires.

3. **REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; THE ACCUSED MUST NOT ONLY PROVE HIS PRESENCE IN ANOTHER PLACE AT THE TIME OF THE COMMISSION OF THE OFFENSE BUT MUST ALSO DEMONSTRATE THE PHYSICAL IMPOSSIBILITY TO BE AT SCENE OF THE CRIME.—** Appellant's denial and alibi are of course legitimate defenses in rape cases. To successfully invoke alibi, however, the accused must not only prove his presence at another place at the time of the commission of

the offense. He must also demonstrate that it would be physically impossible for him to be at the *locus criminis* at the time of the commission of the crime. Appellant, on whom the *onus probandi* lies, failed to discharge the same, however, as he in fact testified that he would go home for lunch and dinner in between plying his tricycle in the vicinity.

4. CRIMINAL LAW; PENALTIES; APPELLANT NOT ELIGIBLE FOR PAROLE.— The Court affirms then the appellate court's decision, with modification, however. Following Republic Act No. 9346 which provides: Section 3. Persons convicted of offenses punished 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[,] appellant is not eligible for parole. And consistent with prevailing jurisprudence, the award by the trial court of moral damages in the amount of ₱50,000 in each count, which was affirmed by the appellate court, should be increased to ₱75,000 for each count.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Nido Garte (appellant) was charged and convicted of four counts of rape of AAA, his 17 year old daughter, by the Regional Trial Court, Branch 89, Quezon City by Joint Decision of May 19, 2005[1] which was affirmed with modification by the Court of Appeals.

The Amended Informations against appellant read:

Criminal Case No. Q-01-106123

That on or about the first week of April[,] 2001[,] in Quezon City, Philippines, the above-named accused with force and intimidation

[1] Records, pp. 196-206.

did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,] a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.[2] (Underscoring supplied)

Criminal Case No. Q-01-106124

That on or about the 23rd day of May, 2001[,] in Quezon City, Philippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,] a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.[3] (Underscoring supplied)

Criminal Case No. Q-01-106125

That on or about the second week of April, 2001[,] in Quezon City, Philippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,] a minor 17 years of age by then and there inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent, to her damage and prejudice.[4] (Underscoring supplied)

Criminal Case No. Q-01-106126

That on or about the 8th day of August, 2000, in Quezon City, Philippines, the above-named accused with force and intimidation did then and there, willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one [AAA][,] his own daughter[,] a minor 17 years of age by then and there dragging her inside her room, removing her clothes, placed hims[elf] on top of her and inserting his penis inside her vagina and thereafter had carnal knowledge of

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[2] *Id.* at 94.

[3] *Id.* at 95.

[4] *Id.* at 96.

her against her will and without her consent, to her damage and prejudice.[5] (Underscoring supplied)

At the pre-trial of the cases which were consolidated, appellant admitted that he is the father of AAA; that at the time of the incident, he and AAA were residing in the same place in Quezon City; and that he and AAA's mother BBB are not married, they being merely live-in partners.[6]

At the witness stand where she kept crying, AAA gave the following account:

She was born on November 9, 1982.[7] Appellant, a *barangay tanod*, was a tricycle driver plying in the vicinity of Sikatuna, Quezon City. Her mother BBB, a laundrywoman, would leave home in the morning and return at around 5:00 p.m. of each day of work. She, appellant and BBB were residing at a guardhouse in Sikatuna, Quezon City.

In the afternoon of August 8, 2000, on her arrival from school, appellant dragged her inside their guardhouse-residence and kissed her neck and put himself on top of her.[8] After that incident, she went to the house of (sic), and reported the incident to her sister CCC, BBB's child by a previous relation, who restrained her from returning home to the guardhouse. She thus stayed with CCC for two weeks until BBB fetched her.[9]

In the first week of April 2001, at around 3:00 p.m., over her resistance, appellant kissed and mashed her breasts and other parts of her body and succeeded in having sexual intercourse with her in their house the door of which he "barricaded." After the incident she again repaired to her sister's house and related to her what appellant did.[10] While her sister was incensed, given

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[5] *Id.* at 97.

[6] Pre-Trial Order, *id.* at 105.

[7] Exhibit "C", *id.* at 165.

[8] TSN, July 2, 2003, pp. 2-7.

[9] TSN, July 7, pp. 3-4.

[10] TSN, July 2, 2003, pp. 9-12.

the threat of appellant against revealing what he did, otherwise he would kill her and BBB, BBB was not informed thereof.[11]

In the second week of April 2001, after AAA returned from a visit to her sister, appellant again had carnal knowledge of her.[12]

On May 23, 2001, appellant, infuriated over AAA's frequent going out of the house, again had sexual intercourse with her. While AAA fiercely resisted, appellant instilled fear in her with his Batangas fan knife ("*beinte nueve*").[13] When at 5:00 p.m. her mother BBB arrived and found her crying, she related to her her plight. BBB did not, at first, believe her and even got mad at her.[14]

BBB eventually accompanied AAA and CCC to Camp Karingal to file a complaint against appellant and execute a *Salaysay,* [15] following which they proceeded to Camp Crame for AAA's medical examination.[16]

The medical examination conducted by Dr. Mary Ann P. Gajardo generated the following findings:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: Medium built

MENTAL STATUS: Coherent female subject

BREAST: Conical in shape with pinkish brown areola and nipples from which no secretions could be pressed out.

PHYSICAL INJURIES: See back page

PUBLIC [*sic*] HAIR: Scanty growth

LABIA MAJORA: Full, convex and slightly gaping

LABIA MINORA: Pinkish brown non-hypertrophied

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[11] TSN, July 7, 2003, p. 6.

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

[13] *Id.* at 9-10.

[14] *Id.* at 11-12.

[15] Exhibit "A", records, p. 163. The Salaysay was sworn to before Police Inspector Anacleta Sucgang Enopia on July 26, 2001.

[16] TSN, July 7, 2003, pp. 13-16.

HYMEN: Fleshy, elastic type, with deep healed laceration at 6 o'clock position.

POSTERIOIR [*sic*] FOURCHETTE: Rounded

EXTERNAL VAGINAL ORIFICE: Offers strong resistance of the examining finger.

VAGINAL CANAL: Narrow with prominent rugosities.

CERVIX: Normal in size, color and consistency

CONCLUSION: The subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.

xxx xxx xxx[17] (Emphasis in the original; underscoring supplied)

Appellant, denying the charges, invoked alibi. By his account, he would ply his route within the Sikatuna area from 4:00 or 5:00 a.m., take lunch at home, rest for about an hour and then resume his work. He would go home at 8:00 in the evening, take dinner, watch television and then leave the house at 10:00 p.m. to discharge his duties as a *barangay tanod* until the following day. Why his daughter would impute rape charges against him, he had no idea as he had been enjoying a harmonious relationship with family members except his stepdaughter CCC who harbors ill feelings against him for unknown reasons.[18]

By Joint Decision of May 19, 2005,[19] the trial court convicted appellant, disposing as follows:

WHEREFORE, premises considered[,] judgment is rendered finding accused Nido Garte guilty [of] four (4) counts of the crime of Rape[,] defined and penalized under Art. 226-A in relation to subsec. 1, Art. 226-B, RPC or R.A. 8353. Accordingly, he is hereby sentenced to suffer death for each count of rape as charged in the four (4) informations docketed as Q-01-1061123, Q-01-106124, Q-01-106125 and Q-01-106126.

He is further ordered to pay complainant for each count of rape the sum of ₱75,000.00 as civil indemnity (*P. vs. Dinambing*, 379

[17] Exhibit "G", records, p. 169.

[18] TSN, June 16, 2004, pp. 2-7; September 7, 2004, pp. 2-5.

[19] Records, pp. 196-206.

SCRA 107) or a total of ₱300,000 and the sum of ₱50,000.00, as moral damages for each count of rape, or a total of ₱200,000.00.

With costs de oficio.[20] (Underscoring supplied)

In convicting appellant, the trial court observed:

In a **clear, direct, positive, straightforward manner and continuous crying on the witness stand,** complainant declared that she was ravished or raped four times by no less than her father. It has been said that a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on her accusation is a credible witness. Consequently, accused's denial of the crimes gains no significance at all. Similarly, the fact that the evidence for both the prosecution and the defense was bereft of any motive for the complainant to testify the way she did renders her a very credible witness. When there is **no evidence to show that a witness was actuated by improper motive**, her identification of the accused as the perpetrator of the crime should be given full faith and credit. Besides motive plays insignificant importance by the fact that accused was positively identified as the author of the crimes.

It is worth stating also that complainant in relating her unforgettable experience in the hands of the accused cried continuously on the witness stand. To the mind of the Court this act of complainant, who was under solemn oath while on the witness stand is another strong badge of her credibility. The Supreme Court…ruled that the crying of the offended party on the witness stand narrating her horrible ordeals earmarks her credibility with the verity born out of human nature and experience. One thing more, it is doctrinal that no woman especially a young girl like the complainant, who has not been exposed to the intricacies of the world and in her right mind would cry rape by her father, allow the examination of her private parts, or subject herself and her family to the embarrassments and humiliation concomitant to the prosecution of the case unless her charges were true and her motive is her fervent desire to seek justice. Besides, the accusations of the complainant w[ere] corroborated by the medical finding that she is no longer in a virgin state. While medical finding on non-virginity of an offended party is not controlling on the truth of the accusation, the same has been repeatedly accepted by the Supreme Court as corroborating evidence on the crime of rape.

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[20] *Id.* at 205-206.

Similarly, it is clear from the testimony of the complainant that she was raped four times under threats, force and in the presence of a knife and her efforts to resist the unpardonable act of the accused, who is her father, and pleas for mercy, did not deter his evil lustful spirit in committing the crime. . . Even assuming that there was absence of any force or intimidation, the same does not affect the nature of the crime. The rule firmly settled in this jurisdiction is that **in a rape committed by a father against his own daughter, the former's authority and moral ascendancy over the latter substitute for violence or intimidation**.[21] (Emphasis and underscoring supplied; citations omitted)

On appeal, appellant cited inconsistencies in the evidence for the prosecution, *viz*: AAA's two *Salaysays* [22] relative to the number of times she claimed to have been raped; BBB's testimony relative to the number of times AAA informed her mother about the rapes;[23] and AAA's claim on direct examination that appellant used a knife whereas she claimed on cross examination that appellant poked a gun at her.[24] And appellant argued that it would be unusual for a father to rape his daughter in broad daylight, without bothering to close the windows and lock the door.[25]

By Decision of September 27, 2006,[26] the appellate court dismissed appellant's appeal in this wise:

Accused-appellant's reliance on the alleged discrepancies between [AAA]'s *Sinumpaang Salaysay* and handwritten sworn affidavit on the number of times she was raped is untenable. We take note of the steadfast doctrine prevailing in our criminal justice system that **inconsistencies found in the *ex parte* affidavits do not necessarily downgrade the credibility of a witness.** Almost always, *ex parte*

[21] *Id.* at 203-204.

[22] Exhibits "A" and "B", *id.* at 163-164.

[23] CA *rollo*, p. 46.

[24] *Id.* at 47.

[25] *Ibid.*

[26] *Id.* at 99-110; penned by Justice Rodrigo V. Cosico with the concurrence of Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo.

affidavits are considered incomplete and often inaccurate. They are products sometimes of partial suggestions and at other times of want of suggestions and inquiries, without the aid of which witnesses may be unable to recall the connected circumstances necessary for accurate recollection.

In this regard, the Court takes note of the fact that although [AAA]'s educational attainment is that of a second year high school student, the latter admitted however that she was not well versed in written English. This would account for the non-inclusion of the first rape, more so if we consider the disparity in the dates of the commission of the first rape which occurred a year before the commission of the subsequent rapes. As testified to by [AAA], she was not able to mention the August 8, 2000 rape incident as she was confused at the time. Added to this, the evidence on hand also show that [AAA] was not beside the policeman when the Sinumpaang Salaysay was prepared and that thereafter, she just signed the same without reading it. Significantly, the records reveal that the handwritten affidavit, executed subsequent to the Sinumpaang Salaysay, is a supplemental affidavit for [AAA]'s earlier sworn statement.

Also worthwhile to note is the fact that **while on the stand, [AAA] remained firm and steadfast** that what she stated in her sworn affidavits were correct despite the consistent prodding of the defense counsel…

xxx xxx xxx

Considering the foregoing, the Court finds such alleged discrepancy in [AAA]'s sworn affidavits on the non-inclusion of the first rape is **a trivial matter which do not in any way cast doubt on her credibility**.

In the same manner, we rule that **the alleged inconsistency with respect to the weapons used in the commission of the rapes is likewise unavailing as we find the same as a mere extraneous matter** and does not remove the fact that the crime of rape was repeatedly committed by the accused-appellant against the victim through the *use of force and intimidation*…

xxx xxx xxx

Meanwhile, the **alleged inconsistency between the testimonies of [AAA] and her mother, [BBB] as to the number of times [AAA] informed the latter of the rape incidents is again a trivial matter** which does not remove the fact that the latter corroborated the claim

of her daughter that she was raped by her father, [BBB]'s husband. True, [BBB] admitted that she first had doubts in the truthfulness of [AAA]'s claim – considering its disturbing implications, but in the end she herself was convinced from her observations of her daughter's conduct who always appeared to be frightened…

On the matter of accused-appellant's contention on the improbability of the commission of the rapes during daytime, well-settled is the rule that **lust is no respecter of time and place, and in this case, also of kinship**…[27] (Italics in the original; emphasis and underscoring supplied)

In view, however, of the enactment of Republic Act No. 9346,[28] the appellate court modified the penalty of death to *reclusion perpetua* in each of the four counts of rape. In addition to the award for civil indemnity and moral damages, the appellate court awarded exemplary damages in the amount of ₱25,000 for each count.

Thus the decretal portion of the appellate court decision reads:

WHEREFORE, premises considered, the decision of the Regional Trial Court, Branch 89 of Quezon City in Criminal Cases Nos. Q-01-106123, Q-01-106124, Q-01-106125 and Q-01-106126 finding accused-appellant Nido Garte GUILTY beyond reasonable doubt of the crime of rape under Article 266-A in relation to paragraph 1 of Art. 226-B of the Revised Penal Code, as amended by Republic Act No. 8353, in each case is AFFIRMED with MODIFICATION in that, accused-appellant is sentenced to suffer the penalty of reclusion perpetua for each count of rape and is also hereby ordered to pay [AAA] ₱75,000 as civil indemnity; ₱50,000 as moral damages; and ₱25,000 as exemplary damages, in each case.[29] (Underscoring supplied)

Hence, the present appeal of appellant.

Appellant and *the People* have by separate Manifestations informed that they are no longer filing supplemental briefs as

[27] *Id.* at 104-106.

[28] Otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[29] CA *rollo*, p. 109.

they had sufficiently discussed their respective positions in the briefs they earlier filed.[30]

Appellant's conviction for each of the four counts must be upheld.

A review of the records of the cases shows that AAA's testimony has satisfactorily met the test of credibility. Why AAA would impute serious charges against him, appellant could not advance any reason. In the recent case of *Campos v. People*,[31] this Court once again reiterated the following well-settled rule:

> . . . [A] rape victim's testimony against her parent is entitled to great weight since, customarily, Filipino children revere and respect their elders. These values are so deeply ingrained in Filipino families that it is unthinkable for a daughter to concoct brazenly a story of rape against her father, if such were not true. Indeed, courts usually give greater weight to the testimony of a girl who fell victim to sexual assault, especially a minor, particularly in incestuous rape as in this case, because no woman would be willing to undergo a public trial and bear the concomitant shame, humiliation, and dishonor of exposing her own degradation were it not for the purpose of condemning injustice and ensuring that the offender is punished.[32]

Appellant's harping on the alleged inconsistencies in AAA's claim respecting the kind of weapon used by appellant and the number of times she informed her mother about the incidents does not persuade. Especially given the number of times AAA was abused, she is not expected to have "the memory of an elephant and the cold precision of a mathematician."[33] Indeed, minor lapses are to be expected when a person is recounting details of a traumatic experience which are commonly too painful and agonizing to recall, especially in a courtroom atmosphere.[34]

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[30] *Rollo*, pp. 15-17 for the People and pp. 22-24 for appellant.

[31] G.R. No. 175275, February 19, 2008, 546 SCRA 334.

[32] *Id.* at 345-346.

[33] *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742, 753.

[34] *Vide People v. Palac*, G.R. No. 175600, April 23, 2008, 552 SCRA 616, 625.

More specifically on the kind of weapon used by appellant to threaten AAA, AAA's claims bearing thereon are not necessarily conflicting.[35] AAA corrected herself by pointing out that aside from the knife, appellant also threatened her with a gun. If the defense wanted to impeach AAA, it should have followed the procedure laid down by Rules of Court [36] by laying the predicate.[37] No such effort was done, however.

In any event, whether appellant used a gun or a knife to threaten AAA becomes immaterial as his moral ascendancy as a father over her replaces "force and intimidation." *People v. Rodavia*, which was correctly cited by the Office of the Solicitor General, is instructive:

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[35] On cross-examination, AAA testified:

Q All these incidents, the accused had a pointed knife?

A Yes, once, sir.

Q How many times?

A 3 times he poked a gun at me.

(TSN, August 11, 2003, pp. 7-8)

[36] Section 13, Rule 132 provides:

How witness impeached by evidence of inconsistent statements. – Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put him concerning them.

[37] In *People v. Relucio*, No. L-38790, November 9, 1978, 86 SCRA 227, 288, this Court held:

It is a basic postulate in the law on evidence that every witness is presumed to be truthful and perjury is not to be readily inferred just because apparent inconsistencies are evinced in parts of his testimony. Every effort to reconcile the conflicting points should first be exerted before any adverse conclusion can be made therefrom. These considerations lie at the base of the familiar rule requiring the laying of a predicate, which i[n] essence means simply that it is the duty of a party trying to impugn the testimony of a witness by means of prior or , for that matter, subsequent inconsistent statements, whether oral or in writing, to give the witness a chance to reconcile his conflicting declarations, such that it is only when no reasonable explanation is given by him that he should be deemed impeached. (Underscoring supplied)

…[T]he use of a knife or any other weapon for that matter is not an element of the crime of rape. As long as the evidence shows that force, violence or intimidation was used to have a carnal knowledge of the victim, the requisite components of the crime are deemed satisfied.

It bears emphasizing that in a rape committed by a father against his own daughter, the former's moral ascendancy and influence sufficiently takes the place of violence or intimidation. Under the same circumstances, **proof of force and violence is not even essential**, because the moral and physical ascendancy of the father over his daughter is sufficient to cow her into submission to his bestial desires.[38] (Emphasis and underscoring supplied)

Appellant's denial and alibi are of course legitimate defenses in rape cases. To successfully invoke alibi, however, the accused must not only prove his presence at another place at the time of the commission of the offense. He must also demonstrate that it would be physically impossible for him to be at the *locus criminis* at the time of the commission of the crime.[39] Appellant, on whom the *onus probandi* lies, failed to discharge the same, however, as he in fact testified that he would go home for lunch and dinner in between plying his tricycle in the vicinity.

The Court affirms then the appellate court's decision, with modification, however. Following Republic Act No. 9346 which provides:

Section 3. Persons convicted of offenses punished 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[,] (Underscoring supplied),

appellant is not eligible for parole.[40] And consistent with prevailing jurisprudence, the award by the trial court of moral damages in the amount of ₱50,000 in each count, which was affirmed by

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[38] 426 Phil. 707, 719 (2002).

[39] *Campos v. People*, *supra* note 31 at 335.

[40] *Vide People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16; *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

the appellate court, should be increased to ₱75,000 for each count.[41]

WHEREFORE, the assailed September 27, 2006 Decision of the Court of Appeals in CA-GR CR-H.C. No. 01099 is *AFFIRMED with MODIFICATION* in that appellant is not eligible for parole, and his liability for moral damages is increased from ₱50,000 to ₱75,000 in each of the four counts of rape. In all other aspects, the challenged decision is affirmed.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176484. November 25, 2008]

CALAMBA MEDICAL CENTER, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, RONALDO LANZANAS and MERCEDITHA[*] LANZANAS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; CONTROL TEST, CONSTRUED; APPLICATION IN CASE AT BAR.— Under the "control test," an employment relationship exists between a physician and a hospital if the hospital controls both

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[41] *People v. Ramos*, G.R. No. 179030, June 12, 2008, 554 SCRA 423; *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16; *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

[*] Mercedita in some pleadings and annexed documents.

the means and the details of the process by which the physician is to accomplish his task. Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, the element of control is absent. As priorly stated, private respondents maintained specific work-schedules, as determined by petitioner through its medical director, which consisted of 24-hour shifts totaling forty-eight hours each week and which were strictly to be observed under pain of administrative sanctions. That petitioner exercised control over respondents gains light from the undisputed fact that in the emergency room, the operating room, or any department or ward for that matter, respondents' work is monitored through its nursing supervisors, charge nurses and orderlies. Without the approval or consent of petitioner or its medical director, no operations can be undertaken in those areas. For control test to apply, it is not essential for the employer to actually supervise the performance of duties of the employee, it being enough that it has the right to wield the power.

2. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; RECOGNIZED EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN RESIDENT PHYSICIANS AND THE TRAINING HOSPITAL; EXCEPTION; NOT PRESENT IN CASE AT BAR.— Under Section 15, Rule X of Book III of the *Implementing Rules of the Labor Code*, an employer-employee relationship exists between the resident physicians and the training hospitals, unless there is a training agreement between them, and the training program is duly accredited or approved by the appropriate government agency. In respondents' case, they were not undergoing any specialization training. They were considered non-training general practitioners, assigned at the emergency rooms and ward sections.

3. ID.; ID.; UNFAIR LABOR PRACTICE; PRESENT WHEN A LIST IS CIRCULATED TO PREVENT EMPLOYMENT OF THOSE INCLUDED IN THE LIST; CASE AT BAR.— While petitioner does not deny the existence of such list, it pointed to the lack of any board action on its part to initiate such listing and to circulate the same, *viz.*: 20. x x x The alleged watchlist or "watch out list," as termed by complainants, were merely lists obtained by one Dr. Ernesto Naval of PAMANA Hospital.

Said list was given by a stockholder of respondent who was at the same time a stockholder of PAMAN[A] Hospital. The giving of the list was not a Board action. The circulation of such list containing names of alleged union members intended to prevent employment of workers for union activities similarly constitutes unfair labor practice, thereby giving a right of action for damages by the employees prejudiced. A word on the appellate court's deletion of the award of attorney's fees. There being no basis advanced in deleting it, as exemplary damages were correctly awarded, the award of attorney's fees should be reinstated.

APPEARANCES OF COUNSEL

Cabio Law Office & Associates for petitioner.

Benjamin S. David for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The Calamba Medical Center (petitioner), a privately-owned hospital, engaged the services of medical doctors-spouses Ronaldo Lanzanas (Dr. Lanzanas) and Merceditha Lanzanas (Dr. Merceditha) in March 1992 and August 1995, respectively, as part of its team of resident physicians. Reporting at the hospital twice-a-week on twenty-four-hour shifts, respondents were paid a monthly "retainer" of ₱4,800.00 each.[1] It appears that resident physicians were also given a percentage share out of fees charged for out-patient treatments, operating room assistance and discharge billings, in addition to their fixed monthly retainer.[2]

The work schedules of the members of the team of resident physicians were fixed by petitioner's medical director Dr. Raul Desipeda (Dr. Desipeda). And they were issued identification

[1] *Rollo*, p. 10.

[2] *Id.* at 11.

cards[3] by petitioner and were enrolled in the Social Security System (SSS).[4] Income taxes were withheld from them.[5]

On March 7, 1998, Dr. Meluz Trinidad (Dr. Trinidad), also a resident physician at the hospital, inadvertently overheard a telephone conversation of respondent Dr. Lanzanas with a fellow employee, Diosdado Miscala, through an extension telephone line. Apparently, Dr. Lanzanas and Miscala were discussing the low "census" or admission of patients to the hospital.[6]

Dr. Desipeda whose attention was called to the above-said telephone conversation issued to Dr. Lanzanas a Memorandum of March 7, 1998 reading:

> **As a Licensed Resident Physician *employed* in Calamba Medical Center since several years ago**, the hospital management has committed upon you utmost confidence in the performance of duties pursuant thereto. This is the reason why you were awarded the privilege to practice in the hospital and were entrusted hospital functions to serve the interest of both the hospital and our patients using your capability for independent judgment.
>
> Very recently though and unfortunately, you have committed acts inimical to the interest of the hospital, the details of which are contained in the hereto attached affidavit of witness.
>
> **You are therefore given 24 hours to explain why no disciplinary action should be taken against you.**
>
> **Pending investigation of your case, you are hereby placed under 30-days [*sic*] preventive suspension effective upon receipt hereof**.[7] (Emphasis, italics and underscoring supplied)

Inexplicably, petitioner did not give respondent Dr. Merceditha, who was not involved in the said incident, any work schedule

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[3] NLRC records, pp. 79-80; Annexes "E" and "F" of Complainants' (herein private respondents) Joint Reply and Rejoinder.

[4] *Id.* at 74-75; Annexes "A" and "B".

[5] *Id.* at 76-78; Annexes "C" and "D".

[6] *Id.* at 12; NLRC records, pp. 99-100, Affidavit of Dr. Meluz Trinidad.

[7] NLRC records, p. 171.

after sending her husband Dr. Lanzanas the memorandum,[8] nor inform her the reason therefor, albeit she was later informed by the Human Resource Department (HRD) officer that that was part of petitioner's cost-cutting measures.[9]

Responding to the memorandum, Dr. Lanzanas, by letter of March 9, 1998,[10] admitted that he spoke with Miscala over the phone but that their conversation was taken out of context by Dr. Trinidad.

On March 14, 1998,[11] the rank-and-file employees union of petitioner went on strike due to unresolved grievances over terms and conditions of employment.[12]

On March 20, 1998, Dr. Lanzanas filed a complaint for illegal suspension[13] before the National Labor Relations Commission (NLRC)-Regional Arbitration Board (RAB) IV. Dr. Merceditha subsequently filed a complaint for illegal dismissal.[14]

In the meantime, then Sec. Cresenciano Trajano of the Department of Labor and Employment (DOLE) certified the labor dispute to the NLRC for compulsory arbitration and issued on April 21, 1998 return-to-work Order to the striking union officers and employees of petitioner pending resolution of the labor dispute.[15]

In a memorandum[16] of April 22, 1998, Dr. Desipeda echoed the April 22, 1998 order of the Secretary of Labor directing all union officers and members to return-to-work "on or April 23,

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[8] *Rollo,* p.12.

[9] NLRC records, p.16.

[10] *Id.* at 174.

[11] The actual date of the union strike as reflected in the order of the Secretary of Labor and Employment. *Id.* at 50-51.

[12] *Rollo,* p. 11.

[13] NLRC records, p. 1.

[14] *Id.* at 7.

[15] NLRC records, pp. 50-51.

[16] CA *rollo,* p. 198.

1998, except those employees that were already terminated or are serving disciplinary actions." Dr. Desipeda thus ordered the officers and members of the union to "report for work as soon as possible" to the hospital's personnel officer and administrator for "work scheduling, assignments and/or re-assignments."

Petitioner later sent Dr. Lanzanas a notice of termination which he received on April 25, 1998, indicating as grounds therefor his failure to report back to work despite the DOLE order and his supposed role in the striking union, thus:

> On April 23, 1998, you still did not report for work despite memorandum issued by the CMC Medical Director implementing the Labor Secretary's ORDER. The same is true on April 24, 1998 and April 25, 1998,—you still did not report for work [*sic*].
>
> You are likewise aware that you were observed (re: signatories [*sic*] to the *Saligang Batas* of BMCMC-UWP) to be unlawfully participating as **member** in the rank-and-file union's concerted activities despite knowledge that your position in the hospital is managerial in nature (*Nurses, Orderlies, and staff of the Emergency Room carry out your orders using your independent judgment*) which participation is expressly prohibited by the New Labor Code and which prohibition was sustained by the Med-Arbiter's **ORDER** dated February 24, 1998. (Emphasis and italics in the original; underscoring partly in the original and partly supplied)
>
> **For these reasons as grounds for termination, you are hereby terminated for cause from employment effective today, April 25, 1998,** without prejudice to further action for revocation of your license before the Philippine [*sic*] Regulations [*sic*] Commission.[17] (Emphasis and underscoring supplied)

Dr. Lanzanas thus amended his original complaint to include illegal dismissal.[18] His and Dr. Merceditha's complaints were consolidated and docketed as NLRC CASE NO. RAB-IV-3-9879-98-L.

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[17] NLRC records, p. 175.

[18] *Id.* at 12.

By Decision[19] of March 23, 1999, Labor Arbiter Antonio R. Macam dismissed the spouses' complaints for want of jurisdiction upon a finding that there was no employer-employee relationship between the parties, the fourth requisite or the "control test" in the determination of an employment bond being absent.

On appeal, the NLRC, by Decision[20] of May 3, 2002, reversed the Labor Arbiter's findings, disposing as follows:

> WHEREFORE, the assailed decision is set aside. The respondents are ordered to pay the complainants their full backwages; separation pay of one month salary for every year of service in lieu of reinstatement; moral damages of ₱500,000.00 each; exemplary damages of ₱250,000.00 each plus ten percent (10%) of the total award as attorney's fees.
>
> SO ORDERED.[21]

Petitioner's motion for reconsideration having been denied, it brought the case to the Court of Appeals on *certiorari*.

The appellate court, by June 30, 2004 Decision,[22] initially granted petitioner's petition and set aside the NLRC ruling. However, upon a subsequent motion for reconsideration filed by respondents, it reinstated the NLRC decision in an Amended Decision[23] dated September 26, 2006 but tempered the award to each of the spouses of moral and exemplary damages to ₱100,000.00 and ₱50,000.00, respectively and omitted the award of attorney's fees.

In finding the existence of an employer-employee relationship between the parties, the appellate court held:

> x x x. While it may be true that the respondents are given the discretion to decide on how to treat the petitioner's patients, the

[19] *Id.* at 117-130.

[20] *Id.* at 280-305.

[21] *Id.* at 304.

[22] *Rollo*, pp. 94-99. Penned by Justice Elvi John S. Asuncion with the concurrence of Justices Mariano C. Del Castillo and Hakim S. Abdulwahid.

[23] *Id.* at 32-43. Penned by Justice Hakim S. Abdulwahid with the concurrence of Justices Remedios A. Salazar-Fernando and Mariano C. del Castillo.

petitioner has not denied nor explained why its Medical Director still has **the direct supervision and control over the respondents**. The fact is the petitioner's Medical Director still has to **approve the schedule of duties of the respondents**. The respondents stressed that the petitioner's Medical Director also issues **instructions or orders to the respondents relating to the means and methods of performing their duties**, *i.e.* admission of patients, manner of characterizing cases, treatment of cases, etc., and **may even overrule, review or revise the decisions of the resident physicians.** This was not controverted by the petitioner. The foregoing factors taken together are sufficient to constitute the fourth element, *i.e.* control test, hence, the existence of the employer-employee relationship. In denying that it had control over the respondents, the petitioner alleged that the respondents were free to put up their own clinics or to accept other retainership agreement with the other hospitals. But, the petitioner failed to substantiate the allegation with substantial evidence. (Emphasis and underscoring supplied)[24]

The appellate court thus declared that respondents were illegally dismissed.

x x x. The petitioner's ground for dismissing respondent Ronaldo Lanzanas was based on his alleged participation in union activities, specifically in joining the strike and failing to observe the return-to-work order issued by the Secretary of Labor. Yet, the petitioner did not adduce any piece of evidence to show that respondent Ronaldo indeed participated in the strike. x x x.

In the case of respondent Merceditha Lanzanas, the petitioner's explanation that "her marriage to complainant Ronaldo has given rise to the presumption that her sympat[hies] are likewise with her husband" as a ground for her dismissal is unacceptable. Such is not one of the grounds to justify the termination of her employment.[25] (Underscoring supplied)

The *fallo* of the appellate court's decision reads:

WHEREFORE, the instant *Motion for Reconsideration* is **GRANTED**, and the Court's decision dated June 30, 2004, is SET ASIDE. In lieu thereof, a new judgment is entered, as follows:

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[24] *Id.* at 40.

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

> WHEREFORE, the petition is DISMISSED. The assailed decision dated May 3, 2002 and order dated September 24, 2002 of the NLRC in NLRC NCR CA No. 019823-99 are AFFIRMED with the MODIFICATION that the moral and exemplary damages are reduced to ~~₱~~100,000.00 each and ~~₱~~50,000.00 each, respectively.
>
> SO ORDERED.[26] (Emphasis and italics in the original; underscoring supplied)

Preliminarily, the present petition calls for a determination of whether there exists an employer-employee relationship[27] between petitioner and the spouses-respondents.

Denying the existence of such relationship, petitioner argues that the appellate court, as well as the NLRC, overlooked its twice-a-week reporting arrangement with respondents who are free to practice their profession elsewhere the rest of the week. And it invites attention to the uncontroverted allegation that respondents, aside from their monthly retainers, were entitled to one-half of all suturing, admitting, consultation, medico-legal and operating room assistance fees.[28] These circumstances, it stresses, are clear badges of the absence of any employment relationship between them.

This Court is unimpressed.

Under the "control test," an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task.[29]

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[26] *Id.* at 42.

[27] Applying the *four-fold test* which has the following elements: a) selection and engagement of the employee; b) payment of wages or salaries; c) exercise of the power of dismissal; and d) exercise of the power to control the employee's conduct.

[28] *Rollo,* p. 26.

[29] *Nogales v. Capitol Medical Center*, G.R. No. 142625, December 19, 2006, 511 SCRA 204, 221 citing *Diggs v. Novant Health, Inc.*, 628 S.E.2d 851 (2006).

Where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, the element of control is absent.[30]

As priorly stated, private respondents maintained specific work-schedules, as determined by petitioner through its medical director, which consisted of 24-hour shifts totaling forty-eight hours each week and which were strictly to be observed under pain of administrative sanctions.

That petitioner exercised control over respondents gains light from the undisputed fact that in the emergency room, the operating room, or any department or ward for that matter, respondents' work is monitored through its nursing supervisors, charge nurses and orderlies. Without the approval or consent of petitioner or its medical director, no operations can be undertaken in those areas. For control test to apply, it is not essential for the employer to actually supervise the performance of duties of the employee, it being enough that it has the right to wield the power.[31]

With respect to respondents' sharing in some hospital fees, this scheme does not sever the employment tie between them and petitioner as this merely mirrors additional form or another form of compensation or incentive similar to what commission-based employees receive as contemplated in Article 97 (f) of the Labor Code, thus:

"Wage" paid to any employee shall mean the remuneration or earning, however designated, capable of being expressed in terms of money, **whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same**, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or

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[30] *Encyclopedia Britannica v. NLRC*, G.R. No. 87098, November 4, 1996, 264 SCRA 1, 10.

[31] *Equitable Banking Corp. v. NLRC*, G.R. No. 102467, June 13, 1997, 273 SCRA 352, 371.

for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. x x x (Emphasis and underscoring supplied),

Respondents were in fact made subject to petitioner-hospital's Code of Ethics,[32] the provisions of which cover administrative and disciplinary measures on negligence of duties, personnel conduct and behavior, and offenses against persons, property and the hospital's interest.

More importantly, petitioner itself provided incontrovertible proof of the employment status of respondents, namely, the identification cards it issued them, the payslips[33] and BIR W-2 (now 2316) Forms which reflect their status as employees, and the classification as "salary" of their remuneration. Moreover, it enrolled respondents in the SSS and Medicare (Philhealth) program. It bears noting at this juncture that mandatory coverage under the SSS Law[34] is premised on the existence of an employer-employee relationship,[35] except in cases of compulsory coverage of the self-employed. It would be preposterous for an employer to report certain persons as employees and pay their SSS premiums as well as their wages if they are not its employees.[36]

And if respondents were not petitioner's employees, how does it account for its issuance of the earlier-quoted March 7, 1998 memorandum explicitly stating that respondent is "employed" in it and of the subsequent termination letter indicating respondent Lanzanas' employment status.

Finally, under Section 15, Rule X of Book III of the *Implementing Rules of the Labor Code*, an employer-employee relationship exists between the resident physicians and the training

[32] NLRC records, pp. 179-184; Annex "H".

[33] *Id.* at 89; Annex "J".

[34] *Vide* Section 9 of REPUBLIC ACT NO. 8282.

[35] *Social Security System v. Court of Appeals*, 401 Phil. 132, 141 (2000).

[36] *Nagasura v. NLRC*, G.R. Nos. 117936-37, May 20, 1998, 290 SCRA 245, 251; *Equitable Banking Corporation v. NLRC*, *supra* note 31.

hospitals, unless there is a training agreement between them, and the training program is duly accredited or approved by the appropriate government agency. In respondents' case, they were not undergoing any specialization training. They were considered non-training general practitioners,[37] assigned at the emergency rooms and ward sections.

Turning now to the issue of dismissal, the Court upholds the appellate court's conclusion that private respondents were illegally dismissed.

Dr. Lanzanas was neither a managerial nor supervisory employee but part of the rank-and-file. This is the import of the Secretary of Labor's Resolution of May 22, 1998 in OS A-05-15-98 which reads:

xxx xxx xxx

In the motion to dismiss it filed before the Med-Arbiter, the employer (CMC) alleged that 24 members of petitioner are supervisors, namely x x x **Rolando Lanzonas** [*sic*] x x x.

A close scrutiny of the job descriptions of the alleged supervisors narrated by the employer only proves that except for the contention that these employees allegedly supervise, they do not however recommend any managerial action. At most, their job is merely routinary in nature and consequently, they **cannot be considered supervisory employees**.

They are **not therefore barred from membership in the union of rank[-]and[-]file**, which the petitioner [the union] is seeking to represent in the instant case.[38] (Emphasis and underscoring supplied)

xxx xxx xxx

Admittedly, Dr. Lanzanas was a union member in the hospital, which is considered indispensable to the national interest. In labor disputes adversely affecting the continued operation of a hospital, Article 263(g) of the Labor Code provides:

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[37] *Rollo*, p. 58.

[38] NLRC records, pp. 90-93.

ART. 263. STRIKES, PICKETING, AND LOCKOUTS.—

xxx xxx xxx

(g) x x x

x x x. **In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions**, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, the Secretary of Labor and Employment is mandated to immediately assume, within twenty-four hours from knowledge of the occurrence of such strike or lockout, jurisdiction over the same or certify to the Commission for compulsory arbitration. **For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them**.

xxx xxx xxx (Emphasis and underscoring supplied)

An assumption or certification order of the DOLE Secretary automatically results in a return-to-work of all striking workers, whether a corresponding return-to-work order had been issued.[39] The DOLE Secretary in fact issued a return-to-work Order, failing to comply with which is punishable by dismissal or loss of employment status.[40]

Participation in a strike and intransigence to a return-to-work order must, however, be duly proved in order to justify immediate

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[39] *Telefunken Semiconductors Employees Union-FFW v. Sec. of Labor and Employment*, G.R. Nos.122743 and 127215, December 12, 1997, 283 SCRA 145-146.

[40] *Marcopper Mining Corp. v. Brillantes*, G.R. No. 119381, March 11, 1996, 254 SCRA 595, 602.

dismissal in a "national interest" case. As the appellate court as well as the NLRC observed, however, there is nothing in the records that would bear out Dr. Lanzanas' actual participation in the strike. And the medical director's Memorandum[41] of April 22, 1998 contains nothing more than a general directive to all union officers and members to return-to-work. Mere membership in a labor union does not *ipso facto* mean participation in a strike.

Dr. Lanzanas' claim that, after his 30-day preventive suspension ended on or before April 9, 1998, he was never given any work schedule[42] was not refuted by petitioner. Petitioner in fact never released any findings of its supposed investigation into Dr. Lanzanas' alleged "inimical acts."

Petitioner thus failed to observe the two requirements,before dismissal can be effected — notice and hearing — which constitute essential elements of the statutory process; the first to apprise the employee of the particular acts or omissions for which his dismissal is sought, and the second to inform the employee of the employer's decision to dismiss him.[43] Non-observance of these requirements runs afoul of the procedural mandate.[44]

The termination notice sent to and received by Dr. Lanzanas on April 25, 1998 was the first and only time that he was apprised of the reason for his dismissal. He was not afforded, however, even the slightest opportunity to explain his side. His was a "termination upon receipt" situation. While he was priorly made to explain on his telephone conversation with Miscala,[45] he was not with respect to his supposed participation in the strike and failure to heed the return-to-work order.

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[41] CA *rollo* at 198.

[42] *Rollo*, p. 79.

[43] *PNB v. Cabansag*, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 530-531.

[44] *Condo Suite Club Travel v. NLRC*, G.R. No. 125671, January 28, 2000, 323 SCRA 679, 690 citing *Vinta Maritime v. NLRC*, 284 SCRA 656, 671-672 (1998).

[45] *Supra* note 10.

As for the case of Dr. Merceditha, her dismissal was worse, it having been effected without any just or authorized cause and without observance of due process. In fact, petitioner never proferred any valid cause for her dismissal except its view that "her marriage to [Dr. Lanzanas] has given rise to the presumption that her sympath[y] [is] with her husband; and that when [Dr. Lanzanas] declared that he was going to boycott the scheduling of their workload by the medical doctor, he was presumed to be speaking for himself [and] for his wife Merceditha."[46]

Petitioner's contention that Dr. Merceditha was a member of the union or was a participant in the strike remained just that. Its termination of her employment on the basis of her conjugal relationship is not analogous to any of the causes enumerated in Article 282[47] of the Labor Code. Mere suspicion or belief, no matter how strong, cannot substitute for factual findings carefully established through orderly procedure.[48]

The Court even notes that after the proceedings at the NLRC, petitioner never even mentioned Dr. Merceditha's case. There is thus no gainsaying that her dismissal was both substantively and procedurally infirm.

Adding insult to injury was the circulation by petitioner of a "watchlist" or "watch out list"[49] including therein the names of

[46] NLRC records, p. 43; Respondent's (Petitioner herein) Position Paper.

[47] Article 282 Temination by employer.—An employer may terminate an employee 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.

[48] *Austria v. NLRC*, G.R. No. 123646, July 14, 1999, 310 SCRA 293, 303.

[49] NLRC records, pp. 197-199.

respondents. Consider the following portions of Dr. Merceditha's Memorandum of Appeal:

3. Moreover, to top it all, respondents have circulated a so called "Watch List" to other hospitals, one of which [was] procured from Foothills Hospital in Sto. Tomas, Batangas [that] contains her name. The object of the said list is precisely to harass Complainant and malign her good name and reputation. This is not only unprofessional, but runs smack of oppression as CMC is trying permanently deprived [*sic*] Complainant of her livelihood by ensuring that she is barred from practicing in other hospitals.

4. Other co-professionals and brothers in the profession are fully aware of these "watch out" lists and as such, her reputation was not only besmirched, but was damaged, and she suffered social humiliation as it is of public knowledge that she was dismissed from work. Complainant came from a reputable and respected family, her father being a retired full Colonel in the Army, Col. Romeo A. Vente, and her brothers and sisters are all professionals, her brothers, Arnold and Romeo Jr., being engineers. The Complainant has a family protection [*sic*] to protect. She likewise has a professional reputation to protect, being a licensed physician. Both her personal and professional reputation were damaged as a result of the unlawful acts of the respondents.[50]

While petitioner does not deny the existence of such list, it pointed to the lack of any board action on its part to initiate such listing and to circulate the same, *viz:*

20. x x x. The alleged watchlist or "watch out list," as termed by complainants, were merely lists obtained by one Dr. Ernesto Naval of PAMANA Hospital. **Said list was given by a stockholder of respondent who was at the same time a stockholder of PAMAN[A] Hospital**. The giving of the list was not a Board action.[51] (Emphasis and underscoring supplied)

The circulation of such list containing names of alleged union members intended to prevent employment of workers for union

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

[51] *Id.* at 59.

activities similarly constitutes unfair labor practice, thereby giving a right of action for damages by the employees prejudiced.[52]

A word on the appellate court's deletion of the award of attorney's fees. There being no basis advanced in deleting it, as exemplary damages were correctly awarded,[53] the award of attorney's fees should be reinstated.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP No. 75871 is *AFFIRMED* with *MODIFICATION* in that the award by the National Labor Relations Commission of 10% of the total judgment award as attorney's fees is reinstated. In all other aspects, the decision of the appellate court is affirmed.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[52] Article 28 of the Civil Code states "Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage."

[53] Article 2208 of the Civil Code states "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) x x x;

xxx xxx xxx"

EN BANC

[G.R. No. 182867. November 25, 2008]

ROBERTO LACEDA, SR., *petitioner, vs.* **RANDY L. LIMENA and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT 9164 (AN ACT PROVIDING FOR SYNCHRONIZED *BARANGAY* AND SANGGUNIANG KABATAAN ELECTIONS); PROHIBITION FROM RUNNING FOR THE SAME POSITION FOR MORE THAN THREE CONSECUTIVE TERMS; REQUISITES.— Section 2 of Rep. Act No. 9164, like Section 43 of the Local Government Code from which it was taken, is primarily intended to broaden the choices of the electorate of the candidates who will run for office, and to infuse new blood in the political arena by disqualifying officials from running for the same office after a term of nine years. This Court has held that for the prohibition to apply, two requisites must concur: (1) that the official concerned has been elected for three consecutive terms in the same local government post and (2) that he or she has fully served three consecutive terms.

2. ID.; ID.; ID.; APPLICATION THEREOF VALID EVEN WHEN MUNICIPALITIES WERE MERGED OR CONVERTED INTO A CITY THEREBY CREATING A NEW POLITICAL UNIT.— In this case, while it is true that under Rep. Act No. 8806 the municipalities of Sorsogon and Bacon were merged and converted into a city thereby abolishing the former and creating Sorsogon City as a new political unit, it cannot be said that for the purpose of applying the prohibition in Section 2 of Rep. Act No. 9164, the office of *Punong Barangay* of Barangay Panlayaan, *Municipality of Sorsogon*, would now be construed as a different local government post as that of the office of *Punong Barangay* of Barangay Panlayaan, *Sorsogon City*. The territorial jurisdiction of Barangay Panlayaan, Sorsogon City, is the same as before the conversion. Consequently, the inhabitants of the *barangay* are the same. They are the same group of voters who elected Laceda to be their *Punong Barangay* for three consecutive terms and over

whom Laceda held power and authority as their *Punong Barangay*. Moreover, Rep. Act No. 8806 did not interrupt Laceda's term. In *Latasa v. Commission on Elections*, which involved a similar question, this Court held that where a person has been elected for three consecutive terms as a municipal mayor and prior to the end or termination of such three-year term the municipality has been converted by law into a city, without the city charter interrupting his term until the end of the three-year term, the prohibition applies to prevent him from running for the fourth time as city mayor thereof, there being no break in the continuity of the terms. Thus, conformably with the democratic intent of Rep. Act No. 9164 and this Court's ruling in *Latasa v. Commission on Elections*, we hold that the prohibition in Section 2 of said statute applies to Laceda. The COMELEC did not err nor commit any abuse of discretion when it declared him disqualified and cancelled his certificate of candidacy.

APPEARANCES OF COUNSEL

Arnulfo L. Perete for petitioner.
The Solicitor General for public respondent.
Percival G. Alvarez for private respondent.

R E S O L U T I O N

QUISUMBING, *J.*:

From this Court's June 10, 2008 Resolution[1] dismissing his petition for certiorari, petitioner Roberto Laceda, Sr. filed the instant motion for reconsideration,[2] insisting that the Commission on Elections (COMELEC) committed grave abuse of discretion in issuing the Resolutions dated January 15, 2008[3] and May 7, 2008[4] in SPA No. 07-028 (BRGY).

[1] *Rollo*, p. 63.

[2] *Id.* at 70-73. Dated July 25, 2008.

[3] *Id.* at 25-30.

[4] *Id.* at 56-62.

The facts are as follows:

Petitioner Roberto Laceda, Sr., and private respondent Randy L. Limena were candidates for *Punong* Barangay of Barangay Panlayaan, West District, Sorsogon City, during the October 29, 2007 Barangay and *Sangguniang Kabataan* Elections. On October 23, 2007, Limena filed a petition for disqualification and/or declaration as an ineligible candidate[5] against Laceda before the COMELEC, contending that Laceda had already served as *Punong Barangay* for Brgy. Panlayaan for three consecutive terms since 1994, and was thus prohibited from running for the fourth time under Section 2 of Republic Act No. 9164 [6] which provides:

SEC. 2. *Term of Office.*—The term of office of all *barangay* and sangguniang kabataan officials after the effectivity of this Act shall be three (3) years.

No *barangay* elective official shall serve for more than three (3) consecutive terms in the same position: *Provided, however,* That the term of office shall be reckoned from the 1994 *barangay* elections. Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected.

Limena likewise attached the following certification from the Department of the Interior and Local Government:

THIS IS TO CERTIFY that per records in this office **HON. ROBERTO LACEDA, SR.,** incumbent *Punong Barangay* of Panlayaan, West District, Sorsogon City. …was elected as *Punong Barangay* during the May 9, 1994, May 12, 1997 and July 15, 2002 Barangay Elections. He resigned from office on March 20, 1995 to run as Municipal Councilor. Hence, he is covered by the three-term rule of paragraph 2, Section 2 of RA 9164 which provides that: "No *barangay* elective official shall serve for more than three (3)

[5] *Id.* at 14-17.

[6] AN ACT PROVIDING FOR SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, AMENDING REPUBLIC ACT NO. 7160, AS AMENDED, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991," AND FOR OTHER PURPOSES, approved on March 19, 2002.

consecutive terms in the same position: Provided, however, that the term of office shall be reckoned from the 1994 *barangay* elections. *Voluntary renunciation of office [for] any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected*."[7]

xxx xxx xxx

In his Answer,[8] Laceda admitted having served as *Punong Barangay* of Panlayaan for three consecutive terms. However, he asserted that when he was elected for his first two terms, Sorsogon was still a municipality, and that when he served his third term, the Municipality of Sorsogon had already been merged with the Municipality of Bacon to form a new political unit, the City of Sorsogon, pursuant to Republic Act No. 8806.[9] Thus, he argued that his third term was actually just his first in the new political unit and that he was accordingly entitled to run for two more terms.

Laceda likewise argued that assuming he had already served three consecutive terms, Rep. Act No. 9164 which imposes the three-term limit, cannot be made to apply to him as it would violate his vested right to office. He alleged that when he was elected in 1994 the prohibition did not exist. Had he known that there will be a law preventing him to run for the fourth time, he would not have run for office in 1994 as he was looking forward to the election in 2007.[10]

On January 15, 2008, the COMELEC declared Laceda disqualified and cancelled his certificate of candidacy:

WHEREFORE, this Commission **RESOLVED,** as it hereby **RESOLVED,** to declare Respondent Roberto Laceda, Sr. **DISQUALIFIED** from running as *Punong Barangay* of Panlayaan,

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[7] *Rollo*, p. 18.

[8] *Id.* at 20-23.

[9] AN ACT CREATING THE CITY OF SORSOGON BY MERGING THE MUNICIPALITIES OF BACON AND SORSOGON IN THE PROVINCE OF SORSOGON AND APPROPRIATING FUNDS THEREFOR, approved on August 16, 2000.

[10] *Rollo*, p. 21.

West District, Sorsogon City and consequently denies due course and cancels his Certificate of Candidacy.

SO ORDERED.[11]

Laceda moved for reconsideration, but his motion was denied by the COMELEC in a Resolution dated May 7, 2008. Aggrieved, Laceda filed a petition for *certiorari* before this Court.

On June 10, 2008, this Court dismissed the petition for failure to sufficiently show that any grave abuse of discretion was committed by the COMELEC in rendering the assailed Resolutions of January 15, 2008 and May 7, 2008. Hence, this motion for reconsideration.

Laceda insists that the COMELEC committed grave abuse of discretion in basing its decision on the requisites enunciated in *Lonzanida v. Commission on Elections*[12] for the application of the three-term prohibition in Section 43[13] of the Local Government Code.[14] Laceda argues that said case is inapplicable since it involved the position of municipal mayor while the instant case concerned the position of *Punong Barangay*. He likewise insists that he served his third term in a new political unit and therefore he should not be deemed already to have served a third term as *Punong Barangay* for purposes of applying the three-term limit.[15]

For reasons hereafter discussed, the motion for reconsideration cannot prosper.

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[11] *Id*. at 29.

[12] G.R. No. 135150, July 28, 1999, 311 SCRA 602.

[13] SECTION. 43. ***Term of Office***. — …

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

xxx xxx xxx

[14] Republic Act No. 7160, also known as Local Government Code of 1991, approved on October 10, 1991.

[15] *Rollo*, pp. 71-72.

Section 2 of Rep. Act No. 9164, like Section 43 of the Local Government Code from which it was taken, is primarily intended to broaden the choices of the electorate of the candidates who will run for office, and to infuse new blood in the political arena by disqualifying officials from running for the same office after a term of nine years. This Court has held that for the prohibition to apply, two requisites must concur: (1) that the official concerned has been elected for three consecutive terms in the same local government post and (2) that he or she has fully served three consecutive terms.[16]

In this case, while it is true that under Rep. Act No. 8806 the municipalities of Sorsogon and Bacon were merged and converted into a city thereby abolishing the former and creating Sorsogon City as a new political unit, it cannot be said that for the purpose of applying the prohibition in Section 2 of Rep. Act No. 9164, the office of *Punong Barangay* of Barangay Panlayaan, *Municipality of Sorsogon*, would now be construed as a different local government post as that of the office of *Punong Barangay* of Barangay Panlayaan, *Sorsogon City*. The territorial jurisdiction of Barangay Panlayaan, Sorsogon City, is the same as before the conversion. Consequently, the inhabitants of the *barangay* are the same. They are the same group of voters who elected Laceda to be their *Punong Barangay* for three consecutive terms and over whom Laceda held power and authority as their *Punong Barangay*. Moreover, Rep. Act No. 8806 did not interrupt Laceda's term.

In *Latasa v. Commission on Elections*,[17] which involved a similar question, this Court held that where a person has been elected for three consecutive terms as a municipal mayor and prior to the end or termination of such three-year term the municipality has been converted by law into a city, without the city charter interrupting his term until the end of the three-year term, the prohibition applies to prevent him from running for the fourth time as city mayor thereof, there being no break in the continuity of the terms.

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[16] *Lonzanida v. Commission on Elections, supra* at 611.

[17] G.R. No. 154829, December 10, 2003, 417 SCRA 601.

Thus, conformably with the democratic intent of Rep. Act No. 9164 and this Court's ruling in *Latasa v. Commission on Elections,* we hold that the prohibition in Section 2 of said statute applies to Laceda. The COMELEC did not err nor commit any abuse of discretion when it declared him disqualified and cancelled his certificate of candidacy.

WHEREFORE, petitioner Roberto Laceda, Sr.'s Motion for Reconsideration[18] dated July 25, 2008 assailing this Court's Resolution dated June 10, 2008 is *DENIED* with *FINALITY*.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

FIRST DIVISION

[G.R. No. 184098. November 25, 2008]

AMADO TAOPA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 705 (REVISED FORESTRY CODE); VIOLATION OF SECTION 68 THEREOF; PUNISHED AS QUALIFIED THEFT.— Section 68 of PD 705, as amended, refers to Articles 309 and 310 of the Revised Penal Code (RPC) for the penalties to be imposed on violators. Violation of Section 68 of PD 705, as

[18] *Rollo,* pp. 64-68.

amended, is punished as qualified theft. The law treats cutting, gathering, collecting and possessing timber or other forest products without license as an offense as grave as and equivalent to the felony of qualified theft.

2. ID.; ID.; ID.; IMPOSABLE PENALTY.— The actual market value of the 113 pieces of seized lumber was ₱67,630. Following Article 310 in relation to Article 309, the imposable penalty should be *reclusion temporal* in its medium and maximum periods or a period ranging from 14 years, eight months and one day to 20 years plus an additional period of four years for the excess of ₱47,630. The minimum term of the indeterminate sentence imposable on Taopa shall be the penalty next lower to that prescribed in the RPC. In this case, the minimum term shall be anywhere between 10 years and one day to 14 years and eight months or *prision mayor* in its maximum period to *reclusion temporal* in its minimum period. The maximum term shall be the sum of the additional four years and the medium period of *reclusion temporal* in its medium and maximum periods or 16 years, five months and 11 days to 18 years, two months and 21 days of *reclusion temporal*. The maximum term therefore may be anywhere between 16 years, five months and 11 days of *reclusion temporal* to 22 years, two months and 21 days of *reclusion perpetua*.

APPEARANCES OF COUNSEL

M.F. Velasco Law Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CORONA, *J.*:

On April 2, 1996, the Community Environment and Natural Resources Office of Virac, Catanduanes seized a truck loaded with illegally-cut lumber and arrested its driver, Placido Cuison. The lumber was covered with bundles of abaca fiber to prevent detection. On investigation, Cuison pointed to petitioner Amado Taopa and a certain Rufino Ogalesco as the owners of the seized lumber.

Taopa, Ogalesco and Cuison were thereafter charged with violating Section 68 of Presidential Decree (PD) No. 705,[1] as amended, in the Regional Trial Court (RTC) of Virac, Catanduanes. The information against them read:

That on or about the 2nd day of April 1996 at around 9:00 o'clock in the morning at Barangay Capilihan, Municipality of Virac, Province of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess, conspiring, confederating and helping one another, did then and there, willfully, unlawfully, criminally possess, transport in a truck bearing Plate No. EAS 839 and have in their control forest products, particularly one hundred thirteen (113) pieces of lumber of Philippine Mahogany Group and Apitong species with an aggregate net volume of One Thousand Six Hundred Eighty Four (1,684) board feet with an approximate value of Ninety-Nine Thousand One Hundred Twenty (Php99,120.00) Pesos, Philippine Currency, without any authority and/or legal documents as required under existing forest laws and regulations, prejudicial to the public interest.

ACTS CONTRARY TO LAW.[2]

Taopa, Ogalesco and Cuison pleaded not guilty on arraignment. After trial on the merits, the RTC found them guilty as charged beyond reasonable doubt.[3]

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[1] Revised Forestry Code.

[2] *Rollo*, p. 27.

[3] *Rollo*, pp. 30-31. The dispositive portion of the RTC decision read:

WHEREFORE, In view of the foregoing, this Court finds:

Accused Amado Taopa and Rufino Ogalesco GUILTY beyond reasonable doubt as principal of the crime charged and applying Articles 309 and 310 of the Revised Penal Code and the Indeterminate Sentence Law, hereby sentences both of them to suffer imprisonment from ten (10) years and one (1) day as minimum to twenty (20) years as maximum.

Accused Placido Cuison GUILTY beyond reasonable doubt as accessory to the crime by transporting the lumber materials in his truck covered by bundles of abaca fiber, which is akin to concealing the body of the crime in order to prevent its discovery, and hereby sentences him to suffer an imprisonment, the maximum period of which is two (2) degrees lower than that of the principal and the minimum period of which is one (1) degree lower, applying the Indeterminate Sentence Law, hence, from two (2) years four (4)

Only Taopa and Cuison appealed the RTC decision to the Court of Appeals (CA). Cuison was acquitted but Taopa's conviction was affirmed.[4] The dispositive portion of the CA decision read:

> WHEREFORE, the Decision appealed from is **REVERSED** with respect to accused-appellant Placido Cuison, who is **ACQUITTED** of the crime charged on reasonable doubt, and **MODIFIED** with respect to accused-appellants Amado Taopa and Rufino Ogalesco by reducing the penalty imposed on them to four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.
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> SO ORDERED.[5]

In this petition,[6] Taopa seeks his acquittal from the charges against him. He alleges that the prosecution failed to prove that he was one of the owners of the seized lumber as he was not in the truck when the lumber was seized.

We deny the petition.

Both the RTC and the CA gave scant consideration to Taopa's alibi because Cuison's testimony proved Taopa's active

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months and one (1) day as minimum to eight (8) years eight (8) months and one (1) day as maximum.

The lumber materials are likewise confiscated in favor of the government to be disposed of through public auction sale to be conducted by the Clerk of Court and *Ex-Officio* Provincial Sheriff of the Regional Trial Court of Virac, Catanduanes. The truck, which was included in the Seizure Receipt is ordered released to its owner inasmuch as the evidence proved that it was hired purposely for the transport of abaca fibers and not lumber materials.

SO ORDERED.

[4] Despite Ogalesco's failure to appeal, the CA held that the modification of the penalty will benefit him pursuant to Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure. *Rollo*, p. 14.

[5] Decision dated January 31, 2008 in CA-G.R. CR No. 30380. Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo of the Third Division of the Court of Appeals. *Rollo*, pp. 26-40. The motion for reconsideration thereto was denied in a Resolution dated July 28, 2008. *Rollo*, pp. 56-58.

[6] Under Rule 45 of the Rules of Court.

participation in the transport of the seized lumber. In particular, the RTC and the CA found that the truck was loaded with the cargo in front of Taopa's house and that Taopa and Ogalesco were accompanying the truck driven by Cuison up to where the truck and lumber were seized. These facts proved Taopa's (and Ogalesco's) exercise of dominion and control over the lumber loaded in the truck. The acts of Taopa (and of his co-accused Ogalesco) constituted possession of timber or other forest products without the required legal documents. Moreover, the fact that Taopa and Ogalesco ran away at the mere sight of the police was likewise largely indicative of guilt. We are thus convinced that Taopa and Ogalesco were owners of the seized lumber.

However, we disagree with both the RTC and CA as to the penalty imposed on Taopa.

Section 68 of PD 705, as amended,[7] refers to Articles 309 and 310 of the Revised Penal Code (RPC) for the penalties to be imposed on violators. Violation of Section 68 of PD 705, as amended, is punished as qualified theft.[8] The law treats cutting, gathering, collecting and possessing timber or other forest products without license as an offense as grave as and equivalent to the felony of qualified theft.

Articles 309 and 310 read:

Art. 309. *Penalties*. – Any person guilty of theft shall be punished by:

1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more 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**

[7] Section 68 provides: "Sec. 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products without License*. – Any person who shall xxx 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."

[8] *Merida v. People*, G.R. No. 158182, 12 June 2008 citing *People v. Dator*, 398 Phil. 109, 124 (2000).

> **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 *prision mayor* or *reclusion temporal*, as the case may be. (emphasis supplied)
>
> 2. xxx xxx xxx
>
> **Art. 310.** *Qualified theft*. – The crime of theft shall be punished by the penalties next higher by **two degrees than those respectively specified in the next preceding articles** xxx (emphasis supplied).

The actual market value of the 113 pieces of seized lumber was ₱67,630.[9] Following Article 310 in relation to Article 309, the imposable penalty should be *reclusion temporal* in its medium and maximum periods or a period ranging from 14 years, eight months and one day to 20 years plus an additional period of four years for the excess of ₱47,630.

The minimum term of the indeterminate sentence[10] imposable on Taopa shall be the penalty next lower to that prescribed in

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[9] The CA did not contest the correctness of the value as stated in the information. However, the CA clarified that the value of the lumber pegged at ₱99,120 was inclusive of surcharges and forest charges. The CA thus provided a breakdown of the values for a more correct computation of the penalties to be imposed on the accused. The relevant portion of the CA decision reads: "The Statement of Lumber Apprehended, which was prepared by Forest Ranger Jose San Roque, states that the market value of the 113 pieces of lumber is only ₱67,630. It appears that that the amount of ₱99,120 was arrived at by adding regular forest charges in the amount of ₱7,940 and 300% surcharges in the amount of ₱23,820 to the market value of the lumber pegged at ₱67,[63]0."*Rollo*, p. 39.

[10] Section 1 of the Indeterminate Sentence Law (RA 4103) provides: "SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. xxx"

the RPC. In this case, the minimum term shall be anywhere between 10 years and one day to 14 years and eight months or *prision mayor* in its maximum period to *reclusion temporal* in its minimum period.

The maximum term shall be the sum of the additional four years and the medium period[11] of *reclusion temporal* in its medium and maximum periods or 16 years, five months and 11 days to 18 years, two months and 21 days of *reclusion temporal*. The maximum term therefore may be anywhere between 16 years, five months and 11 days of *reclusion temporal* to 22 years, two months and 21 days of *reclusion perpetua*.

WHEREFORE, the petition is hereby *DENIED*. The January 31, 2008 decision and July 28, 2008 resolution of the Court of Appeals in CA-G.R. CR No. 30380 are *AFFIRMED* with *MODIFICATION*. Petitioner Amado Taopa is hereby found *GUILTY* beyond reasonable doubt for violation of Section 68 of PD No. 705, as amended, and sentenced to suffer the indeterminate penalty of imprisonment from 10 years and one day of *prision mayor*, as minimum, to 20 years of *reclusion temporal* as maximum, with the accessory penalties provided for by law.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Azcuna, and *Tinga,*[*] *JJ.*, concur.

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[11] The medium period is imposed following Article 64 of the RPC which states: "When there is neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period." Although PD No. 705 is a special law, the penalties therein were taken from the RPC. Hence, the rules in the RPC for graduating by degrees or determining the period should be applied. This is pursuant to *People v. Simon,* G.R. No. 93028, 29 July 1994, 234 SCRA 555.

[*] As replacement of Justice Teresita J. Leonardo-De Castro who is on official leave per Special Order No. 539.

THIRD DIVISION

[G.R. No. 150270. November 26, 2008]

CITY ENGINEER OF BAGUIO and HON. MAURICIO DOMOGAN, *petitioners, vs.* **ROLANDO BANIQUED,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; DEFINED AND CONSTRUED.— Prohibition or a "writ of prohibition" is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising a jurisdiction with which they have not been vested by law. As its name indicates, the writ is one that commands the person or tribunal to whom it is directed not to do something which he or she is about to do. The writ is also commonly defined as one to prevent a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance. At common law, prohibition was a remedy used when subordinate courts and inferior tribunals assumed jurisdiction which was not properly theirs. x x x Prohibition is not a new concept. It is a remedy of ancient origin. It is even said that it is as old as common law itself. The concept originated in conflicts of jurisdiction between royal courts and those of the church. In our jurisdiction, the rule on prohibition is enshrined in Section 2, Rule 65 of the Rules on Civil Procedure.

2. ID.; ID.; ID.; THE COMPLAINT IS NOT AUTOMATICALLY DISMISSED IN THE ABSENCE OF ALLEGATION THAT THE ACT COMPLAINED OF WAS DONE WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION.— The better interpretation is that the absence of specific allegation that the act complained of was done without or in excess of jurisdiction or with grave abuse of discretion *would not automatically* cause the dismissal of the complaint for prohibition, *provided* that a reading of the allegations in the complaint leads to no other conclusion than that the act complained of was, indeed, done without or in excess

of jurisdiction. To subscribe to the reasoning of petitioners may lead to an absurd situation. A patently unmeritorious complaint for prohibition may not be given due course just because of an allegation that the act complained of was committed without or in excess of jurisdiction or with grave abuse of discretion.

3. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS.— The doctrine of **exhaustion of administrative remedies** is not an iron-clad rule. It admits of several exceptions. Jurisprudence is well-settled that the doctrine does not apply in cases (1) when the question raised is purely legal; (2) when the administrative body is in estoppel; (3) when the act complained of is patently illegal; (4) **when there is urgent need for judicial intervention;** (5) when the claim involved is small; (6) **when irreparable damage will be suffered**; (7) when there is no other plain, speedy, and adequate remedy; (8) when strong public interest is involved; (9) when the subject of the proceeding is private land; (10) in *quo warranto* proceedings; and (11) where the facts show that there was violation of due process.

APPEARANCES OF COUNSEL

Office of the City Legal Officer (Baguio) for petitioners.
Mauricio Law Office for respondent.

D E C I S I O N

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

OFT-QUOTED in cases involving searches and seizures is the principle that a man's home is his castle. Not even the king would dare desecrate it. In protecting his home, the poorest and most humble citizen or subject may bid defiance to all the powers of the State.[1] Indeed, a man is king in his own house.

The case before Us views the sanctity of a man's home in a different light. It is about a man's struggle against the attempt of the State to demolish his house.

[1] *U.S. v. Arceo,* 3 Phil. 381, 384 (1904).

Petitioners Leo Bernardez, Jr. and Mauricio Domogan question by way of appeal under Rule 45 the Decision[2] and Resolution[3] of the Court of Appeals (CA) which set aside the Order[4] of the Regional Trial Court (RTC) dismissing the complaint[5] for prohibition with temporary restraining order (TRO)/injunction filed by private respondent Rolando Baniqued.

The Facts

Generoso Bonifacio, acting as the attorney-in-fact of Purificacion de Joya, Milagros Villar, Minerva Baluyut and Israel de Leon filed a complaint with the Office of the Mayor of Baguio City seeking the demolition of a house built on a parcel of land[6] located at Upper Quezon Hill, Baguio City.

On May 19, 1999, Domogan, the then city mayor of Baguio City, issued Notice of Demolition No. 55, Series of 1999, against spouses Rolando and Fidela Baniqued. Pertinent parts of the notice read:

> The investigation and ocular inspection conducted by the City Engineer's Office (memorandum dated 18 February 1998) showed that you built your structures sometime in 1999 without any building permit in violation of P.D. 1096 and possibly R.A. 7279, qualifying your structure structures illegal, thus, subject to demolition.
>
> The Anti-Squatting Committee in its Resolution No. 52-4 dated 22 April 1999 has recommended for the demolition of your illegal structures.
>
> IN VIEW OF THE FOREGOING, you are hereby notified to voluntarily remove/demolish your illegal structures within seven (7) days from receipt of this notice, otherwise the City Demolition

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[2] *Rollo*, pp. 15-21; Annex "A". CA-G.R. SP No. 59219. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Martin S. Villarama, Jr. and Eliezer R. De los Santos, concurring.

[3] *Id.* at 2; Annex "B".

[4] *Id.* at 42-43; Annex "E". Penned by Judge Edilberto T. Claravall.

[5] *Id.* at 26-33; Annex "C".

[6] Covered by TCT No. 25860.

Team will undertake the demolition of your illegal structures at your own expense.[7]

Aggrieved, Rolando Baniqued filed a complaint for prohibition with TRO/injunction before Branch 60 of the RTC in Baguio City.

In his complaint, Baniqued alleged that the intended demolition of his house was done without due process of law and "was arrived at arbitrarily and in a martial-law like fashion." Specifically, Baniqued alleged that he was (1) never given any copy of the complaint of Generoso Bonifacio; (2) "never summoned nor subpoenaed to answer that complaint"; (3) "never allowed to participate in the investigation and ocular inspection which the City Engineer's Office allegedly conducted, as a consequence of the complaint of Bonifacio, much less to adduce evidence in support of his position"; (4) "never summoned nor subpoenaed to appear before the Anti-Squatting Committee"; and (5) "not given the opportunity to contest the complaint against him, before such complaint was decided and to be carried out by the Defendants."[8]

Baniqued buttressed his complaint by arguing that Article 536 of the Civil Code should be applied, *i.e.,* there should be a court action and a court order first before his house can be demolished and before he can be ousted from the lot.[9] More, under Section 28 of Republic Act 7279, an adequate relocation should be provided first before demolition can be had.[10] Too, by virtue of the National Building Code or Presidential Decree (P.D.) No. 1096, the demolition of buildings or structures should only be resorted to in case they are dangerous or ruinous. Otherwise, the remedy is criminal prosecution under Section 213 of P.D. No. 1096.[11] Lastly, the 1991 Local Government Code

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[7] *Rollo,* p. 35; Annex "A".

[8] *Id.* at 28.

[9] *Id.* at 29.

[10] *Id.* at 30.

[11] *Id.*

does not empower the mayor to order the demolition of anything unless the interested party was afforded prior hearing and unless the provisions of law pertaining to demolition are satisfied.[12] Thus, Baniqued prayed for the following reliefs:

> A. Immediately upon the filing hereof, a temporary restraining order be issued stopping the Defendants, or any other person acting under their orders or authority, from carrying out, or causing to carry out, the demolition of Plaintiff's residential unit at Upper Quezon Hill, Baguio City under Notice of Demolition No. 55;
>
> B. After due notice and hearing, a writ of preliminary injunction be issued for the same purpose as to that of the TRO, and, thereafter, for this preliminary writ to be made permanent;
>
> C. A writ of prohibition be issued, commanding the Defendants to stop carrying out, or causing to carry out, the demolition of the aforesaid unit of the Plaintiffs.[13]

On June 7, 1999, the RTC enjoined the carrying out of the demolition of the house of Baniqued. The hearing on his application for preliminary injunction was also set.[14]

On June 25, 1999, petitioners moved to dismiss[15] the complaint of Baniqued on the ground of lack of cause of action because (1) there is nothing to be enjoined "as there is no Demolition Order issued by the City Mayor" and that the Demolition Team "does not demolish on the basis of a mere Notice of Demolition"; (2) he has "no clear legal right to be protected as his structure is illegal, the same having been built on a land he does not own without the consent of the owner thereof and without securing the requisite building permit"; (3) the Notice of Demolition "was issued in accordance with law and in due performance of the duties and functions of defendants, who being public officers, are mandated by law to enforce all pertinent laws against illegal constructions"; and that (4) "[d]efendants do not exercise judicial

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[12] *Id.* at 31.

[13] *Id.* at 32.

[14] *Id.* at 17.

[15] Annex "D".

and quasi-judicial functions. Neither was the issuance of the assailed Notice of Demolition an exercise of a ministerial function. Nor is there any allegation in the complaint that defendants acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."[16]

RTC and CA Dispositions

On October 15, 1999, the RTC granted the motion of petitioners and dismissed the complaint of Baniqued with the following disposition:

> WHEREFORE, finding merit in the motion to dismiss filed by the defendant, the same is hereby GRANTED and this case is hereby DISMISSED without pronouncement as to costs.
>
> Atty. Melanio Mauricio is hereby cited for contempt of court and is hereby warned that a repetition of his use of improper language whether orally or in any of his pleadings will be dealt with more severely in the future.
>
> SO ORDERED.[17]

The RTC reasoned that petitioners "are unquestionably members of the executive branch whose functions are neither judicial nor quasi-judicial."[18] The RTC also sustained the argument of petitioners that "the act complained of can hardly qualify as ministerial in nature as to put it within the ambit of the rule on prohibition."[19] Lastly, the complaint of Baniqued was procedurally infirm because he failed to exhaust administrative remedies.[20]

Baniqued moved for reconsideration[21] which was opposed.[22] On March 3, 2000, the RTC denied the motion.[23]

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[16] *Rollo,* pp. 37-39.

[17] *Id.* at 43.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Annex "F".

[22] Annex "G".

[23] Annex "F".

Refusing to give up, Baniqued appealed the decision of the RTC. The CA sustained Baniqued, disposing as follows:

> **IN VIEW OF ALL THE FOREGOING,** the instant petition is **GRANTED** and the appealed Orders dated October 15, 1999 and March 3 2000 are both **RECALLED** and **SET ASIDE** and a new one issued **DENYING** the Motion to Dismiss dated June 25, 1999. After the finality of this judgment, let the entire original records of the case at bench be returned to the court *a quo* which is reminded to decide the case on the merits and with dispatch. No pronouncement as to costs.
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> SO ORDERED.[24]

According to the CA, it may be true that the mayor is an executive official. However, as such, he has also been given the authority to hear controversies involving property rights. In that regard, the Mayor exercises quasi-judicial functions.[25]

The CA also held that the allegations in the complaint of Baniqued state a cause of action. The averments in the complaint call for a determination whether court action is needed before Baniqued can be ousted from the questioned lot.[26]

Petitioners attempted at a reconsideration[27] to no avail. Left with no other recourse, they interposed the present appeal.[28]

Issues

Petitioners impute to the CA the following errors, *viz.*:

1. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN RULING THAT THE ACT OF THE CITY MAYOR IN ISSUING A NOTICE OF DEMOLITION IS A QUASI-JUDICIAL FUNCTION;

2. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN RULING THAT THE ACTION

[24] *Rollo,* p. 21.

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

[26] *Id.* at 20.

[27] Annex "I".

[28] *Rollo,* pp. 3-13.

OF PROHIBITION FILED BY BANIQUED WITH THE TRIAL COURT IS PROPER UNDER THE CIRCUMSTANCES;

3. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN REVERSING THE DECISION OF THE TRIAL COURT.[29] (Underscoring supplied)

In sum, petitioners claim that Baniqued incorrectly availed of the remedy of prohibition.

Our Ruling

The petition is unmeritorious.

Baniqued correctly availed of the remedy of prohibition. Prohibition or a "writ of prohibition" is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising a jurisdiction with which they have not been vested by law.[30] As its name indicates, the writ is one that commands the person or tribunal to whom it is directed not to do something which he or she is about to do. The writ is also commonly defined as one to prevent a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.[31] At common law, prohibition was a remedy used when subordinate courts and inferior tribunals assumed jurisdiction which was not properly theirs.

Prohibition, at common law, was a remedy against encroachment of jurisdiction. Its office was to restrain subordinate courts and inferior judicial tribunals from extending their jurisdiction and, in adopting the remedy, the courts have almost universally preserved its original common-law nature, object and function. Thus, as a rule, its proper function is to prevent courts, or other tribunals, officers, or persons from usurping or exercising a jurisdiction with which they are not vested by law, and confine them to the exercise of those powers legally conferred. However, the function of the writ has been extended by some authorities to cover situations where, even though the lower tribunal has jurisdiction, the superior court deems it

[29] *Id.* at 6.

[30] 73 C.J.S., § 1. (Citations omitted)

necessary and advisable to issue the writ to prevent some palpable and irremediable injustice, and, x x x the office of the remedy in some jurisdictions has been enlarged or restricted by constitutional or statutory provisions. While prohibition has been classified as an equitable remedy, it is generally referred to as a common-law remedy or writ; it is a remedy which is in nature legal, although, x x x its issuance is governed by equitable principles.[32] (Citations omitted)

Prohibition is not a new concept. It is a remedy of ancient origin. It is even said that it is as old as common law itself. The concept originated in conflicts of jurisdiction between royal courts and those of the church.[33] In our jurisdiction, the rule on prohibition is enshrined in Section 2, Rule 65 of the Rules on Civil Procedure, to wit:

Sec. 2. *Petition for prohibition*. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are 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 or any other plain, speedy, and adequate remedy in the ordinary course

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[31] 63 Am. Jur. 2d, § 1. (Citations omitted)

[32] 73 C.J.S., § 2(b).

[33] *Id.*, § 2(a). "Prohibition is a remedy of ancient origin, and has been said to be as old as the common law itself. It was one of the prerogative writs of the king, having for its function the preservation of the right of the king's crown and courts. The process originated in conflict of jurisdiction between the royal courts and those of the church, and was most frequently employed in early times against the ecclesiastical courts to restrain them from acting without jurisdiction. Anciently, a writ of prohibition was an original, as distinguished from a judicial writ, and could issue only out of chancery. In later times writs of prohibition became judicial writs out of a court of law, and do not appear to have issued from a court of chancery in any case in which a court of law might issue them, except during vacation, when the courts of common law were not open, and in this country [*i.e.*, the United States] these writs have never been issued except by a court of common-law jurisdiction. In accordance with, and subject to, general rules, the remedy of prohibition has been accepted in the United States as part of the common-law system and employed in practice wherever it is suited to the arrangement of the judicial system. Like other common law remedies, it is generally recognized as existing in this country unless abolished by positive statutory enactment." (Citations omitted)

of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that the judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as the law and justice require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

It is very clear that before resorting to the remedy of prohibition, there should be "no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law." Thus, jurisprudence teaches that resort to administrative remedies should be had first before judicial intervention can be availed of.

This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action. x x x[34]

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[34] *Paat v. Court of Appeals*, G.R. No. 111107, January 10, 1997, 266 SCRA 167, 175, citing *National Development Company v. Hervilla*, G.R. No. 65718, June 30, 1987, 151 SCRA 521; *Aboitiz and Co., Inc. v. Collector of Customs*, G.R. No. L-29466, May 18, 1978, 83 SCRA 265; *Pestanas v. Dyogi*, G.R. No. L-25786, February 27, 1978, 81 SCRA 574; *Atlas Consolidated Mining & Development Corporation v. Mendoza*, G.R. No. L-15809, August 30, 1961, 2 SCRA 1064. See also 63C Am. Jur. 2d, § 58 which states: "Where an administrative remedy is provided by the statute and is intended to be exclusive, a court has no authority to oust the administrative agency of its jurisdiction by hearing the case; therefore, a court that hears such case is acting without jurisdiction, rather than merely committing an error of law, and is subject to prohibition.

An agency may seek prohibition preventing court interference with cases pending before it, and the hardship the agency faces caused by a court order halting its proceedings is sufficient to justify the granting of the writ." (Citations omitted.)

Explaining the reason behind the rule, Mr. Justice Justo Torres, Jr., expounded, thus:

> x x x This doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case. x x x[35]

Petitioners are of the view that the complaint of Baniqued for prohibition is fatally defective because he failed to exhaust administrative remedies. If he felt aggrieved by the issuance of the notice of demolition, administrative remedies were readily available to him. For example, he could have easily filed a motion for reinvestigation or reconsideration.[36]

The argument fails to persuade.

The doctrine of **exhaustion of administrative remedies** is not an iron-clad rule.[37] It admits of several exceptions. Jurisprudence is well-settled that the doctrine does not apply in cases (1) when the question raised is purely legal; (2) when the administrative body is in estoppel; (3) when the act complained of is patently illegal; **(4) when there is urgent need for judicial intervention;** (5) when the claim involved is small; **(6) when irreparable damage will be suffered;** (7) when there is no other plain, speedy, and adequate remedy; (8) when strong public interest is involved; (9) when the subject of the proceeding is private land; (10) in *quo warranto* proceedings; and (11) where the facts show that there was violation of due process.[38]

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[35] *Id.* at 175-176.

[36] *Rollo,* p. 130.

[37] *Triste v. Leyte State College Board of Trustees*, G.R. No. 78623, December 17, 1990, 192 SCRA 326, 334.

[38] *Diokno v. Cacdac,* G.R. No. 168475, July 4, 2007, 526 SCRA 440, 458-459.

Here, there was an urgent need for judicial intervention. The filing of a motion for reinvestigation or reconsideration would have been a useless exercise. The notice of demolition is very clear and speaks for itself. City Mayor Domogan already made up his mind that the house of Baniqued was illegally built and was thus subject to demolition. It could reasonably be assumed that a motion for reinvestigation or reconsideration would have also been denied outright. The irreparable damage to Baniqued in case his house was demolished cannot be gainsaid.

Petitioners contend, though, that the complaint of Baniqued is **premature**. They say that what was issued by City Mayor Domogan was only a notice of demolition, and *not* an order of demolition.[39] In short, petitioners are saying that Baniqued jumped the gun. He should have waited first for the issuance of a demolition order because no demolition can be carried out in the absence of such order.

To Our mind, the **distinction** between a notice of demolition and an order of demolition is immaterial. What is material is that Baniqued felt threatened with the impending demolition of his house. It would have been too late and illogical if he waited first for his house to be actually demolished, before seeking protection from the courts. Acting in the earliest opportunity and availing of the best remedy available to protect his right was the prudent course of action.

Petitioners also argue that the complaint of Baniqued should not prosper because he **never alleged** that the act complained of was done without or in excess of jurisdiction or with grave abuse of discretion.[40] To support their stance, they cite *Reyes v. Romero*[41] where this Court denied the petition for prohibition because there was "no allegation whatsoever charging the respondent Judge with lack of jurisdiction or with having committed grave abuse of discretion."[42] Put differently, petitioners

[39] *Rollo,* pp. 131-132.

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

[41] G.R. No. L-14917, May 31, 1961, 2 SCRA 438.

[42] *Reyes v. Romero, id.* at 441.

argue that for a complaint for prohibition to prosper, there should be a specific allegation that the act complained of was done without or in excess of jurisdiction or with grave abuse of discretion.

The argument is specious on two grounds.

First, *Romero* is not necessarily applicable to the instant case because it involved a different set of facts. There, a team of PC Rangers raided a house in Pasay City, Rizal, which was dubbed as a Gambling Casino. As a result, twelve persons were charged for violating the gambling law. The case was tried in the branch of the Municipal Trial Court in Pasay presided by Judge Lucio Tianco. The accused were later acquitted for insufficiency of evidence.

An off-shoot of the raid was the prosecution of petitioners as maintainers of a gambling den. The case was also assigned to the sala of Judge Tianco. However, as Judge Tianco was on leave, the Secretary of Justice designated Judge Guillermo Romero to preside over said branch.

Sometime later, Judge Tianco returned to office and resumed his duties. This, notwithstanding, Judge Romero ordered the continuation of the trial before him. Petitioners then sought the inhibition of Judge Romero in view of the return of Judge Tianco. The motion was denied. The matter was brought directly to this Court on petition for prohibition with preliminary injunction. One of the two issues resolved by the Court was "whether respondent Judge in refusing to inhibit himself from continuing with the trial of the criminal case in question, acted without or in excess of his jurisdiction or with grave abuse of discretion."[43]

Clearly, the surrounding circumstances in *Romero* are absent in the case now before Us. They cannot be remotely applied even by analogy.

Second, petitioners misconstrued *Romero* by interpreting it literally. The better interpretation is that the absence of specific allegation that the act complained of was done without or in

[43] *Id*.

excess of jurisdiction or with grave abuse of discretion *would not automatically* cause the dismissal of the complaint for prohibition, *provided* that a reading of the allegations in the complaint leads to no other conclusion than that the act complained of was, indeed, done without or in excess of jurisdiction. To subscribe to the reasoning of petitioners may lead to an absurd situation. A patently unmeritorious complaint for prohibition may not be given due course just because of an allegation that the act complained of was committed without or in excess of jurisdiction or with grave abuse of discretion.

This interpretation is supported by *Romero* itself. Petitioners overlooked that the case goes on to say that even if there were allegations of grave abuse of discretion, "there can be no abuse of discretion, much less a grave one, for respondent Judge to comply with a valid and legal Administrative Order (No. 183) of the Secretary of Justice."[44]

The Mayor, although performing executive functions, also exercises quasi-judicial function which may be corrected by prohibition. As a parting argument, petitioners contend that the complaint of Baniqued is outside the scope of the rule on prohibition which covers the proceedings of any "tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions." The issuance of the notice of demolition by the City Mayor is never a judicial, ministerial or rule-making function. It is strictly an act of law enforcement and implementation, which is purely an executive function. Neither is the Office of the City Mayor a quasi-judicial body.[45]

Again, petitioners are mistaken. We need not belabor so much on this point. We quote with approval the CA observations in this regard, *viz.*:

Under existing laws, the office of the mayor is given powers not only relative to its function as the executive official of the town. It has also been endowed with authority to hear issues involving property

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[44] *Id.*

[45] *Rollo,* pp. 133-135.

rights of individuals and to come out with an effective order or resolution thereon. In this manner, it exercises quasi-judicial functions. This power is obviously a truism in the matter of issuing demolition notices and/or orders against squatters and illegal occupants through some of its agencies or authorized committees within its respective municipalities or cities.

There is no gainsaying that a city mayor is an executive official nor is the matter of issuing demolition notices or orders not a ministerial one. But then, it cannot be denied as well that in determining whether or not a structure is illegal or it should be demolished, property rights are involved thereby needing notices and opportunity to be heard as provided for in the constitutionally guaranteed right of due process. In pursuit of these functions, the city mayor has to exercise quasi-judicial powers. **Moreno,** in his **Philippine Law Dictionary, 3rd Edition,** defines quasi-judicial function as applying to the action discretion, etc. of public administrative officers or bodies, who are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature **(*Midland Insurance Corp. v. Intermediate Appellate Court*, 143 SCRA 458 [1986]).** Significantly, the Notice of Demolition in issue was the result of the exercise of quasi-judicial power by the Office of the Mayor.[46]

We also agree with the CA that the complaint of Baniqued states a cause of action. The averments in the complaint "call for a determination of whether or not there is need for a court action or a court litigation to oust plaintiff from the possession of the subject lot, or, it is within the jurisdictional prerogative of the Office of the Mayor to eject [an] unlawful occupant from a private titled land he does not own."[47]

Lest this Decision be misunderstood, We hasten to clarify that We have not prejudged the merits of the case. Whether or not Baniqued is, indeed, entitled to a writ of prohibition is a matter which the trial court should determine in the first instance without further delay.

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

[47] *Id.* at 20.

WHEREFORE, the appealed Decision is *AFFIRMED.* The case is *REMANDED* to the trial court for further proceedings.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171348. November 26, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LARRY ERGUIZA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; PRINCIPLES FOLLOWED IN REVIEWING RAPE CASES.— This Court has ruled that in the review of rape cases, the Court is guided by the following precepts: (a) an accusation of rape can be made with facility, but it is more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.

2. ID.; ID.; WHEN CONVICTION MAY BE BASED ON THE LONE TESTIMONY OF RAPE VICTIM.— Generally, 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. And so long as her testimony meets the test of credibility and unless the same is controverted by competent physical and testimonial evidence, the accused may be convicted on the basis thereof.

3. REMEDIAL LAW; EVIDENCE; OFFER OF COMPROMISE FROM AN UNAUTHORIZED PERSON DOES NOT AMOUNT TO ADMISSION OF GUILT.— An offer of compromise from an unauthorized person cannot amount to an admission of the party himself. Although the Court has held in some cases that an attempt of the parents of the accused to settle the case is an implied admission of guilt, we believe that the better rule is that for a compromise to amount to an implied admission of guilt, the accused should have been present or at least authorized the proposed compromise. Moreover, it has been held that where the accused was not present at the time the offer for monetary consideration was made, such offer of compromise would not save the day for the prosecution.

4. CRIMINAL LAW; RAPE; EXACT DATE OF COMMISSION OF RAPE IS NOT AN ELEMENT OF THE CRIME.— The Court is not unmindful of the rule that the exact date of the commission of the crime of rape is extraneous to and is not an element of the offense, such that any inconsistency or discrepancy as to the same is irrelevant and is not to be taken as a ground for acquittal. Such, however, finds no application to the case at bar. AAA and Joy may differ in their testimonies as to the time they were at the mango orchard, but there could be no mistake as to the actual day when AAA was supposed to have been raped; it was the day when AAA's shorts got hooked to the fence at the mango orchard. x x x Consequently, in view of the unrebutted testimony of Joy, appellant's defense of alibi and denial assumes considerable weight. It is at this point that the issue as to the time that the rape was committed plays a significant factor in determining the guilt or innocence of appellant. This Court must therefore address this issue for a thorough evaluation of the case. The Court takes note that Macaraeg, the caretaker of the orchard, testified that appellant's house was only a minute away from the orchard if one would run.

5. ID.; ID.; ALIBI AS A DEFENSE; WHEN ADMISSIBLE.— This Court is not unmindful of the doctrine that for alibi to succeed as a defense, appellant must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime. In the case at bar, although the orchard is just a minute away from the house of appellant, in view of the testimony of the *hilot*

Juanita that appellant was with her from 5:10 p.m. and never left his house from that time until his wife gave birth at 3:00 a.m.; and the testimony of Joy that she never left AAA in the orchard and that they both went home together, the defense of alibi assumes significance or strength when it is amply corroborated by a credible witness. Thus, the Court finds that appellant's alibi is substantiated by clear and convincing evidence.

6. ID.; ID.; THE EQUIPOISE RULE PROVIDES THAT WHERE EVIDENCE IN A CRIMINAL CASE IS EVENLY BALANCED, THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE TILTS THE SCALE IN FAVOR OF THE ACCUSED.— What needs to be stressed is that a conviction in a criminal case must be supported by proof beyond reasonable doubt — moral certainty that the accused is guilty. The conflicting testimonies of Joy and complainant, and the testimony of Juanita that corroborated appellant's alibi preclude the Court from convicting appellant of rape with moral certainty. Faced with two conflicting versions, the Court is guided by the equipoise rule. Thus, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused. It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

The Court is confronted with another case of rape. The victim, a 13-year-old girl. And although the Court may be moved by compassion and sympathy, the Court, as a court of law, is duty-bound to apply the law. Basic is the rule that for conviction of a crime, the evidence required is proof beyond reasonable doubt — conviction with moral certainty.

For review before this Court is the November 18, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR H. C. No. 00763 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 57, finding Larry Erguiza (appellant) guilty of one count of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information, dated April 10, 2000, in Criminal Case No. SCC 3282 reads as follows:

> That on or about 5:00 o'clock in the afternoon of January 5, 2000, at the back of the Bical Norte Elementary School, municipality of Bayambang, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a kitchen knife, by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously have sexual intercourse with AAA,[3] a minor of 13 years old, against her will and consent and to her damage and prejudice.[4]

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[1] Penned by Associate Justice Regalado E. Maambong with the concurrence of Associate Justice Rodrigo V. Cosico and Associate Justice Lucenito N. Tagle; *rollo* pp. 3-19.

[2] CA *rollo*, pp. 23-28.

[3] 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, 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. Hence, in *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, citing the case of

When arraigned, appellant pleaded "not guilty".[5] Thereafter trial ensued.

The prosecution presented four witnesses, namely: private complainant (AAA), her mother BBB and father CCC, and Dr. James Sison. The defense presented five witnesses, namely: Joy Agbuya, Juanito Macaraeg, Juanita Angeles, Albina Erguiza, and appellant.

On November 27, 2000, the RTC found appellant guilty of the crime of rape, the dispositive portion of which reads as follows:

> In view whereof, the Court finds the accused LARRY C. ERGUIZA guilty of RAPE under Article 266-a paragraph 1(a) in relation to Article 266-b of R.A. 8353 and R.A. 7659 and sentences (sic) to suffer the penalty of *reclusion perpetua* and to pay the offended party, AAA ₱50,000 as civil indemnity, ₱50,000 as moral damages, ₱50,000 as exemplary damages, to give support to AAA's offspring and to pay the costs.
>
> SO ORDERED.[6]

On appeal, the CA aptly summarized the respective versions of the parties, based on the evidence presented before the trial court, thus:

PROSECUTION'S VERSION:

On **January 5, 2000**, at around 4:00 o'clock in the afternoon, **AAA, a thirteen-year old first year high school student, together**

People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 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 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 x x x."

[4] CA *rollo*, p. 6.

[5] Records, p. 30.

[6] CA *rollo*, p. 69.

with her friends, siblings Joy and Ricky Agbuya, went to the mango orchard located at the back of ZZZ Elementary School to gather fallen mangoes.[7] **When they were bound for home at around 5:00 o'clock in the afternoon**, **AAA's short pants got hooked on the fence. AAA asked Joy and Ricky to wait for her but they ran away and left her**.[8]

While AAA was trying to unhook her short pants, Larry suddenly grabbed and pulled her. Poking a knife at her neck, Larry threatened to hurt her if she would make a noise.[9]

Accused-appellant dragged AAA towards a place where a tamarind tree and other thorny plants grow. Then Larry removed his *maong* pants and forced AAA to lie down on the grassy ground. Thereafter, he removed her short pants and panty, mounted himself on top of her and inserted his penis into her private parts and made push and pull movements. He likewise raised AAA's "sando" and mashed her breast. AAA felt pain when accused-appellant entered her and she felt something sticky in her private part after Larry made the push and pull movements.[10]

Larry told AAA not to tell anybody about the incident otherwise he would kill her and all the members of her family and then he ran away.[11]

AAA lingered for a while at the place and kept crying. Having spent her tears, she wore her panty and short pants and proceeded to the adjacent store of her Aunt Beth who was asleep. After staying for some time at the store, AAA decided to come (sic) home. Upon reaching home, she directly went to bed. Fearing Larry's threat, AAA kept mum on the incident.[12]

On April 7, 2000, BBB brought her daughter AAA to her grandmother (BBB's mother), a *hilot* residing in XXX, Tarlac, to consult her on the unusual palpitation on the mid-portion of AAA's

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[7] TSN, July 12, 2000, pp. 3-5.

[8] TSN, July 12, 2000, pp. 6-7; TSN, July, 13, 2000, p.14.

[9] TSN, July 12, 2000, pp. 8-9; TSN, July 13, 2000, pp. 14-15.

[10] TSN, July 12, 2000, pp. 9-11; TSN July 19, 2000, pp. 4-5.

[11] TSN, July 12, 2000, pp. 11-12.

[12] TSN, July 12, 2000, p. 13.

throat and the absence of her monthly period.[13] After examining AAA, her grandmother told BBB that her daughter was pregnant.

BBB asked AAA who was the father of her unborn child but AAA refused to talk. After much prodding, and in the presence of her Uncle, Rudy Domingo, AAA finally revealed that she was raped by accused-appellant.[14]

On April 8, 2000, AAA, accompanied by her mother and uncle, went to the police headquarters in YYY, Pangasinan to report the incident.[15] Then the police brought her to YYY District Hospital[16] where Dr. James Sison, Medical Officer III of said hospital conducted the examination on Michelle. Dr. Sison made the following findings:

"Q. x x x No extragenital injuries noted. Complete healed hymenal laceration 11:00 o'clock. x x x. In layman's term, Dr. Sison found no physical injury from the breast, the body except the genital area wherein he found a significant laceration complete *(sic)* healed over 11:00 o'clock."[17] Dr. Sison also testified that a single sexual intercourse could make a woman pregnant.

BBB testified that her daughter AAA stopped going to school after she was raped and that no amount of money could bring back the lost reputation of her daughter.

CCC (AAA's father), testified that on May 2, 2000, the family of accused-appellant went to their house and initially offered ₱50,000 and later ₱150,000; that in January 5, 2000, while they were repairing his house for the wedding reception,[18] Larry left at around 4:00 o'clock p.m.

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[13] TSN, July 26, 2000, p. 5.

[14] TSN, July 12, 2000, p. 15.

[15] TSN, July 12, 2000, pp. 16-17.

[16] TSN, July 12, 2000, p.18.

[17] TSN, July 25, 2000, p.6.

[18] CCC's daughter DDD (from his first marriage) got married to Larry Erguiza's brother Carlito on January 20, 2000, fifteen days after the rape incident.

DEFENSE'S VERSION

On January 5, 2000, Larry Erguiza helped in the repair of CCC's[19] house from 8:00 o'clock in the morning up to 5:00 o'clock in the afternoon. When he reached home at around 5:00 pm, his mother Albina Erguiza instructed him to fetch a "*hilot*" as his wife Josie was already experiencing labor pains. He proceeded to fetch the "*hilot*" Juanita Angeles and stayed in their house until his wife delivered a baby at around 3:00 o'clock in the morning of January 6, 2000.[20]

Juanita Angeles corroborated Larry's testimony that he indeed fetched her at around 5:10 pm on January 5, 2000 to attend to his wife who was experiencing labor pains and who delivered a baby at about 3:00 a.m. of January 6, 2000; and that Larry never left his wife's side until the latter gave birth.

Albina, mother of the accused-appellant, testified that AAA is the daughter of her "*balae*" Spouses CCC and BBB; that her son Larry, her husband and two others left CCC and BBB's residence at about 5:00 o'clock in the afternoon on January 5, 2000; that she went to Spouses CCC and BBB to talk about the charge of rape against her son; that Spouses CCC and BBB were asking for ₱1,000,000.00 which was later reduced to ₱250,000.00 and that she made a counter-offer of ₱5,000.00.[21]

Joy Agbuya testified that she and AAA were at the mango orchard of Juanito Macaraeg on January 5, 2000; that she never left AAA when her short pants got hooked; that they went together to the store of Auntie Beth where they parted.[22]

Juanito Macaraeg, the mango orchard caretaker, testified that the house of Larry was a walking distance of about three minutes from the mango orchard; that if one runs fast, it would only take a minute to reach his house; and that he could not recall having seen Larry in the orchard.[23] (Emphasis supplied)

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[19] TSN, September 12, 2000, pp. 4-5.

[20] TSN, August 28, 2000, pp. 3-7.

[21] TSN, August 3, 2000, pp. 4-5; TSN, August 22, 2000, pp. 3-15.

[22] TSN, August 1, 2000, p. 9.

[23] TSN, August 2, 2000, pp. 8 and 11.

In its Decision dated November 18, 2005, the CA affirmed the decision of the RTC, but modified the amount of the award of exemplary damages and costs as follows:

> WHEREFORE, in view of all the foregoing circumstances, the Decision of the Regional Trial Court of San Carlos (Pangasinan), Branch 57 dated November 27, 2000 in Criminal Case No. SCC-3282 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Larry Erguiza is held **GUILTY** of Rape and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim AAA ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages and to give support to AAA's offspring.
>
> SO ORDERED.[24]

Hence, herein appeal.

In his appeal Brief,[25] appellant raises the following errors:

1. THE COURT *A QUO* GRAVELY (SIC) ERRED IN GIVING CREDENCE TO THE INCREDIBLE, THUS UNBELIEVABLE TESTIMONY OF PRIVATE COMPLAINANT AAA.
2. THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED APPELLANT OF THE CRIME OF RAPE DESPITE THE FACT THAT THE PROSECTION (SIC) EVIDENCE FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.
3. THE COURT *A QUO* GRAVELY ERRED IN NOT APPRECIATING ACCUSED-APPELLANT'S DEFENSE OF ALIBI CORROBORATED BY THE WITNESSES PRESENTED BY THE DEFENSE.[26]

The appeal is meritorious. The prosecution's evidence does not pass the test of moral certainty.

This Court has ruled that in the review of rape cases, the Court is guided by the following precepts: (a) an accusation of

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[24] *Rollo,* p. 18.

[25] CA *rollo,* pp. 43-62.

[26] CA *rollo,* p. 45.

rape can be made with facility, but it is more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.[27]

In the case at bar, the CA upheld the conclusion of the RTC in finding the complainant credible, to wit:

> The testimonies of victims who are young and of tender age, like AAA, deserve full credence and should not be dismissed as mere fabrication especially where they have absolutely no motive to testify against the accused-appellant as in this case. Larry even admitted that AAA had no ill motive for charging him with rape. The Supreme Court in several cases, ruled that full credence is accorded the testimony of a rape victim who has shown no ill motive to testify against the accused. This being so, the trial court did not err in giving full credence to AAA's testimony.[28]

This Court does not agree with the CA.

The Court is not unmindful of the general rule that findings of the trial court regarding credibility of witnesses are accorded great respect and even finality on appeal.[29] However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court.[30] In the past, this Court has not hesitated to reverse a judgment of conviction, where there were strong indications pointing to the possibility that the rape charge was false.[31]

Generally, when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary

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[27] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 108.

[28] *Rollo*, p. 15.

[29] *People v. Palma*, G.R. Nos. 130206-08, June 17, 1999, 308 SCRA 466.

[30] *People v. Domogoy*, G.R. No. 116738, March 22, 1999, 305 SCRA 75.

[31] *People v. Medel*, G.R. No. 123803, February 26, 1998, 286 SCRA 567.

to show that rape was committed. And so long as her testimony meets the test of credibility and unless the same is controverted by competent physical and testimonial evidence, the accused may be convicted on the basis thereof.[32]

After a judicious examination of the records of the case, the Court finds that there is testimonial evidence that contradicts the findings of the RTC and CA on the basis of which no conviction beyond reasonable doubt could arise. It is the *unrebutted testimony of a credible defense witness. The testimony of Joy Agbuya (Joy) casts doubt as to the possibility of rape having taken place as narrated by complainant. In addition, the testimony of a disinterested defense witness, Juanita Angeles (Juanita) corroborated the alibi of appellant.*

Before dwelling on the testimonies of Juanita and Joy, the Court shall first scrutinize the testimonial evidence presented by the prosecution and the defense.

Aside from the testimony of complainant, the prosecution presented the following witnesses: Dr. James Sison, BBB, and CCC. The pertinent portions of their testimonies may be summarized as follows:

Dr. James Sison testified that he conducted the medical examination of complainant. His diagnosis was that there was a significant laceration completely healed at the 11:00 o'clock position.[33] However, Dr. Sison testified that his findings were not conclusive, but were rather suggestive that complainant was raped. Furthermore, as to the question of paternity of the child of complainant, Dr. Sison suggested doing a DNA match.[34]

BBB testified that she brought AAA to her grandmother, a *hilot* residing in XXX, Tarlac, to consult her on the unusual palpitation on the mid-portion of complainant's throat and the absence of her monthly period.[35] After examining complainant,

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[32] *People v. Banela*, G.R. No. 124973, January 18, 1999, 301 SCRA 84, 87.

[33] TSN, July 25, 2000, p. 6.

[34] TSN, July 25, 2000, p. 11.

[35] TSN, July 26, 2000, p. 5.

the *hilot* told BBB that her daughter was pregnant. AAA later revealed that she was raped by appellant.[36] BBB further testified that she accompanied AAA to the police headquarters in YYY, Pangasinan to report the incident.[37] Afterwards, the police brought complainant to YYY District Hospital[38] where Dr. James Sison, Medical Officer III of said hospital, conducted the examination on complainant. On cross-examination, BBB testified that the family of appellant offered her money to settle the case.[39]

CCC, the father of AAA, was the lone rebuttal witness of the prosecution. In order to rebut the allegation made by appellant's family that the present case was filed because appellant's family did a poor job in preparing for the wedding of CCC's daughter DDD and appellant's brother Carlito, CCC testified that on the contrary, the wedding went smoothly.[40] CCC further claimed that the family of appellant knelt before him crying and offered money to settle the case.[41] Moreover, CCC testified that appellant left his house at 4:00 p.m. on January 5, 2000.

On the other hand, the defense presented four witnesses, namely: Juanito Macaraeg (Macaraeg), Albina Erguiza (Albina), Juanita and Joy.

Macaraeg, the caretaker of the mango orchard, testified that he did not see appellant on any occasion in the orchard.[42] More specifically, Macaraeg emphasized that he did not see appellant on January 5, 2000.[43] However, on cross-examination, he testified that the house of appellant is only a three-minute walk from the mango orchard and probably a minute if one walks fast.[44]

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[36] TSN, July 26, 2000, p. 7.

[37] TSN, July 12, 2000, pp. 16-17.

[38] TSN, July 12, 2000, p. 18.

[39] TSN, July, 27, 2000, p. 9.

[40] TSN, September 12, 2000, p. 10.

[41] TSN, September 12, 2000, p. 10.

[42] TSN, August 2, 2000. p. 8.

[43] TSN, August 2, 2000, pp. 6-7.

[44] TSN, August 2, 2000, p. 11.

Albina, the mother of appellant, testified that on January 5, 2000, she was with appellant at the house of CCC and BBB preparing for the wedding of CCC's daughter DDD and appellant's brother Carlito. She said that they left the house of CCC at around 5:00 p.m.[45] Albina narrated that when they arrived home, at around 5:02 or 5:03 p.m., she sent appellant to fetch a *hilot,* as the wife of appellant was having some labor pains.[46] She said that appellant and the *hilot* arrived at around 5:30 p.m.[47] According to Albina appellant never left their house.[48]

On the day of the wedding, Albina testified that she had an altercation with BBB regarding the bills and that they never resolved their quarrel.[49] She spoke to BBB and CCC because she learned that they were falsely accusing appellant of raping AAA.[50] After talking to BBB and CCC, she and her husband confronted appellant and asked if he had raped complainant, which appellant denied.[51] Albina claimed that CCC and BBB were demanding ₱1,000,000.00 and that they later reduced it to ₱250,000.00.[52] Albina said that she offered ₱5,000.00 to BBB and CCC only to preserve their relationship as in-laws and for peace.[53]

In sum, with the exception of the claim of AAA that she was raped by appellant, other evidence presented by the prosecution did not identify appellant as the perpetrator of the crime.

Moreover, the testimonies of the witnesses for both the prosecution and the defense conflict on certain points, more notably the claim by BBB and CCC that the family of appellant

[45] TSN, August 2, 2000, p. 8.

[46] TSN, August 2, 2000, p. 8.

[47] TSN, August 2, 2000, p. 9.

[48] TSN, August 2, 2000, p. 9.

[49] TSN, August 22, 2000, pp. 11-12.

[50] TSN, August 22, 2000, p. 12.

[51] TSN, August 22, 2000, p. 13.

[52] TSN, August 22, 2000, p. 13.

[53] TSN, August 22, 2000, p. 14.

offered to settle the case. This, however, was denied by Albina, who claimed that it was BBB and CCC who demanded ₱1,000,000.00.

The offer of compromise allegedly made by Albina is critical to the case at bar in light of law and jurisprudence that an offer of compromise in a criminal case may be received in evidence as an implied admission of guilt.[54] In the case at bar, the offer of compromise was first testified to by BBB on cross-examination, to wit:

> Q. Is it not a fact that there was an offer by you to the mother of the accused that they pay you 1 million and you have reduced it to ₱250,000.00?
>
> A. No, sir, it was they who were the ones offering for settlement, but we never offer them any settlement, sir.[55]

On rebuttal, CCC corroborated the testimony of BBB that the family of appellant offered to settle the case, to wit:

> Q. And according to Larry Erguiza as well as his witnesses they told the Honorable Court that you and your wife are demanding from Larry Erguiza and his parents the amount of one million pesos so that you will not file this case against the accused, what can you say about that?
>
> A. There is no truth about that, sir.
>
> Q. And what is the truth about it?
>
> A. It was they who went to my house, they even knelt before me crying and they were offering money, sir.[56]

However, Albina, the mother of appellant, denied the foregoing allegations, to wit:

> Q. What happened when you went to the house of BBB and CCC talking with them about their problem of the alleged rape on AAA, their daughter?

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[54] RULES OF COURT, Rule 130, Section 24.

[55] TSN, July 27, 2000, p. 9.

[56] TSN, September 12, 2000, p. 10.

A. They were asking for a settlement price for one million pesos but we have no money, sir.

Q. What did you do when they were asking one million pesos from you?

A. We told them that we do not have that money until they reduced the price to ₱250,000.00 but we have no money because we are poor, sir.

Q. Were you around when BBB testified to the witness stand?

A. I was here, sir.

Q. Did you hear what BBB said that you were the one offering money?

A. Yes, sir, I was here and I heard that.

Q. What can you say to that allegation of BBB?

A. That is not true, sir. She was saying that we were the ones offering money for one million to them but she was telling a lie, it was they who were asking for one million pesos, sir.

Q. What is your proof that is was they who are demanding the amount of one million and reduced that to two hundred fifty thousand (₱250,000.00)?

A. We already left because we cannot afford to give that much, sir.

Q. Aside from the fact that you do not have money, was there any reason or what was your other reason in going there?

A. Our reason in talking to them was that when Larry said that he did not commit the alleged rape and so we went there to talk to them so that we could preserve our relationship as in-laws even if it is for the sake of peace we could try our best to cope up even ₱5,000.00 just for the sake of peace because our intention in going to their house was to extract the truth, sir.[57]

On cross-examination, appellant gave the following statements:

[57] TSN, August 22, 2000, pp. 13-15.

Q. Before the filing of this case with this Honorable Court, your parents and you were pleading to the parents of AAA not to continue anymore the case, is it not?

A. Yes, sir, so that the case will not be filed and our relationship will not be destroyed, sir.

Q. In fact you asked your parents to do so, is it not?

A. No, sir. They were the ones who went to the house of AAA, sir.

Q. But the family of AAA did not agree to the pleadings of your parents that the case be not filed anymore, is it not?

A. They will agree if we will pay then 1 million, but we do not have 1 million, sir.

Q. Did you offer them 1 million?

A. No, sir. They were the ones who told that to us.[58] (Emphasis Supplied)

The alleged offer of the parents of appellant to settle the case cannot be used against appellant as evidence of his guilt. Appellant testified that he did not ask his parents to settle the case. Moreover, appellant was not present when the offer to settle was allegedly made.

An offer of compromise from an unauthorized person cannot amount to an admission of the party himself.[59] Although the Court has held in some cases that an attempt of the parents of the accused to settle the case is an implied admission of guilt,[60] we believe that the better rule is that for a compromise to amount to an implied admission of guilt, the accused should have been present or at least authorized the proposed compromise.[61]

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[58] TSN, September 7, 2000, pp. 13-14.

[59] Wigmore, *RULES ON EVIDENCE*, Section 1061, p. 30.

[60] *People v. Manzano*, No. L- 38449, November 25, 1982, 118 SCRA 705; *People v. Manuel*, G.R. No. 57061, May 9, 1988, 161 SCRA 235, 244-245.

[61] *People v. Bangcado*, G.R. No. 132330, November 28, 2000, 346 SCRA 189.

Moreover, it has been held that where the accused was not present at the time the offer for monetary consideration was made, such offer of compromise would not save the day for the prosecution.[62]

In addition, the Court, in weighing the evidence presented, may give less weight to the testimonies of Albina, on the one hand, and BBB and CCC, on the other, as they are related to the appellant and the victim, respectively.[63] Their testimonies relating to the offer of settlement simply contradict each other. As a matter of fact, even the lower courts did not consider the alleged offer of settlement in resolving the case.

Thus, the Court now considers the testimonies of Juanita and Joy.

Testimony of Juanita Angeles

Juanita, a *hilot*, testified that appellant fetched her at around 5:10 in the afternoon of January 5, 2000.[64] She asserted that they arrived at the house of appellant at 5:30 p.m. She said that appellant's wife gave birth at dawn at 3:00 a.m. of January 6, 2000.[65] Juanita said that appellant was with her the entire time and never left the house.[66]

Testimony of Joy Agbuya

For a better perspective on the testimony of Joy, it is necessary to repeat the testimony of AAA. AAA testified that on January 5, 2000, she was accompanied by 12-year-old Joy and the latter's brother Ricky Agbuya (Ricky) to the mango orchard at the back of the elementary school to pick fallen mangoes. Further, complainant claims that she was left behind by Joy and Ricky

[62] *People v. Godoy*, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676.

[63] See *People v. Martinez*, G.R. No. 124892, January 30, 2001, 350 SCRA 537, *People v. Abendan*, G.R. Nos. 132026-27, June 28, 2001, 360 SCRA 106.

[64] TSN, August 3, 2000, p. 4.

[65] TSN, August 3, 2000, p. 5.

[66] TSN, August 3, 2000, p. 7.

when her shorts got hooked to the fence and that while she was unhooking her pants from the fence, appellant grabbed her and raped her.[67]

This was however contradicted by Joy, to wit:

Q. How many times did you go to the mango orchard of Juanito Macaraeg?

A. Three (3) times, sir.

Q. When you usually go to the mango orchard of Juanito Macaraeg, where did you met [*sic*] with AAA?

A. In their house, I dropped by her house, sir.

Q. Was there an occasion wherein you brought your brother Ricky when you went with AAA to the mango orchard of Juanito Macaraeg?

A. No, sir.

Q. Are we made to understand that Ricky, your brother did not go even once to the mango orchard of Maning Macaraeg?

A. Yes, sir.

Q. According to AAA in her sworn statement she stated that in [sic] January 5, 2000 you were with your brother Ricky and AAA in going to the mango orchard, what can you say about that?

A. What she is saying is not true. I was not with my brother, sir. I did not tug him along with me.

Q. It is also said by AAA that you left her behind in the mango orchard when her pants was hooked, what can you say about that?

A. No, sir I waited for her.

Q. <u>Are we made to understand Madam Witness, that there was no instance or never that happened that you left her in the mango orchard alone?</u>

[67] TSN, July 12, 2000, pp. 5-12.

A. No, sir, I waited for her and both of us went home together, sir.

Q. Going back to the occasion wherein you were with AAA, who were with you in going back home?

A. Just the two (2) of us, sir.

Q. In your way home, where did you part or separate with each other?

A. In front of the store of auntie Beth, sir.[68]

xxx xxx xxx

Q. Is AAA your bestfriend?

A. Yes, sir.

Q. Since you said that AAA is your bestfriend was there an occasion wherein she told you that she was raped?

A. None, sir.[69] (Emphasis and underscoring supplied)

On cross-examination, Prosecutor Ely Reintar elicited the following statements from Joy:

Q. In the year 2000, when was the last time that you talked to AAA?

A. April, sir.

Q. After April, you did not talk to AAA anymore?

A. No more, sir.

Q. Your friendship was severed?

A. Yes, sir.

Q. Will you please tell the Honorable Court why your friendship became severed?

A. Because she quarreled with me, sir.

Q. And because you quarreled, that is the reason why you are now testifying against her?

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[68] TSN, August 1, 2000, pp. 8-9.

[69] TSN, August 1, 2000, p.10.

A. Yes, sir.[70]

On re-direct examination, Joy clarified, thus:

Q. Madam Witness, you said that you have a quarrel with the private complainant, AAA, will you please tell this Honorable Court what is the reason or cause of your quarrel with AAA?

A. Because they wanted me to say another statement that I left AAA behind, sir.[71] (Emphasis supplied)

On re-cross examination, Joy gave the following answers to the questions of Prosecutor Reintar:

Q. You said that the reason for your quarrel is that they wanted you to change your statement, that you left behind AAA, who are those they, that you are referring to?

INTERPRETER

No answer.

Witness

I, sir.

PROS. REINTAR

Q. Who told you to change your statement that you left AAA behind?

A. Because they are saying that I will change my statement that I left AAA but I did not sir.

Q. Who are these who are telling that?

A. They, sir.

Q. Will you please mention them?

A. BBB, only her, sir.[72]

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[70] TSN, August 1, 2000, p. 19.

[71] TSN, August 2, 2000, p. 2.

[72] TSN, August 2, 2000, p. 3.

The testimony of 12-year-old Joy makes it impossible for the appellant to have raped AAA the way complainant narrated it, to wit:

> Q. You try to understand clearly the question, Madam Witness, and may I repeat that, at the time of the rape when according to you, you were the one raped, where were Joy and Ricky Agbuya?
>
> A. They left ahead of me because my short pants was hooked at the fence so I was left behind, sir.
>
> Q. Were you able to remove the pants of yours at the fence?
>
> A. I was removing it sir, when he suddenly grabbed me.
>
> Q. And who is this person you are referring to as the one who grabbed you?
>
> A. Larry Erguiza, sir.[73]

Put simply, complainant could not have been raped because Joy waited for complainant when the latter's shorts got hooked to the fence and thereafter both went home together. The Court finds no cogent reason for Joy to lie and say that she had waited for complainant and that they both went home together. She had nothing to gain for lying under oath. Moreover, the records are bereft of any showing or claim that Joy was related to or was a close friend of appellant or his family. On the contrary, Joy considers herself the "best-friend" and playmate of complainant.[74]

When Prosecutor Reintar questioned her as to her understanding of the oath she took, Joy answered, "That I will swear to God, sir. x x x The truth, sir."[75] Furthermore, Joy did not succumb to pressure even as she was being conscientiously examined by Prosecutor Reintar. Joy boldly testified that BBB, the mother of complainant, was forcing her to change her statement.

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[73] TSN, July 12, 2000, pp. 8-9.

[74] TSN, August 1, 2000, p.10.

[75] TSN, August 1, 2000, p. 13.

The testimony of Joy clearly lays down the following facts which are damaging to the case of the prosecution: first, that Joy did not leave behind AAA when the latter's shorts got hooked to the fence; and secondly, that Joy and AAA left the orchard, went home together and separated at their Aunt Beth's house, indicating that no untoward incident, much less rape, was committed by appellant at the time and place that complainant had testified on.

Necessarily, either Joy or AAA lied under oath. It was thus critical for the prosecution to show that Joy gave false statements.

Unfortunately for AAA, the prosecution miserably failed to rebut Joy's testimony. Neither complainant nor Ricky, BBB or any other witness was called to the witness stand to refute Joy's testimony. True, it is up to the prosecution to determine who to present as witnesses.[76] However, considering that the testimony of Joy critically damaged the case of the prosecution, it behooved the prosecution to present evidence to rebut the defense evidence. Witnesses such as Ricky, AAA and BBB should have been presented by the prosecution to demolish Joy's testimony. The testimony of Ricky is particularly significant, especially since AAA claimed that he was with her and his sister Joy at the mango orchard on the day of the alleged rape incident. The failure on the part of the prosecution to present Ricky or AAA bolsters the defense evidence, that no rape happened on the date and time claimed by AAA.

The prosecution presented CCC, the father of complainant, as it's lone rebuttal witness.[77] However, the testimony of CCC covered facts and issues not related to the testimony of Joy. The testimony of CCC merely rebutted the allegation made by appellant's family that the present case was filed because appellant's family did a poor job of preparing for the wedding of CCC's daughter DDD and appellant's brother Carlito. To this, CCC testified that on the contrary, the wedding went

[76] *People v. Ruedas*, G.R.No. 83372, February 27, 1991, 194 SCRA 553.

[77] TSN, September 12, 2000, pp. 2-16.

[78] TSN, September 12, 2000, p. 10.

smoothly.[78] Furthermore, CCC claimed that the family of appellant knelt before him crying and offered money to settle the case.[79] In addition, CCC testified that appellant left his house at 4:00 p.m. on January 5, 2000. Thus, the testimony of CCC did not in any way rebut the testimony of Joy.

Further, Joy testified that during the three times she went with AAA to the mango orchard, the time was 1:00 p.m.[80] However, AAA testified that she went to the mango orchard with Joy at 4:00 p.m.[81] The variance in the testimonies of Joy and AAA as to the time they went to the mango orchard on the day of the alleged rape incident may be disregarded as they are *de minimis* in nature and do not relate to the commission of the crime. There is a common point uniting the testimonies of both Joy and AAA; that is, that both referred to the day when AAA's short got hooked to the fence.

Moreover, assuming *arguendo* that the variance between the testimonies of AAA and Joy as to the time they were together at the mango orchard is an *indicia* that AAA may have been raped by appellant on a different day, not on January 5, 2000, to still impute to appellant the crime of rape is not plausible.

The Court is not unmindful of the rule that the exact date of the commission of the crime of rape is extraneous to and is not an element of the offense, such that any inconsistency or discrepancy as to the same is irrelevant and is not to be taken as a ground for acquittal.[82] Such, however, finds no application to the case at bar. AAA and Joy may differ in their testimonies as to the time they were at the mango orchard, but there could be no mistake as to the actual day when AAA was supposed to have been raped; it was the day when AAA's shorts got hooked to the fence at the mango orchard.

The RTC and CA unwittingly brushed aside the testimonies of Juanita and Joy and gave full credence to the testimony of

[79] TSN, September 12, 2000, p. 10.

[80] TSN, August 1, 2000, pp. 16-17.

[81] TSN, July 12, 2000. p. 5.

[82] *People v. Lantano*, G.R. No 176734, January 28, 2008, 542 SCRA 640.

AAA. As a matter of fact, their probative weight were not considered or evaluated in the text of the lower courts' decision.

As mentioned earlier, the prosecution could have rebutted the testimony of Joy, but for some reason or oversight, it chose not to do so.

Consequently, in view of the unrebutted testimony of Joy, appellant's defense of alibi and denial assumes considerable weight. It is at this point that the issue as to the time that the rape was committed plays a significant factor in determining the guilt or innocence of appellant. This Court must therefore address this issue for a thorough evaluation of the case.

The Court takes note that Macaraeg, the caretaker of the orchard, testified that appellant's house was only a minute away from the orchard if one would run.

As earlier mentioned, CCC testified that appellant left CCC's house at 4:00 p.m. on January 5, 2000, contrary to the testimony of Albina that she and appellant left at 5:00 p.m. AAA declared that the alleged rape took place after 5:00 p.m.

Q. So at 4:00 o'clock you were at the house and you left and proceeded at the back of the school to pick mangoes?

A. Yes, sir.

Q. That was already around 5:00 o'clock?

A. Yes, sir. I asked my companion Joy.

Q. What did you ask of her?

A. **She was wearing a wristwatch and I asked Joy what time is it and when I looked at her wristwatch, it was already 5:00 o'clock, sir**.[83] (Emphasis Supplied)

Moreover, on cross-examination, AAA gave the following statements, to wit:

Q. So it is almost 5:00 p.m. When you went to the mango orchard with Joy Agbuya and Ricky Agbuya?

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[83] TSN, July 12, 2000, pp. 5-6.

A. What I only know was that, it was already about 5:00 o'clock then, sir.

Q. How many minutes did you consume in getting mangoes?

A. **When we went there, we were not able to get some mango and when I asked sir what was the time then and when I looked at the wristwatch, it was already 5:00 o'clock, sir**.[84] (Emphasis Supplied)

The testimony of Joy makes it impossible for AAA to have been raped at 4:00 p.m. or 5:00 p.m. or any time thereafter since it was not rebutted that Joy never left complainant at the mango orchard even when AAA's shorts got hooked to the fence, and both went home together without any other untoward incident.

This Court is not unmindful of the doctrine that for alibi to succeed as a defense, appellant must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[85]

In the case at bar, although the orchard is just a minute away from the house of appellant, in view of the testimony of the *hilot* Juanita that appellant was with her from 5:10 p.m. and never left his house from that time until his wife gave birth at 3:00 a.m.; and the testimony of Joy that she never left AAA in the orchard and that they both went home together, the defense of alibi assumes significance or strength when it is amply corroborated by a credible witness.[86] Thus, the Court finds that appellant's alibi is substantiated by clear and convincing evidence.

What needs to be stressed is that a conviction in a criminal case must be supported by proof beyond reasonable doubt — moral certainty that the accused is guilty.[87] The conflicting

[84] TSN, July 13, 2000, p. 13.

[85] *People v. Obrique*, G.R. No 146859, January 20, 2004, 420 SCRA 304.

[86] *People v. Amestuzo*, G.R. No. 104383, July 12, 2001, 361 SCRA 184.

[87] *People v. Bautista*, G.R. No. 123557, February 4, 2002, 376 SCRA 18.

testimonies of Joy and complainant, and the testimony of Juanita that corroborated appellant's alibi preclude the Court from convicting appellant of rape with moral certainty.

Faced with two conflicting versions, the Court is guided by the equipoise rule.[88] Thus, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[89] The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.[90]

It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion.[91] What is required of it is to justify the conviction of the accused with moral certainty.[92] Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.[93]

WHEREFORE, the Decision dated November 18, 2005 of the Court of Appeals in CA-G.R. CR H. C. No. 00763 is *REVERSED* and *SET ASIDE*. Larry Erguiza is *ACQUITTED* and ordered immediately *RELEASED* from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is *ORDERED* to implement this Decision forthwith and to *INFORM* this Court,

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[88] *Tin v. People*, G.R. No. 126480, August 10, 2001, 362 SCRA 594.

[89] *People v. Agustin*, 316 Phil. 828, 832 (1995).

[90] *People v. Lagmay*, G.R. No. 125310, April 21, 1999, 306 SCRA 157.

[91] *People v. Fernandez*, G.R. Nos. 139341-45, July 25, 2002, 385 SCRA 224, 232.

[92] Rules of Court, Rule 133, Section 2.

[93] *People v. Aballe*, G.R. No. 133997, May 17, 2001, 357 SCRA 802.

within five (5) days from receipt hereof, of the date appellant was actually released from confinement.

Costs *de oficio.*

SO ORDERED.

Puno,[*] *C.J., Ynares-Santiago (Chairperson), Chico-Nazario,* and *Reyes, JJ.,* concur.

EN BANC

[A.M. No. 03-9-02-SC. November 27, 2008]

RE: ENTITLEMENT TO HAZARD PAY OF SC MEDICAL AND DENTAL CLINIC PERSONNEL

SYLLABUS

1. POLITICAL LAW; R.A. NO. 7305 (THE MAGNA CARTA OF PUBLIC HEALTH WORKERS); HAZARD PAY; MINIMUM RATES DUE ALL HEALTH WORKERS IN THE GOVERNMENT PROVIDED.— Essentially, hazard pay is the premium granted by law to health workers who, by the nature of their work, are constantly exposed to various risks to health and safety. The implementing rules of R.A. No. 7305 likewise stipulate the same rates of hazard pay. In a language too plain to be mistaken, R.A. No. 7305 and its implementing rules mandate that the allocation and distribution of hazard allowances to public health workers within each of the two salary grade brackets at the respective rates of 25% and 5% be based on the salary grade to which the covered employees belong. These same rates have in fact been incorporated into the subject Circular to apply to all SCMDS personnel. The computation

[*] In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated October 13, 2008.

of the hazard allowance due should, in turn, be based on the corresponding basic salary attached to the position of the employee concerned. To be sure, the law and the implementing rules obviously prescribe the minimum rates of hazard pay due all health workers in the government, as in fact this is evident in the self-explanatory phrase "at least" used in both the law and the rules. No compelling argument may thus be offered against the competence of the DOH to prescribe, by rules or orders, higher rates of hazard allowance, provided that the same fall within the limits of the law. As the lead agency in the implementation of the provisions of R.A. No. 7305, it has in fact been invested with such power by Section 35.

2. ID.; ADMINISTRATIVE LAW; THE RULE-MAKING POWER DELEGATED TO AN ADMINISTRATIVE AGENCY IS LIMITED AND DEFINED BY THE STATUTE CONFERRING THE POWER; VIOLATION IN CASE AT BAR.— Fundamental is the precept in administrative law that the rule-making power delegated to an administrative agency is limited and defined by the statute conferring the power. For this reason, valid objections to the exercise of this power lie where it conflicts with the authority granted by the legislature. A mere fleeting glance at A.O. No. 2006-0011 readily reveals that the DOH, in issuing the said administrative order, has exceeded its limited power of implementing the provisions of R.A. No. 7305. It undoubtedly sought to modify the rates of hazard pay and the mechanism for its allocation under both the law and the implementing rules by prescribing a uniform rate—let alone a fixed and exact amount—of hazard allowance for government health workers occupying positions with salary grade 20 and above. The effect of this measure can hardly be downplayed especially in view of the unmistakable import of the law to establish a scalar allocation of hazard allowances among public health workers within each of the two salary grade brackets. Section 19 of R.A. No. 7305 recognizes, for its own purposes, the applicability of the provisions of R.A. No. 6758 (The Salary Standardization Act of 1989) in the determination of the salary scale of all covered public health workers. x x x Hence, it can only be surmised that the issuance of AO No. 2006-0011 is an attempt to amend the rates of hazard allowance and the mechanism for its allocation as provided for in R.A. No. 7305 and the implementing rules because it has the effect of obliterating the intended discrepancy in the

cash equivalents of the hazard allowance for employees falling within the bracket of Salary Grade 20 and above. Without unnecessarily belaboring this point, the Court finds that the administrative order violates the established principle that administrative issuances cannot amend an act of Congress. It is void on its face, but only insofar as it prescribes a predetermined exact amount in cash of the hazard allowance for public health workers with Salary Grade 20 and above.

3. ID.; ID.; THE FUNCTION TO PROMULGATE RULES AND REGULATIONS MAY BE LEGITIMATELY EXERCISED ONLY FOR THE PURPOSE OF CARRYING OUT THE PROVISIONS OF LAW; APPLICATION IN CASE AT BAR. — Indeed, when an administrative agency enters into the exercise of the specific power of implementing a statute, it is bound by what is provided for in the same legislative enactment inasmuch as its rule-making power is a delegated legislative power which may not be used either to abridge the authority given by the Congress or the Constitution or to enlarge the power beyond the scope intended. The power may not be validly extended by implication beyond what may be necessary for its just and reasonable execution. In other words, the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of a law, inasmuch as the power is confined to implementing the law or putting it into effect. Therefore, such rules and regulations must not be inconsistent with the provisions of existing laws, particularly the statute being administered and implemented by the agency concerned, that is to say, the statute to which the issuance relates. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it.

R E S O L U T I O N

TINGA, *J.*:

This administrative matter pertains to the latest of the spate of requests of some of the members of the Supreme Court Medical and Dental Services (SCMDS) Division in relation to the grant of hazard allowance.

In the Court's Resolution[1] of 9 September 2003, the SCMDS personnel were declared entitled to hazard pay according to the provisions of Republic Act (R.A.) No. 7305,[2] otherwise known as *The Magna Carta of Public Health Workers.* The resolution paved the way for the issuance of Administrative Circular No. 57-2004[3] which prescribed the guidelines for the grant of hazard allowance in favor of the SCMDS personnel. Now, eleven members of the same office: namely, Ramon S. Armedilla, Celeste P. Vista, Consuelo M. Bernal, Remedios L. Patricio, Madonna Catherine G. Dimaisip, Elmer A. Ruñez, Marybeth V. Jurado, Mary Ann D. Barrientos, Angel S. Ambata, Nora T. Juat and Geslaine C. Juan—question the wisdom behind the allocation of hazard pay to the SCMDS personnel at large in the manner provided in the said circular.

Administrative Circular No. 57-2004 (the subject Circular) initially classified SCMDS employees according to the level of exposure to health hazards, as follows: (a) physicians, dentists, nurses, medical technologists, nursing and dental aides, and physical therapists who render direct, actual and frequent medical services in the form of consultation, examination, treatment and ancillary care, were said to be subject to high-risk exposure; and (b) psychologists, pharmacists, optometrists, clerks, data encoders, utility workers, ambulance drivers, and administrative and technical support personnel, to low-risk exposure.[4]

[1] *Rollo*, p. 26.

[2] The law was approved on 26 March 1992 and took effect fifteen (15) days following its publication.

[3] The Circular, entitled PRESCRIBING THE GUIDELINES FOR THE GRANT OF HAZARD ALLOWANCE TO THE PERSONNEL OF THE MEDICAL AND DENTAL SERVICES (SCMDS), was issued on 11 November 2004 and took effect the following day.

[4] Supreme Court Administrative Circular No. 57-2004.

II. Eligibility:

SCMDS employees, whether permanent, temporary, casual, or co-terminus, including those assigned or detailed at the SC Clinic who render actual medical, dental and/or other health-related services, as well as those who provide administrative and technical support are entitled to receive hazard allowance.

For the purpose of these guidelines, SCMDS personnel are classified as follows:

Accordingly, employees exposed to high-risk hazards belonging to Salary Grade 19 and below, and those belonging to Salary Grade 20 and above, were respectively given 27% and 7% of their basic monthly salaries as hazard allowances; whereas employees open to low-risk hazards belonging to Salary Grade 20 and above, and Salary Grade 19 and below, were respectively given 5% and 25% of their basic monthly salaries as hazard allowances.[5] This classification, however, was abolished when the Department of Health (DOH)—after reviewing the corresponding job descriptions of the members of the SCMDS personnel and the nature of their exposure to hazards—directed that they should all be entitled to a uniform hazard pay rate without regard for the nature of the risks and hazards to which they are exposed.[6] The dual 25% and 5% hazard allowance rates for all the members of the SCMDS personnel were retained.

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1. Those who, by the nature of their functions, are subject to high risk exposure being directly and frequently exposed to communicable, contagious, infectious and biological hazards. These are the physicians, dentists, nurses, medical technologists, nursing aides, dental aides and physical therapists who render direct, actual, and frequent medical services in the form of consultations, physical examinations, treatment and ancillary care; and

2. Those who are subject to low risk exposure in view of their indirect and/or infrequent exposure to patients with communicable and infectious ailments in the Supreme Court clinics. These personnel include psychologists, pharmacists, optometrists, who render health-related services as well as clerks, data encoders, utility workers, ambulance drivers and all those who, regardless of their official job titles, provide administrative and technical support to the SCMDS.

[5] A.C. No. 57-2004.

III. Rates of Payment:

xxx xxx xxx

1. SCMDS personnel exposed to high-risk hazard with Salary Grades 19 and below shall receive hazard allowance equivalent to twenty-seven percent (27%) of their monthly basic salary. Those with Salary Grades 20 and above shall receive hazard allowance equivalent to seven percent (7%) of their basic salary.

2. SCMDS personnel exposed to low risk hazard with Salary Grades 19 and below shall receive hazard allowance equivalent to twenty five percent (25%) of their monthly basic salary. Those with Salary Grades 20 and above shall receive hazard allowance equivalent to five percent (5%) of their basic salary.

[6] See the Memorandum of Undersecretary Milagros L. Fernandez, dated 2 September 2005 addressed to Secretary Francisco Duque III. Undersecretary

In their Letter[7] dated 21 January 2005 addressed to then Chief Justice Hilario Davide, Jr., eleven of the SCMDS personnel concerned—who claim to be doctors with salary grades higher than 19[8] and who allegedly render front-line and hands-on services but receive less hazard allowance allocations than do those personnel who do not directly deliver patient care—lamented that the classification and the rates of hazard allowance implemented by the subject Circular seemed to favor only those belonging to Salary Grade 19 and below, contrary to the very purpose of the grant which is to compensate health workers according to the degree of exposure to hazards regardless of rank or status. They believe that the grant must be based not on the salary grade but rather on the degree of hazard to which they are actually exposed; thus, they asked for a reexamination of the subject Circular.[9]

However, even before the request could be acted upon by the Court, Secretary Francisco Duque III issued Administrative Order (A.O.) No. 2006-0011[10] on 16 May 2006. The administrative order prescribes amended guidelines in the payment of hazard pay applicable to all public health workers regardless of the nature of their appointment. It essentially establishes a 25% hazard pay rate for health workers with salary grade 19 and below but fixed the hazard allowance of those occupying

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Fernandez was the Chairperson of the National Management Health Workers Consultative Council, the technical committee of the DOH tasked to review the list of positions in the various agencies and to determine whether the same are exposed to high or low-risk hazard. *Rollo*, p. 61.

[7] *Id.* at 63-64.

[8] Except Madonna Catherine G. Dimaisip who as Dentist III occupies a position belonging to Salary Grade 19. Geslaine C. Juan and Nora T. Juat are, respectively, supervising judicial staff officer and chief judicial staff officer. See Hazard Pay Payroll for 15 November-21 December 2004 attached to the Letter, *id.* at 67-68.

[9] *Id.* at 63.

[10] Department of Health A.O. No. 2006-0011 carries the title, AMENDED GUIDELINES ON THE PAYMENT OF HAZARD PAY TO PUBLIC HEALTH WORKERS (PHWs) UNDER R.A. 7305. It states that its effective date is 1 July 2006. See *id.* at 59-60.

positions belonging to Salary Grade 20 and above to ₱4,989.75 without further increases.[11] In view of this development, some of the SCMDS personnel concerned,[12] in another Letter dated 19 December 2007 and addressed to Chief Justice Reynato S. Puno, suggesting that the subject Circular be amended to conform to A.O. No. 2006-0011, and that they accordingly be paid hazard pay differentials accruing by virtue thereof.[13]

SCMDS Senior Chief Staff Officer Dr. Prudencio Banzon, Jr. indorsed the letter to Deputy Clerk of Court and Chief Administrative Officer Atty. Eden Candelaria (Atty. Candelaria).[14] On 15 January 2008, Atty. Candelaria issued a Memorandum[15] finding merit in the request to amend the subject Circular because A.O. No. 2006-0011 suggests more equitable guidelines on the allocation of hazard allowances among health workers in the government.[16] Accordingly, she recommended that: (a) the classification as to whether employees are exposed to high or low-risk hazard, as found in the Circular, be abolished and instead replaced by the fixed rates provided in A.O. No. 2006-0011; and that (b) the payment of the adjusted hazard allowance be charged against the regular savings of the Court.[17]

In its Resolution[18] dated 22 January 2008, the Court referred Atty. Candelaria's memorandum to the Fiscal Management and Budget Office (FMBO) and to the Office of the Chief Attorney (OCAT) for comment.

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[11] *Id.* at 59.

[12] Prudencio P. Banzon, Jr., M.D., Ramon S. Armedilla, Elmer R. Ruñez, M.D., Consuelo M. Bernal, M.D., Remedios L. Patricio, M.D., Gislaine C. Juan, M.D., Celeste Aida P. Vista, M.D., Mary Ann D. Barrientos and Angel S. Ambata, D.M.D., *Id.* at 57-58.

[13] *Id.* at 57.

[14] *Id.* at 56.

[15] *Id.* at 52-55.

[16] *Id.* at 54.

[17] *Id.* at 55.

[18] *Id.* at 76.

The OCAT posits that the subject Circular may not be amended in accordance with A.O. No. 2006-0011 and in the manner the personnel concerned desire because, first, the mechanics of payment established by the administrative order is of doubtful validity; and second, the said administrative order has not been duly published and hence not binding on the Court.[19] It also points out that the administrative order does not conform to Section 21 of R.A. No. 7305 in which the rates of hazard pay are clearly based on salary grade.[20]

The FMBO advances a contrary position. It maintains that the subject Circular may be amended according to the terms of A.O. No. 2006-0011 inasmuch as the latter could put to rest the objection of the personnel concerned to the allegedly unreasonable and unfair allocation of hazard pay. Additionally, it recommends that once the amendment is made, the hazard allowances due the SCMDS personnel be charged against the savings from the regular appropriations of the Court.[21]

This Court has to deny the request because the subject Circular cannot be amended according to the mechanism of hazard pay allocation under AO No. 2006-0011 without denigrating established administrative law principles.

Essentially, hazard pay is the premium granted by law to health workers who, by the nature of their work, are constantly exposed to various risks to health and safety.[22] Section 21 of R.A. No. 7305 provides:

> SEC. 21. *Hazard Allowance*.—Public health workers in hospitals, sanitaria, rural health units, main health centers, health infirmaries, barangay health stations, clinics and other health-related establishments located in difficult areas, strife-torn or embattled areas, distressed or isolated stations, prison camps, mental hospitals,

[19] *Id.* at 90.

[20] *Id.* at 77-97. See Comment of the Office of the Chief Attorney dated 17 April 2008.

[21] *Rollo*, pp. 199, 201.

[22] Rule III.18 of the Implementing Rules of R.A. No. 7305 defines "hazard" as the risk to the health and safety of public health workers.

radiation-exposed clinics, laboratories or disease-infested areas or in areas declared under state of calamity or emergency for the duration thereof which expose them to great danger, contagion, radiation, volcanic activity/eruption, occupational risks or perils to life as determined by the Secretary of Health or the Head of the unit with the approval of the Secretary of Health, shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above.

The implementing rules of R.A. No. 7305 likewise stipulate the same rates of hazard pay. Rule 7.1.5 thereof states:

7.1.5 *Rates of Hazard Pay*

a. Public health workers shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above. This may be granted on a monthly, quarterly or annual basis. x x x

In a language too plain to be mistaken, R.A. No. 7305 and its implementing rules mandate that the allocation and distribution of hazard allowances to public health workers within each of the two salary grade brackets at the respective rates of 25% and 5% be based on the salary grade to which the covered employees belong. These same rates have in fact been incorporated into the subject Circular to apply to all SCMDS personnel. The computation of the hazard allowance due should, in turn, be based on the corresponding basic salary attached to the position of the employee concerned.

To be sure, the law and the implementing rules obviously prescribe the minimum rates of hazard pay due all health workers in the government, as in fact this is evident in the self-explanatory phrase "at least" used in both the law and the rules. No compelling argument may thus be offered against the competence of the DOH to prescribe, by rules or orders, higher rates of hazard allowance, provided that the same fall within the limits of the law. As the lead agency in the implementation of the provisions of R.A. No. 7305, it has in fact been invested with such power by

Section 35.[23] Be that as it may, the question that arises is whether that power is broad enough to vest the DOH with authority to fix an exact amount of hazard pay accruing to public health workers with Salary Grade 20 and above, deviating from the 5% monthly salary benchmark prescribed by both the law and its implementing rules.

The DOH possesses no such power.

Fundamental is the precept in administrative law that the rule-making power delegated to an administrative agency is limited and defined by the statute conferring the power. For this reason, valid objections to the exercise of this power lie where it conflicts with the authority granted by the legislature.[24]

A mere fleeting glance at A.O. No. 2006-0011 readily reveals that the DOH, in issuing the said administrative order, has exceeded its limited power of implementing the provisions of R.A. No. 7305. It undoubtedly sought to modify the rates of hazard pay and the mechanism for its allocation under both the law and the implementing rules by prescribing a uniform rate—let alone a fixed and exact amount—of hazard allowance for government health workers occupying positions with salary grade 20 and above. The effect of this measure can hardly be downplayed especially in view of the unmistakable import of the law to establish a scalar allocation of hazard allowances among public health workers within each of the two salary grade brackets.

Section 19[25] of R.A. No. 7305 recognizes, for its own purposes, the applicability of the provisions of R.A. No. 6758[26]

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[23] SEC. 35. *Rules and Regulations.*—The Secretary of Health after consultation with appropriate agencies of the Government as well as professional and health workers' organizations or unions, shall formulate and prepare the necessary rules and regulations to implement the provisions of this Act.

[24] *Benson & Gold Chevrolet, Inc. v. Louisiana Motor Vehicle Com.*, 403 So 2d 13.

[25] SEC. 19. *Salaries.*—In the determination of the salary scale of public health workers, the provisions of Republic Act No. 6758 shall govern, except that the benchmark for Rural Health Physicians shall be upgraded to Grade 24.

[26] Entitled, AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES.

(The Salary Standardization Act of 1989) in the determination of the salary scale of all covered public health workers. Telling is this reference to the scalar schedule of salaries when viewed in light of the fact that factoring in the salaries of individual employees and the applicable uniform rate of hazard allowance would yield different results which, when charted against each other, would also bear the scalar schedule intended by the law.

The object, in other words, of both the law and its implementing rules in providing a uniform rate for each of the two groups of public health workers is to establish a scalar allocation of the cash equivalents of the hazard allowance within each of the two groups. A scalar schedule of hazard pay allocation within the Salary Grade 20 and higher bracket can indeed be achieved only by multiplying the basic monthly salary of the covered employees by a constant factor that is 25% as the fixed legal rate. Even without an express reference to the scalar schedule of salaries under R.A. No. 6758, it can nevertheless be inferred that R.A. No. 7305, by mandating a fixed rate of hazard allowance for each of the two groups of health workers, intends to achieve the same effect.

Hence, it can only be surmised that the issuance of AO No. 2006-0011 is an attempt to amend the rates of hazard allowance and the mechanism for its allocation as provided for in R.A. No. 7305 and the implementing rules because it has the effect of obliterating the intended discrepancy in the cash equivalents of the hazard allowance for employees falling within the bracket of Salary Grade 20 and above. Without unnecessarily belaboring this point, the Court finds that the administrative order violates the established principle that administrative issuances cannot amend an act of Congress.[27] It is void on its face, but only insofar as it prescribes a predetermined exact amount in cash of the hazard allowance for public health workers with Salary Grade 20 and above.

Indeed, when an administrative agency enters into the exercise of the specific power of implementing a statute, it is bound by

[27] *Toledo v. Civil Service Commission,* G.R. Nos. 92646-47, 4 October 1991, 202 SCRA 507, 514.

what is provided for in the same legislative enactment[28] inasmuch as its rule-making power is a delegated legislative power which may not be used either to abridge the authority given by the Congress or the Constitution or to enlarge the power beyond the scope intended. [29] The power may not be validly extended by implication beyond what may be necessary for its just and reasonable execution. [30] In other words, the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of a law, inasmuch as the power is confined to implementing the law or putting it into effect.[31] Therefore, such rules and regulations must not be inconsistent with the provisions of existing laws, particularly the statute being administered and implemented by the agency concerned,[32] that is to say, the statute to which the issuance relates. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it.[33]

It must be stressed that the DOH issued the rules and regulations implementing the provisions of R.A. 7305 pursuant to the authority expressly delegated by Congress. Hence, the DOH, as the delegate administrative agency, cannot contravene the law from which its rule-making authority has emanated. As the cliché goes, the

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[28] *Melendres, Jr. v. Commission on Elections*, 377 Phil. 275, 291 (1999); *Blaquera v. Alcala*, 356 Phil. 678 (1998).

[29] *Conte v.Commission on Audit,* 332 Phil. 21, 36; 264 SCRA 19, 30-31 (1996).

[30] *United BF Homeowners Association v. BF Homes, Inc.,* 369 Phil. 568, 579; 310 SCRA 304, 316 (1999); *Nasipit Lumber Co., Inc. v. National Wages and Productivity Commission*, 352 Phil. 503 (1998).

[31] *Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, 6 February 2007, 514 SCRA 346, 364-365.

[32] *United BF Homeowners Association v. BF Homes, Inc.,* 369 Phil. 568, 580; 310 SCRA 304, 316 (1999); *Conte v. Commission on Audit,* 332 Phil. 21, 36; 264 SCRA 19, 31 (1996); *Lina, Jr. v. Cariño,* G.R. No. 100127, 23 April 1993, 221 SCRA 515, 531.

[33] *Conte v. Commission on Audit, supra* note 32.

spring cannot rise higher than its source.[34] In this regard, Fisher observes:

x x x The often conflicting and ambiguous passages within a law must be interpreted by executive officials to construct the purpose and intent of Congress. **As important as intent is the extent to which a law is carried out.** President Taft once remarked, "Let anyone make the laws of the country, if I can construe them."

To carry out the laws, administrators issue rules and regulations of their own. The courts long ago appreciated this need. Rules and regulations "must be received as the acts of the executive, and as such, be binding upon all within the sphere of his legal and constitutional authority. Current law authorizes the head of an executive department or military department to prescribe regulations "for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

These duties, primarily of a "housekeeping" nature, relate only distantly to the citizenry. Many regulations, however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policymaking that Congress enacts in the form of a public law. **Although administrative regulations are entitled to respect, the authority to prescribe rules and**

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[34] *Cf. ABAKADA GURO Party List, et al. v. Hon. Cesar V. Purisima, et al.*, G.R. No. 166715, 14 August 2008, *J.* Tinga, concurring opinion, SCAD at 14 and 16.

[T]he power to formulate or adopt implementing rules…is a legislative function traditionally delegated by Congress to the executive branch x x x.

This delegable rule-making power may be classified into two types: (1) rules intended to regulate the internal management of the agencies themselves; and (2) rules supplementing a statute and intended to affect persons and entities outside the government made subject to agency regulation. Either case, the power of the executive branch to promulgate such rules springs from legislative delegation. In the Philippines, the power of executive officials to enact rules to regulate the internal management of executive departments was specifically allocated to them by a statute, the Administrative Code of 1987, promulgated by President Aquino in the exercise of her then extant legislative powers. With respect to supplementary rules to particular legislation, the power of executive officials to formulate such rules derives from the legislation itself x x x.

regulations is not an independent source of power to make laws. Agency rulemaking must rest on authority granted directly or indirectly by Congress.[35] (Emphasis supplied)

Moreover, although an administrative agency is authorized to exercise its discretion in the exercise of its power of subordinate legislation, nevertheless, no similar authority exists to validate an arbitrary or capricious enactment of rules and regulations.[36] Rules which have the effect of extending or conflicting with the authority-granting statute do not represent a valid exercise of rule-making power but constitute an attempt by the agency to legislate.[37] In such a situation, it is said that the issuance becomes void not only for being *ultra vires* but also for being unreasonable.[38] The law therefore prevails over the administrative issuance.[39]

The Court takes notice of the fact that the enactment of R.A. No. 7305 has touched off, within the public health service sector, a surge of negative sentiments regarding the alleged inequitableness and unfairness of the law—particularly the provisions thereof relating to the allocation of hazard allowances. Certainly, the DOH can be reasonably expected to respond to the well-meaning clamor of the public health workers; but while indeed the DOH is entitled to a certain amount of hegemony

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[35] L. Fisher. CONSTITUTIONAL CONFLICTS BETWEEN CONGRESS AND THE PRESIDENT, (4th ed., 1997), p. 90, citing *Wayman v. Southhard,* 10 Wheat. 1, 46 (1825).

[36] *Thompson v. Consolidated Gas Utilities Corp.,* 300 US 55, 81 L Ed 510; *Busey v. Deshler Hotel Co.,* 130 F2d 187.

[37] *United BF Homeowners Association v. BF Homes, Inc.,* 369 Phil. 568, *supra* note 32.

[38] *Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission,* G.R. No. 144322, 6 February 2007, 514 SCRA 346, 365, citing *Executive Secretary v. Southwing Heavy Industries, Inc.,* G.R. Nos. 164171, 164172 and 168741, 20 February 2006, 482 SCRA 673, 699 (2006).

[39] *Commissioner of Internal Revenue v. Bicolandia Drug Corp.,* G.R. No. 148083, 21 July 2006, 496 SCRA 176, 188; *Department of Agrarian Reform v. Sutton,* G.R. No. 162070, 19 October 2005, 473 SCRA 392, 401-402.

over the statutes which it is tasked to administer, it nevertheless may not go far beyond the letter of the law even if it does perceive that it is acting in the furtherance of the spirit of the law.[40]

A final note. Just as the power of the DOH to issue rules and regulations is confined to the clear letter of the law, the Court's hands are likewise tied to interpreting and applying the law. In other words, the Court cannot infuse vitality, let alone a semblance of validity, to an issuance which on its face is inconsistent with the law and therefore void, by adopting its terms and in effect implementing the same—lest we otherwise validate an undue exercise by the DOH of its delegated and limited power of implementation. Suffice it to say that questions relative to the seeming unfairness and inequitableness of the law are matters that lie well within the legitimate powers of Congress and are well beyond the competence of the Court to address.

In light of the foregoing, there appears to be no more necessity to discuss the issue of the non-publication of A.O. No. 2006-0011.

WHEREFORE, the request of the Supreme Court Medical and Dental Services Division to amend Administrative Circular (A.C.) No. 57-2004 according to the provisions of Department of Health Administrative Order No. 2006-0011 is *DENIED*. The Court *DIRECTS* that the payment of hazard allowance in favor of the personnel concerned be made in accordance with A.C. No. 57-2004.

SO ORDERED.

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

Leonardo-de Castro, J., on official leave.

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[40] See *Moderate Income Housing, Inc. v. Board of Review*, 393 NW2d 324.

THIRD DIVISION

[A.M. No. P-08-2494. November 27, 2008]
(Formerly OCA IPI No. 06-2399-P)

RE: REPORT ON THE IRREGULARITY IN THE USE OF BUNDY CLOCK BY ALBERTO SALAMAT, SHERIFF IV, RTC-Br. 80, Malolos City

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DENIAL IS PURELY SELF-SERVING AND WITH NIL EVIDENTIARY VALUE.— It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, a denial crumbles in the light of positive declarations. Respondent undeniably failed to substantiate the allegations in his comment. He could have submitted evidence to substantiate his allegations, other than his mere denials, but respondent failed to submit any supporting proof. The basic rule is that mere allegation is not evidence and is not equivalent to proof.

2. ID.; ID.; FALSIFICATION OF DAILY TIME RECORD; THE ACT OF PUNCHING IN ANOTHER'S DAILY TIME RECORD FALLS WITHIN THE AMBIT OF FALSIFICATION; CASE AT BAR.— There being substantive proof that respondent punched in the daily time cards for his co-employees on 22 April 2007, the Court finds respondent's actuations to be in violation of OCA Circular No. 7-2003, which reads in part that: In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed: 1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein truthfully and accurately the time of arrival in and departure from the office x x x. The foregoing Circular clearly provides that every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. Equally important is the fact that this Court has

already held that the **punching in of one's daily time record is a personal act of the holder**. It cannot and should not be delegated to anyone else. This is mandated by the word "every" in the above-quoted circular. Respondent's act of punching in another employee's daily time card falls within the ambit of falsification. Worse, he did not do it for only one co-employee, but for at least five others. He made it appear as though his co-employees personally punched in their respective daily time cards and, at the same time, made the card reflect a log-in time different from their actual times of arrival. It is patent dishonesty, reflective of respondent's fitness as an employee to continue in office and of the level of discipline and morale in the service. Falsification of daily time records is an act of dishonesty. For this, respondent must be held administratively liable. Rule XVII, Section 4 of the Omnibus Civil Service Rules and Regulations (Civil Service Rules) provides: Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable x x x.

3. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— Respondent, by his actions, violated his sacred trust as a public servant and judicial officer. Indeed, dishonesty is a malevolent act that has no place in the judiciary. This Court has defined dishonesty as the "(d)isposition 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." Under Rule XIV, Section 21 of the Civil Service Rules, falsification of official documents (such as daily time records) and dishonesty are both grave offenses. As such, they carry the penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service. The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. In the case at bar, respondent was previously charged with grave misconduct, dishonesty, and acts prejudicial to the interest of the service, as a result of which he was suspended for one month. Three other cases against

him were dismissed. This is the second administrative case against him given due course in his 18 years in government service. With the foregoing pronouncements, the Court deems it proper to impose a suspension of ten months. The Court, though, could not rule on the supposed culpability of respondent's co-employees whose time cards he punched in, as Judge Pasamba, the investigating judge, failed to make any factual findings thereon.

4. ID.; ID.; COURT PERSONNEL; PUBLIC SERVANT MUST EXHIBIT AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND INTEGRITY; RATIONALE.— The Court has repeatedly emphasized 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 free of any suspicion that may taint the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency." As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness and honesty.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before this Court is an administrative charge against Sheriff IV Alberto Salamat (respondent) of the Regional Trial Court (RTC) of Malolos City, Branch 80, accusing him of punching in the daily time cards for his co-employees.

Black Tiger Security Services, Inc. (Black Tiger) provides security services by assigning security guards to the Bulacan Halls of Justice. One of the security guards of Black Tiger,

Glicerio Magbanua (Magbanua), was assigned to the lobby of the Bulacan Halls of Justice from 6:00 a.m. to 2:00 p.m. on 22 April 2005. At 7:40 a.m. and 7:45 a.m., Magbanua saw respondent punch in more than five daily time cards.[1] Magbanua initially reminded respondent about the prohibition on punching in a multiple number of daily time cards but the latter answered, "*Isa isa lang naman ang punch ko.*"[2] When respondent persisted in punching in more daily time cards, Magbanua merely observed him and recorded the incident in the logbook.[3]

Thereafter, Magbanua reported the matter to his superiors at Black Tiger. The report was passed on from Deputy Detachment Commander Eduardo de Guzman (DDC De Guzman) to Detachment Commander Lino Quitoriano (DC Quitoriano). Finally, President/General Manager Dr. Celso B. Songcuya, Jr. (Dr. Songcuya) and Executive Vice President/Managing Director Rolando G. Macaoay (EVP/MD Macaoay) sent their letter-report dated 18 May 2005 to Atty. Peter John U. Javier (Atty. Javier), Officer-in-Charge of the Bulacan Halls of Justice-Secretariat. In said letter report, however, respondent was charged with punching in the daily time cards of his co-employees on **5 May 2005**, instead of 22 April 2005.

On 15 July 2005, Court Administrator now Associate Justice Presbitero J. Velasco, Jr., required[4] respondent to submit his comment within 10 days from receipt.

In his Comment[5] dated 18 August 2005 submitted to the Office of the Court Administrator (OCA), respondent denied the allegations against him. He argued that, as shown in the logbook of the daily time of arrival and departure kept by their office, he punched in his daily time card on 5 May 2005 at 8:01 a.m. and not 7:45 a.m. as claimed by Dr. Songcuya. Hence, it

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[1] TSN, 7 September 2007, p. 24; *rollo*, p. 260.

[2] TSN, 16 June 2006, p. 36; *id.* at 73.

[3] TSN, 7 September 2007; *id.* at 261.

[4] *Rollo*, p. 8.

[5] *Id.* at 9-11.

would be illogical and unlikely for him to punch in the daily time cards of his co-employees since some of them arrived at the office earlier than he.

On 6 March 2006, the First Division of this Court issued a Resolution[6] referring the administrative matter to the Executive Judge of the RTC of Malolos City, Bulacan, for investigation, report, and recommendation within 60 days from receipt of record. In a letter[7] dated 6 June 2006, then Executive Judge Petrita Braga Dime[8] of the Malolos City RTC informed this Court that the administrative matter was raffled to First Vice Executive Judge Herminia V. Pasamba (Judge Pasamba).

Investigation of the aforementioned administrative matter ensued.

On 23 June 2006, Judge Pasamba submitted a Final Report[9] finding that, based on the facts established and evidence adduced, the act complained of actually took place on **22 April 2005**, not on **5 May 2005**, the date stated in the letter-report charging respondent. Believing that any sanction on the respondent based on the standing charge would be violative of his procedural right to due process, Judge Pasamba recommended that the administrative matter be dismissed, but without prejudice to any further proper action against the respondent.

On 19 February 2007, the Third Division of this Court issued a Resolution[10] resolving, *inter alia*, to require respondent to submit his Comment on the charge that he punched in the daily time cards of his co-employees on 22 April 2005; and Judge Pasamba to undertake another investigation, report, and recommendation on this matter.

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[6] *Id.* at 20.

[7] *Id.* at 24.

[8] Now deceased.

[9] *Rollo*, pp. 35-38.

[10] *Id.* at 127.

In his Comment[11] dated 9 April 2007, respondent argued that no irregular punching in of time cards occurred on 22 April 2005, and if it so happened, then the Bi-Monthly/Semi-Monthly Report of Black Tiger covering the period of 16 to 30 April 2005 should have reflected an entry on the same. Respondent concludes that the Black Tiger officers and personnel must have doctored, falsified, or irregularly inserted an entry in their logbook to support their belated claim that the correct and actual date of his commission of the offense charged took place on 22 April 2005 and not on 5 May 2005.

The administrative matter was again set for hearing by Judge Pasamba.

Subsequently, on 31 October 2007, Judge Pasamba rendered her Final Report,[12] the pertinent portions of which state:

"DISCUSSION

Respondent sheriff IV has been placed twice under investigation on the irregularity in the use of the bundy clock. The first administrative matter under AM No. 05-7-416 RTC was resolved on 19 February 2007. A correct date of the actual commission of the incident from May 5, 2005 to April 22, 2005, as a consequence, is now the subject of the present administrative charge. The officers of the Black Tiger Security Services Inc. EVP/Managing Director Rolando G. Macaoay and Detachment Commander Lino Quitoriano based here in the Halls of Justice, RTC Malolos City explained where the error lied. The erroneous entry appeared on the Report submitted by DC Lino Quitoriano to EVP/Managing Director Rolando G. Macaoay. The report on the incident is rooted and sourced to the entry in the log book of Security Guard Eduardo de Guzman then on duty on Bldg. 3, Hall of Justice (sic) housing Branch 80 RTC where respondent Alberto Salamat was seen punching in on two occasions, around 7:40 and 7:45 am the time cards of his co-office mates. An examination of the blotter and record book under the custody of the security guard presented and marked as exhibit in this case showed that indeed the incident took place on April 22, 2005 not on May 5, 2005. Involved in the incident was Sheriff IV respondent Alberto

[11] *Id.* at 129-131.

[12] *Id.* at 156-160.

Salamat. Respondent's offered defense is DENIAL and that the records on the charge were "doctored etc. *(sic)* by the people concerned in the Black Tiger Security Services Inc., who filed the present administrative matter upon insistence of Assistant Clerk of Court Atty. Geronimo Santos. Detachment Commander Lino Quitoriano cleared the issue and explained that such was not the case. They were merely acting on the instruction of the Asst. Clerk of Court to report to the Executive Judge through Atty. Santos those court personnel who punched in the time cards of others and proper action was taken because of their contractual obligation with the Supreme court (sic) to bring to its attention those who breached the said canon. The undersigned finds the explanation of DC Lino Quitoriano credible. And while the common stand and testimonies of three of the co-employees of the respondent cannot be undermined, the undersigned cannot reconcile it with the fact that there appears no ulterior motive on the part of the witnesses Security Guards and the Detachment Commander of the Black Tiger Security Services Inc. to file a trumped up charge against the respondent. They have no ax to grind against him for them to fabricate the case. In a numberless of cases, the Highest Court has 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 free of any suspicion that may taint the judiciary. As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Every employee must accurately enter his/her time of arrival and departure in the office. Punching of one's daily time record is a personal act of the holder. It should not be delegated to anyone else.

RECOMMENDATION

Given the foregoing, there is the likelihood that respondent Alberto Salamat [Sheriff IV] committed the complained irregularity. A strong admonition, as a sanction, is meted upon respondent with a stern warning that a repetition of a similar act will call for a more severe disciplinary action.

On 29 April 2008, the OCA submitted its report and recommendation to this Court, concurring in and adopting the factual findings of Judge Pasamba with modification of the recommended sanction, thus:

IN VIEW OF THE FOREGOING, the undersigned respectfully recommend (sic) that:

1. the instant administrative case be RE-DOCKETED as a regular administrative matter;

2. respondent Alberto Salamat, Sheriff IV, Regional Trial Court, Branch 80, Malolos City be found GUILTY of Dishonesty for his act of punching in the time cards of his co-employees; and

3. the said respondent be meted the penalty of DISMISSAL with forfeiture of all his retirement benefits, except his accrued leave credits, and with perpetual disqualification from re-employment in any government agency, including government owned and controlled corporation.[13]

On 9 July 2008, the Court required[14] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Respondent submitted such a manifestation[15] on 10 September 2008. Resultantly, the case was already submitted for decision.

After a thorough review of the records of this case, the Court agrees in the finding of the OCA that respondent is guilty of dishonesty, but diverges from the recommended penalty.

This Court held in *Office of the Court Administrator v. Judge Bautista*,[16] citing *Mamba v. Garcia*,[17] that in administrative proceedings, only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conviction, is required. In the case at bar, substantial evidence exists to hold respondent liable for the offense charged, particularly: (1) Black Tiger Security Guard Magbanua's testimony; (2) the Information Report filed by DCC De Guzman to his superiors at Black Tiger; (3) the letter report[18] dated 18 May

[13] *Id.* at 476-477.

[14] *Id.* at 478.

[15] *Id.* at 480.

[16] 456 Phil. 193, 207 (2003).

[17] 412 Phil. 1, 10 (2001).

[18] *Rollo,* p. 3.

2005 of Black Tiger President/GM Dr. Songcuya and EVP/MD Macaoay to Atty. Javier charging respondent with punching in the daily time cards for his co-employees.

On the other hand, respondent merely denies the allegations against him. Instead, he alleges that it would be illogical and unlikely for him to punch in the daily time cards of his co-employees on 5 May 2005 since some of them arrived at the office much earlier than he; and the Black Tiger officers and personnel merely doctored, falsified, or irregularly inserted an entry in their logbook to make it appear that he committed the offense charged not on 5 May 2005, but on 22 April 2005.

It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, a denial crumbles in the light of positive declarations.[19]

Respondent undeniably failed to substantiate the allegations in his comment. He could have submitted evidence to substantiate his allegations, other than his mere denials, but respondent failed to submit any supporting proof. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[20]

As to the alleged discrepancy on the date the incident happened, the Court notes that this was already clarified by Black Tiger DC Quitoriano, who admitted that he inadvertently and honestly committed the mistake by stating the date 5 May 2005 in his Information Report, since he prepared the report already late at night.[21] The wrong date was eventually corrected[22] by changing it to 22 April 2005. Both Judge Pasamba and the OCA found DC Quitariano's explanation to be credible, and there is no reason for this Court to rule otherwise.

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[19] *Jugueta v. Estacio,* A.M. No. CA-04-17-P, 25 November 2004, 444 SCRA 10, 16.

[20] *Navarro v. Cerezo,* A.M. No. P-05-1962, 17 February 2005, 451 SCRA 626, 629.

[21] TSN, 7 September 2007, p. 41-44; *rollo,* pp. 277-280.

[22] *Rollo,* Annex A.

Respondent's assertion that the Black Tiger officers and personnel only doctored, falsified, or irregularly inserted an entry on the incident in their logbook deserves scant consideration. It is purely speculation on his part. As pointed out by Judge Pasamba in her 31 October 2007 Final Report, no ulterior motive can be attributed to Black Tiger officers and personnel for them to file a trumped up charge against the respondent. They have no ax to grind against him to spur them to fabricate the present administrative charge.

There being substantive proof that respondent punched in the daily time cards for his co-employees on 22 April 2007, the Court finds respondent's actuations to be in violation of OCA Circular No. 7-2003, which reads in part that:

> In the submission of Certificates of Service and Daily Time Records (DTRs)/Bundy Cards by Judges and court personnel, the following guidelines shall be observed:
>
> 1. After the end of each month, every official and employee of each court shall accomplish the Daily Time Record (Civil Service Form No. 48)/Bundy Card, indicating therein truthfully and accurately the time of arrival in and departure from the office x x x. (Emphasis supplied.)

The foregoing Circular clearly provides that every court official and employee must truthfully and accurately indicate the time of his or her arrival at and departure from the office. Equally important is the fact that this Court has already held that the **punching in of one's daily time record is a personal act of the holder**. It cannot and should not be delegated to anyone else. This is mandated by the word "every" in the above-quoted circular.[23]

Respondent's act of punching in another employee's daily time card falls within the ambit of falsification. Worse, he did

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[23] *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.

not do it for only one co-employee, but for at least five others. He made it appear as though his co-employees personally punched in their respective daily time cards and, at the same time, made the card reflect a log-in time different from their actual times of arrival. It is patent dishonesty, reflective of respondent's fitness as an employee to continue in office and of the level of discipline and morale in the service.[24] Falsification of daily time records is an act of dishonesty. For this, respondent must be held administratively liable. Rule XVII, Section 4 of the Omnibus Civil Service Rules and Regulations (Civil Service Rules) provides:

> Section 4. Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable x x x.

The Court has repeatedly emphasized 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 free of any suspicion that may taint the judiciary.[25] Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that "a public office is a public trust and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency."[26] As the administration of justice is a sacred task, the persons involved in it ought to live up to the strictest standard of honesty and integrity.[27] Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Thus, every employee of the judiciary should be an example of integrity, uprightness and honesty.[28]

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[24] *Alabastro v. Moncada, Sr.*, A.M. No. P-04-1887, 16 December 2004, 447 SCRA 42, 59; *Nera v. Garcia and Elicaño*, 106 Phil. 1031, 1036 (1960).

[25] *Dipolog v. Montealto*, A.M. No. P-04-190, 23 November 2004, 443 SCRA 465, 476.

[26] Section 1, Article XI, 1987 Constitution.

[27] *Hernandez v. Borja*, 312 Phil. 199, 204 (1995).

[28] *Basco v. Gregorio*, 315 Phil. 681, 688 (1995).

Respondent, by his actions, violated his sacred trust as a public servant and judicial officer. Indeed, dishonesty is a malevolent act that has no place in the judiciary.[29] This Court has defined dishonesty as the "(d)isposition 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."[30]

Under Rule XIV, Section 21 of the Civil Service Rules, falsification of official documents (such as daily time records) and dishonesty are both grave offenses. As such, they carry the penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service.[31]

However, there have been several other administrative cases[32] involving dishonesty, in which the Court meted out a penalty lower than dismissal. In these cases, mitigating circumstances existed which merited the leniency of the Court.

In *Re: Ting and Esmerio*, the Court did not impose the severe penalty of dismissal on the basis of the acknowledgment by respondents therein of their infractions, and also their remorse

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[29] *Office of the Court Administrator v. Magno*, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999(a).

[30] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court*, A.M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1, 15.

[31] *Office of the Court Administrator v. Magno, supra* note 29; Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999(a).

[32] *Concerned Employee v. Valentin*, A.M. No. 2005-01-SC, 8 June 2005, 459 SCRA 307, 311; *Dipolog v. Montealto*, A.M. No. P-04-190, 23 November 2004, 443 SCRA 465, 478; *Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Branch 18, Regional Trial Court, Manila*, A.M. No. 03-8-463-RTC, 20 May 2004, 428 SCRA 572, 576; *Office of the Court Administrator v. Sirios*, 457 Phil. 42, 48-49 (2003); *Atty. Reyes-Domingo v. Morales*, 396 Phil. 150, 164 (2000).

and long years of service. The Court imposed, instead, the penalty of suspension for six months on Ting; and the penalty of forfeiture of six months' salary on Esmerio, on account of the latter's retirement.

In *Re: Failure of Jose Dante E. Guerrero to Register His Time In and Out in Chronolog Time Recorder Machine [for] Several Times*,[33] the Court imposed the penalty of six-month suspension on Guerrero, who was found guilty of dishonesty for falsifying his time record. The Court considers as mitigating circumstances Guererro's good performance rating, his 13 years of satisfactory service in the judiciary, and his acknowledgment of and remorse for his infractions.

The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service,[34] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

In the case at bar, respondent was previously charged with grave misconduct, dishonesty, and acts prejudicial to the interest of the service, as a result of which he was suspended for one month.[35] Three other cases[36] against him were dismissed. This is the second administrative case against him given due course in his 18 years in government service. With the foregoing pronouncements, the Court deems it proper to impose a suspension of ten months.

The Court, though, could not rule on the supposed culpability of respondent's co-employees whose time cards he punched

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

[34] CSC Memorandum Circular No. 19-99, 14 September 1999.

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

[36] A.M. OCA IPI No. 01-1239-P (*Sarmiento v. Salamat)*— for abuse of authority-dismissed on 13 January 2003; A.M. No. P-01-1501 (*Sarmiento v. Salamat*, 416 Phil. 685 [2001]) - for dereliction of duty— was dismissed on 4 September 2001; A.M. OCA IPI No. 00-881-MTJ (*Joaquin-Agregado v. Presiding Judge Ronquillo)*— for grave abuse of authority and willful violation of Republic Act No. 3019— was dismissed on 3 December 2001.

in, as Judge Pasamba, the investigating judge, failed to make any factual findings thereon.

WHEREFORE, Alberto Salamat is found *GUILTY* of dishonesty and is hereby *SUSPENDED* for TEN (10) MONTHS, effective immediately, with a stern *WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-07-2053. November 27, 2008]
(Formerly OCA IPI No. 05-2171-RTJ)

LILIA C. RAGA, *complainant, vs.* **JUDGE SIBANAH E. USMAN, Regional Trial Court, Branch 28, Catbalogan, Samar,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDGES ARE DUTY-BOUND TO SCRUPULOUSLY ADHERE TO AND HOLDS SACRED THE TENENTS OF THE PROFESSION OF LAW.— Judges, as the presiding magistrates of the courts, are duty-bound to scrupulously adhere to, and hold sacred, the tenets of the profession of law. They should keep in mind that a certificate of service is not merely a means to receive one's salary. It is part of the sacred task of dispensing justice. It is an instrument essential to the fulfillment by the judges of their duty to dispose of their cases speedily as mandated by the Constitution.

2. ID.; ID.; THE ACT OF MAKING UNTRUTHFUL STATEMENTS IN THE CERTIFICATE OF SERVICE IS LESS SERIOUS CHARGE; IMPOSABLE PENALTY.— Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies the act of making untruthful statements in the certificate of service as a less serious charge which carries any of the following sanctions: suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Although the present misfeasance is the first offense of respondent of this particular nature, the Court finds that his certification that he did not incur absences for the month of September 2001 when, in fact, he was absent on September 7 and 21, 2001 constitutes a repeated disregard of the rule in the performance of his duties regarding the submission of his certificate of service which militates the imposition of a penalty higher than that recommended by the OCA and the Investigating Judge. **WHEREFORE**, Judge Sibanah E. Usman, of the Regional Trial Court, Branch 28, Catbalogan, Samar, is found **GUILTY** of making untruthful statements in his certificate of service for the month of September 2001 for which he is **SUSPENDED** from office without salary and other benefits for a period of one (1) month from receipt of herein Resolution.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Lilia C. Raga, (complainant) a Court Process Server of the Regional Trial Court (RTC), Branch 28, Catbalogan, Samar, is charging Judge Sibanah E. Usman, of the same court, with dishonesty, violation of Republic Act (R.A.) No. 3019, gross misconduct, violation of the Code of Judicial Conduct, unjustified absences without leave, untruthful statements in the certificate of service, and violation of Rule 139-B of the Rules of Court.

In her letter-complaint dated December 28, 2004, complainant avers: Respondent was absent on September 7 and 21, 2001 but he indicated in his certificate of service for September 2001 that he rendered complete attendance for the said month. The

1st Indorsement dated September 7, 2001 signed by the Branch Clerk of Court of RTC Branch 28, Atty. Ireneo A. Escobar, Jr. (Atty. Escobar) states that the records in Crim. Case Nos. 5199 and 5200 were being forwarded to Judge Cesar R. Cinco of Branch 29 for the disposition of the accused's application for bailbond, in view of the absence of respondent. *Constancias* dated September 21, 2001 which rescheduled cases for other dates were signed by Atty. Escobar, with one *constancia* specifically stating that Crim. Case No. 3618 had to be reset due to the absence of respondent.[1]

The Office of the Court Administrator (OCA) referred the complaint to respondent for his Comment, through a 1st Indorsement dated February 17, 2005.[2]

Respondent filed an Answer dated March 11, 2007 denying that he was absent on September 7, 2001. He said that he was just inside his office on said date and complainant deliberately bypassed him and personally assisted the accused in Crim Case. No. 5199 and 5200 in posting his bail before Judge Monsanto, through the help of complainant's husband, Eustacio C. Raga, Officer-In-Charge (OIC) of Branch 27. He further claims that: it was complainant's duty to prepare his certificates of service and submit the same to him for his signature on time; to hold him administratively liable for acts or omissions primarily caused by the obvious negligence of complainant would be giving license to other like-minded subordinates to charge him for their faults; his signature on the certificate of service which complainant presented as evidence was forged; and complainant just wants to get back at him, as she has in fact filed several administrative cases against him, after he indorsed the complaint of Maribel Velarde against complainant before the OCA.[3]

In its report dated April 20, 2007, the OCA found the complaint to be meritorious. It held that: complainant was able to prove by substantial evidence the absence of respondent on

[1] *Rollo*, pp. 1-12.

[2] *Id.* at 27.

[3] *Id.* at 28-29.

September 7, 2001; the 1st Indorsement of Atty. Escobar dated September 7, 2001 clearly stated that respondent was absent that day; the *constancias* submitted also show that respondent was absent on September 21, 2001 because if he were really present on said date, it should have been him and not Atty. Escobar who signed the *constancias*; the *constancia* in Crim. Case No. 5035 also expressly stated that respondent was absent on said date; respondent did not disclaim the authenticity of the *constancia*; and while respondent claimed that his signature was forged in the certificate of service which complainant submitted to the Court, respondent did not present a copy of his certificate of service with his authentic signature.[4]

The OCA recommended that respondent be fined ₱11,000.00 for making untruthful statements in his certificate of service with a warning against its repetition.[5]

The OCA also noted that complainant was dismissed from the service for grave misconduct in *Mabini v. Raga*,[6] dated June 21, 2006.

In a Resolution dated June 20, 2007, the Court required the parties to manifest whether they were willing to submit the case for decision based on the pleadings/records already filed.[7]

In her Manifestation dated August 2, 2007, complainant expressed her desire for a reception of evidence.

Accordingly, per Resolution dated March 3, 2008, the Court referred the instant case to Court of Appeals Justice Celia C. Leagogo for investigation, report and recommendation.[8]

A hearing was conducted on May 15, 2008 and complainant presented the 1st Indorsement dated September 7, 2001 signed by Atty. Escobar; respondent's certificate of service for September

[4] *Rollo*, pp. 49-52.

[5] *Id.* at 52.

[6] A.M. No. P-06-2150, June 21, 2006, 491 SCRA 525.

[7] *Rollo*, p. 53.

[8] *Rollo*, p. 60.

1 to 30, 2001; and *constancias* dated September 21, 2007 issued by Atty. Escobar in Crim. Case Nos. 5035, 3618, 4619, 4859, 4653, 5012 and 4909.[9] Complainant also filed her Memorandum and respondent filed his own Memorandum and Addendum, reiterating their respective arguments.[10]

Justice Leagogo, agreeing with the OCA, found that complainant was able to prove by substantial evidence that respondent made untruthful statements in his certificate of service for September 2001;[11] the certificate states that respondent did not incur any absence for September 2001; the 1st Indorsement dated September 7, 2001 signed by Atty. Escobar clearly states however that the application for bailbond in Crim. Case Nos. 5199 and 5200 were being forwarded to Judge Cinco of Branch 29 in view of the absence of herein respondent that day; the *constancia* dated September 21, 2001 in Crim. Case No. 5035, signed by Atty. Escobar also explicitly stated that respondent was absent on said date; Atty. Escobar would not have issued the seven *constancias* on September 21, 2001 if respondent were actually present, because he would then have been the one to sign the order; respondent admitted the existence of complainant's exhibits and failed to adduce countervailing proof of the validity and authenticity of the same; while respondent claims that the certificate of service was a forgery, all that he could present to support such claim was a photocopy of a letter from then Deputy Court Administrator Jose P. Perez dated May 7, 2008 stating that certificates of service from 1990 to 2003 of all lower court officials were already disposed of; the certificate of service of respondent for September 2001 is a certified true copy of the original with the dry seal of the Office of the Clerk of Court, RTC Catbalogan, Samar and signed by its Clerk of Court Atty. Ma. Luz Lampasa-Pabilona; Supreme Court Chief Judicial Staff Officer, Leave Division of the OCA, Hermogena F. Bayani, also issued a Certification dated May 18, 2005 stating that the records of their office show that respondent did not incur any

[9] *Id.* at 186, 72-79.

[10] *Id.* at 120-131, 89-101, 133-136.

[11] *Id.* at 189.

leave of absence in September 2001; even if the credibility of complainant is questionable, still the documents presented are more than ample proof of the failure of respondent to reflect in his certificate of service for September 2001 his absences on September 7 and 21, 2001; respondent cannot use the alleged inefficiency and antagonistic attitude of complainant towards him as a defense; the Code of Judicial Conduct requires a judge to organize and supervise the court personnel to ensure the prompt and efficient dispatch of business as well as to observe high standards of public service and fidelity at all times.[12]

Justice Leagogo then recommended that:

> x x x Judge Sibanah E. Usman be held guilty of the less serious charge of making untruthful statements in his certificate of service for the month of September 2001 and that a FINE of Eleven Thousand Pesos (₱11,000.00) be imposed on him, with a WARNING that a repetition of the same or similar act in the future shall be dealt with severely.[13]

The Court finds the evaluation and recommendation of the Investigating Justice to be well-taken except for the recommended penalty.

Judges, as the presiding magistrates of the courts, are duty-bound to scrupulously adhere to, and hold sacred, the tenets of the profession of law. They should keep in mind that a certificate of service is not merely a means to receive one's salary. It is part of the sacred task of dispensing justice.[14] It is an instrument essential to the fulfillment by the judges of their duty to dispose of their cases speedily as mandated by the Constitution.[15]

In this case, complainant was able to show that respondent was absent on September 7 and 21, 2001 yet respondent stated

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[12] *Rollo*, pp. 187-196.

[13] *Id.* at 197.

[14] *Office of the Court Administrator v. Andaya*, A.M. No. RTJ-02-1676, August 28, 2003, 410 SCRA 47, 50-51.

[15] *Office of the Court Administrator v. Trocino*, A.M. No. RTJ-05-1936, May 29, 2007, 523 SCRA 262, 271.

in his certificate of service that he did not incur any absences for the said month. Respondent's denial is weak in the face of the documentary proofs presented by complainant, specifically the indorsement and *constancias* signed by Atty. Escobar, the authenticity of which respondent did not assail. Respondent also tried to claim that his signature in the certificate of service for September 2001 was forged. As found by the Investigating Justice however, respondent failed to substantiate and prove such allegation.

Respondent also tried to pass the blame on complainant, who is his subordinate. Unfortunately, he cannot use the alleged inefficiency and antagonistic attitude of his staff towards him as a defense.[16] Whatever blame he tries to impute to complainant for his present predicament ultimately goes back to him, for it shows his inability to control and discipline his staff and demonstrates his weakness in administrative supervision.

Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies the act of making untruthful statements in the certificate of service as a less serious charge which carries any of the following sanctions: suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In *Jabon v. Usman,*[17] respondent was found guilty of vulgar and unbecoming conduct, teaching law without permit, and trying to influence the outcome of the administrative case for which he was suspended for two months and fined ₱10,000.00. In another case filed by herein complainant against respondent, *Raga v. Usman*[18] the Court adopted the findings of the OCA and imposed on respondent a fine of ₱2,000.00 for delay in the submission of his certificate of service for January 1997. Although the present misfeasance is the first offense of respondent of

[16] *Office of the Court Administrator v. Sayo, Jr.*, A.M. Nos. RTJ-00-1587, May 7, 2002, 381 SCRA 659, 676.

[17] A.M. No. RTJ-02-1713, October 25, 2005, 474 SCRA 36.

[18] A.M. No. RTJ-08-2098, January 16, 2008.

this particular nature, the Court finds that his certification that he did not incur absences for the month of September 2001 when, in fact, he was absent on September 7 and 21, 2001 constitutes a repeated disregard of the rule in the performance of his duties regarding the submission of his certificate of service which militates the imposition of a penalty higher than that recommended by the OCA and the Investigating Judge.

WHEREFORE, Judge Sibanah E. Usman, of the Regional Trial Court, Branch 28, Catbalogan, Samar, is found *GUILTY* of making untruthful statements in his certificate of service for the month of September 2001 for which he is *SUSPENDED* from office without salary and other benefits for a period of one (1) month from receipt of herein Resolution.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr.,[*] and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 163609. November 27, 2008]

SPS. BUENAVENTURA JAYME and ROSARIO JAYME, *petitioners, vs.* **RODRIGO APOSTOL, FIDEL LOZANO, ERNESTO SIMBULAN, MAYOR FERNANDO Q. MIGUEL, MUNICIPALITY OF KORONADAL (NOW CITY OF KORONADAL), PROVINCE OF SOUTH COTABATO, represented by the MUNICIPAL TREASURER and/or MUNICIPAL MAYOR FERNANDO Q. MIGUEL, and THE FIRST INTEGRATED BONDING AND INSURANCE COMPANY, INC.,** *respondents.*

[*] Per Raffle dated October 20, 2008.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; DOCTRINE OF VICARIOUS LIABILITY; CLAIMS AGAINST EMPLOYERS FOR THE ACTS OF THEIR EMPLOYEES, REQUISITES.— Article 2180 of the Civil Code provides that a person is not only liable for one's own quasi-delictual acts, but also for those persons for whom one is responsible for. This liability is popularly known as vicarious or imputed liability. To sustain claims against employers for the acts of their employees, the following requisites must be established: (1) That the employee was chosen by the employer personally or through another; (2) That the service to be rendered in accordance with orders which the employer has the authority to give at all times; and (3) That the illicit act of the employee was on the occasion or by reason of the functions entrusted to him.

2. ID.; ID.; ID.; ID.; ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP CANNOT BE ASSUMED; IT IS INCUMBENT UPON THE PLAINTIFF TO PROVE THE RELATIONSHIP BY PREPONDERANT EVIDENCE.— [T]he employer-employee relationship cannot be assumed. It is incumbent upon the plaintiff to prove the relationship by preponderant evidence. In *Belen v. Belen*, this Court ruled that it was enough for defendant to deny an alleged employment relationship. The defendant is under no obligation to prove the negative averment. This Court said: It is an old and well-settled rule of the courts that the burden of proving the action is upon the plaintiff, and that if he fails satisfactorily to show the facts upon which he bases his claim, the defendant is under no obligation to prove his exceptions. This rue is in harmony with the provisions of Section 297 of the Code of Civil Procedure holding that each party must prove his own affirmative allegations, etc.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; EMPLOYER-EMPLOYEE RELATIONSHIP STILL EXISTS EVEN IF THE EMPLOYEE WAS LOANED BY THE EMPLOYER TO ANOTHER PERSON OR ENTITY BECAUSE CONTROL OVER THE EMPLOYEE

SUBSISTS.— [T]o determine the existence of an employment relationship, We rely on the four-fold test. This involves: (1) the employer's power of selection; (2) payment of wages or other remuneration; (3) the employer's right to control the method of doing the work; and (4) the employer's right of suspension or dismissal. Applying the foregoing test, the CA correctly held that it was the Municipal of Koronadal which was the lawful employer of Lozano at the time of the accident. It is uncontested that Lozano was employed as a driver by the municipality. That he was subsequently assigned to Mayor Miguel during the time of the accident is of no moment. This Court has, on several occasions, held that an employer-employee relationship still exists even if the employee was loaned by the employer to another person or entity because control over the employee subsists. In the case under review, the Municipality of Koronadal remains to be Lozano's employer notwithstanding Lozano's assignment to Mayor Miguel.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; DOCTRINE OF VICARIOUS LIABILITY; WHATEVER RIGHT OF CONTROL THE OCCUPANT MAY HAVE OVER THE DRIVER IS NOT SUFFICIENT BY ITSELF TO JUSTIFY AN APPLICATION OF THE DOCTRINE, IN THE ABSENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP. **—** [N]o negligence may be imputed against a fellow employee although the person may have the right to control the manner of the vehicle's operation. In the absence of an employer-employee relationship establishing vicarious liability, the driver's negligence should not be attributed to a fellow employee who only happens to be an occupant of the vehicle. Whatever right of control the occupant may have over the driver is not sufficient by itself to justify an application of the doctrine of vicarious liability.

5. POLITICAL LAW; CONSTITUTIONAL LAW; DOCTRINE OF IMMUNITY FROM SUIT; A MUNICIPALITY ENGAGED IN GOVERNMENTAL FUNCTIONS IS AN AGENCY OF THE STATE THUS, IMMUNE FROM SUIT; CASE AT BAR.— As correctly held by the trial court, the true and lawful employer of Lozano is the Municipality of Koronadal. Unfortunately for Spouses Jayme, the municipality may not be used because it is an agency of the State engaged in

> governmental functions and, hence, immune from suit. This immunity is illustrated in *Municipality of San Fernando, La Union v. Firme,* where this Court held: It has already been remarked that municipal corporations are suable because their charters grant them the competence to sue and be sued. Nevertheless, they are generally not liable for torts committed by them in the discharge of governmental functions and can only be held answerable only if it can be shown that they were acting in proprietary capacity. In permitting such entities to be sued, the State merely gives the claimant the right to show that the defendant was not acting in governmental capacity when the injury was committed or that the case comes under the exceptions recognized by law. Failing this, the claimant cannot recover.

APPEARANCES OF COUNSEL

Vencer Lacap Canacan & Seredrica Law Office for petitioners.

Catedral Bendita & Emilio Law Offices for Mayor F.Q. Miguel.

Romeo Sucaldito for City of Koronadal and Provincial Legal Officer.

D E C I S I O N

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

MAY a municipal mayor be held solidarily liable for the negligent acts of the driver assigned to him, which resulted in the death of a minor pedestrian?

Challenged in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals (CA) which reversed and set aside the decision of the Regional Trial Court (RTC), Polomolok, Cotabato City, Branch 39, insofar as defendant Mayor Fernando Q. Miguel is concerned. The CA absolved Mayor Miguel from

[1] *Rollo*, pp. 45-51. Dated April 16, 2004. Penned by Associate Justice Marina L. Buzon, with Associate Justices Sergio L. Pestaño and Jose C. Mendoza, concurring.

any liability since it was not he, but the Municipality of Koronadal, that was the employer of the negligent driver.

The Facts

On February 5, 1989, Mayor Miguel of Koronadal, South Cotabato was on board the Isuzu pick-up truck driven by Fidel Lozano, an employee of the Municipality of Koronadal.[2] The pick-up truck was registered under the name of Rodrigo Apostol, but it was then in the possession of Ernesto Simbulan.[3] Lozano borrowed the pick-up truck from Simbulan to bring Miguel to Buayan Airport at General Santos City to catch his Manila flight.[4]

The pick-up truck accidentally hit Marvin C. Jayme, a minor, who was then crossing the National Highway in Poblacion, Polomolok, South Cotabato.[5] The intensity of the collision sent Marvin some fifty (50) meters away from the point of impact, a clear indication that Lozano was driving at a very high speed at the time of the accident.[6]

Marvin sustained severe head injuries with subdural hematoma and diffused cerebral contusion.[7] He was initially treated at the Howard Hubbard Memorial Hospital.[8] Due to the seriousness of his injuries, he was airlifted to the Ricardo Limso Medical Center in Davao City for more intensive treatment.[9] Despite medical attention, Marvin expired six (6) days after the accident.[10]

Petitioners spouses Buenaventura and Rosario Jayme, the parents of Marvin, filed a complaint for damages with the RTC

[2] *Id.* at 46.

[3] *Id.*

[4] *Id.*

[5] CA *rollo,* p. 53.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

against respondents.[11] In their complaint, they prayed that all respondents be held solidarily liable for their loss. They pointed out that that proximate cause of Marvin's death was Lozano's negligent and reckless operation of the vehicle. They prayed for actual, moral, and exemplary damages, attorney's fees, and litigation expenses.

In their respective Answers, all respondents denied liability for Marvin's death. Apostol and Simbulan averred that Lozano took the pick-up truck without their consent. Likewise, Miguel and Lozano pointed out that Marvin's sudden sprint across the highway made it impossible to avoid the accident. Yet, Miguel denied being on board the vehicle when it hit Marvin. The Municipality of Koronadal adopted the answer of Lozano and Miguel. As for First Integrated Bonding and Insurance Company, Inc., the vehicle insurer, it insisted that its liability is contributory and is only conditioned on the right of the insured. Since the insured did not file a claim within the prescribed period, any cause of action against it had prescribed.

RTC Disposition

On January 25, 1999, the RTC rendered judgment in favor of spouses Jayme, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the defendant Municipality of Koronadal cannot be held liable for the damages incurred by other defendant *(sic)* being an agency of the State performing a *(sic)* governmental functions. The same with defendant Hermogenes Simbulan, not being the owner of the subject vehicle, he is absolved of any liability. The complaint against defendant First Integrated Bonding Insurance Company, Inc. is hereby ordered dismissed there being no cause of action against said insurance company.
>
> However, defendants Fidel Lozano, Rodrigo Apostol, and Mayor Fernando Miguel of Koronadal, South Cotabato, are hereby ordered jointly and severally to pay the plaintiff *(sic)* the following sums:
>
> 1. One Hundred Seventy Three Thousand One Hundred One and Forty Centavos (₱173,101.40) Pesos as actual damages

[11] *Rollo,* p. 46.

with legal interest of 12% per annum computed from February 11, 1989 until fully paid;

2. Fifty Thousand (₱50,000.00) Pesos as moral damages;
3. Twenty Thousand (₱20,000.00) Pesos as exemplary damages;
4. Twenty Thousand (₱20,000.00) Pesos as Attorney's fees;
5. Fifty Thousand (₱50,000.00) Pesos for the death of Marvin Jayme;
6. Three Thousand (₱3,000.00) as litigation expenses; and
7. To pay the cost of this suit.

SO ORDERED.[12]

Dissatisfied with the RTC ruling, Mayor Miguel interposed an appeal to the CA.

CA Disposition

In his appeal, Mayor Miguel contended that the RTC erred in ruling that he was Lozano's employer and, hence, solidarily liable for the latter's negligent act. Records showed that the Municipality of Koronadal was the driver's true and lawful employer. Mayor Miguel also denied that he did not exercise due care and diligence in the supervision of Lozano. The incident, although unfortunate, was unexpected and cannot be attributed to him.

On October 22, 2003, the CA granted the appeal, disposing as follows:

WHEREFORE, the Decision appealed from is REVERSED and SET ASIDE, insofar as defendant-appellant Mayor Fernando Q. Miguel is concerned, and the complaint against him is DISMISSED.

IT IS SO ORDERED.[13]

The CA held that Mayor Miguel should not be held liable for damages for the death of Marvin Jayme. Said the appellate court:

[12] *Id.* at 48.

[13] *Id.* at 50.

Moreover, plaintiffs-appellees admitted that Mayor Miguel was not the employer of Lozano. Thus, paragraph 9 of the complaint alleged that the **Municipality of Koronadal was the employer of both Mayor Miguel and Lozano**. Not being the employer of Lozano, Mayor Miguel could not thus be held liable for the damages caused by the former. **Mayor Miguel was a mere passenger in the Isuzu pick-up at the time of the accident**.[14] (Emphasis supplied)

The CA also reiterated the settled rule that it is the registered owner of a vehicle who is jointly and severally liable with the driver for damages incurred by passengers or third persons as a consequence of injuries or death sustained in the operation of the vehicle.

Issues

The spouses Jayme have resorted to the present recourse and assign to the CA the following errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT MAYOR FERNANDO MIGUEL CANNOT BE HELD LIABLE FOR THE DEATH OF MARVIN JAYME WHICH CONCLUSION IS CONTRARY TO LAW AND THE SETTLED PRONOUNCEMENTS OF THIS HONORABLE TRIBUNAL;

II.

THE FINDINGS OF FACTS OF THE HONORABLE COURT OF APPEALS ARE CONTRARY TO THE FINDINGS OF THE TRIAL COURT AND ARE CONTRADICTED BY THE EVIDENCE ON RECORD; MOREOVER, THE CONCLUSIONS DRAWN BY THE HONORABLE COURT OF APPEALS ARE ALL BASED ON CONJECTURES AND SURMISES AND AGAINST ACCEPTED COURSE OF JUDICIAL PROCEEDINGS WHICH URGENTLY CALL FOR AN EXERCISE OF THIS HONORABLE COURT'S SUPERVISION.[15]

Our Ruling

The doctrine of vicarious liability or imputed liability finds no application in the present case.

[14] *Id.* at 44.

[15] *Id.* at 23-24.

Spouses Jayme contend, *inter alia*, that vicarious liability attaches to Mayor Miguel. He was not a mere passenger, but instead one who had direct control and supervision over Lozano during the time of the accident. According to petitioners, the element of direct control is not negated by the fact that Lozano's employer was the Municipality of Koronadal. Mayor Miguel, being Lozano's superior, still had control over the manner the vehicle was operated.

Article 2180[16] of the Civil Code provides that a person is not only liable for one's own quasi-delictual acts, but also for those persons for whom one is responsible for. This liability is popularly known as vicarious or imputed liability. To sustain claims against employers for the acts of their employees, the following requisites must be established: (1) That the employee was chosen by the

[16] Civil Code, Art. 2180 provides:

Art. 2180. The obligation imposed by Article 2176 is demandable for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father, and in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

employer personally or through another; (2) That the service to be rendered in accordance with orders which the employer has the authority to give at all times; and (3) That the illicit act of the employee was on the occasion or by reason of the functions entrusted to him.[17]

Significantly, to make the employee liable under paragraphs 5 and 6 of Article 2180, it must be established that the injurious or tortuous act was committed at the time the employee was performing his functions.[18]

Furthermore, the employer-employee relationship cannot be assumed. It is incumbent upon the plaintiff to prove the relationship by preponderant evidence. In *Belen v. Belen*,[19] this Court ruled that it was enough for defendant to deny an alleged employment relationship. The defendant is under no obligation to prove the negative averment. This Court said:

> It is an old and well-settled rule of the courts that the burden of proving the action is upon the plaintiff, and that if he fails satisfactorily to show the facts upon which he bases his claim, the defendant is under no obligation to prove his exceptions. This rue is in harmony with the provisions of Section 297 of the Code of Civil Procedure holding that each party must prove his own affirmative allegations, *etc*.[20]

In resolving the present controversy, it is imperative to find out if Mayor Miguel is, indeed, the employer of Lozano and therefore liable for the negligent acts of the latter. To determine the existence of an employment relationship, We rely on the four-fold test. This involves: (1) the employer's power of selection; (2) payment of wages or other remuneration; (3) the employer's

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[17] Cammarota, 449, cited in Tolentino, Civil Code of the Philippines, Vol. V, p. 522.

[18] *Marquez v. Castillo,* 68 Phil. 568 (1939); *Cerf v. Medel,* 33 Phil. 37 (1915).

[19] 13 Phil. 202 (1909).

[20] *Belen v. Belen, id.* at 206.

right to control the method of doing the work; and (4) the employer's right of suspension or dismissal.[21]

Applying the foregoing test, the CA correctly held that it was the Municipality of Koronadal which was the lawful employer of Lozano at the time of the accident. It is uncontested that Lozano was employed as a driver by the municipality. That he was subsequently assigned to Mayor Miguel during the time of the accident is of no moment. This Court has, on several occasions, held that an employer-employee relationship still exists even if the employee was loaned by the employer to another person or entity because control over the employee subsists.[22] In the case under review, the Municipality of Koronadal remains to be Lozano's employer notwithstanding Lozano's assignment to Mayor Miguel.

Spouses Jayme argued that Mayor Miguel had at least supervision and control over Lozano and how the latter operated or drove the Isuzu pick-up during the time of the accident. They, however, failed to buttress this claim.

Even assuming *arguendo* that Mayor Miguel had authority to give instructions or directions to Lozano, he still can not be held liable. In *Benson v. Sorrell*,[23] the New England Supreme Court ruled that mere giving of directions to the driver does not establish that the passenger has control over the vehicle. Neither does it render one the employer of the driver. This Court, in *Soliman, Jr. v. Tuazon*,[24] ruled in a similar vein, to wit:

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[21] *Coca-Cola Bottlers (Phils.), Inc. v. Climaco,* G.R. No. 146881, February 5, 2007, 514 SCRA 164; *Ecal v. National Labor Relations Commission,* G.R. Nos. 92777-78, March 13, 1991, 195 SCRA 224; *Social Security System v. Court of Appeals,* G. R. No. L-28134, June 30, 1971, 39 SCRA 629; *Brotherhood Labor Unity Movement v. Zamora,* G.R. No. L-48645, January 7, 1987, 147 SCRA 49.

[22] *Rhone-Poulenc Agrochemicals, Phil., Incorporated v. National Labor Relations Commission,* G.R. Nos. 102633-65, January 19, 1993, 217 SCRA 249.

[23] 627 NE 2d 866 (Ind. Ct. App. 5th Dist., 1994).

[24] G.R. No. 66207, May 18, 1992, 209 SCRA 47.

x x x The fact that a client company may give instructions or directions to the security guards assigned to it, **does not**, by itself, **render the client responsible as an employer** of the security guards concerned and liable for their wrongful acts and omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency. x x x[25] (Emphasis supplied)

Significantly, no negligence may be imputed against a fellow employee although the person may have the right to control the manner of the vehicle's operation.[26] In the absence of an employer-employee relationship establishing vicarious liability, the driver's negligence should not be attributed to a fellow employee who only happens to be an occupant of the vehicle.[27] Whatever right of control the occupant may have over the driver is not sufficient by itself to justify an application of the doctrine of vicarious liability. *Handley v. Lombardi*[28] is instructive on this exception to the rule on vicarious liability:

Plaintiff was not the master or principal of the driver of the truck, but only an intermediate and superior employee or agent. This being so, the doctrine of *respondeat superior or qui facit per alium* is not properly applicable to him. His power to direct and control the driver was not as master, but only by virtue of the fact that they were both employed by Kruse, and the further fact that as Kruse's agent he was delegated Kruse's authority over the driver. x x x

In the case of actionable negligence, the rule is well settled both in this state and elsewhere that the negligence of a subordinate employee or subagent is not to be imputed to a superior employee or agent, but only to the master or principal. (*Hilton v. Oliver*, 204 Cal. 535 [61 A. L. R. 297, 269 Pac. 425]; *Guild v. Brown*, 115 Cal.

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[25] *Soliman, Jr. v. Tuazon, id.* at 51.

[26] § 796, 8 Am. Jur. 2d.

[27] *Handley v. Lombardi*, 122 Cal. App. 22, 9 P. 2d 867 (1st Dist. 1932); *Swanson v. McQuown*, 139 Colo. 442, 340 P. 2d. 1063 (1959); *Nadeau v. Melin*, 260 Minn. 369, 110 NW 2d 29 (1961); *Vogler v. Jones*, 199 Okla. 156, 186 P. 2d 315 (1947); *Siburg v. Johnson*, 249 Or. 556, 439 P. 2d 865 (1968); *Veek v. Tacoma Suburban Lines, Inc.*, 49 Wash. 2d 584, 304 P. 2d 700 (1956).

[28] *Id.*

App. 374 [1 Pac. (2d) 528]; *Ellis v. Southern Ry. Co.*, 72 S. C. 464 [2 L. R. A. (N. S.) 378, 52 S. E. 228]; *Thurman v. Pittsburg & M. Copper Co.*, 41 Mont. 141 [108 Pac. 588]; 2 Cor. Jur., p. 829; and see the elaborate note in 61 A. L. R. 277, and particularly that part commencing at p. 290.) We can see no logical reason for drawing any distinction in this regard between actionable negligence and contributory negligence. x x x[29]

The rule was reiterated in *Bryant v. Pacific Elec. Ry. Co.*[30] and again in *Sichterman v. Hollingshead Co.*[31]

In *Swanson v. McQuown*,[32] a case involving a military officer who happened to be riding in a car driven by a subordinate later involved in an accident, the Colorado Supreme Court adhered to the general rule that a public official is not liable for the wrongful acts of his subordinates on a vicarious basis since the relationship is not a true master-servant situation.[33] The court went on to rule that the only exception is when they cooperate in the act complained of, or direct or encourage it.[34]

In the case at bar, Mayor Miguel was neither Lozano's employer nor the vehicle's registered owner. There existed no causal relationship between him and Lozano or the vehicle used that will make him accountable for Marvin's death. Mayor Miguel was a mere passenger at the time of the accident.

Parenthetically, it has been held that the failure of a passenger to assist the driver, by providing him warnings or by serving as lookout does not make the passenger liable for the latter's negligent

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[29] *Handley v. Lombardi, id.* at 869.

[30] 174 Cal. 737 [164 Pac. 385].

[31] 94 Cal. App. 486, [271 Pac. 372, 1111].

[32] *Supra*.

[33] Citing 38 Am. Jur. 921, 922, Sec. 235, Negligence. *Dowler v. Johnson,* 225 N.Y. 39, 121 NE 487, 3 A.L.R. 146.

[34] *Lane v. Cotton,* 1 Ld. Raym. 646, 91 Eng. Reprint 1332; *Bailey v. Mayor, etc. of City of New York,* 3 Hill 531, 538, 38 Am. Dec. 669; *Cardot v. Barney,* 63 N.Y. 281, 20 Am. Rep. 533; *Robertson v. Sichel,* 127 US 507, 8 S. Ct. 1286, 32 L. Ed. 203; *Ely v. Parsons,* 55 Conn. 83, 10 A. 499; Story, Agency, § 319.

acts.[35] The driver's duty is not one that may be delegated to others.[36]

As correctly held by the trial court, the true and lawful employer of Lozano is the Municipality of Koronadal. Unfortunately for Spouses Jayme, the municipality may not be sued because it is an agency of the State engaged in governmental functions and, hence, immune from suit. This immunity is illustrated in *Municipality of San Fernando, La Union v. Firme*,[37] where this Court held:

> It has already been remarked that municipal corporations are suable because their charters grant them the competence to sue and be sued. Nevertheless, they are generally not liable for torts committed by them in the discharge of governmental functions and can only be held answerable only if it can be shown that they were acting in proprietary capacity. In permitting such entities to be sued, the State merely gives the claimant the right to show that the defendant was not acting in governmental capacity when the injury was committed or that the case comes under the exceptions recognized by law. Failing this, the claimant cannot recover.[38]

Verily, liability attaches to the registered owner, the negligent driver and his direct employer. The CA observation along this line are worth restating:

> Settled is the rule that the registered owner of a vehicle is jointly and severally liable with the driver for damages incurred by passengers and third persons as a consequence of injuries or death sustained in the operation of said vehicles. Regardless of who the actual owner of the vehicle is, the operator of record continues to be the operator of the vehicle as regards the public and third persons, and as such is directly and primarily responsible for the consequences incident *(sic)* to its operation x x x.[39]

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[35] 8 Am. Jur. 2d 694.

[36] *Capretz v. Chicago Great Western R. Co.*, 157 Minn. 29, 195 NW 531 (1923).

[37] G.R. No. 52179, April 8, 1991, 195 SCRA 692.

[38] *Municipality of San Fernando, La Union v. Firme*, *id.* at 698.

[39] *Rollo*, p. 249.

The accidental death of Marvin Jayme is a tragic loss for his parents. However, justice demands that only those liable under our laws be held accountable for Marvin's demise. Justice can not sway in favor of petitioners simply to assuage their pain and loss. The law on the matter is clear: only the negligent driver, the driver's employer, and the registered owner of the vehicle are liable for the death of a third person resulting from the negligent operation of the vehicle.

WHEREFORE, the petition is *DENIED* and the appealed Decision *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165060. November 27, 2008]

ALBINO JOSEF, *petitioner, vs.* **OTELIO SANTOS,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; THE FAMILY; FAMILY HOME, DEFINED.— The family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by creditors except in certain special cases. The family home is the dwelling place of a person and his family, a sacred symbol of family love and repository of cherished memories that last during one's lifetime. It is the sanctuary of that union which the law declares and protects

as a sacred institution; and likewise a shelter for the fruits of that union. It is where both can seek refuge and strengthen the tie that binds them together and which ultimately forms the moral fabric of our nation. The protection of the family home is just as necessary in the preservation of the family as a basic social institution.

2. ID.; ID.; ID.; ID.; PROCEDURE TO BE OBSERVED BY THE TRIAL COURT UPON BEING APPRISED THAT THE PROPERTY SUBJECT OF EXECUTION IS A FAMILY HOME.— Upon being apprised that the property subject of execution allegedly constitutes petitioner's family home, the trial court should have observed the following procedure: 1. Determine if petitioner's obligation to respondent falls under either of the exceptions under Article 155 of the Family Code; 2. Make an inquiry into the veracity of petitioner's claim that the property was his family home; conduct an ocular inspection of the premises; an examination of the title; an interview of members of the community where the alleged family home is located, in order to determine if petitioner actually resided within the premises of the claimed family home; order a submission of photographs of the premises, depositions, and/or affidavits of proper individuals/parties; or a solemn examination of the petitioner, his children and other witnesses. At the same time, the respondent is given the opportunity to cross-examine and present evidence to the contrary; 3. If the property is accordingly found to constitute petitioner's family home, the court should determine: a) if the obligation sued upon was contracted or incurred prior to, or after, the effectivity of the Family Code; b) if petitioner's spouse is still alive, as well as if there are other beneficiaries of the family home; c) if the petitioner has more than one residence for the purpose of determining which of them, if any, is his family home; and d) its actual location and value, for the purpose of applying the provisions of Articles 157 and 160 of the Family Code.

3. ID.; ID.; ID.; ID.; CLAIM FOR EXEMPTION FROM EXECUTION SHOULD BE SET UP AND PROVED BEFORE THE SALE OF THE PROPERTY AT PUBLIC AUCTION, OTHERWISE ESTOPPEL WOULD SET IN; EXEMPTION; CASE AT BAR.— Although we have held in several cases that a claim for exemption from execution of the family home should be set up and proved before the sale

of the property at public auction, and failure to do so would estop the party from later claiming the exemption since the right of exemption is a personal privilege granted to the judgment debtor which must be claimed by the judgment debtor himself at the time of the levy or within a reasonable period thereafter, the circumstances of the instant case are different. Petitioner claimed exemption from execution of his family home soon after respondent filed the motion for issuance of a writ of execution, thus giving notice to the trial court and respondent that a property exempt from execution may be in danger of being subjected to levy and sale. Thereupon, the trial court is called to observe the procedure as herein laid out; on the other hand, the respondent should observe the procedure prescribed in Article 160 of the Family Code, that is, to obtain an order for the sale on execution of the petitioner's family home, if so, and apply the proceeds – less the maximum amount allowed by law under Article 157 of the Code which should remain with the petitioner for the rebuilding of his family home – to his judgment credit. Instead, both the trial court and respondent completely ignored petitioner's argument that the properties subject of the writ are exempt from execution.

APPEARANCES OF COUNSEL

Manuel R. Bustamante for petitioner.
Ciriaco A. Macapagal for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the November 17, 2003[1] Resolution of the Court of Appeals in CA-G.R. SP No. 80315, dismissing petitioner's special civil action of *certiorari* for failure to file a prior motion for reconsideration, and the May 7, 2004[2] Resolution denying the motion for reconsideration.

[1] *Rollo*, p. 64; penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Ruben T. Reyes and Noel G. Tijam.

[2] *Id.* at 72-73.

Petitioner Albino Josef was the defendant in Civil Case No. 95-110-MK, which is a case for collection of sum of money filed by herein respondent Otelio Santos, who claimed that petitioner failed to pay the shoe materials which he bought on credit from respondent on various dates in 1994.

After trial, the Regional Trial Court of Marikina City, Branch 272, found petitioner liable to respondent in the amount of ₱404,836.50 with interest at 12% per annum reckoned from January 9, 1995 until full payment.[3]

Petitioner appealed[4] to the Court of Appeals, which affirmed the trial court's decision *in toto*.[5] Petitioner filed before this Court a petition for review on *certiorari*, but it was dismissed in a Resolution dated February 18, 2002.[6] The Judgment became final and executory on May 21, 2002.

On February 17, 2003, respondent moved for issuance of a writ of execution,[7] which was opposed by petitioner.[8] In an Order dated July 16, 2003,[9] the trial court granted the motion, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, the motion for issuance of writ of execution is hereby granted. Let a writ of execution be issued commanding the Sheriff of this Court to execute the decision dated December 18, 1996.
>
> SO ORDERED.[10]

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[3] *Id.* at 29-33; penned by Judge Reuben R. De la Cruz.

[4] Docketed as CA-G.R. CV No. 56952.

[5] *Rollo*, pp. 34-38; penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Ramon A. Barcelona and Alicia L. Santos.

[6] *Id.* at 13, 51; docketed as G.R. No. 150720.

[7] *Id.* at 50-52.

[8] *Id.* at 53-55.

[9] *Id.* at 56.

[10] *Id.*

A writ of execution was issued on August 20, 2003[11] and enforced on August 21, 2003. On August 29, 2003, certain personal properties subject of the writ of execution were auctioned off. Thereafter, a real property located at Marikina City and covered by Transfer Certificate of Title (TCT) No. N-105280 was sold on October 28, 2003 by way of public auction to fully satisfy the judgment credit. Respondent emerged as the winning bidder and a Certificate of Sale[12] dated November 6, 2003 was issued in his favor.

On November 5, 2003, petitioner filed an original petition for *certiorari* with the Court of Appeals, questioning the sheriff's levy and sale of the abovementioned personal and real properties. Petitioner claimed that the personal properties did not belong to him but to his children; and that the real property covered by TCT No. N-105280 was his family home thus exempt from execution.

On November 17, 2003, the Court of Appeals issued the assailed Resolution dismissing the petition for failure of petitioner to file a motion for reconsideration of the trial court's July 16, 2003 Order granting the motion for execution and ordering the issuance of a writ therefor, as well as for his failure to indicate in his petition the timeliness of its filing as required under the Rules of Court. On May 7, 2004, the appellate court denied petitioner's motion for reconsideration.

Thus, the instant petition which raises the following issues:

I.

WHETHER OR NOT THE LEVY AND SALE OF THE PERSONAL BELONGINGS OF THE PETITIONER'S CHILDREN AS WELL AS THE ATTACHMENT AND SALE ON PUBLIC AUCTION OF HIS FAMILY HOME TO SATISFY THE JUDGMENT AWARD IN FAVOR OF RESPONDENT IS LEGAL.

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[11] *Id.* at 57-58.

[12] *Id.* at 61-62.

II.

WHETHER OR NOT THE DISMISSAL OF THE PETITIONER'S PETITION FOR *CERTIORARI* BY THE HONORABLE COURT OF APPEALS IS JUSTIFIED UNDER THE CIRCUMSTANCES.

Petitioner argues that the trial court sheriff erroneously attached, levied and sold on execution the real property covered by TCT No. N-105280 because the same is his family home; that the execution sale was irregular because it was conducted without complying with the notice and posting of requirements; and that the personal and real properties were sold for inadequate prices as to shock the conscience. The real property was allegedly worth ₱8 million but was sold for only ₱848,448.64.

Petitioner also argues that the appellate court gravely abused its discretion in dismissing the petition based purely on technical grounds, *i.e.*, his failure to file a motion for reconsideration of the trial court's order granting execution, and his failure to indicate in his petition for *certiorari* the timeliness of filing the same with the Court of Appeals.

Respondent, on the other hand, argues that petitioner's alleged family home has not been shown to have been judicially or extrajudicially constituted, obviously referring to the provisions on family home of the Civil Code – not those of the Family Code which should apply in this case; that petitioner has not shown to the court's satisfaction that the personal properties executed upon and sold belonged to his children. Respondent argues that he is entitled to satisfaction of judgment considering the length of time it took for the parties to litigate and the various remedies petitioner availed of which have delayed the case.

The petition is meritorious.

Petitioner, in his opposition to respondent's motion for issuance of a writ of execution, claimed that he was insolvent; that he had no property to answer for the judgment credit; that the house and lot in which he was residing at the time was his family home thus exempt from execution; that the household furniture and appliances found therein are likewise exempt from

execution; and that these furniture and appliances belonged to his children Jasmin Josef and Jean Josef Isidro. Thus, as early as during proceedings prior to the issuance of the writ of execution, petitioner brought to the fore the issue of exemption from execution of his home, which he claimed to be a family home in contemplation of the civil law.

However, instead of inquiring into the nature of petitioner's allegations in his opposition, the trial court ignored the same and granted respondent's motion for execution. The full text of the July 16, 2003 Order provides, as follows:

> This resolves the "Motion for the Issuance of Writ of Execution" filed by plaintiff thru counsel and the "Opposition" thereto filed by the defendant on her own behalf.
>
> The records show that a decision was rendered by this Court in favor of the plaintiff on December 18, 1995 which decision was affirmed by the Court of Appeals on June 26, 2001 and by the Supreme Court on February 18, 2002. On June 18, 2003, this Court received the entire records of the case from the Court of Appeals.
>
> Considering the foregoing, it is now the ministerial duty of the Court to issue a writ of execution pursuant to Sec. 1, Rule 39 of the Rules of Court.
>
> WHEREFORE, premises considered, the motion for issuance of writ of execution is hereby granted. Let a writ of execution be issued commanding the Sheriff of this Court to execute the decision dated December 18, 1996.
>
> SO ORDERED.[13]

The above Order did not resolve nor take into account petitioner's allegations in his Opposition, which are material and relevant in the resolution of the motion for issuance of a writ of execution. This is serious error on the part of the trial court. It should have made an earnest determination of the truth to petitioner's claim that the house and lot in which he and his children resided was their duly constituted family home. Since it did not, its July 16, 2003 Order is thus null and void.

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[13] *Id.* at 56.

Where a judgment or judicial order is void it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.[14]

The family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by creditors except in certain special cases.[15]

Upon being apprised that the property subject of execution allegedly constitutes petitioner's family home, the trial court should have observed the following procedure:

1. Determine if petitioner's obligation to respondent falls under either of the exceptions under Article 155[16] of the Family Code;

2. Make an inquiry into the veracity of petitioner's claim that the property was his family home;[17] conduct an ocular inspection of the premises; an examination of the title; an interview of members of the community where the alleged family home is located, in order to determine if petitioner actually resided within the premises of the claimed family home; order a submission of photographs of the premises, depositions, and/or affidavits of proper individuals/parties; or a solemn examination of the petitioner, his children and other

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[14] *Abbain v. Chua*, No. L-24241, February 26, 1968, 22 SCRA 748.

[15] *Taneo, Jr. v. Court of Appeals*, G.R. No. 108532, March 9, 1999, 304 SCRA 308.

[16] Family Code.

Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

(1) For non-payment of taxes;

(2) For debts incurred prior to the constitution of the family home;

(3) For debts secured by mortgages on the premises before or after such constitution; and

(4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

[17] Family Code.

witnesses. At the same time, the respondent is given the opportunity to cross-examine and present evidence to the contrary;

3. If the property is accordingly found to constitute petitioner's family home, the court should determine:

a) if the obligation sued upon was contracted or incurred prior to, or after, the effectivity of the Family Code;[18]

b) if petitioner's spouse is still alive, as well as if there are other beneficiaries of the family home;[19]

c) if the petitioner has more than one residence for the purpose of determining which of them, if any, is his family home;[20] and

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Art. 152. The family home, constituted jointly by the husband and the wife or by an unmarried head of a family, is the dwelling house where they and their family reside, and the land on which it is situated.

Art. 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

Art. 162. The provisions in this Chapter shall also govern existing family residences insofar as said provisions are applicable.

[18] *Modequillo v. Breva*, G.R. No. 86355, May 31, 1990, 185 SCRA 766; *Manacop v. Court of Appeals*, 342 Phil. 735 (1997); *Taneo v. Court of Appeals, supra* note 15.

[19] Family Code.

Art. 154. The beneficiaries of a family home are:

(1) The husband and wife, or an unmarried person who is the head of a family; and

(2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

Art. 159. The family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of ten years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home.

[20] Family Code.

d) its actual location and value, for the purpose of applying the provisions of Articles 157[21] and 160[22] of the Family Code.

The family home is the dwelling place of a person and his family, a sacred symbol of family love and repository of cherished memories that last during one's lifetime.[23] It is the sanctuary of that union which the law declares and protects as a sacred institution; and likewise a shelter for the fruits of that union. It

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Art. 161. For purposes of availing of the benefits of a family home as provided for in this Chapter, a person may constitute, or be the beneficiary of, only one family home.

[21] Family Code.

Art. 157. The actual value of the family home shall not exceed, at the time of its constitution, the amount of Three hundred thousand pesos in urban areas, and Two hundred thousand pesos in rural areas, or such amounts as may hereafter be fixed by law.

In any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of evaluation.

For purposes of this Article, urban areas are deemed to include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed to be rural areas.

[22] Family Code.

Art. 160. When a creditor whose claim is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum allowed in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

At the execution sale, no bid below the value allowed for a family home shall be considered. The proceeds shall be applied first to the amount mentioned in Article 157, and then to the liabilities under the judgment and the costs. The excess, if any, shall be delivered to the judgment debtor.

[23] A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. I (1990 ed.), p. 508, citing Code Commission of 1947, pp. 18-19, 20.

is where both can seek refuge and strengthen the tie that binds them together and which ultimately forms the moral fabric of our nation. The protection of the family home is just as necessary in the preservation of the family as a basic social institution, and since no custom, practice or agreement destructive of the family shall be recognized or given effect,[24] the trial court's failure to observe the proper procedures to determine the veracity of petitioner's allegations, is unjustified.

The same is true with respect to personal properties levied upon and sold at auction. Despite petitioner's allegations in his Opposition, the trial court did not make an effort to determine the nature of the same, whether the items were exempt from execution or not, or whether they belonged to petitioner or to someone else.[25]

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[24] Family Code, Art. 149.

[25] Sec. 13, Rule 39 of the Rules of Court provide:

Sec. 13. Property exempt from execution. Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution:

(a) The judgment obligor's family home as provided by law, or the homestead in which he resides, and land necessarily used in connection therewith;

(b) Ordinary tools and implements personally used by him in his trade, employment, or livelihood;

(c) Three horses, or three cows, or three carabaos, or other beasts of burden such as the judgment obligor may select necessarily used by him in his ordinary occupation;

(d) His necessary clothing and articles for ordinary personal use, excluding jewelry;

(e) Household furniture and utensils necessary for housekeeping, and used for that purpose by the judgment obligor and his family, such as the judgment obligor may select, of a value not exceeding one hundred thousand pesos;

(f) Provisions for individual or family use sufficient for four months;

(g) The professional libraries and equipment of judges, lawyers, physicians, pharmacists, dentists, engineers, surveyors, clergymen, teachers, and other professionals, not exceeding three hundred thousand pesos in value;

Respondent moved for issuance of a writ of execution on February 17, 2003 while petitioner filed his opposition on June 23, 2003. The trial court granted the motion on July 16, 2003, and the writ of execution was issued on August 20, 2003. Clearly, the trial court had enough time to conduct the crucial inquiry that would have spared petitioner the trouble of having to seek relief all the way to this Court. Indeed, the trial court's inaction on petitioner's plea resulted in serious injustice to the latter, not to mention that its failure to conduct an inquiry based on the latter's claim bordered on gross ignorance of the law.

Being void, the July 16, 2003 Order could not have conferred any right to respondent. Any writ of execution based on it is likewise void. Although we have held in several cases[26] that a claim for exemption from execution of the family home should be set up and proved before the sale of the property at public auction, and failure to do so would estop the party from later claiming the exemption since the right of exemption is a personal privilege granted to the judgment debtor which must be claimed by the judgment debtor himself at the time of the levy or within a reasonable period thereafter, the circumstances of the instant case are different. Petitioner claimed exemption from execution

(h) One fishing boat and accessories not exceeding the total value of one hundred thousand pesos owned by a fisherman and by the lawful use of which he earns his livelihood;

(i) So much of the salaries, wages, or earnings of the judgment obligor of his personal services within the four months preceding the levy as are necessary for the support of his family;

(j) Lettered gravestones;

(k) Monies benefits, privileges, or annuities accruing or in any manner growing out of any life insurance;

(l) The right to receive legal support, or money or property obtained as such support, or any pension or gratuity from the Government;

(m) Properties specially exempt by law.

But no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon.

[26] *Honrado v. Court of Appeals*, G.R. No. 166333, November 25, 2005, 476 SCRA 280; *Gomez v. Gealone*, G.R. No. 58281, November 13, 1991, 203 SCRA 474 .

of his family home soon after respondent filed the motion for issuance of a writ of execution, thus giving notice to the trial court and respondent that a property exempt from execution may be in danger of being subjected to levy and sale. Thereupon, the trial court is called to observe the procedure as herein laid out; on the other hand, the respondent should observe the procedure prescribed in Article 160 of the Family Code, that is, to obtain an order for the sale on execution of the petitioner's family home, if so, and apply the proceeds – less the maximum amount allowed by law under Article 157 of the Code which should remain with the petitioner for the rebuilding of his family home – to his judgment credit. Instead, both the trial court and respondent completely ignored petitioner's argument that the properties subject of the writ are exempt from execution.

Indeed, petitioner's resort to the special civil action of *certiorari* in the Court of Appeals was belated and without benefit of the requisite motion for reconsideration, however, considering the gravity of the issue, involving as it does matters that strike at the very heart of that basic social institution which the State has a constitutional and moral duty to preserve and protect, as well as petitioner's constitutional right to abode, all procedural infirmities occasioned upon this case must take a back seat to the substantive questions which deserve to be answered in full.

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The November 17, 2003 and May 7, 2004 Resolutions of the Court of Appeals in CA-G.R. SP No. 80315 are *REVERSED and SET ASIDE*. The July 16, 2003 Order of the Regional Trial Court of Marikina City, Branch 272 in Civil Case No. 95-110-MK, as well as the writ or writs of execution thus issued in said case, are hereby *DECLARED VOID*, and all acts proceeding therefrom and any title obtained by virtue thereof are likewise *DECLARED VOID*.

The trial court is hereby *DIRECTED* (1) to conduct a solemn inquiry into the nature of the real property covered by Transfer Certificate of Title No. N-105280, with a view toward determining whether the same is petitioner Albino Josef's family home, and if so, apply the pertinent provisions of the Family Code and

Rule 39 of the Rules of Court; and (2) to conduct an inquiry into the ownership of all other properties that were levied upon and sold, with the aim of determining as well whether these properties are exempt from execution under existing law.

Respondent Otelio Santos is hereby *DIRECTED* to hold the abovementioned real and personal properties, or the proceeds thereof, in trust to await the outcome of the trial court's inquiry.

Finally, the trial court is *DIRECTED* to resolve, with utmost dispatch, Civil Case No. 95-110-MK within sixty (60) days from receipt of a copy of this Decision.

SO ORDERED.

Austria-Martinez, Tinga,[*] *Chico-Nazario,* and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165969. November 27, 2008]

NATIONAL POWER CORPORATION, *petitioner, vs.* **HEIRS OF NOBLE CASIONAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAYBE ENTERTAINED ON APPEAL.— As a rule, only questions of law may be entertained on appeal by *certiorari* under Rule 45. The finding of negligence on the part of petitioner by the trial court and affirmed by the CA is a question

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[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro, per Special Order No. 539 dated November 14, 2008.

of fact which We cannot pass upon since it would entail going into factual matters on which the finding of negligence was based. Corollary to this, the finding by both courts of the lack of contributory negligence on the part of the victim is a factual issue which is deemed conclusive upon this Court absent any compelling reason for Us to rule otherwise.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE, ELUCIDATED.— Negligence is the failure to observe, for the protection of the interest of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. On the other hand, **contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection.** There is contributory negligence when the party's act showed lack of ordinary care and foresight that such act could cause him harm or put his life in danger. It is an act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury. The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. If indeed there was contributory negligence on the part of the victim, then it is proper to reduce the award for damages. This is in consonance with the Civil Code provision that liability will be mitigated in consideration of the contributory negligence of the injured party. Article 2179 of the Civil Code is explicit on this score: When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

3. ID.; DAMAGES; DETERMINATION OF COMPENSABLE AMOUNT OF LOST EARNINGS; FACTORS TO CONSIDER; FORMULA.— [T]o determine the compensable amount of lost earnings, We consider (1) the number of years

for which the victim would otherwise have lived (life expectancy); and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed by applying the formula (2/3 x [80 – age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earnings is ordinarily computed at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court is computing loss of earning capacity is: Net Earning Capacity = [2/3 x (80 – age at time of death) x (gross annual income – reasonable and necessary living expenses)].

4. ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHERE THE OFFENDER WAS GUILTY OF GROSS NEGLIGENCE; CASE AT BAR.— In quasi delicts, exemplary damages are awarded where the offender was guilty of gross negligence. Gross negligence has been defined to be the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Petitioner demonstrated its disregard for the safety of the members of the community of Dalicno who used the trail regularly when it failed to address the sagging high tension wires despite numerous previous requests and warnings. It only exerted efforts to rectify the danger it posed after a death from electrocution already occurred. Gross negligence was thus apparent, warranting the award of exemplary damages.

5. ID.; ID.; MORAL DAMAGES; DESIGNED TO COMPENSATE THE CLAIM FOR ACTUAL INJURY SUFFERED AND NOT TO IMPOSE A PENALTY ON THE WRONGDOER.— [M]oral damages are designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. It is not meant to enrich the complainant but to enable the injured party to obtain means to obviate the moral suffering experience. Trial courts should guard against the award of exorbitant damages lest they be accused of prejudice or corrupting in their decision making.

6. ID.; ID.; ATTORNEY'S FEES; REASON FOR THE AWARD THEREOF MUST BE DISCUSSED IN THE TEXT OF THE COURT'S DECISION AND NOT ONLY IN THE DISPOSITIVE PORTION.— As for the award for attorney's fees, well-settled is the rule that the reason for the award must be discussed in the text of the court's decision and not only in the dispositive portion. Except for the *fallo*, a discussion on the reason for the award for attorney's fees was not included by the RTC in its decision. The CA thus correctly disallowed it on appeal.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ruben E. Paoad for respondents.

D E C I S I O N

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

PETITIONING power company pleads for mitigation of awarded damages on ground of contributory negligence. But is the victim in this case partly to blame for his electrocution and eventual demise?

This is a review on *certiorari* of the Decision[1] of the Court of Appeals (CA) which found the National Power Corporation (NPC) liable for damages for the death of Noble Casionan due to electrocution from the company's high tension transmission lines.

The Facts

The facts, as found by the trial court are as follows:

Respondents are the parents of Noble Casionan, 19 years old at the time of the incident that claimed his life on June 27, 1995. He would have turned 20 years of age on November 9 of

[1] *Rollo*, pp. 46-58. CA-G.R. CV No. 59614. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Roberto A. Barrios and Mariano C. Del Castillo, concurring.

that year. Noble was originally from Cervantes, Ilocos Sur. He worked as a pocket miner in Dalicno, Ampucao, Itogon, Benguet.

A trail leading to Sangilo, Itogon, existed in Dalicno and this trail was regularly used by members of the community. Sometime in the 1970's, petitioner NPC installed high-tension electrical transmission lines of 69 kilovolts (KV) traversing the trail. Eventually, some of the transmission lines sagged and dangled reducing their distance from the ground to only about eight to ten feet. This posed a great threat to passersby who were exposed to the danger of electrocution especially during the wet season.

As early as 1991, the leaders of Ampucao, Itogon made verbal and written requests for NPC to institute safety measures to protect users of the trail from their high tension wires. On June 18, 1991 and February 11, 1993, Pablo and Pedro Ngaosie, elders of the community, wrote Engr. Paterno Banayot, Area Manager of NPC, to make immediate and appropriate repairs of the high tension wires. They reiterated the danger it posed to small-scale miners especially during the wet season. They related an incident where one boy was nearly electrocuted.

In a letter dated March 1, 1995, Engr. Banayot informed Itogon Mayor Cresencio Pacalso that NPC had installed nine additional poles on their Beckel-Philex 60 KV line. They likewise identified a possible rerouting scheme with an estimated total cost of 1.7 million pesos to improve the distance from its deteriorating lines to the ground.

On June 27, 1995, Noble and his co-pocket miner, Melchor Jimenez, were at Dalicno. They cut two bamboo poles for their pocket mining. One was 18 to 19 feet long and the other was 14 feet long. Each man carried one pole horizontally on his shoulder: Noble carried the shorter pole while Melchor carried the longer pole. Noble walked ahead as both passed through the trail underneath the NPC high tension transmission lines on their way to their work place.

As Noble was going uphill and turning left on a curve, the tip of the bamboo pole he was carrying touched one of the dangling

high tension wires. Melchor, who was walking behind him, narrated that he heard a buzzing sound when the tip of Noble's pole touched the wire for only about one or two seconds. Thereafter, he saw Noble fall to the ground. Melchor rushed to Noble and shook him but the latter was already dead. Their co-workers heard Melchor's shout for help and together they brought the body of Noble to their camp.

A post-mortem examination by Dra. Ignacia Reyes Ciriaco, Municipal Health Officer of Itogon, Benguet, determined the cause of death to be cardiac arrest, secondary to ventricular fibulation, secondary to electrocution.[2] She also observed a small burned area in the middle right finger of the victim.

Police investigators who visited the site of the incident confirmed that portions of the high tension wires above the trail hung very low, just about eight to ten feet above the ground. They noted that the residents, school children, and pocket miners usually used the trail and had to pass directly underneath the wires. The trail was the only viable way since the other side was a precipice. In addition, they did not see any danger warning signs installed in the trail.

The elders and leaders of the community, through Mayor Cresencio Pacalso, informed the General Manager of NPC in Itogon of the incident. After learning of the electrocution, NPC repaired the dangling and sagging transmission lines and put up warning signs around the area.

Consequently, the heirs of the deceased Noble filed a claim for damages against the NPC before the Regional Trial Court (RTC) in Benguet. In its answer, NPC denied being negligent in maintaining the safety of the high tension transmission lines. It averred that there were danger and warning signs installed but these were stolen by children. Excavations were also made to increase the necessary clearance from the ground to about 17 to 18 feet but some towers or poles sank due to pocket mining in the area.

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[2] *Id.* at 83.

At the trial, NPC witnesses testified that the cause of death could not have been electrocution because the victim did not suffer extensive burns despite the strong 69 KV carried by the transmission lines. NPC argued that if Noble did die by electrocution, it was due to his own negligence. The company counter-claimed for attorney's fees and cost of litigation.

RTC Disposition

On February 17, 1998, the RTC decided in favor of respondents. The *fallo* of its decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant NPC as follows:
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> 1. Declaring defendant NPC guilty of Negligence (*Quasi-Delict*) in connection with the death of Noble Casionan;
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> 2. Ordering NPC as a consequence of its negligence, to pay the plaintiffs Jose and Linda Casionan, as heirs of the deceased, Noble Casionan, the following Damages:
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> a. ₱50,000.00 as indemnity for the death of their son Noble Casionan;
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> b. ₱100,000.00 as moral damages;
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> c. ₱50,000.00 as exemplary damages;
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> d. ₱52,277.50 as actual damages incurred for the expenses of burial and wake in connection with the death of Noble Casionan;
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> e. ₱720,000.00 as the loss of unearned income; and
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> f. ₱20,000.00 as attorney's fees and the cost of suit; and
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> 3. Dismissing the counter claim of the NPC for lack of merit.[3]

The RTC gave more credence to the testimony of witnesses for respondents than those of NPC who were not actually present at the time of the incident. The trial court observed that witnesses for NPC were biased witnesses because they were all employed by the company, except for the witness from the Department of Environment and Natural Resources (DENR). The RTC found:

[3] *Id.* at 98.

Melchor Jimenez was very vivid in his account. He declared that he and Noble Casionan cut two bamboo poles, one 14 feet and the other about 18 feet. The shorter bamboo pole was carried by Noble Casionan and the longer bamboo pole was carried by him. And they walked along the trail underneath the transmission lines. He was following Noble Casionan. And when they were going uphill in the trail and Noble Casionan was to turn left in a curve, the bamboo pole of Casionan swung around and its tip at the back touched for one or two seconds or for a split moment the transmission line that was dangling and a buzzing sound was heard. *And Casionan immediately fell dead and simply stopped breathing. What better account would there be than this? Melchor Jimenez was an eye witness as to how it all happened*.[4] (Emphasis added)

The RTC ruled that the negligence of NPC in maintaining the high-tension wires was established by preponderance of evidence. On this score, the RTC opined:

2. On the matter of whether plaintiffs have a cause of action against defendant NPC, obviously, they would have. x x x *This negligence of the NPC was well established and cannot be denied because previous to this incident, the attention of NPC has already been called by several requests and demands in 1991, 1993 and 1995 by elders and leaders of the community in the area to the fact that their transmission lines were dangling and sagging* and the clearance thereof from the line to the ground was only 8 to 10 feet and not within the standard clearance of 18 to 20 feet but no safety measures were taken. They did not even put danger and warning signs so as to warn persons passing underneath.[5] (Emphasis added)

Disagreeing with the ruling of the trial court, NPC elevated the case to the CA. In its appeal, it argued that the RTC erred in ruling that NPC was liable for Noble's death. Further, even assuming that Noble died of electrocution, the RTC erred in not finding that he was guilty of contributory negligence and in awarding excessive damages.

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[4] *Id.* at 90.

[5] *Id.* at 93.

CA Disposition

On June 30, 2004, the CA promulgated its decision, disposing as follows:

> WHEREFORE, the appealed Decision is hereby AFFIRMED, with the MODIFICATION that the amount of moral damages is REDUCED to Fifty Thousand Pesos (₱50,000.00); and the award of attorney's fees in the sum of Twenty Thousand Pesos (₱20,000.00) is DELETED.[6]

The CA sustained the findings of fact of the trial court but reduced the award of moral damages from ₱100,000.00 to ₱50,000.00. The CA further disallowed the award of attorney's fees because the reason for the award was not expressly stated in the body of the decision.

Issues

The following issues are presented for Our consideration: (i) Whether the award for damages should be deleted in view of the contributory negligence of the victim; and (ii) Whether the award for unearned income, exemplary, and moral damages should be deleted for lack of factual and legal bases.[7]

Our Ruling

I

That the victim Noble died from being electrocuted by the high-tension transmission wires of petitioner is not contested by petitioner. We are, however, asked to delete or mitigate the damages awarded by the trial and appellate courts in view of what petitioner alleges to be contributory negligence on the part of the victim.

As a rule, only questions of law may be entertained on appeal by *certiorari* under Rule 45. The finding of negligence on the part of petitioner by the trial court and affirmed by the CA is a question of fact which We cannot pass upon since it would entail going into factual matters on which the finding of negligence

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[6] *Id.* at 57.

[7] *Id.* at 30.

was based.[8] Corollary to this, the finding by both courts of the lack of contributory negligence on the part of the victim is a factual issue which is deemed conclusive upon this Court absent any compelling reason for Us to rule otherwise.

But even if We walk the extra mile, the finding of liability on the part of petitioner must stay.

Petitioner contends that the mere presence of the high tension wires above the trail did not cause the victim's death. Instead, it was Noble's negligent carrying of the bamboo pole that caused his death. It insists that Noble was negligent when he allowed the bamboo pole he was carrying to touch the high tension wires. This is especially true because other people traversing the trail have not been similarly electrocuted.

Petitioner's contentions are absurd.

The sagging high tension wires were an accident waiting to happen. As established during trial, the lines were sagging around 8 to 10 feet in violation of the required distance of 18 to 20 feet. If the transmission lines were properly maintained by petitioner, the bamboo pole carried by Noble would not have touched the wires. He would not have been electrocuted.

Petitioner cannot excuse itself from its failure to properly maintain the wires by attributing negligence to the victim. In *Ma-ao Sugar Central Co., Inc. v. Court of Appeals*,[9] this Court held that the responsibility of maintaining the rails for the purpose of preventing derailment accidents belonged to the company. The company should not have been negligent in ascertaining that the rails were fully connected than to wait until a life was lost due to an accident. Said the Court:

> In this petition, the respondent court is faulted for finding the petitioner guilty of negligence notwithstanding its defense of due diligence under Article 2176 of the Civil Code and for disallowing the deductions made by the trial court.

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[8] *Lambert v. Heirs of Ray Castillon*, G.R. No. 160709, February 23, 2005, 452 SCRA 285.

[9] G.R. No. 83491, August 27, 1990, 189 SCRA 88.

Investigation of the accident revealed that the derailment of the locomotive was caused by protruding rails which had come loose because they were not connected and fixed in place by fish plates. Fish plates are described as strips of iron 8" to 12" long and 3 ½" thick which are attached to the rails by 4 bolts, two on each side, to keep the rails aligned. Although they could be removed only with special equipment, the fish plates that should have kept the rails aligned could not be found at the scene of the accident.

There is no question that the maintenance of the rails, for the purpose, inter alia, of preventing derailments, was the responsibility of the petitioner, and that this responsibility was not discharged. According to Jose Reyes, its own witness, who was in charge of the control and supervision of its train operations, cases of derailment in the milling district were frequent and there were even times when such derailments were reported every hour. The petitioner should therefore have taken more prudent steps to prevent such accidents instead of waiting until a life was finally lost because of its negligence.[10]

Moreover, We find no contributory negligence on Noble's part.

Negligence is the failure to observe, for the protection of the interest of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[11] On the other hand, **contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection**.[12] There is contributory negligence when the party's act showed lack of ordinary care and foresight that such act could cause him harm or put his life in danger.[13] It is an act or omission amounting to want of ordinary care on the

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[10] *Id.* at 91.

[11] *Jarco Marketing Corporation v. Court of Appeals*, 378 Phil. 991, 1002-1003 (1999). (Citations omitted.)

[12] *Estacion v. Bernardo*, G.R. No. 144723, February 27, 2006, 483 SCRA 222, 234.

[13] *Id.*

part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury.[14]

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence.[15] If indeed there was contributory negligence on the part of the victim, then it is proper to reduce the award for damages. This is in consonance with the Civil Code provision that liability will be mitigated in consideration of the contributory negligence of the injured party. Article 2179 of the Civil Code is explicit on this score:

> When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

In *Ma-ao Sugar Central*, it was held that to hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warnings or signs on an impending danger to health and body. This Court held then that the victim was not guilty of contributory negligence as there was no showing that the caboose where he was riding was a dangerous place and that he recklessly dared to stay there despite warnings or signs of impending danger.[16]

In this case, the trail where Noble was electrocuted was regularly used by members of the community. There were no warning signs to inform passersby of the impending danger to their lives should they accidentally touch the high tension wires. Also, the trail was the only viable way from Dalicon to Itogon. Hence, Noble should not be faulted for simply doing what was ordinary routine to other workers in the area.

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[14] *Ma-ao Sugar Central Co., Inc. v. Court of Appeals, supra* note 9, at 93.

[15] *Syki v. Begasa,* 460 Phil. 381, 390-391 (2003).

[16] *Ma-ao Sugar Central Co., Inc. v. Court of Appeals, supra* note 9.

Petitioner further faults the victim in engaging in pocket mining, which is prohibited by the DENR in the area.

In *Añonuevo v. Court of Appeals*,[17] this Court ruled that the violation of a statute is not sufficient to hold that the violation was the proximate cause of the injury, unless the very injury that happened was precisely what was intended to be prevented by the statute. In said case, the allegation of contributory negligence on the part of the injured party who violated traffic regulations when he failed to register his bicycle or install safety gadgets thereon was struck down. We quote:

> x x x *The bare fact that Villagracia was violating a municipal ordinance at the time of the accident may have sufficiently established some degree of negligence on his part, but such negligence is without legal consequence unless it is shown that it was a contributing cause of the injury.* If anything at all, it is but indicative of Villagracia's failure in fulfilling his obligation to the municipal government, which would then be the proper party to initiate corrective action as a result. But such failure alone is not determinative of Villagracia's negligence in relation to the accident. Negligence is relative or comparative, dependent upon the situation of the parties and the degree of care and vigilance which the particular circumstances reasonably require. *To determine if Villagracia was negligent, it is not sufficient to rely solely on the violations of the municipal ordinance, but imperative to examine Villagracia's behavior in relation to the contemporaneous circumstances of the accident.*
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> xxx xxx xxx
>
> Under American case law, the failures imputed on Villagracia are not grievous enough so as to negate monetary relief. In the absence of statutory requirement, one is not negligent as a matter of law for failing to equip a horn, bell, or other warning devise onto a bicycle. In most cases, the absence of proper lights on a bicycle does not constitute negligence as a matter of law but is a question for the jury whether the absence of proper lights played a causal part in producing a collision with a motorist. *The absence of proper lights on a bicycle at night, as required by statute or ordinance, may constitute negligence barring or diminishing recovery if the*

[17] G.R. No. 130003, October 20, 2004, 441 SCRA 24.

bicyclist is struck by a motorist as long as the absence of such lights was a proximate cause of the collision; however, the absence of such lights will not preclude or diminish recovery if the scene of the accident was well illuminated by street lights, if substitute lights were present which clearly rendered the bicyclist visible, if the motorist saw the bicycle in spite of the absence of lights thereon, or if the motorist would have been unable to see the bicycle even if it had been equipped with lights. A bicycle equipped with defective or ineffective brakes may support a finding of negligence barring or diminishing recovery by an injured bicyclist where such condition was a contributing cause of the accident.

The above doctrines reveal a common thread. *The failure of the bicycle owner to comply with accepted safety practices, whether or not imposed by ordinance or statute, is not sufficient to negate or mitigate recovery unless a causal connection is established between such failure and the injury sustained.* The principle likewise finds affirmation in *Sanitary Steam*, wherein we declared that the violation of a traffic statute must be shown as the proximate cause of the injury, or that it substantially contributed thereto. Añonuevo had the burden of clearly proving that the alleged negligence of Villagracia was the proximate or contributory cause of the latter's injury.[18] (Emphasis added)

That the pocket miners were unlicensed was not a justification for petitioner to leave their transmission lines dangling. We quote with approval the observation of the RTC on this matter:

The claim of NPC that the pocket miners have no right to operate within the area of Dalicno, Itogon, Benguet as there was no permit issued by DENR is beside the point. The fact is that there were not only pocket miners but also there were many residents in the area of Dalicno, Ampucao, Itogon, Benguet using the trail. These residents were using this trail underneath the transmission lines xxx. They were using this trail even before the transmission lines were installed in the 1970's by NPC. *The pocket miners, although they have no permit to do pocket mining in the area, are also human beings who have to eke out a living in the only way they know how. The fact that they were not issued a permit by the DENR to do pocket mining is no justification for NPC to simply leave their transmission lines dangling or hanging 8 to 10 feet above the ground posing*

[18] *Añonuevo v. Court of Appeals, id.* at 40-43. (Citations omitted.)

danger to the life and limb of everyone in said community. xxx[19] (Emphasis added)

In sum, the victim was not guilty of contributory negligence. Hence, petitioner is not entitled to a mitigation of its liability.

II

We now determine the propriety of the awards for loss of unearned income, moral, and exemplary damages.

From the testimony of the victim's mother, it was duly established during trial that he was earning ₱3,000.00 a month. To determine the compensable amount of lost earnings, We consider (1) the number of years for which the victim would otherwise have lived (life expectancy); and (2) the rate of loss sustained by the heirs of the deceased. Life expectancy is computed by applying the formula (2/3 x [80 - age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The net earning is ordinarily computed at fifty percent (50%) of the gross earnings. Thus, the formula used by this Court in computing loss of earning capacity is: Net Earning Capacity = [2/3 x (80 – age at time of death) x (gross annual income – reasonable and necessary living expenses)].[20]

We sustain the trial court computation of unearned income of the victim:

x x x the loss of his unearned income can be computed as follows: two-thirds of 80 years, minus 20 years, times ₱36,000.00 per year, equals ₱1,440,000.00. This is because Noble Casionan, at the time of his death, was 20 years old and was healthy and strong. And, therefore, his life expectancy would normally reach up to 80 years

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[19] *Rollo,* p. 95.

[20] *Lambert v. Heirs of Ray Castillon, supra* note 8, at 294; *Pleyto v. Lomboy*, G.R. No. 148737, June 16, 2004, 432 SCRA 329, 340-341.

old in accordance with the above formula illustrated in the aforesaid cases. Thus, Noble Casionan had 60 more years life expectancy since he was 20 years old at the time of his death on June 27, 1995. Two-thirds of 60 years times ₱36,000.00 since he was earning about ₱3,000.00 a month of ₱36,000.00 a year would be ₱1,440,000.00.

However, in determining the unearned income, the basic concern is to determine the damages sustained by the heirs or dependents of the deceased Casionan. And here, the damages consist not of the full amount of his earnings but the support they would have received from the deceased had he not died as a consequence of the unlawful act of the NPC. x x x The amount recoverable is not the loss of the entire earnings but the loss of that portion of the earnings which the heirs would have received as support. Hence, from the amount of ₱1,440,000.00, a reasonable amount for the necessary expenses of Noble Casionan had he lived would be deducted. Following the ruling in *People v. Quilaton*, 205 SCRA 279, the Court deems that 50 percent of the gross earnings of the deceased of ₱1,440,000.00 should be deducted for his necessary expenses had he lived, thus leaving the other half of about ₱720,000.00 as the net earnings that would have gone for the support of his heirs. This is the unearned income of which the heirs were deprived of.[21]

In quasi delicts, exemplary damages are awarded where the offender was guilty of gross negligence.[22] Gross negligence has been defined to be the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[23]

Petitioner demonstrated its disregard for the safety of the members of the community of Dalicno who used the trail regularly when it failed to address the sagging high tension wires despite numerous previous requests and warnings. It only exerted efforts to rectify the danger it posed after a death from electrocution already occurred. Gross negligence was thus apparent, warranting

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[21] *Rollo*, pp. 96-98.

[22] Civil Code of the Philippines, Art. 2231.

[23] *Metro Transit Organization, Inc. v. National Labor Relations Commission*, 331 Phil. 633, 641 (1996). (Citations omitted.)

the award of exemplary damages.

As to the award of moral damages, We sustain the CA reduction of the award. Moral damages are designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. It is not meant to enrich the complainant but to enable the injured party to obtain means to obviate the moral suffering experience. Trial courts should guard against the award of exorbitant damages lest they be accused of prejudice or corruption in their decision making.[24] We find that the CA correctly reduced the award from ₱100,000.00 to ₱50,000.00.

As for the award for attorney's fees, well-settled is the rule that the reason for the award must be discussed in the text of the court's decision and not only in the dispositive portion.[25] Except for the *fallo*, a discussion on the reason for the award for attorney's fees was not included by the RTC in its decision. The CA thus correctly disallowed it on appeal.

WHEREFORE, the petition is *DENIED* and the appealed decision of the Court of Appeals *AFFIRMED*.

SO ORDERED.

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

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[24] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 530 (1999).

[25] *Lambert v. Heirs of Ray Castillon, supra* note 8, at 297.

THIRD DIVISION

[G.R. No. 166554. November 27, 2008]

JULITO SAGALES, *petitioner, vs.* **RUSTAN'S COMMERCIAL CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; POST EMPLOYMENT; TERMINATION OF EMPLOYMENT; TRUST AND CONFIDENCE RULE; SUPERVISORY EMPLOYEES OCCUPYING POSITIONS OF RESPONSIBILITY ARE COVERED BY THE TRUST AND CONFIDENCE RULE; CASE AT BAR.— The nature of the job of an employee becomes relevant in **termination of employment by the employer** because the rules on termination of managerial and supervisory employees are different from those on the rank-and-file. Managerial employees are tasked to perform key and sensitive functions, and thus are bound by more exacting work ethics. As a consequence, managerial employees are covered by the trust and confidence rule. The same holds true for supervisory employees occupying positions of responsibility. There is no doubt that the position of petitioner as chief cook is supervisory in nature. A chief cook directs and participates in the preparation and serving of meals; determines timing and sequence of operations required to meet serving times; and inspects galley and equipment for cleanliness and proper storage and preparation of food. Naturally, a chief cook falls under the definition of a supervisor, *i.e.*, one who, in the interest of the employer, effectively recommends managerial actions which would require the use of independent judgment and is not merely routinary or clerical.

2. POLITICAL LAW; CONSTITUTIONAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; SECURITY OF TENURE IS A PARAMOUNT RIGHT OF EVERY EMPLOYEE THAT IS HELD SACRED BY THE CONSTITUTION, AS SUCH, IT SHOULD NOT BE DENIED ON MERE SPECULATION OF ANY SIMILAR OR UNCLEAR NEBULOUS BASIS.— Security of tenure is a paramount right of every employee that is held sacred by the Constitution. The reason for this is that

labor is deemed to be "property" within the meaning of constitutional guarantees. Indeed, as it is the policy of the State to guarantee the right of every worker to security of tenure as an act of social justice, such right should not be denied on mere speculation of any similar or unclear nebulous basis. Indeed, the right of every employee to security of tenure is all the more secured by the Labor Code by providing that "the employer shall not terminate the services of an employee except for a just cause or when authorized" by law. Otherwise, an employee who is illegally dismissed "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." Necessarily then, the employer bears the burden of proof to show the basis of the termination of the employee.

3. REMEDIAL LAW; EVIDENCE; SUFFICIENCY OF EVIDENCE; THE QUANTUM OF PROOF REQUIRED FOR THE APPLICATION OF THE LOSS OF TRUST AND CONFIDENCE RULE IS NOT PROOF BEYOND REASONABLE DOUBT.— [Q]uantum of proof required for the application of the loss of trust and confidence rule is *not* proof beyond reasonable doubt. **It is sufficient that there must only be some basis for the loss of trust and confidence or that there is reasonable ground to believe, if not to entertain the moral conviction, that the employee concerned is responsible for the misconduct and that his participation in the misconduct rendered him absolutely unworthy of trust and confidence.**

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONVICTION OF AN EMPLOYEE IN A CRIMINAL CASE IS NOT INDISPENSABLE TO THE EXERCISE OF THE EMPLOYER'S DISCIPLINARY AUTHORITY.— It is also of no moment that the criminal complaint for qualified theft against petitioner was dismissed. It is well settled that **the conviction of an employee in a criminal case is not indispensable to the exercise of the employer's disciplinary authority.**

5. ID.; ID.; ID.; EXERCISE OF MANAGEMENT PREROGATIVES SHOULD NOT BE DONE IN BAD FAITH OR WITH ABUSE OF DISCRETION.— The free will of management to conduct its own business affairs to achieve its purpose cannot be denied. The only condition is that the exercise of management prerogatives should not be done in bad faith or with abuse of discretion. Truly, while the employer has the inherent right to discipline, including that of dismissing its employees, this prerogative is subject to the regulation by the State in the exercise of its police power.

6. ID.; ID.; ID.; INFRACTIONS COMMITTED BY AN EMPLOYEE SHOULD MERIT ONLY THE PENALTY COMMENSURATE WITH THE ACT, CONDUCT OR OMISSION IMPUTED TO THE EMPLOYEE AND MUST BE IMPOSED IN CONNECTION WITH THE DISCIPLINARY AUTHORITY OF THE EMPLOYER.— [I]t is a hornbook doctrine that **infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary authority of the employer.**

APPEARANCES OF COUNSEL

Edwin P. Cerezo for petitioner.

Gonzales Rayos Del Sol Fernandez Law Offices for respondent.

D E C I S I O N

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

Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies to a large extent at the foundation of most other forms of property, and of all solid individual and national prosperity.[1]

[1] Slaughter House Cases, 16 Wall. (83 US) 36, 127.

The exultation of labor by Mr. Justice Noah Haynes Swayne of the United States Supreme Court comes to the fore in this petition for review on *certiorari*. The employee questions the propriety of his dismissal after he was caught stealing 1.335 kilos of squid heads worth ₱50.00. He invokes his almost thirty-one (31) years of untarnished service and the several awards he received from the company to temper the penalty of dismissal meted on him.

The Facts

Petitioner Julito Sagales was employed by respondent Rustan's Commercial Corporation from October 1970 until July 26, 2001, when he was terminated. At the time of his dismissal, he was occupying the position of Chief Cook at the Yum Yum Tree Coffee Shop located at Rustan's Supermarket in Ayala Avenue, Makati City. He was paid a basic monthly salary of ₱9,880.00. He was also receiving service charge of not less than ₱3,000.00 a month and other benefits under the law and the existing collective bargaining agreement between respondent and his labor union.[2]

In the course of his employment, petitioner was a consistent recipient of numerous citations[3] for his performance. After receiving his latest award on March 27, 2001, petitioner conveyed to respondent his intention of retiring on October 31, 2001, after reaching thirty-one (31) years in service.[4] Petitioner, however, was not allowed to retire with his honor intact.

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

[3] (1) Sikap Awards in recognition of his exemplary job performance for the years 1984, 1985, 1986, 1987, 1992, 1993 and 1994; (2) Sikap Awards Service Award in 1991 for having rendered twenty five (25) years of loyal service to the company; (3) Sikap Awards Service Award for having rendered twenty five (25) years of loyal service; (4) Several Certificates of Recognition for being named to the EVP-GM list, a roster of employees who have posted a perfect record of attendance and punctuality in reporting to work for several years; and (5) Sikap Loyalty Award for having rendered thirty (30) years of loyal service, making him one of the elite employees of his company.

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

On June 18, 2001, Security Guard Waldo Magtangob, upon instructions from Senior Guard Bonifacio Aranas, apprehended petitioner in the act of taking out from Rustan's Supermarket a plastic bag. Upon examination, it was discovered that the plastic bag contained 1.335 kilos of squid heads worth ₱50.00. Petitioner was not able to show any receipt when confronted. Thus, he was brought to the Security Office of respondent corporation for proper endorsement to the Makati Headquarters of the Philippine National Police. Subsequently, petitioner was brought to the Makati Police Criminal Investigation Division where he was detained. Petitioner was later ordered released pending further investigation.[5]

Respondent alleged that prior to his detention, petitioner called up Agaton Samson, Rustan's Branch Manager, and apologized for the incident. Petitioner even begged Samson that he would just pay for the squid heads. Samson replied that it is not within his power to forgive him.[6]

On June 19, 2001, petitioner underwent inquest proceedings for qualified theft before Assistant Prosecutor Amado Y. Pineda. Although petitioner admitted that he was in possession of the plastic bag containing the squid heads, he denied stealing them because he actually paid for them. As proof, petitioner presented a receipt. The only fault he committed was his failure to immediately show the purchase receipt when he was accosted because he misplaced it when he changed his clothes. He also alleged that the squid heads were already "scraps" as these were not intended for cooking. Neither were the squid heads served to customers. He bought the squid heads so that they could be eaten instead of being thrown away. If he intended to steal from respondent, he could have stolen other valuable items instead of scrap.[7]

Assistant Prosecutor Pineda believed the version of petitioner and recommended the dismissal of the case for "lack of evidence."[8]

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[5] *Id.* at 302-303.

[6] *Id.* at 303-304.

[7] *Id.* at 45-46.

[8] *Id.* at 46.

The recommendation was approved upon review by City Prosecutor Feliciano Aspi.[9]

Notwithstanding the dismissal of the complaint, respondent, on June 25, 2001, required petitioner to explain in writing within forty-eight (48) hours why he should not be terminated in view of the June 18, 2001 incident. Respondent also placed petitioner under preventive suspension.[10]

On June 29, 2001, petitioner was informed that a formal investigation would be conducted by the Legal Department on July 6, 2001.[11]

Petitioner and his counsel attended the administrative investigation where he reiterated his defense before the inquest prosecutor. Also in attendance were Aranas and Magtangob, who testified on the circumstances surrounding the apprehension of petitioner; Samson, the branch manager to whom petitioner allegedly apologized for the incident; and Zenaida Castro, cashier, who testified that the squid heads were not paid.

Respondent did not find merit in the explanation of petitioner. Thus, petitioner was dismissed from service on July 26, 2001.[12] At that time, petitioner had been under preventive suspension for one (1) month.

Aggrieved, petitioner filed a complaint for illegal dismissal against respondent. He also prayed for unpaid salaries/wages, overtime pay, as well as moral and exemplary damages, attorney's fees, and service charges.[13]

Labor Arbiter, NLRC, and CA Dispositions

On July 24, 2002, Labor Arbiter Felipe P. Pati dismissed[14] the complaint.

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[9] *Id.* at 50.

[10] *Id.* at 203.

[11] *Id.* at 204.

[12] *Id.* at 207.

[13] *Id.* at 69-75.

[14] *Id.* at 84-94. NLRC Case No. NCR-S-30-09-04047-01.

IN VIEW OF THE FOREGOING, the complaint for illegal dismissal should be DISMISSED for lack of merit.

SO ORDERED.[15]

According to the Labor Arbiter, the nature of the responsibility of petitioner "was not that of an ordinary employee."[16] It then went on to categorize petitioner as a supervisor in "a position of responsibility where trust and confidence is inherently infused."[17] As such, it behooved him "to be more knowledgeable if not the most knowledgeable in company policies on employee purchases of food scrap items in the kitchen."[18] Per the evidence presented by respondent, petitioner breached company policy which justified his dismissal.

Petitioner appealed to the National Labor Relations Commission (NLRC).[19] On April 10, 2003, the NLRC reversed[20] the Labor Arbiter in the following tenor:

WHEREFORE, the decision appealed from is hereby SET ASIDE and complainant's dismissal declared illegal. Further, respondent is hereby ordered to reinstate complainant to his former position without loss of seniority rights and other benefits and paid backwages computed from time of dismissal up to the finality of this decision which as of this date amounts to ₱269,854.16.

All other claims are denied for want of basis.

SO ORDERED.[21]

The NLRC held that the position of complainant is not supervisory covered by the trust and confidence rule.[22] On the

[15] *Id.* at 94.

[16] *Id.* at 91.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 95-104.

[20] *Id.* at 116-123. NLRC CA 033170-02. Penned by Commissioner Tito F. Genilo, with Commissioner Lourdes C. Javier, concurring.

[21] *Id.* at 123.

[22] *Id.* at 121.

contrary, petitioner is a mere rank-and-file employee.[23] The evidence is also wanting that petitioner committed the crime charged.[24] The NLRC did not believe that petitioner would trade off almost thirty-one (31) years of service for ₱50.00 worth of squid heads.[25]

The NLRC further ruled that petitioner was illegally dismissed as respondent failed to establish a just cause for dismissal.[26] However, the claim for damages was denied for lack of evidence.[27]

The motion for reconsideration[28] having been denied,[29] respondent brought the matter to the Court of Appeals (CA) via a petition for *certiorari* under Rule 65 of the 1997 Rules on Civil Procedure.[30] On July 12, 2004, the CA rendered the assailed decision,[31] with the following *fallo*:

> WHEREFORE, the petition is **GRANTED**. The challenged resolutions of April 10, 2003 and July 31, 2003 of public respondent NLRC are **REVERSED** and **SET ASIDE**. The decision of the Labor Arbiter of July 24, 2002, dismissing private respondent's complaint is **REINSTATED**.
>
> SO ORDERED.[32]

In reversing the NLRC, the CA opined that the position of petitioner was supervisory in nature.[33] The CA also held that

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[23] *Id.* at 122.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.* at 123.

[28] *Id.* at 124-129.

[29] *Id.* at 133-134.

[30] *Id.* at 138-156.

[31] *Id.* at 25-33. CA-G.R. SP No. 80131. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Cancio C. Garcia (a retired member of this Court) and Remedios Salazar-Fernando, concurring.

[32] *Rollo,* p. 32.

[33] *Id.* at 29.

the evidence presented by respondent clearly established loss of trust and confidence on petitioner.[34] Lastly, the CA, although taking note of the long years of service of petitioner and his numerous awards, refused to award separation pay in his favor. According to the CA, "the award of separation pay cannot be sustained under the social justice theory" because the instant case "involves theft of the employer's property."[35]

Petitioner filed a motion for reconsideration[36] which was denied.[37] Left with no other recourse, petitioner availed of the present remedy.[38]

Issues

Petitioner in his Memorandum[39] imputes to the CA the following errors, to wit:

> I. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONCLUDED THAT THE POSITION OF THE PETITIONER BEING AN ASSISTANT COOK AS A SUPERVISORY POSITION FOR BEING CONTRADICTORY TO THE EVIDENCE ON RECORD.
>
> II. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT CONCLUDED THAT THE DOCTRINE OF TRUST AND CONFIDENCE APPLIES AGAINST THE PETITIONER TO JUSTIFY HIS DISMISSAL FROM EMPLOYMENT FOR BEING CONTRADICTORY TO THE EVIDENCE ON RECORD.[40] (Underscoring supplied)

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[34] *Id.* at 30.

[35] *Id.* at 32.

[36] *Id.* at 35-41.

[37] *Id.* at 52-53.

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

[39] *Id.* at 283-295.

[40] *Id.* at 287.

For a full resolution of the issues in the instant case, the following questions should be answered: (1) Is the position of petitioner supervisory in nature which is covered by the trust and confidence rule? (2) Is the evidence on record sufficient to conclude that petitioner committed the crime charged? and (3) Assuming that the answer is in the affirmative, is the penalty of dismissal proper?

Our Ruling

I. The position of petitioner is supervisory in nature which is covered by the trust and confidence rule.

The nature of the job of an employee becomes relevant in **termination of employment by the employer** because the rules on termination of managerial and supervisory employees are different from those on the rank-and-file. Managerial employees are tasked to perform key and sensitive functions, and thus are bound by more exacting work ethics.[41] As a consequence, managerial employees are covered by the trust and confidence rule.[42] The same holds true for supervisory employees occupying positions of responsibility.[43]

There is no doubt that the position of petitioner as chief cook is supervisory in nature. A chief cook directs and participates in the preparation and serving of meals; determines timing and sequence of operations required to meet serving times; and inspects

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[41] *Gonzales v. National Relations Labor Commission,* G.R. No. 131653, March 26, 2001, 355 SCRA 195.

[42] *Caingat v. National Labor Relations Commission,* G.R. No. 154308, March 10, 2005, 453 SCRA 142; *Sulpicio Lines, Inc. v. Gulde,* G.R. No. 149930, February 22, 2002, 377 SCRA 525; *Sanchez v. National Labor Relations Commission,* G.R. No. 124348, August 19, 1999, 312 SCRA 727.

[43] *Cruz v. Coca-Cola Bottlers Phils., Inc.,* G.R. No. 165586, June 15, 2005, 460 SCRA 340; *Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW,* G.R. No. 148205, February 28, 2005, 452 SCRA 480; *Tan v. National Labor Relations Commission,* G.R. No. 128290, November 24, 1998, 299 SCRA 169, 183; *Filipro, Inc. v. National Labor Relations Commission,* G.R. No. 70546, October 16, 1986, 145 SCRA 123; *Lamsam Trading, Inc. v. Leogardo, Jr.,* G.R. No. 73245, September 30, 1986, 144 SCRA 571.

galley and equipment for cleanliness and proper storage and preparation of food.[44] Naturally, a chief cook falls under the definition of a supervisor, *i.e.*, one who, in the interest of the employer, effectively recommends managerial actions which would require the use of independent judgment and is not merely routinary or clerical.[45]

It has not escaped Our attention that petitioner changed his stance as far as his actual position is concerned. In his position paper, he alleged that at the time of his dismissal, he was "Chief Cook."[46] However, in his memorandum, he now claimed that he was an "Asst. Cook."[47] The ploy is clearly aimed at giving the impression that petitioner is merely a rank-and-file employee. The change in nomenclature does not, however, help petitioner, as he would still be covered by the trust and confidence rule. In *Concorde Hotel v. Court of Appeals*,[48] the Court categorically ruled:

> **Petitioner is correct insofar as it considered the nature of private respondent's position as assistant cook a position of trust and confidence**. As assistant cook, private respondent is charged with the care of food preparation in the hotel's coffee shop. He is also responsible for the custody of food supplies and must see to it that there is sufficient stock in the hotel kitchen. He should not permit food or other materials to be taken out from the kitchen without the necessary order slip or authorization as these are properties of the hotel. Thus, the nature of private respondent's position as assistant cook places upon him the duty of care and custody of Concorde's property.[49] (Emphasis supplied)

Of course, the ruling assumes greater significance if petitioner is the chief cook. A chief cook naturally performs greater functions

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[44] <http://en.wikipedia.org/wiki/Chief_Cook> (visited October 20, 2008).

[45] *A.D. Gothong Manufacturing Corporation Employee's Union-ALU v. Confesor*, G.R. No. 113638, November 16, 1999, 318 SCRA 58.

[46] *Rollo*, p. 69.

[47] *Id.* at 285.

[48] G.R. No. 144089, August 9, 2001, 362 SCRA 583.

[49] *Concorde Hotel v. Court of Appeals*, *id.* at 591.

and has more responsibilities than an assistant cook. *In eo quod plus sit simper inest et minimus*. The greater always includes the less. ***Ang malawak ay laging sumasakop sa maliit***.

II. The evidence on record is sufficient to conclude that petitioner committed the crime charged.

Security of tenure is a paramount right of every employee that is held sacred by the Constitution.[50] The reason for this is that labor is deemed to be "property"[51] within the meaning of constitutional guarantees.[52] Indeed, as it is the policy of the State to guarantee the right of every worker to security of tenure as an act of social justice,[53] such right should not be denied on mere speculation of any similar or unclear nebulous basis.[54] Indeed, the right of every employee to security of tenure is all the more secured by the Labor Code by providing that "the employer shall not terminate the services of an employee except for a just cause or when authorized" by law. Otherwise, an employee who is illegally dismissed "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."[55]

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[50] CONSTITUTION (1987), Art. XIII, Sec. 3 on Social Justice and Human Rights.

[51] *Id.*, Art. III, Sec. 1 of the Bill of Rights partly provides: "No person shall be deprived of life, liberty or property without due process of law x x x."

[52] *Philippine Movie Pictures Workers Association v. Premiere Productions, Inc.*, 92 Phil. 843 (1953).

[53] *Rance v. National Labor Relations Commission*, G.R. No. 68147, June 30, 1988, 163 SCRA 279.

[54] *Asia World Recruitment, Inc. v. National Labor Relations Commission*, G.R. No. 113363, August 24, 1999, 313 SCRA 1; *Philippine-Singapore Transport Services, Inc. v. National Labor Relations Commission*, G.R. No. 95449, August 18, 1997, 277 SCRA 506; *Tolentino v. National Labor Relations Commission*, G.R No. 75380, July 31, 1987, 152 SCRA 717.

[55] Labor Code, Art. 279.

Necessarily then, the employer bears the burden of proof to show the basis of the termination of the employee.[56]

In the case at bar, respondent has discharged its *onus* of proving that petitioner committed the crime charged. We quote with approval the observation of the CA in this regard:

> On this matter, petitioner presents as evidence the verified statement of security guard Aranas. Aranas positively saw the private in the act of bringing out the purloined squid heads. Similarly, the statement of security guard Magtangob attested to the commission by private respondent of the offense charged. Further, the verified statement of Samson, store manager of petitioner corporation who is in charge of all personnel, including employees of the Yum Yum Tree Coffee Shop of which private respondent was a former assistant cook, attested to the fact of private respondent seeking apology for the commission of the act. Likewise, the statement of Zenaida Castro (Castro), cashier of petitioner corporation's supermarket, Makati Branch, Ayala Center, Makati City, confirmed that indeed the 1.335 kilos of squid heads amounting to fifty pesos (₱50.00)per kilo, had not been paid for.[57]

The contention of petitioner that respondent merely imputed the crime against him because he was set to retire is difficult, if not impossible, to believe. Worth noting is the fact that petitioner failed to impute any ill will or motive on the part of the witnesses against him. As aptly observed by the Labor Arbiter:

> It seems unbelievable to believe that the apprehending officers up to the Manager, Mr. Samson, were all telling a lie as what complainant wants to portray when he alleged in his pleadings that he mentioned to the apprehending officers [that] he has a receipt for [the squid heads] and that he never apologized. This is

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[56] *De Jesus v. National Labor Relations Commission,* G.R. No. 151158, August 17, 2007, 530 SCRA 489, 498; *Arboleda v. National Labor Relations Commission,* G.R. No. 119509, February 11, 1999, 303 SCRA 38; *Agoy v. National Labor Relations Commission,* G.R. No. 112096, January 30, 1996, 252 SCRA 588; *Gesulgon v. National Labor Relations Commission,* G.R. No. 90349, March 5, 1993, 219 SCRA 561.

[57] *Rollo,* p. 30.

understandable on his part because complainant wants no loophole in his version. And an easy way out is to fabricate his allegations.[58]

We stress that the quantum of proof required for the application of the loss of trust and confidence rule is **not** proof beyond reasonable doubt. **It is sufficient that there must only be some basis for the loss of trust and confidence or that there is reasonable ground to believe, if not to entertain the moral conviction, that the employee concerned is responsible for the misconduct and that his participation in the misconduct rendered him absolutely unworthy of trust and confidence**.[59]

It is also of no moment that the criminal complaint for qualified theft against petitioner was dismissed. It is well settled that **the conviction of an employee in a criminal case is not indispensable to the exercise of the employer's disciplinary authority.**[60]

III. The penalty of dismissal is too harsh under the circumstances.

The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[61] The only condition is that the exercise of management prerogatives should

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[58] *Id.* at 92-93.

[59] *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg,* G.R. No. 145800, January 22, 2003, 395 SCRA 720; *Gonzales v. National Labor Relations Commission, supra* note 41.

[60] *Starlite Plastic Industrial Corporation v. National Labor Relations Commission,* G.R. No. 78491, March 16, 1989, 171 SCRA 315, 324, citing *Sea Land Service, Inc. v. National Labor Relations Commission,* G.R. No. 68212, May 24, 1985, 136 SCRA 544.

[61] *Hongkong and Shanghai Banking Corporation Employee's Union v. National Labor Relations Commission,* G.R. No. 125038, November 6, 1997, 281 SCRA 509; *Almodiel v. National Labor Relations Commission,* G.R. No. 100641, June 14, 1993, 223 SCRA 341; *Yuco Chemical Industries, Inc. v. Ministry of Labor and Employment,* G.R. No. 75656, May 28, 1990, 185 SCRA 727; *San Miguel Brewery Sales Force Union (PTGWO) v. Ople,* G.R. No. 53515, February 8, 1989, 170 SCRA 25; *Abbott Laboratories (Phils.), Inc. v. National Labor Relations Commission,* G.R. No. 76959, October 12, 1987, 154 SCRA 713.

not be done in bad faith[62] or with abuse of discretion.[63] Truly, while the employer has the inherent right to discipline, including that of dismissing its employees, this prerogative is subject to the regulation by the State in the exercise of its police power.[64]

In this regard, it is a hornbook doctrine that **infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary authority of the employer**.[65]

For example, in *Farrol v. Court of Appeals*,[66] the employee, who was a district manager of a bank, incurred a shortage of ₱50,985.37. He was dismissed although the funds were used to pay the retirement benefits of five employees of the bank.

[62] *Aparente, Sr. v. National Labor Relations Commission,* G.R. No. 117652, April 27, 2000, 331 SCRA 82; *Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission (Third Division),* 316 Phil. 335 (1995); *Maya Farms Employees Organization v. National Labor Relations Commission,* G.R. No. 106256, December 28, 1994, 239 SCRA 508; *Garcia v. Manila Times,* G.R. No. 99390, July 5, 1991, 224 SCRA 399; *Union Carbide Labor Union v. Union Carbide Philippines, Inc.,* G.R. No. 41314, November 13, 1992, 215 SCRA 554; *National Federation of Labor Unions v. National Labor Relations Commission,* G.R. No. 90739, October 3, 1991, 202 SCRA 346; *Philippine Telegraph and Telephone Corporation v. Laplana,* G.R. No. 76645, July 23, 1991, 199 SCRA 485; *Cruz v. Medina,* G.R. No. 73053, September 15, 1989, 177 SCRA 565; *San Miguel Brewery Sales Force Union (PTGWO) v. Ople, supra* note 61.

[63] *Pantranco North Express, Inc. v. National Labor Relations Commission,* G.R. No. 106516, September 21, 1999, 314 SCRA 740; *Palomares v. National Labor Relations Commission (5th Division),* G.R. No. 120064, August 15, 1997, 277 SCRA 439, 449; *Union Carbide Labor Union v. Union Carbide Philippines, supra* note 62, at 558; *Employees Association of the Philippine American Life Insurance Company v. National Labor Relations Commission,* G.R. No. 82976, July 26, 1991, 199 SCRA 628.

[64] *Manila Trading and Supply Co. v. Zulueta,* 69 Phil. 485 (1940).

[65] *Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission (Third Division), supra* note 62, at 343; *Radio Communications of the Philippines, Inc. v. National Labor Relations Commission,* G.R. No. 102958, June 25, 1993, 223 SCRA 656.

[66] G.R. No. 133259, February 10, 2000, 325 SCRA 331.

The employee was also able to return the amount, leaving a balance of only ₱6,995.37 of the shortage. The bank argued that under its rules, the penalty for the infraction of the employee is dismissal. The Court disagreed and held that the penalty of dismissal is too harsh. The Court took note that it is the first infraction of the employee and that he has rendered twenty-four (24) long years of service to the bank. In the words of **Mme. Justice Consuelo Ynares-Santiago**, "**the dismissal imposed on petitioner is unduly harsh and grossly disproportionate to the infraction which led to the termination of his services. A lighter penalty would have been more just, if not humane**."[67]

So too did the Court pronounce in *Felix v. National Labor Relations Commission*,[68] *Gutierrez v. Singer Sewing Machine Company*,[69] *Associated Labor Unions-TUCP v. National Labor Relations Commission*,[70] *Dela Cruz v. National Labor Relations Commission*,[71] *Philippine Long Distance Telephone Company v. Tolentino*,[72] *Hongkong and Shanghai Banking Corporation v. National Labor Relations Commission*,[73] *Permex, Inc. v. National Labor Relations Commission*,[74] *VH Manufacturing, Inc. v. National Labor Relations Commission*,[75] *A' Prime Security Services, Inc. v. National Labor Relations Commission*,[76] and *St. Michael's Institute v. Santos*.[77]

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[67] *Farrol v. Court of Appeals*, *id.* at 340.

[68] G.R. No. 148256, November 17, 2004, 442 SCRA 465; *Gutierrez v. Singer Sewing Machine Company*, G.R. No. 140982, September 23, 2003, 411 SCRA 512; *Associated Labor Unions-TUCP v. National Labor Relations Commission*, G.R. No. 120450, February 10, 1999, 302 SCRA 708.

[69] *Supra*

[70] *Supra* at 715-716.

[71] G.R. No. 119536, February 17, 1997, 268 SCRA 458, 471.

[72] G.R. No. 143171, September 21, 2004, 438 SCRA 555.

[73] *Supra* note 61.

[74] G.R. No. 125031, January 24, 2000, 323 SCRA 121.

[75] G.R. No. 130957, January 19, 2000, 322 SCRA 417.

[76] G.R. No. 107320, January 19, 2000, 322 SCRA 283.

[77] G.R. No. 145280, December 4, 2001, 371 SCRA 383.

In the case at bar, petitioner deserves compassion more than condemnation. At the end of the day, it is undisputed that: (1) petitioner has worked for respondent for almost thirty-one (31) years; (2) his tireless and faithful service is attested by the numerous awards[78] he has received from respondent; (3) the incident on June 18, 2001 was his first offense in his long years of service; (4) the value of the squid heads worth ₱50.00 is negligible; (5) respondent practically did not lose anything as the squid heads were considered scrap goods and usually thrown away in the wastebasket; (6) the ignominy and shame undergone by petitioner in being imprisoned, however momentary, is punishment in itself; and (7) petitioner was preventively suspended for one month, which is already a commensurate punishment for the infraction committed. Truly, petitioner has more than paid his due.

In any case, it would be useless to order the reinstatement of petitioner, considering that he would have been retired by now. Thus, in lieu of reinstatement, it is but proper to award petitioner separation pay computed at one-month salary for every year of service, a fraction of at least six (6) months considered as one whole year.[79] In the computation of separation pay, the period where backwages are awarded must be included.[80]

Word of caution.

We do not condone dishonesty. After all, honesty is the best policy. However, punishment should be commensurate with

[78] See note 3.

[79] *Farrol v. Court of Appeals, supra* note 66, at 340, citing *Jardine Davies, Inc. v. National Labor Relations Commission,* G.R. No. 76272, July 28, 1999, 311 SCRA 289, citing in turn, *Mabeza v. National Labor Relations Commission,* G.R. No. 118506, April 18, 1997, 271 SCRA 670; *Reformist Union of R.B. Liner, Inc. v. National Labor Relations Commission,* G.R. No. 120482, January 27, 1997, 266 SCRA 713; *Bustamante v. National Labor Relations Commission,* G.R. No. 111651, November 28, 1996, 265 SCRA 61; Presidential Decree 442, Art. 283, otherwise known as The Labor Code of the Philippines.

[80] *Id.*, citing *Jardine Davies, Inc. v. National Labor Relations Commission, supra,* citing in turn, *Guatson International Travel and Tours, Inc. v. National Labor Relations Commission,* G.R. No. 100322, March 9, 1994, 230 SCRA 815, 824.

the offense committed. The supreme penalty of dismissal is the death penalty to the working man. Thus, care should be exercised by employers in imposing dismissal to erring employees. The penalty of dismissal should be availed of as a last resort.

Indeed, the immortal words of Mr. Justice (later Chief Justice) Enrique Fernando ring true then as they do now: "where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not be visited with a consequence so severe. It is not only because of the law's concern for the workingman. There is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on the wage-earner."[81]

WHEREFORE, the appealed Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The Decision of the National Labor Relations Commission is *REINSTATED* with the *MODIFICATION* that petitioner is granted separation pay and backwages in lieu of reinstatement.

SO ORDERED.

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

[81] *Almira v. B.F. Goodrich Philippines, Inc.,* G.R. No. L-34974, July 25, 1974, 58 SCRA 120, 131.

THIRD DIVISION

[G.R. No. 167809. November 27, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **JOSEFINA R. DUMLAO, A. FLORENTINO R. DUMLAO, JR., STELLA DUMLAO-ATIENZA, and NESTOR R. DUMLAO, represented by Attorney-In-Fact, A. FLORENTINO R. DUMLAO, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW); JUST COMPENSATION NOT SETTLED PRIOR TO THE PASSAGE OF R.A. NO. 6657 SHALL BE COMPUTED IN ACCORDANCE THEREWITH, ALTHOUGH THE PROPERTY WAS ACQUIRED UNDER P.D. NO. 27, WITH SAID DECREE AND E.O. NO. 28 HAVING ONLY SUPPLETORY EFFECT; RATIONALE.— Needless to say, respondents have already been deprived of the use and dominion over their landholdings for a substantial period of time. In the interim, petitioner bank has abjectly failed to pay, much less to determine, the just compensation due to respondents. The law clearly recognizes that the exact value of lands taken under PD No. 27, or the just compensation to be given to the landowner must be determined with certainty before the land titles are transferred. Petitioner's gross failure to compensate respondents for loss of their land, while transferring the same to the farmer-beneficiaries, make it unjust to determine just compensation based on the guidelines provided by PD No. 27 and EO No. 228. Accordingly, just compensation should be computed in accordance with RA No. 6657 in order to give full effect to the principle that the recompense due to the landowner should be the full and fair equivalent of the property taken from the owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be **real, substantial, full, and ample.**

2. ID.; ID.; DETERMINATION OF JUST COMPENSATION IS A FUNCTION ADDRESSED TO THE COURTS.— The determination of just compensation is a function addressed to the courts of justice and may not be usurped by any other branch or official of the government.

3. ID.; ID.; ID.; FACTORS TO BE CONSIDERED.— It cannot be overemphasized that the just compensation to be given to the owner cannot be assumed and must be determined with certainty. Its determination involves the examination of the following factors specified in Section 17 of RA No. 6657, as amended, namely: (1) the cost of acquisition of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.

4. ID.; ID.; DATE OF TAKING OF THE SUBJECT LAND FOR PURPOSES OF COMPUTING JUST COMPENSATION SHOULD BE RECKONED FROM THE DATE OF ISSUANCE OF EMANCIPATION PATENTS.— The "taking" of the properties for the purpose of computing just compensation should be reckoned from the date of issuance of emancipation patents, and not on October 21, 1972, as petitioner insists. The nature of the land at that time determines the just compensation to be paid.

5. ID.; ID.; PAYMENT OF JUST COMPENSATION MUST BE WITHIN A REASONABLE PERIOD FROM THE TAKING OF PROPERTY.— [T]o wait for the DAR valuation despite its unreasonable neglect and delay in processing the four properties' claimfolders is to violate the elementary rule that payment of just compensation must be within a reasonable period from the taking of property. *Cosculluela v. Court of Appeals* could not have been clearer: **Just compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking.** Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequence of

being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. x x x.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS; CASE AT BAR.— The principle of exhaustion of administrative remedies is a relative one and is flexible depending on the peculiarity and uniqueness of the factual and circumstantial settings of a case. It is disregarded: **when to require exhaustion of administrative remedies would be unreasonable; when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant;** Here, to require exhaustion of administrative remedies would be unreasonable. What is more, judicial intervention is necessary so as not to unduly prejudice the landowners. Respondents have long been deprived of their landholdings, yet compensation has been withheld from them. Accordingly, to make respondents wait for the DAR to process the claimfolders of the remaining four properties would be unreasonable, unjust and manifestly prejudicial to them.

7. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW); LANDOWNERS HAVE RIGHT OF RETENTION OVER THEIR LANDS; RETAINED AREA, DEFINED.— The right of retention is constitutionally guaranteed, subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to anymore leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process. The opinion of the MARO that respondents are not entitled to retain areas out of their landholdings because they applied for the same after the grace period set by the government fails to persuade. A landowner whose land was taken pursuant to PD No. 27 has a right to retain seven hectares of land, provided that the landowner is cultivating the area or will now cultivate it. Those who did not

avail of their rights of retention under PD No. 27 are entitled to exercise the same under Section 6 of RA No. 6657.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Cortez & Reyna Law Firm for respondents.

D E C I S I O N

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

IN determining just compensation for lands covered by the government's Operation Land Transfer, which law applies – Presidential Decree (PD) No. 27[1] or Republic Act (RA) No. 6657[2] known as the Comprehensive Agrarian Reform (CARP) Law?

This and other related questions are brought to the Court via this petition for review on *certiorari*[3] of the Decision[4] of the Court of Appeals (CA) granting each of respondents a five-hectare retention area and ordering petitioner to pay them One Hundred Nine Thousand Pesos (₱109,000.00) per hectare for the excess of the retained area.

The Facts

Respondents Josefina R. Dumlao, A. Florentino R. Dumlao, Jr., Stella Dumlao-Atienza, and Nestor R. Dumlao, heirs of the deceased Florentino G. Dumlao, were the co-owners of several parcels of agricultural land with an aggregate area of 32.2379 hectares situated at Villaverde, Nueva Vizcaya.

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[1] Decreeing the Emancipation of Tenants From the Bondage of the Soil Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor. Issued on October 21, 1972.

[2] Effective on June 15, 1988.

[3] Rules of Civil Procedure (1997), Rule 45.

[4] *Rollo*, pp. 3-23. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring. Dated February 16, 2005.

The properties are covered by: (1) Transfer Certificate of Title (TCT) No. T-1180 with an area of 11.33 hectares;[5] (2) TCT No. 41508 consisting of 6.2201 hectares;[6] (3) TCT No. 41507 with an area of 4.0001 hectares;[7] (4) TCT No. 41506 consisting of 3.9878 hectares;[8] (5) TCT No. 41504 consisting of 5.0639 hectares; and (6) TCT No. 41505 with an area of 1.6360 hectares.

The properties were placed under Operation Land Transfer by the Department of Agrarian Reform (DAR).[9] However, the definite time of actual taking was not stated [10]

Pursuant to PD No. 27 and Executive Order (EO) No. 228,[11] a preliminary valuation was made by the DAR on the landholdings covered by TCT Nos. 41504 and T-1180 with a total area of 16.3939 hectares. Finding the valuation to be correct, petitioner bank informed respondents of the said valuation.[12] Payments were then deposited in the name of the landowners.[13] Meanwhile, processing of the properties covered by the other four (4) titles, namely, TCT Nos. 41505, 41506, 41507 and 41508, remains pending with the DAR.[14]

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[5] Registered in the names of Florentino G. Dumlao and Josefina R. Dumlao.

[6] Registered in the name of A. Florentino R. Dumlao, Jr.

[7] Registered in the name of Stella R. Dumlao-Atienza.

[8] Registered in the name of Stella R. Dumlao-Atienza.

[9] *Rollo,* p. 61.

[10] *Id.* at 68.

[11] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27, Determining the Value of Remaining Unvalued Rice and Corn Lands Subject of PD No. 27, and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner. Issued on July 17, 1987.

[12] *Rollo,* p. 32.

[13] *Id.* at 63.

[14] *Id.* at 32.

On July 9, 1995, respondents filed a Complaint[15] before the Regional Trial Court (RTC) in Nueva Vizcaya, Branch 28,[16] for determination of just compensation for their properties. It was claimed, *inter alia*, that they were not paid their just compensation for the properties despite issuance of certificates of land transfer to farmer-beneficiaries by the DAR.[17] They prayed for the appointment of three (3) competent and disinterested commissioners who would determine and report to the court the just compensation of their landholdings based on their current fair market value, without prejudice to their retention rights. They also asked for payment of actual and moral damages, attorney's fees, and costs of suit.[18]

In its Answer, the DAR, represented by the Municipal Agrarian Reform Office (MARO) and Provincial Agrarian Reform Office (PARO), posited that the complaint lacked a cause of action and that the RTC did not have jurisdiction. Under Section 50 of RA No. 6657, it is the Department of Agrarian Reform Adjudication Board (DARAB) which is vested with primary and original jurisdiction over land valuation, while the RTC as a Special Agrarian Court may review the DARAB's decision.[19]

Petitioner, which was impleaded as defendant in the valuation case before the trial court, likewise filed its Answer, raising a similar line of defense.[20] Petitioner added that while payment for the properties covered by TCT Nos. T-1180 and T-41504 were already deposited in trust for respondents, the claimfolders

[15] Entitled *Josefina R. Dumlao, A. Florentino R. Dumlao, Jr., Stella Dumlao-Atienza, Nestor R. Dumlao, represented by Attorney-In-Fact, A. Florentino R. Dumlao, Jr. v. Rafael R. Alcazar, The Municipal Agrarian Reform Officer, Villaverde, Nueva Vizcaya, The Provincial Agrarian Reform Officer of Nueva Vizcaya, Land Bank of the Philippines, Solano Branch, Nueva Vizcaya*. Docketed as Case No. 6000.

[16] Sitting as Special Agrarian Court.

[17] *Rollo,* p. 61.

[18] *Id.* at 61-62.

[19] *Id.* at 62.

[20] *Id.*

for the remaining four properties is still with the DAR. Thus, the filing of the complaint against petitioner was premature.

After the termination of pre-trial conference, respondent Atty. A. Florentino Dumlao, Jr. submitted his affidavit on which he was cross-examined. Following the submission of their testimonial and documentary evidence, respondents rested their case.

Upon motion of respondents, the RTC, on April 15, 1998, appointed Atty. John D. Balasya, Clerk of Court, as commissioner. He was mandated to "receive, examine, and ascertain valuation of the properties."[21] Believing that the valuation of the properties is not commensurate to their true value and, hence, not a "just" compensation, Atty. Balasya stated in his Commissioner's Report dated July 21, 1998,[22] that:

> The evidences submitted by the parties as well as those gathered by the undersigned show that only two (2) parcels of land were valued under Presidential Decree No. 27. The parcels of land are located in Nagbitin, Villaverde, Nueva Vizcaya and per Exhibit "O", the unirrigated riceland in Nagbitin are considered first class agricultural lands. Under Tax Ordinance No. 96-45 adopting and authorizing the 1996 Schedule of Fair Market Values for the Different Classes of Real Property in Nueva Vizcaya (Exhibit "G" and Exhibit "G-1") the market value of first class unirrigated Riceland in the Municipality of Villaverde is ₱109,000.00 Per Department Order No. 56-97 dated May 27, 1997 issued by the Department of Finance, Re: Implementation of the Revised Zonal Values of Real Properties in all Municipalities under the jurisdiction of Revenue District Office No. 14 (Bayombong, Nueva Vizcaya), Revenue Region No. 3, Tuguegarao, Cagayan for Internal Revenue Tax purposes, the zonal value of land in other *Barangays* in Villaverde is ₱60.00/square meter.
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> In summary, the undersigned believes that the valuation of respondents Land Bank of the Philippines and the Department of Agrarian Reform is not commensurate to the definition of just compensation x x x.[23]

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[21] *Id.* at 63.

[22] Records, pp. 147-149.

[23] *Id.* at 148-149.

RTC Ruling

On October 14, 1998, the RTC issued a decision,[24] the *fallo* of which reads:

> WHEREFORE, the Court hereby orders the remand of the case with respect to TCT Nos. 1180 and T-41504 to the proper DAR agency for further proceedings and orders the dismissal of the case with respect to TCT Nos. T-41508, T-41507, T-41506, and T-41505 for having been prematurely filed, there being no preliminary valuation made yet on the said parcels of land. No pronouncement as to costs.
>
> SO ORDERED.[25]

Respondents moved for reconsideration. Consequently, on December 21, 1998, the trial court modified[26] its decision in the following manner:

> WHEREFORE, premises considered, in the higher interest of justice, the Court MODIFIES its October 14, 1998 decision by ordering plaintiffs to adduce additional evidence to support their contentions under PD 27/EO 228 within 30 days from receipt of this Order furnishing a copy thereof to the defendants who are given 15 days from receipt to comment thereon. Thereafter, the matter shall be deemed submitted for resolution.
>
> SO ORDERED.[27]

Instead of adducing additional evidence, respondents filed a motion for reconsideration of the trial court's December 21, 1998 order. Positing that the additional evidence required by the court pertains to the formula under PD No. 27, respondents insisted on ₱109,000.00 per hectare, the market value of the properties, as just compensation.[28] Accordingly, the trial court,

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[24] CA *rollo*, pp. 135-138.

[25] *Id.* at 137-138.

[26] *Id.* at 139-140.

[27] *Id.* at 140.

[28] Records, pp. 192-193.

on March 18, 1999, issued another order,[29] the dispositive portion of which states:

> WHEREFORE, premises considered, the Court hereby sets the just compensation in the amount of ₱6,912.50 per hectare for lot covered by TCT No. T-1180 and the amount provided for in the Land Valuation Summary and Farmers Undertaking for lot covered by TCT No. T-41504 to be paid to the plaintiffs with interest from the time of the taking until fully paid.
>
> SO ORDERED.[30]

CA Disposition

Dissatisfied with the March 18, 1999 RTC Order, respondents appealed to the CA. On February 16, 2005, the CA rendered a decision[31] modifying the trial court's ruling, *viz.*:

> WHEREFORE, in view of the foregoing, the trial court's decision is hereby MODIFIED. The plaintiffs-appellants' right of retention is recognized. Plaintiffs-appellants Josefina, A. Florentino, Jr. and Stella, all surnamed Dumlao are each entitled to retain five (5) hectares pursuant to the provisions of R.A. 6657.
>
> The excess in area after application of the right of retention is valued at One Hundred Nine Thousand (₱109,000.00) Pesos per hectare with interest at the prevailing rate from the time of taking until fully paid.
>
> No costs.
>
> SO ORDERED.[32]

The CA declared that the definite time of the actual taking of the subject properties is not certain.[33] Further, there is no doubt that the transfer of the subject landholdings is governed

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[29] CA *rollo,* pp. 141-142.

[30] *Id.* at 142.

[31] *Supra* note 4.

[32] *Rollo,* pp. 73-74.

[33] *Id.* at 68.

by PD No. 27.[34] However, after the passage of RA No. 6657, the formula relative to valuation under PD No. 27 no longer applies.[35] The appellate court held:

> The trial court, therefore, in the determination of just compensation is not confined within the valuation provisions of P.D. 27. It can depart from it so long as the valuation assigned on the land transferred is within the meaning of the phrase "just compensation" provided for in *J.M. Tuazon Co. vs. Land Tenure Administration* (31 SCRA 413).[36]

Relying on the Commissioner's Report, the CA assigned the lower value of ₱109,000.00 per hectare as just compensation for the subject properties.[37]

Issues

Petitioner bank has resorted to the present recourse, imputing to the CA the following errors:

A.

WHEN THE CHALLENGED DECISION ADHERED TO THE COMMISSIONER'S REPORT AND FIXED THE VALUE OF THE LANDHOLDINGS AT ₱109,000.00 PER HECTARE WITH INTEREST AT THE PREVAILING RATE FROM THE TIME OF TAKING UNTIL FULLY PAID, WORKING A MODIFICATION OF THE LEGALLY PRESCRIBED BASIC FORMULA FOR DETERMINING THE JUST COMPENSATION OF LANDS ACQUIRED THROUGH OPERATION LAND TRANSFER (OLT), CONTRARY TO THE CLEAR MANDATE OF PD 27/EO 228.

B.

WHEN THE CHALLENGED DECISION DECLARED THAT OCTOBER 21, 1972 CANNOT BE DEEMED AS THE DATE OF TAKING OF THE SUBJECT PROPERTIES.

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[34] *Id.* at 68.

[35] *Id.* at 70.

[36] *Id.* at 71.

[37] *Id.* at 72.

C.

WHEN THE CHALLENGED DECISION DECLARED THAT RESPONDENTS' ENTIRE LANDHOLDINGS ARE COVERED BY PD 27 AND THAT RESPONDENTS JOSEFINA, A. FLORENTINO, JR., AND STELLA ARE ENTITLED TO RETAIN FIVE (5) HECTARES EACH.[38] (Underscoring supplied)

Our Ruling

The just compensation due to respondents should be determined under the provisions of RA No. 6657.

Petitioner asserts that since the properties were acquired pursuant to PD No. 27, the formula for computing just compensation provided by said decree and EO No. 228 should apply. Respondents, on the other hand, insist on the application of RA No. 6657 with respect to the computation.

Petitioner is mistaken. The 1987 Constitution, specifically Article XIII on Social Justice and Human Rights, mandates the State's adoption of an agrarian reform program for the benefit of the common people.[39] The recognition of the need for genuine land reform, however, started earlier. PD No. 27, issued on October 21, 1972, more than a decade before the enactment of the 1987 Constitution, provided for the compulsory acquisition of private lands for distribution among tenant-farmers and specified the maximum retention limits for landowners.[40]

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[38] *Id.* at 37.

[39] SEC. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[40] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744 & 79777, July 14, 1989, 175 SCRA 343, 353-354.

The agrarian reform thrust was further energized with the enactment of EO No. 228 on July 17, 1987, when full land ownership was declared in favor of the beneficiaries of PD No. 27. The executive issuance also provided for the valuation of still unvalued covered lands, as well as the manner of their payment. On July 22, 1987, Presidential Proclamation No. 131, instituting a comprehensive agrarian reform program, as well as EO No. 229[41] providing the mechanics for its implementation, were likewise enacted.[42]

When the Philippine Congress was formally reorganized, RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, was immediately enacted. It was signed by President Corazon Aquino on June 10, 1988. This law, while considerably changing the earlier presidential issuances, including PD No. 27 and EO No. 228, nevertheless gave them suppletory effect insofar as they are not inconsistent with its provisions.[43]

On one hand, PD No. 27 provides the formula to be used in arriving at the exact total cost of the acquired lands:[44]

> For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, **the value of the land shall be equivalent to two and one half (2-½) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree**.
>
> The total cost of the land, including interest at the rate of six (6) per centum per annum, shall be paid by the tenant in fifteen (15) years of fifteen (15) equal annual amortizations. (Emphasis supplied)

Implementing the formula under PD No. 27, EO No. 228 states:

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[41] Providing the Mechanisms for the Implementation of the Comprehensive Agrarian Reform Program.

[42] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, supra* at 354.

[43] *Id.*; Republic Act No. 6657, Sec. 75.

[44] *Paris v. Alfeche,* G.R. No. 139083, August 30, 2001, 364 SCRA 110, 121.

SECTION 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the *Barangay* Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973 and related issuances and regulation of the Department of Agrarian Reform. **The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty-Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of *palay* on October 21, 1972**, or Thirty-One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, **and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner**. (Emphasis supplied)

Thus, under PD No. 27 and EO No. 228, the formula for computing the Land Value (LV) or Price Per Hectare (PPH) of rice and corn lands is:

$$2.5 \times AGP^{45} \times GSP^{46} = LV \text{ or } PPH$$

The parameters of PD No. 27 and EO No. 228 are manifestly different from the guidelines provided by RA No. 6657 for determining just compensation. Section 17 of RA No. 6657 is explicit:

Sec. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Due to the divergent formulae or guidelines presented by these laws, a number of cases have already been brought to the

[45] Average gross production.

[46] Government support price.

Court regarding which law applies in computing just compensation for landholdings acquired under PD No. 27. On this score, the Court has repeatedly held that if just compensation was not settled prior to the passage of RA No. 6657, it should be computed in accordance with said law, although the property was acquired under PD No. 27.

In the recent *Land Bank of the Philippines v. Heirs of Angel T. Domingo*,[47] We rejected the DAR's valuation of just compensation based on the formula provided by PD No. 27 and EO No. 228. We held then that Section 17 of RA No. 6657 is applicable. The latter law, being the **latest** law in agrarian reform, should control.

> When RA 6657 was enacted into law in 1988, the agrarian reform process in the present case was still incomplete as the amount of just compensation to be paid to Domingo had yet to be settled. Just compensation should therefore be determined and the expropriation process concluded under RA 6657.
>
> **Guided by this precept, just compensation for purposes of agrarian reform under PD 27 should adhere to Section 17 of RA 6657** x x x.

In *Land Bank of the Philippines v. Estanislao*,[48] the Court ruled that taking into account the passage of RA No. 6657 in 1988 pending the settlement of just compensation, it is that law which applies to landholdings seized under PD No. 27, with said decree and EO No. 288 having only suppletory effect. Prior to that declaration, the Court already decreed in *Land Bank of the Philippines v. Natividad*,[49] citing *Paris v. Alfeche*,[50] that:

> Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (6657) before the completion of the process, the

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[47] G.R. No. 168533, February 4, 2008.

[48] G.R. No. 166777, July 10, 2007, 527 SCRA 181.

[49] G.R. No. 127198, May 16, 2005, 458 SCRA 441.

[50] *Supra* note 44.

just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.[51]

Agrarian reform is a revolutionary kind of expropriation.[52] The recognized rule in expropriation is that title to the expropriated property shall pass from the owner to the expropriator only upon full payment of the just compensation.[53] Thus, payment of just compensation to the landowner is indispensable.

In fact, Section 4, Article XIII of the 1987 Constitution mandates that the redistribution of agricultural lands shall be subject to the payment of just compensation. The deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights but should also not make an insurmountable obstacle to a successful agrarian reform program. Hence, the landowner's right to just compensation should be balanced with agrarian reform.[54]

In the case under review, the agrarian reform process was not completed. The just compensation to be paid respondents was not settled prior to the enactment of RA No. 6657, the law subsequent to PD No. 27 and EO No. 228. In fact, the non-payment of just compensation is precisely the reason why respondents filed a petition for the determination of just compensation before the RTC on July 13, 1995.

The records do not show when respondents or their father, Florentino Dumlao, was formally notified of the expropriation.

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[51] *Land Bank of the Philippines v. Natividad, supra* at 451-452.

[52] *Paris v. Alfeche, supra* note 44, at 386.

[53] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, supra* note 40, at 389-390, citing *Kennedy v. Indianapolis,* 103 US 599, 26 L. Ed. 550; *Rubottom v. Mclure,* 4 Blkf. 508; *Rexford v. Knight,* 11 NY 314; *Visayan Refining Co. v. Camus and Paredes,* 40 Phil. 550 (1919).

[54] *Land Bank of the Philippines v. Heirs of Angel T. Domingo, supra* note 47.

The records, however, bear out that the bank sent Florentino Dumlao a letter stating that it had approved the land transfer claim involving that property covered by TCT No. T-1180 on November 5, 1990. Moreover, the various Land Valuation Summary and Farmers Undertakings showing the valuation of the land transferred to the farmers-beneficiaries were approved on May 17, 1989[55] and July 21, 1989.[56] It is thus crystal clear that even after the passage of RA No. 6657 in 1988, neither petitioner nor the DAR had settled the matter of just compensation with respondents as landowners.

Besides, RA No. 6657 applies to rice and corn lands covered by PD No. 27. In *Paris v. Alfeche*,[57] the Court explained:

> Considering the passage of RA 6657 before the completion of the application of the agrarian reform process to the subject lands, the same should now be completed under the said law, with PD 27 and EO 228 having only suppletory effect. This ruling finds support in *Land Bank of the Philippines v. CA,* wherein the Court stated:
>
> "**We cannot see why Sec. 18 of RA 6657 should not apply to rice and corn lands under PD 27**. Section 75 of RA 6657 clearly states that the provisions of PD 27 and EO 228 shall only have a suppletory effect. Section 7 of the Act also provides —
>
> > Sec. 7. *Priorities.*— The DAR, in coordination with the PARC shall plan and program the acquisition and distribution of all agricultural lands through a period of ten (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:
> >
> > Phase One: *Rice and Corn lands under P.D. 27;* all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform; x x x and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the

[55] *Rollo*, p. 114; Exhibit "2-b".

[56] *Id.* at 116-117; Exhibits "3-b" and "3-c".

[57] *Supra* note 44.

> implementation to be completed within a period of not more than four (4) years.
>
> **This eloquently demonstrates that RA 6657 includes PD 27 lands among the properties which the DAR shall acquire and distribute to the landless. And to facilitate the acquisition and distribution thereof, Secs. 16, 17, and 18 of the Act should be adhered to**. In *Association of Small Landowners of the Philippines v. Secretary of Agrarian Reform*, this Court applied the provisions (of) RA 6657 to rice and corn lands when it upheld the constitutionality of the payment of just compensation for PD 27 lands through the different modes stated in Sec. 18." (Emphasis supplied)

Verily, there is nothing to prevent Section 17 of RA No. 6657 from being applied to determine the just compensation for lands acquired under PD No. 27.

In *Natividad*,[58] the Court ruled that the DAR's failure to determine the just compensation for a considerable length of time made it inequitable to follow the guidelines provided by PD No. 27 and EO No. 228. Hence, RA No. 6657 should apply. The same rationale was followed in *Meneses v. Secretary of Agrarian Reform*.[59] There, the Court noted that despite the lapse of more than thirty (30) years since the expropriation of the property in 1972, petitioners had yet to benefit from it, while the farmer-beneficiaries were already harvesting the property's produce. Thus, RA No. 6657 was applied instead of PD No. 27 in determining just compensation.

In *Meneses*, the Court compared the conflicting rulings in *Gabatin v. Land Bank of the Philippines*,[60] cited by petitioner, and *Land Bank of the Philippines v. Natividad*.[61] This Court affirmed *Natividad*, stating that it would be more equitable to apply the same due to the circumstances obtaining, *i.e.* the more than 30-year delay in the payment of just compensation.

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[58] *Supra* note 49.

[59] G.R. No. 156304, October 23, 2006, 505 SCRA 90.

[60] G.R. No. 148223, November 25, 2004, 444 SCRA 176.

[61] *Supra* note 49.

The application of RA No. 6657 due to the inequity faced by landowners continued in *Lubrica v. Land Bank of the Philippines*.[62] The landowners were also deprived of their properties in 1972 but had yet to receive their just compensation even after the passage of RA No. 6657. Since the landholdings were already subdivided and distributed to the farmer-beneficiaries, the Court, speaking through Justice Consuelo Ynares-Santiago, deemed it unreasonable to compute just compensation using the values at the time of taking in 1972 as dictated by PD No. 27, and not at the time of payment pursuant to RA No. 6657.

We find no cogent reason not to apply the same ratiocination here. In the case at bar, emancipation patents, and eventually, transfer certificates of title, were issued to the farmer-beneficiaries[63] at least twenty-eight (28) years ago. On March 16, 1990, the DAR acknowledged that the property covered by TCT No. T-1180 had already been distributed to farmer-beneficiaries through emancipation patents. As early as June 10, 1975, a portion of the same property was conveyed to a certain Rosalina Abon, although this was not annotated on the owner's title.[64]

Needless to say, respondents have already been deprived of the use and dominion over their landholdings for a substantial period of time. In the interim, petitioner bank has abjectly failed to pay, much less to determine, the just compensation due to respondents. The law clearly recognizes that the exact value of lands taken under PD No. 27, or the just compensation to be given to the landowner must be determined with certainty before the land titles are transferred.[65] Petitioner's gross failure to compensate respondents for loss of their land, while transferring the same to the farmer-beneficiaries, make it unjust to determine

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[62] G.R. No. 170220, November 20, 2006, 507 SCRA 415.

[63] *Rollo,* p. 61.

[64] Records, p. 79; Exhibit "J".

[65] *Paris v. Alfeche, supra* note 44.

just compensation based on the guidelines provided by PD No. 27 and EO No. 228.

Accordingly, just compensation should be computed in accordance with RA No. 6657 in order to give full effect to the principle that the recompense due to the landowner should be the full and fair equivalent of the property taken from the owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be **real, substantial, full, and ample**.[66]

The determination of just compensation is a function addressed to the courts of justice and may not be usurped by any other branch or official of the government.[67] However, the determination made by the trial court, which relied solely on the formula prescribed by PD No. 27 and EO No. 228, is grossly erroneous. The amount of ₱6,912.50 per hectare, which is based on the DAR valuation of the properties "at the time of their taking in the 1970s,"[68] does not come close to a full and fair equivalent of the property taken from respondents.

Meanwhile, the CA's act of setting just compensation in the amount of ₱109,000.00 would have been a valid exercise of this judicial function, had it followed the mandatory formula prescribed by RA No. 6657. However, the appellate court merely chose the lower of two (2) values specified by the commissioner as basis for determining just compensation, namely: (a) ₱109,000.00 per hectare as the **market value** of first class unirrigated rice land in the Municipality of Villaverde; and (b) ₱60.00 per square meter as the **zonal value** of the land in other *barangays* in Villaverde. This is likewise erroneous because it does not adhere to the formula provided by RA No. 6657.

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[66] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, supra* note 40, at 378-379.

[67] *Id.* at 380.

[68] Records, p. 195.

It cannot be overemphasized that the just compensation to be given to the owner cannot be assumed and must be determined with certainty.[69] Its determination involves the examination of the following factors specified in Section 17 of RA No. 6657, as amended, namely: (1) the cost of acquisition of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.[70]

Section 17 was converted into a formula by the DAR through Administrative Order (AO) No. 6, Series of 1992,[71] as amended by AO No. 11, Series of 1994,[72] the pertinent portions of which provide:

A. There shall be one basic formula for the valuation of lands covered by [Voluntary Offer to Sell] or [Compulsory Acquisition] regardless of the date of offer or coverage of the claim:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant and applicable.

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[69] *Paris v. Alfeche, supra* note 44.

[70] *Land Bank of the Philippines v. Banal,* G.R. No. 143276, July 20, 2004, 434 SCRA 543, 550-551; *Lubrica v. Land Bank of the Philippines, supra* note 62, at 424.

[71] Rules and Regulations Amending the Valuation of Lands Voluntarily Offered and Compulsorily Acquired as Provided for Under Administrative Order No. 17, Series of 1989, as Amended, Issued Pursuant to Republic Act No. 6657. Issued on October 30, 1992.

[72] Revising the Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired As Embodied in Administrative Order No. 6, Series of 1992. Issued on September 13, 1994.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of the land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.

xxx xxx xxx

A.6 The basic formula in the grossing-up of valuation inputs such as LO's Offer, Sales Transaction (ST), Acquisition Cost (AC), Market Value Based on Mortgage (MVM) and Market Value per Tax Declaration (MV) shall be:

Grossed-up Valuation Input	=	Valuation input x Regional Consumer Price Index (RCPI) Adjustment Factor

The RCPI Adjustment Factor shall refer to the ratio of RCPI for the month issued by the National Statistics Office as of the date when the claimfolder (CF) was received by LBP from DAR for processing or, in its absence, the most recent available RCPI for the month issued prior to the date of receipt of CF from DAR and the RCPI for the month as of the date/effectivity/registration of the valuation input. Expressed in equation form:

RCPI for the Month as of the Date of Receipt of Claimfolder by LBP from DAR or the Most recent RCPI for the Month

$$\text{RCPI Adjustment Factor} = \frac{\text{RCPI Issued Prior to the Date of Receipt of CF}}{\text{RCPI for the Month Issued as of the Date/Effectivity/Registration of the Valuation Input}}$$

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

Where: CNI = Capitalized Net Income

AGP = Latest available 12-month's gross production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA.

SP = The average of the latest available 12 month's selling prices prior to the date of receipt of the claimfolder by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/coverage shall continue to use the 70% NIR. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

.12 = Capitalization Rate

xxx xxx xxx

C. CS shall refer to any one or the average of all the applicable sub-factors, namely, ST, AC and MVM:

Where: ST = Sales Transactions as defined under Item C.2
AC = Acquisition Cost as defined under Item C.3
MVM = Market Value Based on Mortgage as defined under Item C.4

xxx xxx xxx

D. In the computation of Market Value per Tax Declaration (MV), the most recent Tax Declaration (TD) and Schedule of Unit Market Value (SMV) issued prior to receipt of claimfolder by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of claimfolder by LBP from DAR for processing, in accordance with item II.A.A.6. (Emphasis and underscoring supplied)

While the determination of just compensation involves the exercise of judicial discretion, such discretion must be discharged within the bounds of the law.[73] The DAR, as the government agency principally tasked to implement the agrarian reform program, has the duty to issue rules and regulations to carry out the object of the law. The DAR administrative orders precisely filled in the details of Section 17 of RA No. 6657 by providing a basic formula by which the factors mentioned in the provision may be taken into account.[74] Special agrarian courts are not at liberty to disregard the formula devised to implement the said provision because unless an administrative order is declared invalid, courts have no option but to apply it.[75]

In his Report, the Commissioner merely specified the market value of first class unirrigated ricelands in the municipality where the properties are located, as well as the zonal value of lands in

[73] *Land Bank of the Philippines v. Banal, supra* note 70, at 549-554, cited in *Land Bank of the Philippines v. Lim*, G.R. No. 171941, August 2, 2007, 529 SCRA 129, 135.

[74] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495, 507.

[75] *Id.*

other *barangays* in the same municipality. For their part, respondents attempted to prove the following: market value of unirrigated ricelands for the Municipality of Villaverde, set at ₱109,000.00 per hectare, pursuant to Sangguniang Bayan Tax Ordinance No. 96-45;[76] annual production of unirrigated ricefields in Villaverde, at 80 cavans during "*palagad*" cropping, and 101 cavans under regular cropping;[77] government support price for *palay* for the period October 1, 1990 to October 1995 at ₱6.00 per kilo, and from November 1, 1995 to the time of the filing of the petition at ₱8.00 per kilo.[78]

However, the records do not bear out if these factors are the only ones **relevant, present and applicable** in this case, so that just compensation can now be computed by the Court based on the formula provided by the DAR administrative orders. Based on the evidence adduced, it appears that market value and comparable net income (CNI) are being proved. However, CNI cannot be computed in the absence of information regarding cost of operations.[79]

We are thus compelled to remand the case to the court *a quo* to determine the final valuation of respondents' properties. The trial court is mandated to consider the factors provided under Section 17 of RA No. 6657, as translated into the formula prescribed by DAR AO No. 6-92, as amended by DAR AO No. 11-94.

Furthermore, upon its own initiative, or at the instance of any of the parties, the RTC may again appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute including the valuation of properties and to file a written report with the RTC.[80]

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[76] Records, pp. 74-76, Exhibit "G".

[77] *Id.* at 81; Exhibit "K".

[78] *Id.* at 82; Exhibit "N".

[79] DAR AO No. 06, Series of 1992, Sec. II(B), as amended by DAR AO No. 11, Series of 1994, Sec. 4.

[80] *Land Bank of the Philippines v. Lim, supra* note 73, at 142.

We next address the second issue – date of taking.

The "taking" of the properties for the purpose of computing just compensation should be reckoned from the date of issuance of emancipation patents, and not on October 21, 1972, as petitioner insists. The nature of the land at that time determines the just compensation to be paid.[81]

We cannot sustain petitioner's position that respondents' properties were statutorily taken on October 21, 1972, the date of effectivity of PD No. 27; that on that date, respondents were effectively deprived of possession and dominion over the land; and that when EO No. 228 fixed the basis in determining land valuation using the government support price of ₱35.00 for one cavan of 50 kilos of palay on October 21, 1972, it was consistent with the settled rule that just compensation is the value of the property at the time of the taking.[82]

In *Association of Small Landowners v. Secretary of Agrarian Reform*,[83] the Court held that title to the property expropriated shall pass from the owner to the expropriator only upon full payment of just compensation. The Court further held that:

> It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as [of] October 21, 1972 and declared that he shall be deemed the owner of a portion of land consisting of a family-sized farm except that no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmer's cooperative. **It was understood, however, that full payment of just compensation also had to be made first, conformably to the constitutional requirement**.[84] (Emphasis supplied)

In *Land Bank of the Philippines v. Estanislao*,[85] the Court declared that seizure of landholdings or properties covered by

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[81] *National Power Corporation v. Chiong*, G.R. No. 152436, June 20, 2003, 404 SCRA 527.

[82] *Rollo*, p. 236.

[83] *Supra* note 40.

[84] *Id.* at 390.

[85] *Supra* note 48, citing *Land Bank v. Natividad, supra* note 49.

PD No. 27 did not take place on October 21, 1972, but upon the payment of just compensation.

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the ***seizure*** *of the landholding did not take place on the date of effectivity of PD 27 but* ***would take effect on the payment of just compensation***.[86] (Emphasis in the original)

However, for purposes of computing just compensation, this Court recently declared in *Land Bank of the Philippines v. Heirs of Angel T. Domingo*[87] that the time of taking should be reckoned from the issue dates of emancipation patents.

> **The date of taking of the subject land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents**. An emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee. It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner.[88] (Emphasis supplied)

It is undisputed that emancipation patents were issued to the farmer-beneficiaries. However, their issuance dates are not shown. As such, the trial court should determine the date of issuance of these emancipation patents in order to ascertain the date of taking and proceed to compute the just compensation due to respondents, in accordance with RA No. 6657.

Now, to the third and final issue.

Respondents are entitled to payment of just compensation even on those properties which have not been processed by the DAR.

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[86] *Land Bank of the Philippines v. Estanislao, id.* at 187.

[87] *Supra* note 47.

[88] *Id.*

Petitioner admits that of respondents' landholdings, only those covered by TCT Nos. T-1180 and T-41504, totaling 16.3939 hectares, were processed and initially valued by the DAR. Pending initial processing by the DAR of the remaining landholdings, petitioner posits that it cannot be made to pay the amount of ₱109,000.00 per hectare for those covered by TCT Nos. 41508, 41507, 41506, and 41505, with an aggregate area of 17.2379 hectares.

The argument is specious for three reasons.

First, the determination of just compensation is judicial in nature. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of its functions, the courts still have the final say on what the amount of just compensation will be.[89]

In *Natividad,* the Court held that:

> [T]here is nothing contradictory between the DAR's primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, which includes the determination of questions of just compensation, and the **original and exclusive jurisdiction of regional trial courts over all petitions for the determination of just compensation**. The first refers to administrative proceedings, while the second refers to judicial proceedings.
>
> In accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR to determine in a **preliminary manner the just compensation for the lands taken under the agrarian reform program**, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function.
>
> Thus, the trial court did not err in taking cognizance of the case as the determination of just compensation is a function addressed to the courts of justice.[90] (Emphasis supplied)

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[89] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, supra* note 40, at 382.

[90] *Land Bank of the Philippines v. Natividad, supra* note 49, at 450-451.

In fact, the law does not make the DAR valuation absolutely binding as the amount payable by petitioner. A reading of Section 18[91] of RA No. 6657 shows that it is the courts, not the DAR, which make the final determination of just compensation.

Accordingly, RA No. 6657 directs petitioner to pay the DAR's land valuation only if the landowner, the DAR and petitioner agree on the amount of just compensation. Otherwise, the amount determined by the special agrarian court as just compensation shall be paid by petitioner. Corollarily, there is no reason for petitioner to wait for the DAR valuation of the properties, if the court has already determined the just compensation due to respondents.

Second, to wait for the DAR valuation despite its unreasonable neglect and delay in processing the four properties' claimfolders is to violate the elementary rule that payment of just compensation must be within a reasonable period from the taking of property. *Cosculluela v. Court of Appeals*[92] could not have been clearer:

> **Just compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking**. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. x x x.[93] (Emphasis supplied)

In the case at bar, the properties have long been expropriated by the government and their fruits enjoyed by the farmer-beneficiaries. Respondent have been made to wait for decades for payment of their recompense. They were not even allowed

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[91] Section 18. *Valuation and Mode of Compensation.* – The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP in accordance with the criteria provided for in Secs. 16 and 17 and other provisions hereof, **or as may be finally determined by the court, as the just compensation for the land**. (Emphasis supplied)

[92] G.R. No. 77765, August 15, 1998, 164 SCRA 393.

[93] *Cosculluela v. Court of Appeals, id.* at 400.

to withdraw the amount claimed to have been deposited with petitioner bank on their behalf. It would certainly be iniquitous to wait for the DAR to process the properties covered by the four other titles before the special agrarian court can finally determine the amount of their just compensation.[94]

Third, while the DAR is vested with primary jurisdiction to determine in a **preliminary manner** the amount of just compensation, the circumstances of this case militate against the application of the doctrine of primary jurisdiction.

The principle of exhaustion of administrative remedies is a relative one and is flexible depending on the peculiarity and uniqueness of the factual and circumstantial settings of a case. It is disregarded: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal and amounts to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when respondent is a department secretary whose acts, as an alter ego of the President, bears the implied and assumed approval of the latter; (7) **when to require exhaustion of administrative remedies would be unreasonable**; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) **when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant**; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.[95]

Here, to require exhaustion of administrative remedies would be unreasonable. What is more, judicial intervention is necessary

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[94] See *Meneses v. Secretary of Agrarian Reform, supra* note 59.

[95] *Province of Zamboanga del Norte v. Court of Appeals,* G.R. No. 109853, October 11, 2000, 342 SCRA 549.

so as not to unduly prejudice the landowners. Respondents have long been deprived of their landholdings, yet compensation has been withheld from them. Accordingly, to make respondents wait for the DAR to process the claimfolders of the remaining four properties would be unreasonable, unjust and manifestly prejudicial to them.

Respondents are entitled to the right of retention over their lands.

The right of retention is constitutionally guaranteed, subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to anymore leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process.[96]

The opinion of the MARO[97] that respondents are not entitled to retain areas out of their landholdings because they applied for the same after the grace period set by the government[98] fails to persuade. A landowner whose land was taken pursuant to PD No. 27 has a right to retain seven hectares of land, provided that the landowner is cultivating the area or will now cultivate it.[99] Those who did not avail of their rights of retention under PD No. 27 are entitled to exercise the same under Section 6[100]

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[96] *Daez v. Court of Appeals*, G.R. No. 133507, February 17, 2000, 325 SCRA 856.

[97] Records, pp. 79-80; Exhibit "J". Dated March 16, 1990.

[98] *Id.* at 80.

[99] Presidential Decree No. 27.

[100] Section 6. *Retention Limits*. – Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC)

of RA No. 6657.[101] Landowners may still avail of their retention rights notwithstanding the August 27, 1985 deadline imposed by DAR AO No. 1, Series of 1985. In *Daez v. Court of Appeals*,[102] the Court, citing *Association of Small Landowners, Inc. v. Secretary of Agrarian Reform*,[103] disregarded said deadline and sustained the landowner's retention rights. Notably, under RA No. 6657, landowners who do not personally cultivate their lands are no longer required to do so in order to qualify for the retention of an area not exceeding five hectares. Instead, they are now required to maintain the actual tiller of the area retained, should the latter choose to remain in those lands.[104] Verily, there is no impediment to the exercise by respondents of their retention rights under RA No. 6657.

In sum, We rule that:

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created hereunder, but **in no case shall the retention by the landowner exceed five (5) hectares**. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided*, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further*, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain, to the landowner: *Provided, however*, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention. (Emphasis supplied)

[101] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, supra* note 40, at 392.

[102] G.R. No. 133507, February 17, 2000, 325 SCRA 856.

[103] *Supra* note 40.

[104] *Paris v. Alfeche, supra* note 44, at 124.

1. The provisions of RA No. 6657 apply in determining the just compensation due to respondents for the taking of their property. However, the value of ₱109,000.00, based on the property's market value and assigned by the CA as just compensation, is erroneous. The trial court is thus directed to receive evidence pertaining to the factors to be considered in determining just compensation, in accordance with DAR AO No. 6, Series of 1992, as amended by AO No. 11, Series of 1994.

2. For purposes of computing just compensation, the date of issuance of emancipations is deemed the date of taking, not October 21, 1972.

3. Respondents are entitled to payment of just compensation on their entire landholdings covered by Operation Land Transfer, except for the five hectares of retention area each of them are entitled to.

WHEREFORE, the petition is *DENIED*. The case is *REMANDED* to the court *a quo* for final determination of just compensation due to respondents.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168819. November 27, 2008]

ALFREDO, PRECIOSA, ANGELITA and CRISOSTOMO, all surnamed BUENAVENTURA, *petitioners, vs.* **AMPARO PASCUAL and the REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY CERTIORARI TO THE SUPREME COURT; LIMITED TO REVIEWING ONLY ERRORS OF LAW, NOT OF FACT; EXCEPTIONS; RATIONALE.— [T]he Supreme Court is not a trier of facts. It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Questions of fact cannot be raised in an appeal via *certiorari* before the Supreme Court and are not proper for its consideration. Time and again, this Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of their credibility. Hence, the findings of the trial court must be accorded the highest respect, even finality, by this Court. Likewise, the Court has ruled that, when supported by sufficient evidence, findings of fact by the Court of Appeals affirming those of the trial court are not to be disturbed on appeal. The rationale behind this doctrine is that review of the findings of fact by the Court of Appeals is not a function this Court normally undertakes. The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; JUDICIAL CONFIRMATION OF IMPERFECT TITLE; WHO MAY APPLY; WHAT MUST BE PROVEN.— The requirements necessary for a judicial confirmation of imperfect title are laid down in Section 14, paragraph 1 of Presidential Decree No. 1529. In accordance therewith, any person who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since 12 June 1945 or earlier, may file in

the proper trial court an application for registration of title to land, whether personally or through their duly authorized representatives. Thus, any person seeking the confirmation and registration of his title under said statutory provision must specifically prove that: (1) the land forms part of the alienable and disposable land of the public domain, and (2) he has been in open, continuous, exclusive and notorious possession of the subject land under a *bona fide* claim of ownership from 12 June 1945 or earlier.

3. ID.; ID.; REGALIAN DOCTRINE; APPLIES EVEN TO PRIVATELY OWNED UNREGISTERED LANDS WHICH ARE PRESUMED TO BE PUBLIC LANDS, UNLESS THE CONTRARY IS SHOWN.— [T]he Regalian doctrine which states that all lands of whatever classification belong to the State. The rule applies even to privately owned unregistered lands which, unless the contrary is shown, are presumed to be public lands.

4. ID.; ID.; PRESIDENTIAL DECREE NO. 1529; JUDICIAL CONFIRMATION OF AN IMPERFECT TITLE; DEFINITIVE DATE WHEN THE SUBJECT LOT BECAME ALIENABLE AND DISPOSABLE IS NECESSARY IN THE COMPUTATION OF THE PERIOD OF POSSESSION.— [W]ithout a definitive date when the subject lot became alienable and disposable, the determination of whether petitioners possessed the subject lot for the time period required by law is rendered impossible, since any period of possession prior to the date when the subject lot was classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession. Such possession can never ripen into ownership; and unless the land has been classified as alienable and disposable, the rules on confirmation of imperfect title shall not apply thereto.

5. ID.; ID.; ID.; ID.; APPLICANT FOR REGISTRATION MUST PROVE THAT THE LAND SUBJECT OF THE APPLICATION FOR REGISTRATION IS ALIENABLE AND DISPOSABLE BY A POSITIVE ACT OF THE GOVERNMENT.— To prove that the land subject of the application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an

administrative action; investigation reports of the Bureau of Lands investigators; and a legislative act or statute. No such evidence was offered by the petitioners in this case. Verily, the rules on the confirmation of imperfect title do not apply unless and until the land subject thereof is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain. Inasmuch as the petitioners failed to present any proof that the subject lot has indeed been classified as and forms part of the disposable land of the public domain, whatever possession they might have had, regardless of the length or nature thereof cannot ripen into private ownership.

APPEARANCES OF COUNSEL

Libra Law Libarios Jalandoni Dimayuga & Magtanong for petitioners.

Cesar T. Verano for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, challenging the Decision[1] dated 31 August 2004 and Resolution[2] dated 30 June 2005 of the Court of Appeals in CA-G.R. CV No. 55454. In its assailed Decision, the Court of Appeals affirmed the Decision[3] dated 21 November 1996 of the Regional Trial Court (RTC) of Parañaque, Branch 257, in Land Registration Case (LRC) No. M-197, dismissing petitioners' claim of title to the subject property for which they sought judicial confirmation and registration. In its assailed Resolution, the appellate court denied petitioners' Urgent Motion for Partial Reconsideration.

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[1] Penned by Associate Justice Godardo A. Jacinto with Associate Justices Edgardo P. Cruz and Jose C. Mendoza, concurring; *rollo*, pp. 84-98.

[2] *Rollo*, pp. 100-106.

[3] Penned by Judge Agnes Reyes-Carpio; *rollo*, pp. 152-157.

The factual and procedural antecedents of the instant Petition are as follows:

On 28 April 1993, private respondent Amparo Pascual filed with the RTC of Makati an application[4] for confirmation and registration of title, in accordance with the provisions of the Public Land Act,[5] as amended, to a parcel of land designated as **Lot No. 5001-A**, situated at San Dionisio, Parañaque, Metro Manila, with an area of 1,184.52 square meters (subject lot). Private respondent alleged, *inter alia*, that the subject lot was not within any reservation; that to the best of her knowledge and belief, there was no mortgage or encumbrance of any kind whatsoever affecting the said land, nor was there any person having any interest thereon; and that she was the occupant of the subject lot and had been in actual, open, continuous, adverse and exclusive possession thereof by herself and through her predecessor-in-interest since time immemorial. Attached to the application were the following documents: (1) the tracing cloth plan and duplicate blue print plan of the subject lot[6]; (2) the technical description of the subject lot [7]; and (3) Tax Declaration No. 016-10453 covering the subject lot for the year 1993.[8]

Upon private respondent's *ex-parte* motion,[9] the case was transferred to the RTC of Parañaque on 17 May 1993,[10] where the same was raffled to Branch 274, in the sala of Judge Octavio A. Astilla.[11]

The RTC thereafter ordered that the initial hearing of LRC Case No. M-197 be held on 27 September 1993.[12]

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[4] *Rollo*, pp. 333-334.

[5] Commonwealth Act No. 141.

[6] Records, pp. 13-32.

[7] *Rollo*, p. 335.

[8] *Id.* at 126-126(a).

[9] Records, p. 29.

[10] *Id.* at 24.

[11] *Id.* at 25.

[12] *Id.* at 25.

On 27 September 1993, petitioners Alfredo, Preciosa, Angelita, and Crisostomo, all surnamed Buenaventura, filed an Opposition[13] to private respondent's application for confirmation and registration of title to the subject lot, contending that they and their predecessors-in-interest were the owners and possessors of a parcel of land known as Lot No. 5001, Cad-299, Parañaque Cadastre, of which the subject lot formed apart, since time immemorial. Not one of them gave consent to or authority for the issuance and approval of the subdivision plan where the subject lot was segregated from Lot No. 5001, and petitioner Preciosa never affixed her signature to such plan, thus, making the said subdivision plan falsified and illegal. Petitioners averred that they, instead of private respondent, were entitled to the confirmation of their title to the subject lot and to the registration of the same in their names.

The Republic of the Philippines, through the Office of the Solicitor General, likewise filed an Opposition[14] dated 10 February 1994 to private respondent's application in LRC Case No. M-197, on the grounds that: (1) neither private respondent nor her predecessors-in-interest had been in open, continuous, exclusive and notorious possession and occupation of the subject lot since 12 June 1945 or prior thereto; (2) the muniments of title and/or the tax declaration attached to private respondent's application did not constitute competent and sufficient evidence of a *bona fide* acquisition of the subject lot or her open, continuous, exclusive and notorious possession and occupation thereof in the concept of an owner, since 12 June 1945 or earlier; (3) the muniments of title did not appear to be genuine and the tax declaration appeared to be of recent vintage; (4) the claim of ownership in fee simple of the subject lot on the basis of a Spanish title or grant could no longer be availed of by private respondent who failed to file an appropriate application for registration of her title within the period of six months from the effectivity of Presidential Decree No. 892 on 16 February

[13] *Rollo*, pp. 336-338.

[14] Records, pp. 66-67.

1976[15] inasmuch as the instant application was filed only on 28 April 1993; and (5) the subject lot applied for was a portion of the public domain belonging to the Republic of the Philippines, which was not subject to private appropriation.

Hearings on LRC Case No. M-197 were held where the parties presented their respective evidence.

According to private respondent's evidence, the subject lot was originally owned by her grandfather Mariano Pascual (Mariano).[16] Upon Mariano's death, he was succeeded by his two sons, Arcadio and Agripino.[17] As early as when she was 12 years old, private respondent was already aware that her father, Arcadio, owned the subject lot where she used to play, gather fish from a fishpond, and get fruits from the trees growing thereon.[18] Her brother Ruben, however, claimed to be already 40 years old when he first saw the subject lot.[19] Upon the death of Arcadio and his wife Josefa, the subject lot passed on to their three children: private respondent, Ruben, and Jose. Ruben and Jose executed on 8 March 1993 an Affidavit[20] whereby they waived and renounced all their rights, interests, and participation over the subject lot in favor of private respondent, who could now file a petition in court and have the subject lot registered solely in her name. Other than planting trees and vegetables on the subject lot, however, private respondent and her predecessors-in-interest did not reside on or build any other improvement thereon.[21] Private respondent could not definitively establish when her grandfather (Mariano), her father (Arcadio) and mother (Josefa) passed away, and the timeline when the

[15] DISCONTINUANCE OF THE SPANISH MORTGAGE SYSTEM OF REGISTRATION AND OF THE USE OF SPANISH TITLES AS EVIDENCE IN LAND REGISTRATION PROCEEDINGS.

[16] TSN, 20 December 1993, records, p. 310.

[17] *Id.*; *id.* at 312.

[18] *Id.*; *id.* at 316-317.

[19] TSN, 15 February 1994, *id.* at 339.

[20] *Rollo*, p. 120.

[21] TSN, 21 March 1994, records, p. 374.

ownership and possession of the subject lot was passed on from one person to another.[22] Private respondent declared the subject lot in her name in 1993 and paid realty taxes for the same; but, aside from the said tax declaration covering the subject lot in her name, she was unable to present additional documentary evidence to prove her alleged ownership of the subject lot.[23]

On the other hand, petitioners presented evidence to support their claim that in 1941, brothers Arcadio and Agripino Pascual sold the subject lot to their parents Amado Buenaventura and Irene Flores. Agripino confirmed such a sale in his Affidavit executed on 22 December 1947, which states:

AFFIDAVIT

I, Agripino Pascual, of lawful age, married to Leonor de Leon, and resident of Parañaque, Rizal, after being duly sworn under oath, depose and say the following:

That on March 29, 1941, my brother Arcadio Pascual and myself *(sic)* sold to Amado Buenaventura, married to Irene Flores of Parañaque, Rizal, a parcel of land, declared under Tax No. (sic) 10706 in the name of our late father, Mariano Pascual.

That the said Mariano Pascual who was the previous absolute owner of the said parcel of land was our legitimate father and we two are the only legitimate and forced heirs to the said parcel of land. Hence, for taxation and assessment purposes I hereby testify that the said parcel of land should now be declared in the name of the said Amado Buenaventura and Irene Flores, for they are now the absolute owners of the said property.

In witness whereof, I hereby signed (sic) this affidavit in the City of Manila, this 22nd day of Dec., 1947.

(Sgd.)
Affiant[24]

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[22] *Id.*; *id.* at 368-370.

[23] *Id.*; *id.* at 376.

[24] Records, p. 139.

The subject lot was declared in the name of petitioners' mother Irene in 1948, 1967, 1974 and 1984.[25] In 1978, petitioners became owners and possessors of the subject lot when their parents executed a deed of sale over the same in their favor.[26] The subject property was then declared in petitioners' names in 1979 and 1985. Petitioners and their parents had been religiously paying for the realty taxes on the subject lot from 1948 up to 1994, during which LRC Case No. M-197 was being heard. As of 1994, there were no improvements on the subject lot, as petitioners were filling it up so that they could sell it for a higher price. [27] The subject lot was not part of any forest, sea, military or naval reservation, or any land of the public domain; and it had been possessed by petitioners and their parents publicly, usefully, adversely, and continuously from 1941 to 1994.[28]

On 21 November 1996, the RTC promulgated its Decision in LRC Case No. M-197, finding the evidence of both private respondent and petitioners insufficient and far from credible, and dismissing their respective claims over the subject lot.

In refusing to give credence to private respondent's evidence, the RTC reasoned that:

> A perusal of the records of this case will reveal that [herein respondent's] claim of rightful ownership over the property in question is less than credible.
>
> Firstly, [respondent] claimed that the land applied for, consisting of 1,854.62 sq. meters, was first in the possession of her grandfather. Upon the death of the latter, which year she could not recall, the possession was then taken over by her father and her uncle. When the [respondent] was merely 12 years old, her father cultivated the land and planted the same with trees where she occasionally harvested fruits therefrom. A portion of the land was likewise covered by a fishpond where she used to catch fish at her father's invitation. But upon marrying the late Arcadio Nicolas, the [respondent], together

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[25] TSN, 13 June 1994, records, p. 406.

[26] *Id.*; *id.* at 408.

[27] *Id.*; *id.* at 417-418.

[28] *Id.*; *id.* at 418.

with her four children, was *(sic)* no longer in possession of the property as evidenced by her testimony that each time she and her children passed by the questioned property, she merely told her children that the same used to be owned by their family. Moreover, she further testified that "when I left the property, I didn't see anything anymore. If there is anybody who takes anything, I don't know about that" (TSN, Dec. 20, 1993, p. 24), which evidently proves that she was not in actual and continuous possession of the subject land. Ironically, it was only in the year 1993, when [respondent's] two brothers allegedly decided to renounce their rights over the said property in her favor that the latter filed the instant application.

Although the [respondent] may have proven her stay over the property dating back in her childhood days, such fact, however, failed to prove that her predecessors-in-interest were actually in possession of the property publicly, peacefully and openly for more than thirty (30) years. Moreover, the Pascual brothers, in their Affidavit of Renunciation, merely made allegations that they acquired the property in question from their grandfather, but failed to prove by concrete evidence how they came into possession of the parcel of land from which they based their claim or right (even granting that the same was indeed acquired by means of succession from their grandfather as rightful owner/possessor thereof). Neither did they make mention about the manner by which their predecessors-in-interest possessed the same land.

In the instant case, the [respondent] failed to present specific facts that would show the nature of such possession. xxx

Secondly, the Affidavit of Renunciation introduced in evidence by the [respondent] where her brothers renounced their rights over the subject property in her name merely evidenced the fact that the parcel of land applied for was an alienable and disposable land of the public domain but insufficient to clearly establish the length of time of the possession of their predecessors-in-interest.

Finally, even assuming arguendo that the [respondent] and her predecessors-in-interest were consistent in paying the corresponding taxes over the property starting in the year 1955, the same is of no moment, since the important thing to consider is the compliance of the thirty (30) year period of open and continuous possession of her predecessors-in-interest.[29]

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[29] *Rollo,* pp. 155-156.

As to petitioners' evidence, the RTC made the following evaluation thereof:

> An evaluation of the evidence presented by the [herein petitioners] in support of their claim is likewise far from credible.
>
> The allegation of the [petitioners] that their parents already possessed the land as early as 1941 has not been duly proved nor documented. Granting that the subject lot was transferred to the parents of the [petitioners] sometime in 1947 by virtue of a sale, there was no showing that a notarized deed of sale was ever executed nor was the sale of the land entered in the Registry of Property. If indeed, a sale over the property took place, this Court cannot dismiss the fact that from 1947 until the present or approximately forty-six (46) years thereafter until the time of the filing of the land registration case, did the predecessors-in-interest of herein [petitioners] take the initiative of securing a title over the said property in their name.
>
> The contention that the subject lot has been owned by the Sps. Buenaventura by mere Affidavit of Confirmation of Sale (Exh. "1") cannot be taken lightly. Ordinarily, where the adverse party is deprived of the opportunity to cross-examine the affiants, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon. xxx
>
> Lastly, [petitioners'] argument that [they] took over the possession of the property by the year 1978 or after the death of their parents is untenable. [They] failed to establish the nature of their possession of the land in question, whether the same may have been acquired by means of succession or donation or otherwise, since no documentary evidence had been presented to trace the acquisition of the property from the hands of the predecessors-in-interest of [petitioners] to them.[30]

In the end, the RTC held that:

> It having been insufficiently established that the lots (sic) in controversy have been under the continuous, open, meritorious, peaceful and adverse possession of [herein respondent's] and [herein petitioners'] predecessors-in-interest, in the concept of [an] owner, during the period required by law, this Court finds no legal basis to uphold their respective claims.

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[30] *Id.* at 156-157.

WHEREFORE, premises considered, the application for registration of Lot No. 5001-A of Cad-299 in the name of the [petitioner] Pascual, is hereby dismissed for lack of merit.

The [petitioners'] claim is likewise, (sic) dismissed for being devoid of merit.[31]

Private respondent filed on 23 December 1996 a Notice of Appeal[32] of the foregoing RTC Decision, while petitioners filed on 3 January 1997 a Motion for Reconsideration[33] thereof. In an Order dated 5 February 1997, the RTC denied petitioners' motion for reconsideration for being a mere reiteration of the arguments it already considered and passed upon. Thereafter, on 27 February 1997, petitioners likewise filed their Notice of Appeal of the RTC Decision.[34] The appeals of private respondent and petitioners were docketed before the Court of Appeals as CA-G.R. CV No. 55454.

On 31 August 2004, the Court of Appeals rendered its assailed Decision, disposing thus:

WHEREFORE, under the premises, the decision appealed from is hereby **AFFIRMED**.[35]

The Court of Appeals declared that private respondent failed to discharge the burden of proving that the subject lot had been in the open, continuous, exclusive, and notorious possession by her and her predecessors-in-interest, in the concept of an owner, for the prescribed period prior to the filing of her application. Private respondent's brother, Ruben, acknowledged that neither private respondent nor her predecessors-in-interest ever resided on the subject lot. Even private respondent herself admitted during trial that she was not the actual occupant of the subject lot. The tax declaration and realty tax receipts presented

[31] *Id.* at 157.

[32] Records, p. 266.

[33] *Id.* at 268-275.

[34] *Id.* at 289-290.

[35] *Id.* at 98.

by private respondent were inconclusive evidence of her ownership. And the Affidavit of Renunciation executed in 1993 by private respondent's brothers Ruben and Jose over their rights, interest, and participation over the subject lot in favor of private respondent did not state how long their predecessors-in-interest possessed the subject lot.

Similarly, the Court of Appeals pronounced that petitioners failed to prove that their possession of the subject property was adverse, open, continuous, exclusive, notorious, peaceful, and in the concept of owner. Petitioners were unable to present a notarized deed to evidence the alleged sale of the subject lot by the brothers Arcadio and Agripino to petitioners' parents. It further affirmed the ruling of the RTC that the Affidavit executed by Agripino, confirming the alleged sale of the subject lot by him and his brother Arcadio to petitioner's parents was hearsay evidence, because the adverse party was not given the opportunity to cross-examine the affiant Agripino. Moreover, petitioners — who not only opposed private respondent's application, but who also, in effect, presented their own application by praying that the RTC confirm their title over the subject property instead and order the registration of the same in their name — failed to comply with the requirement that an application must be accompanied by a tracing-cloth plan duly approved by the Director of Lands, as well as two blueprints or photographic copies thereof and copies of the surveyor's certificate. Additionally, the Notice of Hearing of LRC Case No. M-197 as published in the *Official Gazette* and posted in conspicuous places pertained only to private respondent's application. As such, the Court of Appeals ruled that petitioners could not thereby insist on the registration of the subject lot in their names.

Petitioners filed their Urgent Motion for Partial Reconsideration[36] of the Court of Appeals Decision on 27 September 2004, while private respondent filed her Motion for Reconsideration[37] of the same decision on 22 November 2004.

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[36] CA *rollo*, pp. 284-323.

[37] *Id.* at 328-340.

In a Resolution[38] dated 30 June 2005, the Court of Appeals found no cogent reasons to disturb its earlier Decision, and decreed:

WHEREFORE, both Motions for Reconsideration are DENIED.

On 18 July 2005, private respondent filed before this Court a Motion for Extension of Time to file a Petition for Review on *Certiorari*,[39] docketed as G.R. No. 168701. However, she subsequently moved to withdraw the said Motion and informed the Court of her intention to pursue an administrative remedy instead.[40] The Court granted private respondent's motion to withdraw in a Resolution[41] dated 28 September 2005, and thereby declared G.R. No. 168701 terminated.

Petitioners, on the other hand, filed the instant Petition for Review, submitting the following issues for the resolution by this Court:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED GRAVELY IN UPHOLDING THE PREVIOUS FINDING OF THE TRIAL COURT THAT THE AFFIDAVIT OF CONFIRMATION OF SALE, EVEN IF EXECUTED ALMOST 50 YEARS AGO, IS HEARSAY AND, IN THE ABSENCE OF A DULY NOTARIZED DEED OF SALE, CANNOT SUSTAIN PETITIONERS *(sic)* CLAIM THAT THEIR PARENTS HAVE PREVIOUSLY ACQUIRED THE PROPERTY BY WAY OF PURCHASE FROM THE APPLICANT'S PREDECESSORS.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED GRAVELY IN DENYING PETITIONERS (sic) COUNTER-APPLICATION FOR TITLE BY USING THE SAME SET OF LEGAL CONCLUSIONS PREVIOUSLY APPLIED AGAINST AMPARO PASCUAL'S FAILED APPLICATION.

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[38] *Rollo*, pp. 100-106.

[39] *Id.* at 414-417.

[40] *Id.* at 418-423.

[41] *Id.* at 424.

III.

WHETHER OR NOT THE COURT OF APPEALS ERRED GRAVELY IN HOLDING THAT PETITIONERS-PRIVATE OPPOSITORS, NOT HAVING INITIATED THE REGISTRATION PROCEEDINGS, CANNOT OBTAIN AN AFFIRMATIVE RELIEF OF REGISTRATION OF TITLE FOR NON-COMPLIANCE WITH THE FORMALITIES REQUIRED BY LAW.

Fundamentally, the sole issue to be resolved in this case is whether petitioners are entitled to the confirmation and registration of the title to the subject lot in their names.

Petitioners want this Court to reverse the decisions of the RTC and the Court of Appeals finding that petitioners failed to submit sufficient evidence to establish their title over the subject property and to merit its registration in their names. However, the Court cannot grant petitioners' prayer without reviewing the same evidence they presented and already considered by the trial and appellate courts. When a doubt or difference arises as to the truth or falsehood of alleged facts or when a query necessarily solicits calibration of the whole evidence, considering mostly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation, questions or errors of fact are raised.[42]

The petitioners must be reminded that the Supreme Court is not a trier of facts. It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Questions of fact cannot be raised in an appeal via *certiorari* before the Supreme Court and are not proper for its consideration.[43]

Time and again, this Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the

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[42] See *Secretary of Education v. Heirs of Rufino Dulay, Sr.*, G.R. No. 164748, 27 January 2006, 480 SCRA 452, 460.

[43] *Heirs of Simeon Borlado v. Court of Appeals*, 416 Phil. 257, 262 (2001).

Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of their credibility. Hence, the findings of the trial court must be accorded the highest respect, even finality, by this Court. Likewise, the Court has ruled that, when supported by sufficient evidence, findings of fact by the Court of Appeals affirming those of the trial court are not to be disturbed on appeal. The rationale behind this doctrine is that review of the findings of fact by the Court of Appeals is not a function this Court normally undertakes. The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.[44]

Although there are exceptions[45] to the general rule that the Court is bound by the findings of fact of the trial court, as

[44] *Pacific Airways Corporation v. Tonda*, 441 Phil. 156, 162 (2002).

[45] The following are the recognized exceptions to the general rule: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Sampayan v. Court of Appeals*, G.R. No. 156360, 14 January 2005, 448 SCRA 220, 229; citing *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 86; citing *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349,

affirmed by the Court of Appeals, it finds that none exists in this case to justify a departure therefrom.

Being the applicants for confirmation of imperfect title, petitioners bear the burden of proving that they meet the requirements for the same,[46] by no less than clear, positive and convincing evidence.[47]

The requirements necessary for a judicial confirmation of imperfect title are laid down in Section 14, paragraph 1 of Presidential Decree No. 1529.[48] In accordance therewith, any person who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since 12 June 1945 or earlier, may file in the proper trial court an application for registration of title to land, whether personally or through their duly authorized representatives.

Thus, any person seeking the confirmation and registration of his title under said statutory provision must specifically prove that: (1) the land forms part of the alienable and disposable land of the public domain, and (2) he has been in open, continuous, exclusive and notorious possession of the subject land under a *bona fide* claim of ownership from 12 June 1945 or earlier.

1356 [2000]; *Nokom v. National Labor Relations Commission*, 390 Phil. 1228, 1242-1243 [2000]; *Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 [1998]).

[46] See *Collado v. Court of Appeals*, 439 Phil. 149, 173 (2002).

[47] See *Republic v. Enciso*, G.R. No. 160145, 11 November 2005, 474 SCRA 700, 713.

[48] Sec. 14. *Who may apply*.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

The RTC and the Court of Appeals dismissed petitioners' application for having failed to establish compliance with the second requirement, *i.e.*, possession of the subject property for the period and in the nature required by law. The RTC and the Court of Appeals have carefully and meticulously dissected each piece of evidence presented by both private respondent and petitioners, and have thoroughly explained in their respective decisions the reasons why these pieces of evidence cannot be given much weight and credence.

The Court is also appalled by the utter lack of evidence on record establishing the first requirement, *i.e.*, that the subject lot is alienable and disposable. The RTC and the Court of Appeals seemed to have merely presumed that the subject lot was already alienable and disposable.

This Court cannot countenance such a presumption for two reasons: *First*, it goes against the Regalian doctrine which states that all lands of whatever classification belong to the State. The rule applies even to privately owned unregistered lands which, unless the contrary is shown, are presumed to be public lands.[49] *Second*, without a definitive date when the subject lot became alienable and disposable, the determination of whether petitioners possessed the subject lot for the time period required by law is rendered impossible, since any period of possession prior to the date when the subject lot was classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession. Such possession can never ripen into ownership; and unless the land has been classified as alienable and disposable, the rules on confirmation of imperfect title shall not apply thereto.[50]

Indeed, the only evidence presented by petitioners on this basic requirement is the testimony of petitioner Angelita before the RTC, to wit:

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[49] *Cacho v. Court of Appeals*, 336 Phil. 154, 165-166 (1997).

[50] *Republic v. Herbieto*, G.R. No. 156117, 26 May 2005, 459 SCRA 183, 201-202.

Q: At present, will you please tell us who is in possession of the land applied for?

A: We the oppositors, sir.

Q: Will you please tell us if the parcel of land applied for is part of any forest, military, naval reservation and sea (sic) or land of public domain?

A: No, sir.[51]

The self-serving testimony of one of the petitioners is clearly not enough to overcome the presumption of State ownership of the subject lot and to establish that it is alienable or disposable.

To prove that the land subject of the application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of the Bureau of Lands investigators; and a legislative act or statute.[52] No such evidence was offered by the petitioners in this case.

Verily, the rules on the confirmation of imperfect title do not apply unless and until the land subject thereof is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain.[53] Inasmuch as the petitioners failed to present any proof that the subject lot has indeed been classified as and forms part of the disposable land of the public domain, whatever possession they might have had, regardless of the length or nature thereof cannot ripen into private ownership.

Even on this ground alone, petitioners' application for confirmation and registration of title can already be denied.

WHEREFORE, based on the foregoing, the instant Petition is hereby *DENIED*. Costs against petitioners.

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[51] TSN, 13 June 1994, p. 275.

[52] *Republic v. Court of Appeals*, 440 Phil. 697, 710-711 (2002).

[53] See *Bracewell v. Court of Appeals*, 380 Phil. 156, 162 (2000).

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Austria-Martinez* and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 175006. November 27, 2008]

BELEN A. SALVACION, *petitioner, vs.* **SANDIGANBAYAN (FIFTH DIVISION) AND LEO H. MANLAPAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS ; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; CASE AT BAR.— The Revised Rules of Court specifically provides that an appeal by *certiorari* from a judgment or final order or resolution of the Sandiganbayan is by verified petition for review on *certiorari* and shall raise only questions of law. Specifically, Section 1, Rule 45 of the Rules of Court dictates that: SECTION 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. Note that what is being assailed in this original action are the Resolutions of the Sandiganbayan dated 23 February 2006 and 4 August 2006 reversing the Ombudsman's finding

[*] Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 5 November 2008.

of probable cause to hold respondent Manlapas liable to stand trial for violation of Section 3, paragraph (f) of Republic Act No. 3019, as amended, and ordering the dismissal of Criminal Case No. 28111. There is no question that these Resolutions already constitute a final disposition of Criminal Case No. 28111, for after ordering the dismissal of said case, there is nothing more for the graft court to do therein. These Resolutions, therefore, are fit to be subjects of an appeal to this Court *via* a Petition for Review on ***Certiorari*** *under Rule 45.*

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ELUCIDATED.— The writ of *certiorari* issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. It cannot be legally used for any other purpose. Its function is only to keep the inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in the petition and established: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

3. ID.; ID.; ID.; EXCESS OF JURISDICTION AND WITHOUT JURISDICTION, DISTINGUISHED.— Excess of jurisdiction as distinguished from absence of jurisdiction, means that an act, though within the general power of a tribunal, a board or an officer is not authorized, and is invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. "Without jurisdiction" means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.

4. ID.; ID.; PETITION FOR REVIEW AND SPECIAL CIVIL ACTION FOR *CERTIORARI*, DISTINGUISHED.— Contrasting the two remedies, a petition for review is a mode of appeal, while a special civil action for *certiorari* is an extraordinary process for the correction of errors of

jurisdiction. It is basic remedial law that the two remedies are distinct, mutually exclusive, and antithetical. The extraordinary remedy of *certiorari* is proper if the tribunal, board, or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. A petition for review, on the other hand, seeks to correct errors of judgment committed by the court, tribunal, or officer. When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising from the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*. For if every error committed by the trial court or quasi-judicial agency were to be the proper subject of review by *certiorari*, then trial would never end and the dockets of appellate courts would be clogged beyond measure.

5. ID.; RULES OF COURT; LIBERAL INTERPRETATION OF THE RULES; NOT APPLICABLE IN CASE AT BAR.— And while it is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, we have, before, treated a petition for *certiorari* as a petition for review on *certiorari*, but only when the former was filed within the reglementary period for filing the latter. Regrettably, this exception is not applicable to the present factual milieu. The present Petition for *Certiorari* was filed well beyond the reglementary period for filing a petition for review, and without any reason being offered therefor.

APPEARANCES OF COUNSEL

Alexis C. Albao for petitioner.
Torralba Ereñeta Elamparo & Ortega for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for *Certiorari*[1] under Rule 65 of the Revised Rules of Court, petitioner Belen A. Salvacion (Salvacion) urges us to annul and set aside the *23 February 2006*[2] and *4 August 2006*[3] Resolutions[4] of the Sandiganbayan, Fifth Division, reversing its *11 November 2005 Resolution*[5] which affirmed (a) the *7 February 2005 Resolution*[6] and *12 May 2005 Order*,[7] both of the Deputy Ombudsman for Luzon, finding reasonable ground to charge respondent Leo H. Manlapas (Manlapas), then Municipal Mayor of Baleno, Masbate, with violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended; and (b) the Information thereafter filed before respondent Sandiganbayan, docketed as Criminal Case No. 28111. Consequently, petitioner Salvacion also seeks in the present Petition the reinstatement of Criminal Case No. 28111 before the Sandiganbayan, Fifth Division.

The antecedents are not complicated.

In preparation for her impending retirement on 31 December 2002, petitioner Salvacion, Bookkeeper of the Municipality of Baleno, Masbate, prepared all the pertinent documents and clearance for her permanent separation from government service. One such document was an application[8] for the payment of her

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[1] *Rollo*, pp. 4-22.

[2] Annex "G" of the Petition; *id.* at 52-58.

[3] Annex "L" of the Petition; *id.* at 87-88.

[4] Penned by Sandiganbayan Associate Justice Ma. Cristina G. Cortez-Estrada with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring.

[5] Annex "F" of the Petition; *id.* at 47-51.

[6] Annex "D" of the Petition; *id.* at 41-44.

[7] Annex "E" of the Petition; *id.* at 45-46.

[8] *Id.* at 26.

retirement benefits and terminal leave pay filed on 10 December 2002. Said application was duly acted upon and approved by respondent Manlapas as the Municipal Mayor of Baleno, Masbate, and the authorized official to act upon it.

On 18 March 2003, petitioner Salvacion submitted to the Office of the Municipal Mayor, for payment, a Disbursement Voucher[9] duly signed and approved for payment by respondent Manlapas, and accompanied by supporting documents, in the amount of ₱162,291.46 representing her Terminal Leave Pay for 815.226 unused leave credits.

In the intervening time, according to petitioner Salvacion, she made numerous follow-ups for the disbursement of her Terminal Leave Pay; to no avail.

On 10 September 2003, a few days short of six months from the day she submitted the afore-mentioned Disbursement Voucher and its supporting documents to the Office of the Municipal Mayor, petitioner Salvacion sent, *via* registered mail, a letter requesting "the release of fund for payment of my terminal leave pay x x x I will be going to Manila for medical check-up, so that I'm in dire need of money."[10] No response was made by respondent Manlapas.

On 17 February 2004, petitioner Salvacion filed a sworn Complaint[11] before the Office of the Provincial Prosecutor, Masbate, charging respondent Manlapas with violation of Section 3, paragraphs (e) and (f), of Republic Act No. 3019, as amended, which state that:

> SEC. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared unlawful:
>
> xxx xxx xxx

[9] *Id.* at 24.

[10] *Id.* at 34.

[11] Annex "A" of the Petition; *id.* at 23.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

The Complaint was docketed as I.S. No. 04-17546 (DF).

In his Counter-Affidavit,[12] respondent Manlapas denied the charges against him. He averred that "complainant had been following up the payment of her terminal leave pay as alleged x x x, however, I did not make any promise 'to release the payment after a weeks (sic) time,' the truth of the matter being that I really refused immediately (not negligently) to order payment of her Terminal Leave Pay with legal, factual and sufficient justification because upon inquiry from the OIC Municipal Treasurer and contrary to the Certification issued by the previous OIC Municipal Treasurer, Mr. Ismael C. Adoptante in cohort with the complainant, Mrs. Belen A. Salvacion she 'is not free from money and/or property responsibilities,' x x x."

On 19 April 2004, the 4th Assistant Provincial Prosecutor of Masbate, Richard R. Riveral, resolved[13] to dismiss the Complaint. The fiscal chose to believe the account of respondent Manlapas that his failure to release petitioner Salvacion's retirement benefits was due to the latter's supposed failure to remit the amount of ₱7,564.38 to the Municipal Government of Baleno.

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[12] Annex "B" of the Petition; *id.* at 35-36.

[13] Annex "C" of the Petition; *id.* at 38-40.

Aggrieved, petitioner Salvacion filed a Petition for Review before the Office of the Deputy Ombudsman for Luzon, where it was docketed as Case No. OMB-L-C-04-1034-K.

In a *Review Resolution*[14] dated 7 February 2005, issued after due proceedings, the Office of the Deputy Ombudsman for Luzon recommended the reversal of the finding of the Provincial Prosecutor, and thereby declared that there was probable cause to hold respondent Manlapas liable for the violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019. The pertinent portion of said Resolution reads:

> Records of this case show that complainant had retired from government service on December 31, 2002 and was subsequently issued all the pertinent documents and clearances appurtenant to her claim for payment of her terminal leave amounting to ₱162,291.46, with the corresponding certification from the OIC Municipal Treasurer, ESMAEL C. ADOPTANTE that sufficient funds exist to cover for the payment of the same. Ironically and without valid reason, respondent denied payment of the same alleging among others, that complainant had failed to remit some of her collections amounting to ₱7,564.38 as contained in a new certification issued by the new acting Municipal Treasurer, MR. CEFERINO D. CORTES, JR. on February 23, 2004, a year and two months after complainant's severance from service. The averment by the respondent that he immediately ordered the non-payment of the terminal leave pay of the complainant despite her repeated demands based on an alleged cash shortage as certified to by the new OIC Municipal Treasurer only on February 23, 2004 is a flimsy excuse to cover up for his baseless and malicious act. After all, it was only on February 23, 2004 that an alleged shortage was found out. Hence, it was only on even date that he would have had a valid ground to refuse payment of the same. As the Local Chief Executive, herein respondent should have pursued the legal means to collect the alleged cash shortage allegedly owed by the complainant from the municipality. He could have substantiated his claim by filing a case against the complainant and not place the complainant in a stalemate position as regards the payment of the terminal leave pay of which she is entitled to receive, to her damage and prejudice. The more than a year's delay in the payment of what one had lawfully earned and is rightfully due seem

[14] Annex "D" of the Petition; *id.* at 41-44.

to be a punishment and not a reward for more than two (2) decades of government service, as in this case. Respondent himself admitted that follow-ups on her claim were made by the complainant.

Respondent Manlapas moved for the reconsideration of the aforequoted *Review Resolution*. He argued that his refusal to release petitioner Salvacion's Terminal Leave Pay was essentially prompted by good faith, *i.e.*, to protect the interest of the people of Baleno, Masbate, from being defrauded by petitioner Salvacion. He narrated that on the 7th and 8th of January 2003, petitioner Salvacion usurped the functions of revenue collectors by collecting tax payments from tax payers at Baleno, Masbate, amounting to ₱7,564.38, and issuing the corresponding Official Receipts, but failing to remit the same to the Office of the Municipal Treasurer. In support of his defense, respondent Manlapas submitted, as newly discovered evidence, photocopies of several Official Receipts dated 7 and 8 January 2003. Further, respondent Manlapas pointed out that the certification issued by the officer-in-charge (OIC) Municipal Treasurer Ismael C. Adoptante (Adoptante) that petitioner Salvacion had no more accountabilities with the Municipality of Baleno, Masbate, was invalid, considering that the same was issued at the time when Adoptante had already been relieved of his duties as OIC Municipal Treasurer by virtue of Bureau of Local Government Finance (BLGF) Regional Special Personnel Order No. 1-2002 dated 2 December 2002.

Despite the aforementioned arguments, in an Order[15] dated 12 May 2005, the Office of the Deputy Ombudsman for Luzon resolved respondent Manlapas' prayer for reconsideration in the negative. The dispositive portion of said order reads:

> WHEREFORE, in view of the foregoing, it is hereby recommended that the instant Motion for Reconsideration filed by respondent be denied for lack of merit. Accordingly, the Review Resolution dated 07 February 2005 which recommended that an Information for violation of Sec. 3(f) of RA 3019 be filed against the latter stands.

In affirming the *Review Resolution*, the Office of the Deputy Ombudsman for Luzon reasoned that:

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[15] Annex "E" of the Petition; *id.* at 45-46.

It could not have possibly escaped respondent's attention that complainant has sought the payment of her terminal leave pay considering that he signed the corresponding disbursement voucher certifying that the same is necessary and lawful and even approved its payment amounting to ₱162,291.46 x x x. Having presented said document for his signature, it should have prompted him to verify first if there is no impediment in the payment of such claim of complainant. And it appears that indeed there was none, otherwise he could not have signed the same. But now, he is now justifying his refusal of not giving complainant her terminal leave pay because the amount of ₱7,564.38 of her collection is missing. To this, we are not convinced because, aside from the fact that the same is uncorroborated, the purported acts of complainant of usurping the functions of the revenue collectors and misappropriating the amount of ₱7,564.38 transpired immediately on the month after complainant has retired. If the same is factual, immediate action thereon could have been taken and that it should have been relayed at once to complainant and not after a year. With respect to the supposed newly discovered evidence submitted by respondent, we find that the photocopied receipts issued by the municipality only confirms the fact that certain amounts were collected but not to the fact that it was complainant who collected the same and not remit it to the coffers of the municipality. Finally, with respect to the alleged invalidity of the certification made by Adoptante, it was as early as December 2002 that respondent was apprised of the latter's relief as OIC Municipal Treasurer. As such, he should have called complainant's attention of such fact right away and not raised it at this point in time had he be (sic) sincere in acting on the claim of complainant.

On 29 April 2005, bearing the approval of Dennis M. Villa-Ignacio, Special Prosecutor, Office of the Ombudsman, an Information[16] was filed with the Sandiganbayan, and raffled to its Fifth Division, charging respondent Manlapas with having violated Section 3, paragraph (f) of Republic Act No. 3019, as amended, with the accusatory portion of the same reading as follows:

That on December 31, 2002, and for sometime prior or subsequent thereto, in the Municipality of Baleno, Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named

[16] Sandiganbayan *rollo*, pp. 1-3.

accused, LEO H. MANLAPAS, a high ranking public officer, being then the Mayor of Baleno, Masbate, while in the performance of his official administrative functions and acting in relation thereto, with grave abuse of authority, did then and there willfully, unlawfully and criminally fails and refuses without sufficient justification, to order and cause within a reasonable period of time, the payment of the terminal leave pay benefits in the amount of ONE HUNDRED SIXTY TWO THOUSAND TWO HUNDRED NINETY ONE PESOS AND FORTY SIX CENTAVOS (₱162,291.46) of BELEN A. SALVACION, a retired municipal employee, after several follow-ups and due demand, the last of which was in September 2003 and requests and thereby discriminating against said BELEN A. SALVACION, to the prejudice of the latter.

The Information was docketed as Criminal Case No. 28111 before the Sandiganbayan, Fifth Division. A Hold Departure Order was issued by the Sandiganbayan, Fifth Division, directing the Bureau of Immigration to hold the departure of respondent Manlapas and include him in the Bureau's Hold Departure List.[17] Likewise, an Order of Arrest was issued by the same division commanding the arrest of respondent Manlapas.[18]

Respondent Manlapas subsequently filed the sufficient bail bond[19] for his provisional liberty which was duly approved by the Executive Judge of the Regional Trial Court (RTC), City of Masbate, on 1 June 2005.[20]

The arraignment of the accused, respondent Manlapas, was set on 29 July 2005. Before said date, however, respondent Manlapas filed an *Omnibus Motion [(1) For Determination and/or Review of Finding of Probable Cause and/or Reinvestigation; and (2) To Defer/Suspend Arraignment]* on the ground that "new and material evidence has been discovered which the accused could not, with reasonable diligence, have discovered and produced during the preliminary investigation and which, if produced and submitted during the preliminary

[17] *Id.* at 20.

[18] *Id.* at 21.

[19] *Id.* at 37-39.

[20] *Id.* at 31.

investigation, would have certainly established the lack of probable cause and, therefore, would have changed the conclusions and findings of the investigating prosecutors."[21] He claimed that he was recently informed that as early as 1 September 2003, petitioner Salvacion had already withdrawn her terminal leave application and its supporting documents. In view of said development, petitioner Salvacion's terminal leave pay was not included in the budget appropriation for Calendar Year 2003-2004. He explained that "[h]aving withdrawn her application for terminal leave benefits as early as 01 September 2003, or MORE THAN five (5) months BEFORE the filing of the complaint-affidavit, complainant had no right to demand for the approval of her terminal leave application from herein accused. In other words, complainant had no cause of action against herein accused at the time of the filing of her complaint for the simple reason that it would have been PHYSICALLY IMPOSSIBLE for herein accused to approve or even act upon a NON-EXISTENT application for terminal leave benefits."[22] He then concluded that "[t]hus, complainant Belen A. Salvacion could not have suffered damage or injury by reason of the non-payment of her terminal leave benefits; and herein accused could not have committed a crime for not approving the payment of said benefits in the absence of any application therefor."[23]

Petitioner Salvacion opposed the omnibus motion, denying the imputation that she withdrew her Terminal Leave Application. She declared that it was only on 27 January 2004 that she took home her disbursement voucher, after she went to see respondent Manlapas at his office to again plead for the release of her Terminal Leave Pay, and after being told by the Municipal Mayor then that "since [petitioner Salvacion's] family could not support [respondent Manlapas] in the forthcoming May, 2004 election, [petitioner Salvacion's] request (for payment)

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[21] Omnibus Motion, p. 1; *id.* at 90.

[22] Omnibus Motion, p. 4; *id.* at 93.

[23] *Id*.

could not be granted."[24] Further, petitioner Salvacion claimed that the "accused Leo H. Manlapas further told private complainant that she should just keep her documents and wait for a new mayor to be elected because her Terminal Leave will definitely not be (sic) paid by him."[25] Hence, she had no choice but to bring home her voucher "for fear that it might get lost in the Office of the Mayor."[26]

The Sandiganbayan subsequently promulgated a *Resolution* on 11 November 2005 denying for lack of merit respondent Manlapas' Omnibus Motion. The graft court found correct the position of the prosecution that respondent Manlapas was basically asking the Sandiganbayan "to assess the evidence presented by the parties, and on the basis thereof, make a conclusion as to whether or not there is probable cause to indict the accused for the offense charged x x x. However, as pointed out by the Supreme Court x x x this is not a function which the Court must be called upon to perform as this function pertains exclusively to the public prosecutor. Moreover, the prosecutor's finding of probable cause is entitled to highest respect."[27] The *fallo* of said *Resolution* provides:

> WHEREFORE, premises considered, the instant 'Omnibus Motion 1) For Determination and/or Review of Finding of Probable Cause and/or Reinvestigation; and 2) to Defer/Suspend Arraignment' is hereby denied for lack of merit. Arraignment of the accused will proceed as previously scheduled on November 11, 2005.[28]

Respondent Manlapas moved for the reconsideration of the foregoing Resolution maintaining that "[s]ince the [petitioner

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[24] Comment/Opposition to the Omnibus Motion by petitioner Salvacion, p. 1; *id.* at 146.

[25] *Id.*

[26] *Id.*

[27] Sandiganbayan Resolution dated 11 November 2005, p. 4; *id.* at 189.

[28] In an Order dated 11 November 2005, however, the Sandiganbayan, Fifth Division, reset to 13 January 2006 the arraignment of the respondent Manlapas; *id.* at 192.

Salvacion] had no right to apply for terminal leave benefits, the accused was under no obligation to process or approve her application."[29]

On 23 February 2006, the Sandiganbayan reversed itself, thereby dismissing the case against respondent Manlapas. The graft court ruled that:

> WHEREFORE, finding no probable cause to sustain the present indictment, the present Motion for Reconsideration filed by the accused LEO H. MANLAPAS is hereby granted. The Resolution of this Court promulgated on November 11, 2005 is hereby set aside and the instant case against him is hereby ordered dismissed.
>
> The cash bond posted by the accused to obtain his provisional liberty is hereby ordered returned to him subject to the usual auditing and accounting procedures. The Hold Departure Order issued by this Court against the person of the accused on May 10, 2005 is hereby cancelled.[30]

The finding that there was no probable cause to hold respondent Manlapas liable to stand trial for the violation of Section 3, paragraph (f) of Republic Act No. 3019 was based on the ratiocination that:

> In the present case, the prosecution committed grave abuse of discretion in finding that there is probable cause against the accused. There is no sufficient evidence adduced before the Office of the Ombudsman that a violation of Section 3(f) of Republic Act No. 3019 was committed by the accused x x x.
>
> xxx xxx xxx
>
> Admittedly, the elements of the offense are that:
>
> a) The offender is a public officer;
>
> b) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;

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[29] Undated Motion for Reconsideration of respondent Manlapas filed on 29 November 2005, p. 10; *id.* at 208.

[30] *Id.* at 250.

c) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and

d) Such failure to so act is 'for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another' x x x.

xxx xxx xxx

The second element is absent. There is sufficient justification for the accused in refusing to release the monetary benefits in favor of the private complainant after due demand by the latter. It has been established and even the reviewing prosecutors has (sic) recognized that when Ismael C. Adoptante issued the Certification on December 31, 2002, certifying that Ms. Salvacion is free from money and/or property responsibility, he was no longer authorized to do so. The accused knew this fact at the time of the alleged commission of the crime x x x. In BLGF Regional Special Personnel Order No. 1-2002 dated December 2, 2002, Atty. Veronica Bombase King, Regional Director of the Bureau of Local Government Finance, immediately designated Ceferino D. Cortes as OIC Municipal Treasurer of Baleno, Masbate, before Mr. Adoptante issued his certification on December 31, 2002, that the private complainant had then no money accountability. Therefore, knowing the lack of authority of Mr. Adoptante to issue the said clearance in favor of private complainant Belen A. Salvacion, accused mayor was justified in refusing to pay the terminal leave pay benefits of Ms. Salvacion.[31]

Thus, the Sandiganbayan concluded that:

The absence of an essential element of the crime being imputed against the accused cannot sustain a finding of guilt of the accused. Hence, this Court has no option but to desist from inflicting upon the accused mayor the trauma of going through a trial and to dismiss the instant case.[32]

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[31] Sandiganbayan Resolution dated 23 February 2006, pp. 4-6; *rollo*, pp. 55-57.

[32] *Id.* at 57.

Petitioner Salvacion and the People of the Philippines, through the Public Prosecutor, separately moved for the reconsideration of the latest ruling of the Sandiganbayan, but both motions were denied by the said court in a Resolution dated 4 August 2006 which was received by petitioner Salvacion on 22 August 2006.

On 14 March 2006, or within the reglementary period of 15 days within which to file a motion for reconsideration, Petitioner Salvacion filed the same but it was denied in another Resolution dated 3 August 2006 and received by her on 22 August 2006.

Hence, this Petition for *Certiorari* of petitioner Salvacion filed under Rule 65 of the Revised Rules of Court and anchored on the following arguments:

I.

PUBLIC RESPONDENT SANDIGANBAYAN (FIFTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN *(SIC)* JURISDICTION IN HOLDING THAT ISMAEL ADOPTANTE IS NOT AUTHORIZED AS MUNICIPAL TREASURER AT THE TIME THE MONEY/PROPERTY CLEARANCE OF PRIVATE COMPLAINANT WAS SIGNED BY MERELY BASING ON BLGF REGIONAL SPECIAL PERSONNEL ORDER NO. 1-2002 DATED DECEMBER 2, 2002;

II.

SAME PUBLIC RESPONDENT GROSSLY LOST SIGHT OF THE CONTINUING REFUSAL OF PRIVATE RESPONDENT TO PAY THE COMPLAINANT OF *(SIC)* HER TERMINAL LEAVE BENEFITS WHICH AMOUNTED TO GRAVE ABUSE OF DISCRETION; AND

III.

SAME PUBLIC RESPONDENT HAD UNJUSTIFIABLY AND UNDULY INTERFERED WITH THE FINDINGS OF PROBABLE CAUSE MADE BY THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON.[33]

[33] *Id.* at 11.

Petitioner Salvacion maintains that "[t]he reliance of Honorable Sandiganbayan (Fifth Division) on BLGF Regional Special Personnel Order [N]o. 1-2002 dated December 2, 2002 to justify the act of the accused constitute therefore as grave abuse of discretion amounting to lack or excess in jurisdiction."[34] Moreover, she insists that "the demand to pay the said terminal benefits is a continuing one,"[35] such that "from the time the approved disbursement voucher was submitted (to the) respondent Mayor to the time the written demand was given to respondent Mayor and until thereafter, respondent Mayor is, in effect, continuously refusing, without justifiable reason, to release the money claims of petitioner x x x"[36]; and this fact, according to petitioner Salvacion, "had escaped the attention of the Honorable Sandiganbayan."[37] In conclusion, petition Salvacion declares that "the Honorable Sandiganbayan (Fifth Division) had unjustifiably and unduly interfered with the findings of probable cause made by the Office of the Deputy Ombudsman for Luzon."[38]

Without cause to go into the merits of the case at bar, we hereby dismiss this petition.

As a consequence of filing this special civil action for *certiorari* in place of an ordinary appeal under Rule 45 of the Revised Rules of Court, petitioner Salvacion went against the fundamental precepts of procedural law.

The Revised Rules of Court specifically provides that an appeal by *certiorari* from a judgment or final order or resolution of the Sandiganbayan is by verified petition for review on *certiorari* and shall raise only questions of law. Specifically, Section 1, Rule 45 of the Rules of Court dictates that:

SECTION 1. *Filing of petition with Supreme Court.*— A party desiring to appeal by *certiorari* from a judgment or final order or

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[34] *Id.* at 16.

[35] *Id.* at 18.

[36] *Id.*

[37] *Id.* at 19.

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

resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Note that what is being assailed in this original action are the Resolutions of the Sandiganbayan dated 23 February 2006 and 4 August 2006 reversing the Ombudsman's finding of probable cause to hold respondent Manlapas liable to stand trial for violation of Section 3, paragraph (f) of Republic Act No. 3019, as amended, and ordering the dismissal of Criminal Case No. 28111. There is no question that these Resolutions already constitute a final disposition of Criminal Case No. 28111, for after ordering the dismissal of said case, there is nothing more for the graft court to do therein. These Resolutions, therefore, are fit to be subjects of an appeal to this Court *via* a **Petition for Review on *Certiorari* under Rule 45**.

However, the **present Petition** is one **for *certiorari* under Rule 65** of the Revised Rules of Court. Under Rule 65, a party may only avail himself of the special remedy of *certiorari* under the following circumstances:

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.

The writ of *certiorari* issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. It cannot be legally used for any other purpose. Its function is only to keep the inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack

or excess of jurisdiction. It may issue only when the following requirements are alleged in the petition and established: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Excess of jurisdiction as distinguished from absence of jurisdiction, means that an act, though within the general power of a tribunal, a board or an officer is not authorized, and is invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. "Without jurisdiction" means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[39]

Contrasting the two remedies, a petition for review is a mode of appeal, while a special civil action for *certiorari* is an extraordinary process for the correction of errors of jurisdiction. It is basic remedial law that the two remedies are distinct, mutually exclusive, and antithetical. The extraordinary remedy of *certiorari* is proper if the tribunal, board, or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. A petition for review, on the other hand, seeks to correct errors of judgment committed by the court, tribunal, or officer. When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising from the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*. For if every error committed by the trial court or quasi-judicial agency

[39] *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 784-785 (2003).

were to be the proper subject of review by *certiorari*, then trial would never end and the dockets of appellate courts would be clogged beyond measure.[40]

Although petitioner Salvacion made general allegations in her Petition for *Certiorari* that the Sandiganbayan, Fifth Division, committed grave abuse of discretion amounting to lack or excess of jurisdiction, a closer scrutiny of her arguments would reveal that she is actually challenging the Resolutions dated 23 February 2006 and 4 August 2006 based on purported errors of judgment, and not jurisdiction. It is irrefragable that the Sandiganbayan, Fifth Division, had jurisdiction over the subject matter and the parties in Criminal Case No. 28111. Petitioner Salvacion utterly failed to convince this Court that the graft court abused its discretion in issuing the assailed Resolutions – grave enough to have ousted it of jurisdiction over Criminal Case No. 28111 for which she may avail herself of the special remedy of *certiorari*.

It is equally elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for *certiorari*. A writ of *certiorari* will not issue where the remedy of appeal is available to an aggrieved party. By its nature, a petition for *certiorari* lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law."[41] A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioners from the injurious effects of the judgment and the acts of the lower court or agency.[42] In this case, appeal was not only available but also a speedy and adequate remedy.[43] The availability to petitioner Salvacion of the remedy of a petition for review on *certiorari* under Rule 45 from the resolutions of the Sandiganbayan effectively foreclosed her right to resort to a petition for *certiorari*.

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[40] *Sebastian v. Hon. Morales*, 445 Phil. 595, 608 (2003).

[41] *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, 19 November 2004, 443 SCRA 286, 291.

[42] *Chua v. Santos*, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 374.

[43] *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 372 (1999).

And while it is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice,[44] we have, before,[45] treated a petition for *certiorari* as a petition for review on *certiorari*, but only when the former was filed within the reglementary period for filing the latter. Regrettably, this exception is not applicable to the present factual milieu. The present Petition for *Certiorari* was filed well beyond the reglementary period for filing a petition for review, and without any reason being offered therefor.

Pursuant to Sec. 2, Rule 45 of the Revised Rules of Court:

> SEC. 2. *Time for filing; extension.* – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. x x x.

A party litigant wishing to file a petition for review on *certiorari* must do so within **15 days from receipt** of the judgment, final order or resolution sought to be appealed. In this case, the resolution of the Sandiganbayan dated 23 February 2006, denying the motions for reconsideration of both petitioner Salvacion and the People, was received by petitioner Salvacion on **22 August 2006**.[46] The instant Petition was filed only on **17 October 2006**; thus, at the time of the filing of this Petition, **56 days** had already elapsed, way beyond the 15-day period within which to file a petition for review under Rule 45 of the Revised Rules of Procedure; and even beyond an extended period of 30 days, the maximum period to be granted by this Court had one been actually sought by petitioner Salvacion. As the facts stand, petitioner Salvacion has already lost the right to appeal *via* Rule 45.

Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality

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[44] *Oaminal v. Castillo*, 459 Phil. 542, 556 (2003).

[45] *Id.*

[46] *Rollo*, p. 5.

to at least explain its failure to comply with the rules.[47] Herein, petitioner Salvacion's recourse to this Court is bereft of any explanation, meritorious or otherwise, as to why she failed to properly observe the rules of procedure.

Allowing appeals, although filed late in some rare cases, may not be applied to petitioner Salvacion for this rule is, again, qualified by the requirement that there must be exceptional circumstances to justify the relaxation of the rules.[48] We cannot find any such exceptional circumstances in this case and neither has petitioner Salvacion endeavored to allude to the existence of any. This being so, another fundamental rule of procedure applies, and that is the doctrine that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional, so that failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment, more so, to entertain the appeal.[49]

WHEREFORE, in light of the foregoing, the Petition for *Certiorari* is *DISMISSED*. No cost.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

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[47] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals,* 389 Phil. 644, 656 (2000).

[48] *Bank of America, NT & SA v. Gerochi, Jr.,* G.R. No. 73210, 10 February 1994, 230 SCRA 9, 15 citing *Alto Sales Corp. v. Hon. Intermediate Appellate Court,* 274 Phil. 914, 925-926 (1991).

[49] *Philippine Commercial International Bank v. Court of Appeals,* 452 Phil. 542, 551 (2003).

THIRD DIVISION

[G.R. No. 175049. November 27, 2008]

HEIRS OF SOFIA NANAMAN LONOY, namely, MANUEL N. LONOY, OSCAR N. LONOY, WARREN N. LONOY, EXCELINO N. LONOY, EDGAR N. LONOY, VICTOR N. LONOY, APOLLO N. LONOY, GEMMA N. LONOY-SAMSON, HEIRS OF RODOLFO N. LONOY (ISABEL A. LONOY, ISABELITA A. LONOY-YOUNG, WINONA A. LONOY, RODERICK A. LONOY, NANCY A. LONOY-PAYNAEN, ROBERT LONOY, ROMMEL A. LONOY, RAFAEL A. LONOY, ZENAIDA LONOY-OPADA, HONEYLYN A. LONOY, MARITES LONOY CABURNAY, and RODOLFO LONOY, JR.), HEIRS OF CORNELIA NANAMAN ADIS/ASEQUIA, namely, HEIRS OF ELSA N. ADIS, BRICCIO N. ADIS, TOMAS N. ADIS, ROMY N. ADIS, JUSTINO N. ADIS, MERCITA N. ASEQUIA, and TOMASITA N. ASEQUIA, HEIRS OF VICENTE NANAMAN (LUDEM NANAMAN, *ET AL.*), HEIRS OF MANUELA NANAMAN AMARGA, namely, HEIRS OF CLARITA AMARGA-UBGUIA (VERLITO A. UBGUIA, DANILO A. UBGUIA, ASTERIO A. UBGUIA, and CARLO A. UBGUIA), HEIRS OF ACOLON AMARGA (ALMIRANTE AMARGA, SPARTACUS AMARGA, MELVIN AMARGA, and RODRIGO AMARGA), ALONSO N. AMARGA, HERDA N. AMARGA, DELOS MIMBA AMARGA-TOGONON, HEIRS OF ASCONA AMARGA UBAGAN (DEMOSTHENES A. UBAGAN, *ET AL.*), HEIRS OF NICODEMO N. AMARGA (JIMMY AMARGA, MARIETTA AMARGA, BENIGNO AMARGA, NICODEMO AMARGA, JR., ALMA AMARGA, FELIX AMARGA, ADOR AMARGA, LYDIA AMARGA, JUDY AMARGA, LOLOT AMARGA, and MADONNA AMARGA), HEIRS OF ATANACIO NANAMAN AMARGA (GLORIOSA A. APOR, NESTOR AMARGA, NORVILLA AMARGA, GENITA AMARGA, and GILMA AMARGA), HEIRS

OF OLIVA AMARGA-BADELLES (JOSE I. BADELLES, JIMBO BADELLES, JOHNSON BADELLES, ALITA BADELLES-JALAGAT, NINIAN BADELLES, JONA A. BADELLES, CEFERINO A. BADELLES, OLIVER BADELLES, OHARA A. BADELLES, MARIA BADELLES, SARAH A. BADELLES, JEBA A. BADELLES, and MICHAELA A. BADELLES), and HEIRS OF MANSUETO N. AMARGA (EDNA AMARGA — surviving spouse of JESSE AMARGA, DEÑA AMARGA-MAGHINAY, and MARLON AMARGA), HEIRS OF GENARA NANAMAN SAKALL, namely, AMPARO SAKALL-DURANO, BENEDICTO N. SAKALL, ISABELITA N. SAKALL, FRANCISCA SAKALL-MARQUINA, HONORIO N. SAKALL, VIRGINIA SAKALL-ESTANISLAO, and NORMA N. SAKALL, HEIRS OF JULIETA NANAMAN, namely, HEIRS OF JAIME NANAMAN/RIVERA (ANASTASIA LAUGAM NANAMAN — surviving spouse, DULSORA NANAMAN, and GUILLERMO NANAMAN), HEIRS OF PIO NANAMAN/ROA (WILMA NANAMAN, ALFREDO NANAMAN, DELIA NANAMAN, SALVADOR NANAMAN, HEIRS OF RAUL NANAMAN, EVELYN NANAMAN, VIOLA NANAMAN, EDITHA NANAMAN, PINKY NANAMAN, and ALEXANDER NANAMAN), HEIRS OF GREGORIO NANAMAN/DACAMPO (VICTOR NANAMAN, VICENTE NANAMAN, GREGORIO NANAMAN, JR., and VIRGIE NANAMAN), and HEIRS OF ORLANDO NANAMAN (EMILIA G. NANAMAN — surviving spouse, ALEX NANAMAN, EMMA NANAMAN, HEIRS OF GEORGINA NANAMAN, GEORGE NANAMAN, RAMIL NANAMAN, and CAROLYN NANAMAN), HEIRS OF ROSARIO NANAMAN RUEDAS, namely, HEIRS OF BERNARDO N. RUEDAS (JULIA RUEDAS, JONATHAN RUEDAS, MARLON RUEDAS, MARIVIC RUEDAS, EDITHA RUEDAS, and MARGIE RUEDAS-POGOY), and HEIRS OF JOSE "FEBE" NANAMAN

(SOCORRO NANAMAN, AIDA NANAMAN, LERMA NANAMAN-MORALES, EDUARDO NANAMAN, JOSEFA NANAMAN, MARISA NANAMAN, ARTURO NANAMAN, and MARYFLOR NANAMAN), and ATTY. ELPEDIO CABASAN as Administrator of the Intestate Estate of GREGORIO NANAMAN, *petitioners, vs.* **SECRETARY OF AGRARIAN REFORM, LAND REGISTRATION AUTHORITY, DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), LAND BANK OF THE PHILIPPINES, HEIRS OF NECIFORO CABALUNA, HEIRS OF ABDON MANREAL, TRANQUILINA C. MANREAL, TITO L. BALLER, HEIRS OF HERCULANO C. BALORIO, ALICIA B. MANREAL, FELIPE D. MANREAL, SALVACION MANREAL, HEIRS OF DOMINGO N. RICO, HEIRS OF DOMINGO V. RICO, MACARIO VELORIA, HEIRS OF CUSTODIO M. RICO, HEIRS OF CLEMENTE M. RICO, MARTILLANO D. OBESO, HEIRS OF PABLO F. RICO,** *respondents,* **CITY OF ILIGAN, HEIRS OF JUAN NANAMAN, HEIRS OF LIMBANIA CABILI MERCADO, HEIRS OF MARIANO ANDRES CABILI,** *respondents/unwilling co-petitioners.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PROCEDURE IN THE COURT OF APPEALS; ALL PETITIONS ORIGINALLY FILED BEFORE THE COURT OF APPEALS SHALL BE ACCOMPANIED BY DUPLICATE ORIGINALS OR CERTIFIED TRUE COPIES OF THE QUESTIONED JUDGMENT, ORDER OF RESOLUTION; OTHER RELEVANT DOCUMENTS AND PLEADINGS ATTACHED TO SUCH PETITIONS MAY BE MERE MACHINE COPIES THEREOF; CASE AT BAR.— Section 3 of Rule 46 does not require that all supporting papers and documents accompanying a petition be duplicate originals or certified true copies. What it explicitly directs is that all petitions originally filed before the Court of Appeals shall be accompanied by a clearly legible duplicate original or certified true copy of the

judgment, order, resolution or ruling subject thereof. Similarly, under Rule 65, governing the remedies of *certiorari*, prohibition and mandamus, petitions for the same need to be accompanied only by duplicate originals or certified true copies of the questioned judgment, order or resolution. Other relevant documents and pleadings attached to such petitions may be mere machine copies thereof. As to petitioners' Petition for Prohibition in CA-G.R. SP No. 00365, the attached annexes that were not duplicate originals or certified true copies, namely, Annexes "V", "W", "HH", "LL", "NN", "QQ", "UU" and "VV", were mere supporting documents and pleadings referred to in the petition and were not themselves the judgments, orders or resolutions being challenged in said Petition. At any rate, petitioners were able to attach certified true copies of these annexes to their Motion for Reconsideration of the dismissal of their Petition.

2. ID.; SPECIAL CIVIL ACTIONS; PROHIBITION, ELUCIDATED.— [A]mple jurisprudence exists to the effect that subsequent and substantial compliance of a petitioner may call for the relaxation of the rules of procedure in the interest of justice. But to merit the Court's liberal consideration, petitioner must show reasonable cause justifying non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of justice. Hence, deviation from the requirements of verification and certification against forum shopping may only be allowed in special circumstances. In the present case, petitioners failed to provide the Court with sufficient justification for the suspension or relaxation of the rules in their favor. In their Motion for Reconsideration of the 13 July 2005 Resolution of the Court of Appeals, petitioners merely claimed that some of them signed for their co-petitioners, while others were at work so that they could not sign the SPA in favor of Rodolfo Lonoy. Needless to say, the reason is flimsy and unsatisfactory. That other petitioners were at work does not make it impossible to secure their signatures, only a little more inconvenient. It is not, therefore, unreasonable for the Court to demand in this case compliance with the requirements for proper verification of the Petition and execution of the certificate against shopping. Prohibition is a legal remedy, provided by the common law, extraordinary in the sense that it is ordinarily available only when the usual and

ordinary proceedings at law or in equity are inadequate to afford redress, prerogative in character to the extent that it is not always demandable of right, to prevent courts, or other tribunals, officers, or persons, from usurping or exercising a jurisdiction with which they have not been vested by law. The writ of prohibition, as the name imports, is one which commands the person to whom it is directed not to do something which, by suggestion of the relator, the court is informed he is about to do. If the thing be already done, it is manifest the writ of prohibition cannot undo it, for that would require an affirmative act; and the only effect of a writ of prohibition is to suspend all action and to prevent any further proceeding in the prohibited direction. Prohibition, as a rule, does not lie to restrain an act that is already a *fait accompli*.

3. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 27 (PROPERTY REGISTRATION DECREE); INDEFEASIBILITYOF CERTIFICATE OF TITLE; REMEDY OF AGGRIEVED PARTY.— [C]ertificates of title issued in administrative proceedings are as indefeasible as certificates of title issued in judicial proceedings. In the case at bar, the DAR had already issued the corresponding OCTs after granting EPs to the tenant-beneficiaries in compliance with Presidential Decree No. 27 and Section 105 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree. Hence, the OCTs issued to petitioners pursuant to their EPs have already acquired the same protection accorded to other certificates of title issued judicially or administratively. A certificate of title becomes **indefeasible and incontrovertible** upon the expiration of one year from the date of the issuance of the order for the issuance of the patent. Land covered by such title may no longer be the subject matter of a cadastral proceeding, nor can it be decreed to another person. After the expiration of the one-year period, a person whose property has been wrongly or erroneously registered in another's name may bring an ordinary action for reconveyance, or if the property has passed into the hands of an innocent purchaser for value, Section 32 of the Property Registration Decree gives petitioners only one other remedy, *i.e.*, to file an action for damages against those responsible for the fraudulent registration.

APPEARANCES OF COUNSEL

Cabili Law Office for petitioners.
Abragan & Abragan Law Office for Administrator of the Estate of G. Nanaman.
Moises G. Dalisay, Jr. for Heirs of Juan Nanaman.
Paul Centillas Zaide for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking (a) the reversal of the Resolution[1] dated 13 July 2005 of the Twenty-Second (22nd) Division of the Court of Appeals in CA-G.R. SP No. 00365, which dismissed the Special Civil Action for Prohibition, Declaration of Nullity of Emancipation Patents, Injunction with Prayer for the Issuance of a Temporary Restraining Order; and (b) the reversal of the Resolution[2] of the Twenty-First (21st) Division of the Court of Appeals in CA-G.R. SP No. 00365 dated 22 September 2006, which denied the Motion for Reconsideration of the aforementioned Resolution.

The factual and procedural antecedents of the case are set forth hereunder.

Action for Reversion of Title

The spouses Gregorio Nanaman (Gregorio) and Hilaria Tabuclin (Hilaria) were the owners of a parcel of agricultural land situated in Tambo, Iligan City, consisting of 34.7 hectares (subject property), upon which they likewise erected their residence.

[1] Penned by Associate Justice Arturo G. Tayag with Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro, concurring; *rollo*, pp. 350-352.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez, concurring; *rollo*, pp. 387-388.

Living with them on the subject property were Virgilio Nanaman (Virgilio), Gregorio's son by another woman, and fifteen tenants.

When Gregorio died in 1945, Hilaria administered the subject property with Virgilio. On 16 February 1954, Hilaria and Virgilio executed a Deed of Sale[3] over the subject property in favor of Jose C. Deleste (Deleste).

Upon Hilaria's death on 15 May 1954, Juan Nanaman (Juan), Gregorio's brother, was appointed as special administrator of the estate of the deceased spouses Gregorio and Hilaria (joint estate). On 16 June 1956, Edilberto Noel (Noel) was appointed as the regular administrator of the joint estate.

The subject property was included in the list of assets of the joint estate. However, Noel could not take possession of the subject property since it was already in Deleste's possession. Thus, on 30 April 1963, Noel filed before the Court of First Instance (CFI), Branch II, Lanao del Norte, an action against Deleste for the reversion of title over the subject property to the Estate, docketed as Civil Case No. 698.

Through the years, Civil Case No. 698 was heard, decided, and appealed all the way to this Court in *Noel v. Court of Appeals*. On 11 January 1995, the Court rendered its Decision[4] in *Noel*, affirming the ruling of the Court of Appeals that the subject property was the conjugal property of the late spouses Gregorio and Hilaria, such that the latter could only sell her one-half (½) share therein to Deleste. Consequently, the intestate estate of Gregorio and Deleste were held to be the co-owners of the subject property, each with a one-half (½) interest in the same.

Operation Land Transfer Program

While Civil Case No. 698 was still pending before the CFI, Presidential Decree No. 27[5] was issued on 21 October 1972,

[3] Records, pp. 132-133.

[4] *Noel v. Court of Appeals*, 310 Phil. 89 (1995).

[5] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL TRANSFERRING TO THEM THE OWNERSHIP

which mandated that tenanted rice and corn lands be brought under the Operation Land Transfer Program and be awarded to farmer beneficiaries. In accordance therewith, the subject property was placed under the Operation Land Transfer Program.

On 12 February 1984, the Department of Agrarian Reform (DAR) issued Certificates of Land Transfer (CLTs) in the names of herein private respondents, the tenants and actual cultivators of the subject property. The CLTs were registered on 15 July 1986.

Subsequently, on 1 August 2001, Original Certificates of Title (OCTs) and Emancipation Patents (EPs) were issued in favor of the private respondents over their respective portions of the subject property. Private respondents' OCTs, EP numbers, and dates of registration with the Register of Deeds of Iligan City are presented in the table below:

Private Respondents	OCT/ EP Nos.	Areas (has.)	Registration Dates
1. Heirs of Neciforo A.Cabaluna	OCT No. P-01 (a.f.)/ EP No. 190251	1.08	21 Sept. 2001
2. Heirs of Abdon P. Manreal	OCT No. P-02 (a.f.)/ EP No. 00032029	2.5799	21 Sept 2001
3. Tranquilina C. Manreal	OCT No. P-03(a.f.)/ EP No. 190253	1.3612	1 October 2001
4. Tito L. Baller	OCT No. P-04 (a.f.)/ EP No. 190254	.4409	1 October 2001
5. Heirs of Herculano Balorio	OCT No. P-05 (a.f.)/ EP No. 190255	1.7937	1 October 2001
6. Alicia B. Manreal	OCT No. P-06 (a.f.)/ EP No. 190256	1.5233	1 October 2001
7. Felipe D. Manreal	OCT No. P-07 (a.f.)/ EP No. 190257	.9760	1 October 2001
8. Salvacion Manreal	OCT No. P-08 (a.f.)/ EP No. 190258	.5502	1 October 2001

OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

9. Heirs of Domingo N. Rico	OCT No. P-09 (a.f.)/ EP No. 190261	2.7850	1 October 2001
10. Macario Veloria	OCT No. P-10 (a.f.)/ EP No. 190262	.5778	1 October 2001
11. Heirs of Custodio M. Rico	OCT No. P-11 (a.f.)/ EP No. 19026	1.4499	3 October 2001
12. Heirs of Clemente M. Rico	OCT No. P-12 (a.f.)/ EP No. 190264	.7320	1 October 2001
13. Martillano D. Obeso	OCT No. P-13 (a.f.)/ EP No. 190265	2.0492	1 October 2001
14. Heirs of Pablo F. Rico	OCT No. P-14 (a.f.)/ EP No. 190266	.2608	1 October 2001
15. Heirs of Domingo V. Rico	OCT No. P-15 (a.f.)/ EP No. 190267	1.8036	1 October 2001[6]

Expropriation Case

Deleste passed away sometime in 1992.

About a year earlier, in 1991, the subject property was surveyed. The survey of a portion of the land consisting of 20.2611 hectares, designated as Lot No. 1407, was approved on 8 January 1999.

On 22 November 1999, the City of Iligan filed a complaint with the Regional Trial Court (RTC), Branch 4, Iligan City, for the expropriation of a 5.4686-hectare portion of Lot No. 1407, docketed as Civil Case No. 4979. On 11 December 2000, RTC Branch 4 issued a Decision[7] granting the expropriation. Since the true owner of the expropriated portion could not be determined, as the subject property had not yet been partitioned and distributed to any of the Heirs of Gregorio and Deleste, the just compensation for the expropriated portion of the subject property in the amount of ₱27,343,000.00 was deposited with the Development Bank of the Philippines in Iligan City, in trust for RTC Branch 4.

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[6] *Rollo,* pp. 158-216.

[7] *Id.* at 301-321.

Petition for Nullification of the Emancipation Patents (Heirs of Deleste)

On 28 January 2002, the Heirs of Deleste,[8] filed with the Department of Agrarian Reform Adjudication Board (DARAB) a petition seeking to nullify private respondents' EPs. The petition was docketed as Reg. Case No. X-471-LN-2002.

The Provincial Agrarian Reform Adjudicator (PARAD) rendered a Decision[9] on 21 July 2003 declaring that the EPs were null and void in view of the pending issues of ownership and the subsequent reclassification of the subject property into a residential/commercial land.

On appeal, docketed as DARAB Case No. 12486, the DARAB reversed the ruling of the PARAD in its Decision[10] dated 15 March 2004. The DARAB held, *inter alia*, that the EPs were valid, since it was the Heirs of Deleste who should have informed the DAR of the pendency of Civil Case No. 698 at the time the subject property was placed under the coverage of the Operation Land Transfer Program. It further found that the question of exemption from the Operation Land Transfer Program lay within the jurisdiction of the DAR Secretary or his authorized representative. The Heirs of Deleste filed a Motion for Reconsideration[11] of the aforementioned Decision, but the Motion was denied by the DARAB in its Resolution dated 8 July 2004.

The Heirs of Deleste thereafter filed a Petition for Review[12] with the Court of Appeals, docketed as CA-G.R. SP No. 85471, challenging the Decision and Resolution in DARAB Case No. 12486. The Petition was denied by the Court of Appeals in a Resolution[13]

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[8] Josefa L. Deleste, Jose Ray L. Deleste, Raul Hector L. Deleste and Ruben Alex L. Deleste.

[9] *Rollo*, pp. 542-553.

[10] Penned by Assistant Secretary Augusto P. Quijano with Undersecretary Rolando G. Mangulabnan, Assistant Secretary Lorenzo R. Reyes and Assistant Secretary Rustico T. de Belen, concurring; *rollo*, pp. 217-232.

[11] *Rollo*, pp. 659-674.

[12] *Id.* at 685-704.

[13] *Id.* at 705-706.

dated 28 October 2004 as material portions of the record and other supporting papers were not attached thereto, in accordance with Section 6 of Rule 43.[14] The Motion for Reconsideration[15] of the Heirs of Deleste was likewise denied by the appellate court in a Resolution[16] dated 13 September 2005 for being *pro forma*.[17]

Petition for Prohibition

During the pendency of CA-G.R. SP No. 85471 before the Court of Appeals, a Petition for Prohibition, Declaration of Nullity of Emancipation Patents Issued by DAR and the Corresponding [Original Certificates of Title] Issued by the [Land Registration Authority], Injunction with Prayer for Temporary Restraining Order (TRO)[18] was filed on 7 June 2005 by herein petitioners Heirs of Sofia Nanaman Lonoy, *et al*. with the Court of Appeals, docketed as CA-G.R. SP No. 00365.

Petitioners are more than one hundred twenty (120) individuals who claim to be the descendants of Fulgencio Nanaman, Gregorio's brother, and who collectively assert their right to a share in Gregorio's estate. Arguing that they were deprived of their inheritance by virtue of the improper issuance of the EPs to

[14] Sec. 6. *Contents of the petition*. – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

[15] *Rollo*, pp. 707-730.

[16] *Id.* at 734-736.

[17] On 25 January 2006, the Heirs of Deleste filed a Petition for Review on *Certiorari* before the Court, which was docketed as G.R. No. 169913. As of the writing of this decision, the above-mentioned case is still pending with the Second Division.

[18] *Rollo*, pp. 65-143.

private respondents without notice to them, petitioners prayed that a TRO be forthwith issued, prohibiting the DAR Secretary, the Land Registration Authority (LRA), the DARAB, the Land Bank of the Philippines (LBP), as well as the RTC, Branch 4 of Iligan City, from enforcing the EPs and OCTs in the names of private respondents until CA-G.R. SP No. 00365 was resolved. Petitioners further prayed that judgment be subsequently rendered declaring the said EPs and the OCTs null and void.

In a Resolution[19] dated 13 July 2005, the Court of Appeals dismissed the Petition in CA-G.R. SP No. 00365 on the following grounds:

A perusal, however, of the instant petition disclose the following defects and/or infirmities which constrain us to dismiss the petition:

(a.) Annexes "V", "W", "HH", "LL", "NN", "QQ", "UU" and "VV" are not duplicate originals or certified true copies in violation to Section 3, Rule 46 of the Rules of Court, hence, sufficient ground for the dismissal of the petition.

(b.) There is no explanation why personal service was not resorted to by petitioner in serving copies of the petition to adverse parties contrary to the provision of Section 11, Rule 13 of the Rules of Court which provides:

> Sec. 11. Priorities in modes of service and filing. – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, **a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally**. A violation of this Rule may be cause to consider the paper as not filed.

(c.) Petitioners in the instant case are not parties to the Department of Agrarian Reform Adjudication Board (DARAB) case who's (sic) Decision they now seek to be nullified in this present petition for prohibition.

(d.) Although a Special Power of Attorney (SPA) was obtained in favor of Rodolfo Lonoy who signed in the verification and certification of non-forum shopping, it can be gleaned, however, that other heirs whose names appeared in the SPA have not signed

[19] *Id.* at 350-352.

therein. It is also apparent that there was only one person who signed for the first four (4) heirs of Donny Ruedas and only one person who signed in some of the heirs of Jose Febe Nanaman in the Special Power of Attorney executed in favor of Rodolfo Lonoy.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED**.

Petitioners filed a Motion for Reconsideration[20] of the aforequoted Resolution, but the said Motion was denied by the appellate court in another Resolution[21] dated 22 September 2006, which reads:

After a careful evaluation of petitioners' arguments *vis-à-vis* public respondents' comment, We resolve to deny the instant motion.

While litigation is not a game of technicalities, and the rules should not be enforced strictly at the cost of substantial justice, still it does not follow that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation, assessment and just resolution of the issues. Procedural rules should not be belittled or dismissed simply because they may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for compelling reasons.

WHEREFORE, in view of the foregoing, petitioners' Motion for Reconsideration is hereby DENIED and Our July 13, 2005 Resolution is MAINTAINED.

Aggrieved, petitioners now come to this Court *via* the present Petition for Review, raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ACTED CONTRARY TO LAW AND JURISPRUDENCE OR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HASTILY DISMISSING THE PETITIONERS' PETITION FOR PROHIBITION, *ETC*. IN CA-G.R. SP NO. 00365 ON PURELY TECHNICAL GROUNDS SOME OF WHICH ARE PATENTLY ERRONEOUS OR UNTRUE.

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[20] *Id.* at 353-364.

[21] *Id.* at 387-388.

II.

IN THE EVENT THAT THE OUTRIGHT AND HASTY DISMISSAL OF CA-G.R. SP NO. 00365 WILL BE SET ASIDE, WHETHER OR NOT THE OTHER ISSUES SHOULD BE RESOLVED BY THIS HONORABLE COURT INSTEAD OF REMANDING THE CASE TO THE COURT OF APPEALS.

III.

WHETHER OR NOT RESPONDENT SECRETARY OF AGRARIAN REFORM ACTED WITHOUT JURISDICTION OR IN EXCESS OF JURISDICTION IN PLACING THE RESIDENTIAL-COMMERCIAL LOT OF PETITIONERS UNDER THE COVERAGE OF AGRARIAN REFORM.

IV.

WHETHER OR NOT RESPONDENTS SECRETARY OF AGRARIAN REFORM, LRA, AND DARAB VIOLATED PETITIONERS' CONSTITUTIONAL RIGHT TO DUE PROCESS BY DEPRIVING THEM OF THEIR INHERITANCE SHARES IN LOT 1407 WITHOUT IMPLEADING THEM AS INDISPENSABLE PARTIES AND WITHOUT SERVICE OF SUMMONS UPON THEM.

V.

WHETHER OR NOT RESPONDENTS SECRETARY OF AGRARIAN REFORM, LRA, AND DARAB VIOLATED SECTION 6, RA 6657 – COMPREHENSIVE AGRARIAN REFORM LAW, BY PLACING THE INDIVIDUAL INHERITANCE SHARES OF PETITIONERS IN LOT 1407 WHEN THE SAME IS WAY BELOW THE LANDOWNER'S RETENTION LIMIT OF FIVE (5) HECTARES [OR SEVEN (7) HECTARES UNDER PD 27].

VI.

WHETHER OR NOT PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MAKING PRIVATE RESPONDENTS AGRARIAN REFORM BENEFICIARIES DESPITE THE UNDISPUTABLE ABSENCE OF CONSENT, AGRICULTURAL PRODUCTION, SHARING OF HARVESTS, AND OTHER ELEMENTS OF A LEGITIMATE TENANCY RELATIONSHIP.

VII.

WHETHER OR NOT PUBLIC RESPONDENTS ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN REVIEWING [AND] OVERRULING JUDICIAL DECISIONS CONSIDERING THAT THE POWER OF JUDICIAL REVIEW OVER ACTS OF THE EXECUTIVE OR LEGISLATIVE BRANCH BELONGS TO THE JUDICIARY AND NOT VICE VERSA.

[VIII.]

WHETHER OR NOT PUBLIC RESPONDENTS ACTED WITHOUT JURISDICTION IN REVIEWING AND OVERRULING THE EARLIER JUDICIAL DETERMINATION OF JUST COMPENSATION BY RTC BRANCH 4, ILIGAN CITY, RE LOT 1407 PORTION AFFECTED BY THE INTEGRATED BUS TERMINAL [AND] BAGSAKAN MARKET.

[IX.]

WHETHER OR NOT PUBLIC RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN EXPROPRIATING THROUGH AGRARIAN REFORM LAND ALREADY JUDICIALLY EXPROPRIATED FOR THE INTEGRATED BUS TERMINAL AND BAGSAKAN MARKET.[22]

The primary issue for resolution of this Court is whether or not the Court of Appeals was correct in dismissing outright petitioners' Petition in CA-G.R. SP No. 00365, without considering the merits thereof.

In its assailed Resolution dated 13 July 2005, the appellate court dismissed CA-G.R. SP No. 00365 on several procedural grounds, among which was petitioner's failure to attach to their Petition the duplicate originals or certified true copies of some of their annexes, in violation of Section 3, Rule 46 of the Rules of Court.

The Court of Appeals was mistaken in this regard.

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[22] *Id.* at 1015-1017.

It should be recalled that petitioners initiated before the Court of Appeals, in its original jurisdiction, CA-G.R. SP No. 00365, a Petition for Prohibition.

Section 3 of Rule 46 of the Rules of Court states the requirements for a petition originally filed before the Court of Appeals, relevant portions of which are reproduced below:

> Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements*. –
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> xxx xxx xxx
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> It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a **clearly legible duplicate original or certified true copy** of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

Reference is also made to Section 2 of Rule 65 of the Rules of Court, particularly governing petitions for prohibition, which pertinently provides:

> Sec. 2. *Petition for Prohibition*. –
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> xxx xxx xxx
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> The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of **all pleadings and documents relevant and pertinent thereto**, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Section 3 of Rule 46 does not require that all supporting papers and documents accompanying a petition be duplicate originals or certified true copies. What it explicitly directs is that all petitions originally filed before the Court of Appeals

shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution or ruling subject thereof. Similarly, under Rule 65, governing the remedies of *certiorari*, prohibition and mandamus, petitions for the same need to be accompanied only by duplicate originals or certified true copies of the questioned judgment, order or resolution.[23] Other relevant documents and pleadings attached to such petitions may be mere machine copies thereof.[24] As to petitioners' Petition for Prohibition in CA-G.R. SP No. 00365, the attached annexes that were not duplicate originals or certified true copies, namely, Annexes "V",[25] "W",[26] "HH",[27] "LL",[28] "NN",[29] "QQ",[30] "UU"[31] and "VV",[32] were mere supporting documents and pleadings referred to in the petition and were not themselves the judgments, orders or resolutions being challenged in said Petition. At any rate, petitioners were able to attach certified true copies of these annexes to their Motion for Reconsideration of the dismissal of their Petition.

Another ground for which CA-G.R. SP No. 00365 was dismissed by the Court of Appeals was the alleged failure by petitioners to provide an explanation as to why the Petition

[23] *Garcia v. Court of Appeals*, G.R. No. 171098, 26 February 2008, 546 SCRA 595, 603-604.

[24] *Id*.

[25] Opposition and/or Manifestation on the Joint Motion of Atty. Zaide.

[26] Certified Copy of 22 April 2005 Order of RTC Branch 1 in Spl. Proc. 596 granting the joint motion filed by Atty. Cabili, *et al*. to complete partition of the NANAMAN share in Lot No. 1407, *etc*. consisting of 11.6259 hectares, more or less, among the numerous heirs of GREGORIO NANAMAN.

[27] Letter of Regional Officer Rajah, Housing & Land Use Regulatory Board, Cotabato City, to the effect that the 1975 Zoning Ordinance was approved on 21 September 1978.

[28] Ordinance No. 99-3653.

[29] Cash Deposit Slip from the Development Bank of the Philippines.

[30] Copy of the Decision and Entry of Judgment in CA-G.R. SP No. 55370 entitled *City of Iligan v. Hon. Macarambon*.

[31] Business Permit No. 001947-0 issued to Fortunata Lira.

[32] Business Permit No. 002333-0 issued to Fortunata Lira.

therein was served upon adverse parties by registered mail instead of personal service, as required by Section 11, Rule 13[33] of the Rules of Court. To the contrary, petitioners provided such an explanation,[34] except that it was incorporated into the main body of the Petition, right before the statement of the Relief prayed for. It was clearly stated therein that:

EXPLANATION FOR SERVICE BY MAIL

Copies of this petition were served upon respondents SECRETARY OF AGRARIAN REFORM, LRA, DARAB, LBP, and counsels of other respondents to save time and costs considering the number of parties to be served and the far distance of [the] LBP Office in Cagayan de Oro City, the DAR/DARAB offices in Diliman, Quezon City, and the LRA office in East Ave. corner NIA Road, Diliman, Quezon City.

The Court, however, agrees with the Court of Appeals that the failure of all the petitioners to sign the Special Power of Attorney (SPA) in favor of Rodolfo Lonoy, authorizing him to sign the verification and certification against forum shopping on their behalf, was fatal to their Petition in CA-G.R. SP No. 00365.

Section 5 of Rule 7 of the Rules of Court explicitly provides:

Sec. 5. *Certification against forum shopping.* –

The **plaintiff or principal party** shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status

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[33] Sec. 11. *Priorities in modes of service and filing.* – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[34] *Rollo*, p. 139.

thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be **cause for the dismissal of the case without prejudice**, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

In *PET Plans, Inc. v. Court of Appeals*,[35] this Court affirmed the Court of Appeals' dismissal of the petition, since the verification and certification of non-forum shopping was signed by the company's vice president for legal affairs/corporate secretary without any showing that he was authorized to do so.

Indeed, ample jurisprudence exists to the effect that subsequent and substantial compliance of a petitioner may call for the relaxation of the rules of procedure in the interest of justice. But to merit the Court's liberal consideration, petitioner must show reasonable cause justifying non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of justice.[36] Hence, deviation from the requirements of verification and certification against forum shopping may only be allowed in special circumstances.

In the present case, petitioners failed to provide the Court with sufficient justification for the suspension or relaxation of the rules in their favor. In their Motion for Reconsideration of the 13 July 2005 Resolution of the Court of Appeals, petitioners merely claimed that some of them signed for their co-petitioners,

[35] G.R. No. 148287, 23 November 2004, 443 SCRA 510.

[36] *United Paragon Mining Corporation v. Court of Appeals*, G.R. No. 150959, 4 August 2006, 497 SCRA 638, 647-648.

while others were at work so that they could not sign the SPA in favor of Rodolfo Lonoy. Needless to say, the reason is flimsy and unsatisfactory. That other petitioners were at work does not make it impossible to secure their signatures, only a little more inconvenient. It is not, therefore, unreasonable for the Court to demand in this case compliance with the requirements for proper verification of the Petition and execution of the certificate against shopping.

Furthermore, the Court takes note of another procedural lapse committed by petitioners justifying the dismissal of their Petition for Prohibition in CA-G.R. SP No. 00365, for it was the wrong remedy for them to pursue.

According to Section 2 of Rule 65 of the Rules of Court, a petition for prohibition may be availed of under the following circumstances:

Sec. 2. *Petition for prohibition.*—

When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are 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 or any other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein**, or otherwise granting such incidental reliefs as law and justice may require.

Prohibition is a legal remedy, provided by the common law, extraordinary in the sense that it is ordinarily available only when the usual and ordinary proceedings at law or in equity are inadequate to afford redress, prerogative in character to the extent that it is not always demandable of right, to prevent courts, or other tribunals, officers, or persons, from usurping or exercising a jurisdiction with which they have not been vested by law.[37]

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[37] Feria, "*CIVIL PROCEDURE ANNOTATED*," Vol. II (2001 ed.), pp. 475-476.

The writ of prohibition, as the name imports, is one which commands the person to whom it is directed not to do something which, by suggestion of the relator, the court is informed he is about to do. If the thing be already done, it is manifest the writ of prohibition cannot undo it, for that would require an affirmative act; and the only effect of a writ of prohibition is to suspend all action and to prevent any further proceeding in the prohibited direction.[38] Prohibition, as a rule, does not lie to restrain an act that is already a *fait accompli*.[39]

In this case, a close reading of the Petition for Prohibition filed by the petitioners before the Court of Appeals in CA-G.R. SP No. 00365 would reveal that the same is essentially more of an action for the nullification of the allegedly invalid EPs and OCTs issued in the names of private respondents. The writ of prohibition is only sought by petitioners to prevent the implementation of the EPs and OCTs. Considering that such EPs and OCTs were issued in 2001, they had become indefeasible and incontrovertible by the time petitioners instituted CA-G.R. SP No. 00365 in 2005, and may no longer be judicially reviewed.

Section 32 of the Property Registration Decree unequivocally provides:

Sec. 32. *Review of decree of registration; Innocent purchaser for value*.

The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to **file in the proper Court of First Instance [now Regional Trial Court] a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration**, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the

[38] *Cabañero and Mangornong v. Torres*, 61 Phil. 522, 525 (1935).

[39] *Aguinaldo v. Commission on Elections*, 368 Phil. 253, 263 (1999).

land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value. **Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud**.

In *Estribillo v. Department of Agrarian Reform*,[40] the Court affirmed the long-settled doctrine that certificates of title issued in administrative proceedings are as indefeasible as certificates of title issued in judicial proceedings. In the case at bar, the DAR had already issued the corresponding OCTs after granting EPs to the tenant-beneficiaries in compliance with Presidential Decree No. 27 and Section 105[41] of Presidential Decree No. 1529, otherwise known as the Property Registration Decree. Hence, the OCTs issued to petitioners pursuant to their EPs

[40] G.R. No. 159674, 30 June 2006, 494 SCRA 218.

[41] Sec. 105. *Certificates of Land Transfer Emancipation Patents*.— The Department of Agrarian Reform shall pursuant to P. D. No. 27 issue in duplicate, a Certificate of Land Transfer for every land brought under "Operation Land Transfer," the original of which shall be kept by the tenant-farmer and the duplicate, in the Registry of Deeds. After the tenant-farmer shall have fully complied with the requirements for a grant of title under P.D. No. 27, an Emancipation Patent which may cover previously titled or untitled property shall be issued by the Department of Agrarian Reform.

The Register of Deeds shall complete the entries on the aforementioned Emancipation Patent and shall assign an original certificate of title number in case of unregistered land, and in case of registered property, shall issue the corresponding transfer certificate of title without requiring the surrender of the owner's duplicate of the title to be cancelled.

In case of death of the grantee, the Department of Agrarian Reform shall determine his heirs or successors-in-interest and shall notify the Register of Deeds accordingly. In case of subsequent transfer of property covered by an Emancipation Patent or a Certificate of Title emanating from an Emancipation Patent, the Register of Deeds shall affect the transfer only upon receipt of the supporting papers from the Department of Agrarian Reform.

No fee, premium, of tax of any kind shall be charged or imposed in connection with the issuance of an original Emancipation Patent and for the registration or related documents.

have already acquired the same protection accorded to other certificates of title issued judicially or administratively.

A certificate of title becomes **indefeasible and incontrovertible** upon the expiration of one year from the date of the issuance of the order for the issuance of the patent. Land covered by such title may no longer be the subject matter of a cadastral proceeding, nor can it be decreed to another person.[42]

Private respondents' EPs were issued in their favor on 1 August 2001 and their OCTs were correspondingly issued and subsequently registered with the Register of Deeds of Iligan City on 21 September 2001 and 1 October 2001. Petitioners directly went to the Court of Appeals, instead to the Regional Trial Court as mandated by Section 32 of the Property Registration Decree, to seek the nullification of the said EPs and OCTs and only on 7 June 2005, or almost four (4) years after the issuance and registration thereof. Petitioners failed to vindicate their rights within the one-year period from issuance of the certificates of title as the law requires.

After the expiration of the one-year period, a person whose property has been wrongly or erroneously registered in another's name may bring an ordinary action for reconveyance,[43] or if the property has passed into the hands of an innocent purchaser for value, Section 32 of the Property Registration Decree gives petitioners only one other remedy, *i.e.*, to file an action for damages against those responsible for the fraudulent registration.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Austria-Martinez,* and *Reyes, JJ.*, concur.

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[42] *Estribillo v. Department of Agrarian Reform, supra* note 40 at 236-237.

[43] *Gonzales v. Intermediate Appellate Court*, G.R. No. 69622, 29 January 1988, 157 SCRA 587, 600.

[*] Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 21 October 2007.

THIRD DIVISION

[G.R. No. 176474. November 27, 2008]

HEIRS OF ARTURO REYES, represented by EVELYN R. SAN BUENAVENTURA, *petitioners, vs.* **ELENA SOCCO-BELTRAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; VENDOR MUST HAVE OWNERSHIP OF THE PROPERTY AT THE TIME OF DELIVERY; CASE AT BAR.— Under Article 1459 of the Civil Code on contracts of sale, "The thing must be licit and the vendor must have a right to transfer ownership thereof at the time it is delivered." The law specifically requires that the vendor must have ownership of the property at the time it is delivered. Petitioners claim that the property was constructively delivered to them in 1954 by virtue of the Contract to Sell. However, as already pointed out by this Court, it was explicit in the Contract itself that, at the time it was executed, Miguel R. Socco was not yet the owner of the property and was only expecting to inherit it. Hence, there was no valid sale from which ownership of the subject property could have transferred from Miguel Socco to Arturo Reyes. Without acquiring ownership of the subject property, Arturo Reyes also could not have conveyed the same to his heirs, herein petitioners.

2. ID.; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; LAND REGISTRATION ACT; THE OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS OCCUPATION OF PROPERTY FOR MORE THAN 30 YEARS MUST BE CONCLUSIVELY ESTABLISHED; CASE AT BAR.— [P]etitioners herein were unable to prove actual possession of the subject property for the period required by law. It was underscored in *San Miguel Corporation* that the open, continuous, exclusive, and notorious occupation of property for more than 30 years must be no less than **conclusive,** such quantum of proof being necessary to avoid the erroneous validation of actual fictitious claims of possession over the property that is being claimed. In the present case, the evidence presented by the petitioners falls short of being conclusive.

Apart from their self-serving statement that they took possession of the subject property, the only proof offered to support their claim was a general statement made in the letter dated 4 February 2002 of *Barangay* Captain Carlos Gapero, certifying that Arturo Reyes was the occupant of the subject property "since peace time and at present." The statement is rendered doubtful by the fact that as early as 1997, when respondent filed her petition for issuance of title before the DAR, Arturo Reyes had already died and was already represented by his heirs, petitioners herein.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF AN ADMINISTRATIVE OFFICER, IF SUPPORTED BY EVIDENCE, ARE ENTITLED TO GREAT RESPECT; CASE AT BAR.— [T]he certification given by *Barangay* Captain Gapero that Arturo Reyes occupied the premises for an unspecified period of time, *i.e.*, since peace time until the present, cannot prevail over Legal Officer Pinlac's more particular findings in her Report/Recommendation. Legal Officer Pinlac reported that petitioners admitted that it was only in the 1970s that they built the skeletal structure found on the subject property. She also referred to the averments made by Patricia Hipolito in an Affidavit, dated 26 February 1999, that the structure was left unfinished because respondent prevented petitioners from occupying the subject property. Such findings disprove petitioners' claims that their predecessor-in-interest, Arturo Reyes, had been in open, exclusive, and continuous possession of the property since 1954. The adverted findings were the result of Legal Officer Pinlac's investigation in the course of her official duties, of matters within her expertise which were later affirmed by the DAR Secretary, the Office of the President, and the Court of Appeals. The factual findings of such administrative officer, if supported by evidence, are entitled to great respect.

4. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF THE AUTHENTICITY OF AN ANCIENT DOCUMENT WHICH APPEARS TO BE GENUINE ON ITS FACE IS NOT NECESSARY; CASE AT BAR.— The subject property was allocated to respondent in the extrajudicial settlement by the heirs of Constancia's estate. The document entitled "Extra-judicial Settlement of the Estate of the Deceased Constancia Socco" was not notarized and, as a private document,

can only bind the parties thereto. However, its authenticity was never put into question, nor was its legality impugned. Moreover, executed in 1965 by the heirs of Constancia Socco, or more than 30 years ago, it is an ancient document which appears to be genuine on its face and therefore its authenticity must be upheld.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; SALES; CONTRACT TO SELL; TITLE OVER THE SUBJECT PROPERTY IS TRANSFERRED TO THE VENDEE UPON FULL PAYMENT OF THE CONSIDERATION.— By the nature of a contract or agreement to sell, the title over the subject property is transferred to the vendee upon the full payment of the stipulated consideration. Upon the full payment of the purchase price, and absent any showing that the allocatee violated the conditions of the agreement, ownership of the subject land should be conferred upon the allocatee.

APPEARANCES OF COUNSEL

San Buenaventura Law Offices for petitioners.
Rolando Bondoc Miranda for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 31 January 2006 rendered by the Court of Appeals in CA-G.R. SP No. 87066, which affirmed the Decision[2] dated 30 June 2003 of the Office of the President, in O.P. Case No. 02-A-007, approving the application of respondent Elena Socco-Beltran to purchase the subject property.

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Arturo D. Brion (now an Associate Justice of the Supreme Court) and Mariflor Punzalan Castillo, concurring. *Rollo*, pp. 32-40.

[2] Penned by Senior Deputy Executive Secretary Waldo Q. Flores. *Rollo*, pp. 81-82.

The subject property in this case is a parcel of land originally identified as Lot No. 6-B, situated in Zamora Street, Dinalupihan, Bataan, with a total area of 360 square meters. It was originally part of a larger parcel of land, measuring 1,022 square meters, allocated to the Spouses Marcelo Laquian and Constancia Socco (Spouses Laquian), who paid for the same with Japanese money. When Marcelo died, the property was left to his wife Constancia. Upon Constancia's subsequent death, she left the original parcel of land, along with her other property, with her heirs – her siblings, namely: Filomena Eliza Socco, Isabel Socco de Hipolito, Miguel R. Socco, and Elena Socco-Beltran.[3] Pursuant to an unnotarized document entitled "Extrajudicial Settlement of the Estate of the Deceased Constancia R. Socco," executed by Constancia's heirs sometime in 1965, the parcel of land was partitioned into three lots—Lot No. 6-A, Lot No. 6-B, and Lot No. 6-C.[4] The subject property, Lot No. 6-B, was adjudicated to respondent, but no title had been issued in her name.

On 25 June 1998, respondent Elena Socco-Beltran filed an application for the purchase of Lot No. 6-B before the Department of Agrarian Reform (DAR), alleging that it was adjudicated in her favor in the extra-judicial settlement of Constancia Socco's estate.[5]

Petitioners herein, the heirs of the late Arturo Reyes, filed their protest to respondent's petition before the DAR on the ground that the subject property was sold by respondent's brother, Miguel R. Socco, in favor of their father, Arturo Reyes, as evidenced by the Contract to Sell, dated 5 September 1954, stipulating that:[6]

> That I am one of the co-heirs of the Estate of the deceased Constancia Socco; and that **I am to inherit** as such a portion of her lot consisting of Four Hundred Square Meters (400) more or less located on the (sic) Zamora St., Municipality of Dinalupihan, Province of Bataan, bounded as follows:

[3] Records, p. 113.

[4] *Rollo,* pp. 55-58.

[5] Records, p. 26.

[6] *Rollo,* p. 54.

xxx xxx xxx

That for or in consideration of the sum of FIVE PESOS (₱5.00) per square meter, hereby sell, convey and transfer by way of this **conditional sale** the said 400 sq.m. more or less unto Atty. Arturo C. Reyes, his heirs, administrator and assigns x x x. (Emphasis supplied.)

Petitioners averred that they took physical possession of the subject property in 1954 and had been uninterrupted in their possession of the said property since then.

Legal Officer Brigida Pinlac of the DAR Bataan Provincial Agrarian Reform Office conducted an investigation, the results of which were contained in her Report/ Recommendation dated 15 April 1999. Other than recounting the aforementioned facts, Legal Officer Pinlac also made the following findings in her Report/Recommendation:[7]

Further investigation was conducted by the undersigned and based on the documentary evidence presented by both parties, the following facts were gathered: that the house of [the] Reyes family is adjacent to the landholding in question and portion of the subject property consisting of about 15 meters [were] occupied by the heirs of Arturo Reyes were a kitchen and bathroom [were] constructed therein; on the remaining portion a skeletal form made of hollow block[s] is erected and according to the heirs of late Arturo Reyes, this was constructed since the year (sic) 70's at their expense; that construction of the said skeletal building was not continued and left unfinished which according to the affidavit of Patricia Hipolito the Reyes family where (sic) prevented by Elena Socco in their attempt of occupancy of the subject landholding; (affidavit of Patricia Hipolito is hereto attached as Annex "F"); that Elena Socco cannot physically and personally occupy the subject property because of the skeletal building made by the Reyes family who have been requesting that they be paid for the cost of the construction and the same be demolished at the expense of Elena Socco; that according to Elena Socco, [she] is willing to waive her right on the portion where [the] kitchen and bathroom is (sic) constructed but not the whole of Lot [No.] 6-B adjudicated to her; that the Reyes family included the subject property to the sworn statement of value of real properties filed before the

[7] Records, pp. 112-113.

municipality of Dinalupihan, Bataan, copies of the documents are hereto attached as Annexes "G" and "H"; that likewise Elena Socco has been continuously and religiously paying the realty tax due on the said property.

In the end, Legal Officer Pinlac recommended the approval of respondent's petition for issuance of title over the subject property, ruling that respondent was qualified to own the subject property pursuant to Article 1091 of the New Civil Code.[8] Provincial Agrarian Reform Officer (PARO) Raynor Taroy concurred in the said recommendation in his Indorsement dated 22 April 1999.[9]

In an Order dated 15 September 1999, DAR Regional Director Nestor R. Acosta, however, dismissed respondent's petition for issuance of title over the subject property on the ground that respondent was not an actual tiller and had abandoned the said property for 40 years; hence, she had already renounced her right to recover the same.[10] The dispositive part of the Order reads:

1. DISMISSING the claims of Elena Socco-Beltran, duly represented by Myrna Socco for lack of merit;

2. ALLOCATING Lot No. 6-B under Psd-003-008565 with an area of 360 square meters, more or less, situated Zamora Street, Dinalupihan, Bataan, in favor of the heirs of Arturo Reyes.

3. ORDERING the complainant to refrain from any act tending to disturb the peaceful possession of herein respondents.

4. DIRECTING the MARO of Dinalupihan, Bataan to process the pertinent documents for the issuance of CLOA in favor of the heirs of Arturo Reyes.[11]

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[8] *Id.* at 112. Art. 1091 of the Civil Code provides that:

Art. 1091. A partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him.

[9] *Id.* at 114.

[10] *Rollo*, pp. 59-61.

[11] *Id.* at 60-61.

Respondent filed a Motion for Reconsideration of the foregoing Order, which was denied by DAR Regional Director Acosta in another Order dated 15 September 1999.[12]

Respondent then appealed to the Office of the DAR Secretary. In an Order, dated 9 November 2001, the DAR Secretary reversed the Decision of DAR Regional Director Acosta after finding that neither petitioners' predecessor-in-interest, Arturo Reyes, nor respondent was an actual occupant of the subject property. However, since it was respondent who applied to purchase the subject property, she was better qualified to own said property as opposed to petitioners, who did not at all apply to purchase the same. Petitioners were further disqualified from purchasing the subject property because they were not landless. Finally, during the investigation of Legal Officer Pinlac, petitioners requested that respondent pay them the cost of the construction of the skeletal house they built on the subject property. This was construed by the DAR Secretary as a waiver by petitioners of their right over the subject property.[13] In the said Order, the DAR Secretary ordered that:

> WHEREFORE, premises considered, the September 15, 1999 Order is hereby SET ASIDE and a new Order is hereby issued APPROVING the application to purchase Lot [No.] 6-B of Elena Socco-Beltran.[14]

Petitioners sought remedy from the Office of the President by appealing the 9 November 2001 Decision of the DAR Secretary. Their appeal was docketed as O.P. Case No. 02-A-007. On 30 June 2003, the Office of the President rendered its Decision denying petitioners' appeal and affirming the DAR Secretary's Decision.[15] The *fallo* of the Decision reads:

> WHEREFORE, premises considered, judgment appealed from is **AFFIRMED** and the instant appeal **DISMISSED**.[16]

[12] *Id.* at 65-66.

[13] CA *rollo*, pp. 42-46.

[14] *Id.* at 46.

[15] *Rollo*, pp. 81-82.

[16] *Id.* at 82.

Petitioners' Motion for Reconsideration was likewise denied by the Office of the President in a Resolution dated 30 September 2004.[17] In the said Resolution, the Office of the President noted that petitioners failed to allege in their motion the date when they received the Decision dated 30 June 2003. Such date was material considering that the petitioners' Motion for Reconsideration was filed only on 14 April 2004, or almost nine months after the promulgation of the decision sought to be reconsidered. Thus, it ruled that petitioners' Motion for Reconsideration, filed beyond fifteen days from receipt of the decision to be reconsidered, rendered the said decision final and executory.

Consequently, petitioners filed an appeal before the Court of Appeals, docketed as CA-G.R. SP No. 87066. Pending the resolution of this case, the DAR already issued on 8 July 2005 a Certificate of Land Ownership Award (CLOA) over the subject property in favor of the respondent's niece and representative, Myrna Socco-Beltran.[18] Respondent passed away on 21 March 2001,[19] but the records do not ascertain the identity of her legal heirs and her legatees.

Acting on CA-G.R. SP No. 87066, the Court of Appeals subsequently promulgated its Decision, dated 31 January 2006, affirming the Decision dated 30 June 2003 of the Office of the President. It held that petitioners could not have been actual occupants of the subject property, since actual occupancy requires the positive act of occupying and tilling the land, not just the introduction of an unfinished skeletal structure thereon. The Contract to Sell on which petitioners based their claim over the subject property was executed by Miguel Socco, who was not the owner of the said property and, therefore, had no right to transfer the same. Accordingly, the Court of Appeals affirmed respondent's right over the subject property, which was derived from the original allocatees thereof.[20] The *fallo* of the said Decision reads:

[17] *Id.* at 86-88.

[18] CA *rollo*, pp. 153, 160-161.

[19] *Id.* at 64.

[20] *Rollo*, pp. 36-38.

WHEREFORE, premises considered, the instant **PETITION FOR REVIEW** is **DISMISSED**. Accordingly, the Decision dated 30 June 2003 and the Resolution dated 30 December 2004 both issued by the Office of the President are hereby **AFFIRMED *in toto***.[21]

The Court of Appeals denied petitioners' Motion for Reconsideration of its Decision in a Resolution dated 16 August 2006.[22]

Hence, the present Petition, wherein petitioners raise the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE FINDINGS OF THE OFFICE OF THE PRESIDENT THAT THE SUBJECT LOT IS VACANT AND THAT PETITIONERS ARE NOT ACTUAL OCCUPANTS THEREOF BY DENYING THE LATTER'S CLAIM THAT THEY HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE, NOTORIOUS AND AVDERSE (sic) POSSESSION THEREOF SINCE 1954 OR FOR MORE THAN THIRTY (30) YEARS.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT HELD THAT PETITIONERS "CANNOT LEGALLY ACQUIRE THE SUBJECT PROPERTY AS THEY ARE NOT CONSIDERED LANDLESS AS EVIDENCED BY A TAX DECLARATION."

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT "…WHATEVER RESERVATION WE HAVE OVER THE RIGHT OF MYRNA SOCCO TO SUCCEED WAS ALREADY SETTLED WHEN NO LESS THAN MIGUEL SOCCO (PREDECESSOR-IN INTEREST OF HEREIN PETITIONERS) EXECUTED HIS WAIVER OF RIGHT DATED APRIL 19, 2005 OVER THE SUBJECT PROPERTY IN FAVOR OF MYRNA SOCCO.

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[21] *Id.* at 40.

[22] *Id.* at 41-43.

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT DENIED PETITIONERS MOTION FOR NEW TRIAL THEREBY BRUSHING ASIDE THE FACT THAT MYRNA V. SOCCO-ARIZO GROSSLY MISREPRESENTED IN HER INFORMATION SHEET OF BENEFICIARIES AND APPLICATION TO PURCHASE LOT IN LANDED ESTATES THAT SHE IS A FILIPINO CITIZEN, WHEN IN TRUTH AND IN FACT, SHE IS ALREADY AN AMERICAN NATIONAL.[23]

The main issue in this case is whether or not petitioners have a better right to the subject property over the respondent. Petitioner's claim over the subject property is anchored on the Contract to Sell executed between Miguel Socco and Arturo Reyes on 5 September 1954. Petitioners additionally allege that they and their predecessor-in-interest, Arturo Reyes, have been in possession of the subject lot since 1954 for an uninterrupted period of more than 40 years.

The Court is unconvinced.

Petitioners cannot derive title to the subject property by virtue of the Contract to Sell. It was unmistakably stated in the Contract and made clear to both parties thereto that the vendor, Miguel R. Socco, was not yet the owner of the subject property and was merely expecting to inherit the same as his share as a co-heir of Constancia's estate.[24] It was also declared in the Contract itself that Miguel R. Socco's conveyance of the subject to the buyer, Arturo Reyes, was a conditional sale. It is, therefore, apparent that the sale of the subject property in favor of Arturo Reyes was conditioned upon the event that Miguel Socco would actually inherit and become the owner of the said property. Absent such occurrence, Miguel R. Socco never acquired

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[23] *Id.* at 16.

[24] In the Contract To Sell, Miguel R. Socco states that, "That I am **one of the co-heirs** of the Estate of the deceased Constancia Socco; and that **I am to inherit** as such a portion of her lot consisting of Four Hundred Square Meters (400) more or less located on the (sic) Zamora St., Municipality of Dinalupihan, Province of Bataan." (*Rollo*, p. 54.)

ownership of the subject property which he could validly transfer to Arturo Reyes.

Under Article 1459 of the Civil Code on contracts of sale, "The thing must be licit and the vendor must have a right to transfer ownership thereof at the time it is delivered." The law specifically requires that the vendor must have ownership of the property at the time it is delivered. Petitioners claim that the property was constructively delivered to them in 1954 by virtue of the Contract to Sell. However, as already pointed out by this Court, it was explicit in the Contract itself that, at the time it was executed, Miguel R. Socco was not yet the owner of the property and was only expecting to inherit it. Hence, there was no valid sale from which ownership of the subject property could have transferred from Miguel Socco to Arturo Reyes. Without acquiring ownership of the subject property, Arturo Reyes also could not have conveyed the same to his heirs, herein petitioners.

Petitioners, nevertheless, insist that they physically occupied the subject lot for more than 30 years and, thus, they gained ownership of the property through acquisitive prescription, citing *Sandoval v. Insular Government* [25] and *San Miguel Corporation v. Court of Appeals*.[26]

In *Sandoval*, petitioners therein sought the enforcement of Section 54, paragraph 6 of Act No. 926, otherwise known as the Land Registration Act, which required — for the issuance of a certificate of title to agricultural public lands — the open, continuous, exclusive, and notorious possession and occupation of the same in good faith and under claim of ownership for more than ten years. After evaluating the evidence presented, consisting of the testimonies of several witnesses and proof that fences were constructed around the property, the Court in the aforestated case denied the petition on the ground that petitioners failed to prove that they exercised acts of ownership or were in open, continuous, and peaceful possession of the

[25] 12 Phil. 648 (1909).

[26] G.R. No. 57667, 28 May 1990, 185 SCRA 722.

whole land, and had caused it to be enclosed to the exclusion of other persons. It further decreed that whoever claims such possession shall exercise acts of dominion and ownership which cannot be mistaken for the momentary and accidental enjoyment of the property.[27]

In *San Miguel Corporation*, the Court reiterated the rule that the open, exclusive, and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby land ceases to be public land and is, therefore, private property. It stressed, however, that the occupation of the land for 30 years must be *conclusively* established. Thus, the evidence offered by petitioner therein – tax declarations, receipts, and the sole testimony of the applicant for registration, petitioner's predecessor-in-interest who claimed to have occupied the land before selling it to the petitioner – were considered insufficient to satisfy the quantum of proof required to establish the claim of possession required for acquiring alienable public land.[28]

As in the two aforecited cases, petitioners herein were unable to prove actual possession of the subject property for the period required by law. It was underscored in *San Miguel Corporation* that the open, continuous, exclusive, and notorious occupation of property for more than 30 years must be no less than **conclusive**, such quantum of proof being necessary to avoid the erroneous validation of actual fictitious claims of possession over the property that is being claimed.[29]

In the present case, the evidence presented by the petitioners falls short of being conclusive. Apart from their self-serving statement that they took possession of the subject property, the only proof offered to support their claim was a general statement made in the letter[30] dated 4 February 2002 of *Barangay*

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[27] *Sandoval v. Insular Government, supra* note 25 at 654-656.

[28] *San Miguel Corporation v. Court of Appeals, supra* note 26 at 724-726.

[29] *Id.*

[30] *Rollo*, p. 117.

Captain Carlos Gapero, certifying that Arturo Reyes was the occupant of the subject property "since peace time and at present." The statement is rendered doubtful by the fact that as early as 1997, when respondent filed her petition for issuance of title before the DAR, Arturo Reyes had already died and was already represented by his heirs, petitioners herein.

Moreover, the certification given by *Barangay* Captain Gapero that Arturo Reyes occupied the premises for an unspecified period of time, *i.e.*, since peace time until the present, cannot prevail over Legal Officer Pinlac's more particular findings in her Report/Recommendation. Legal Officer Pinlac reported that petitioners admitted that it was only in the 1970s that they built the skeletal structure found on the subject property. She also referred to the averments made by Patricia Hipolito in an Affidavit,[31] dated 26 February 1999, that the structure was left unfinished because respondent prevented petitioners from occupying the subject property. Such findings disprove petitioners' claims that their predecessor-in-interest, Arturo Reyes, had been in open, exclusive, and continuous possession of the property since 1954. The adverted findings were the result of Legal Officer Pinlac's investigation in the course of her official duties, of matters within her expertise which were later affirmed by the DAR Secretary, the Office of the President, and the Court of Appeals. The factual findings of such administrative officer, if supported by evidence, are entitled to great respect.[32]

In contrast, respondent's claim over the subject property is backed by sufficient evidence. Her predecessors-in-interest, the spouses Laquian, have been identified as the original allocatees who have fully paid for the subject property. The subject property was allocated to respondent in the extrajudicial settlement by the heirs of Constancia's estate. The document entitled "Extra-judicial Settlement of the Estate of the Deceased Constancia

[31] Records, p. 105.

[32] *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001); *Dulos Realty and Development Corporation v. Court of Appeals*, 422 Phil. 292, 304 (2001); *Advincula v. Dicen*, G.R. No. 162403, 16 May 2005, 458 SCRA 696, 712; *Balbastro v. Junio*, G.R. No. 154678, 17 July 2007, 527 SCRA 680, 693.

Socco" was not notarized and, as a private document, can only bind the parties thereto. However, its authenticity was never put into question, nor was its legality impugned. Moreover, executed in 1965 by the heirs of Constancia Socco, or more than 30 years ago, it is an ancient document which appears to be genuine on its face and therefore its authenticity must be upheld.[33] Respondent has continuously paid for the realty tax due on the subject property, a fact which, though not conclusive, served to strengthen her claim over the property.[34]

From the foregoing, it is only proper that respondent's claim over the subject property be upheld. This Court must, however, note that the Order of the DAR Secretary, dated 9 November 2001, which granted the petitioner's right to purchase the property, is flawed and may be assailed in the proper proceedings. Records show that the DAR affirmed that respondent's predecessors-in-interest, Marcelo Laquian and Constancia Socco, having been identified as the original allocatee, have fully paid for the subject property as provided under an agreement to sell. By the nature of a contract or agreement to sell, the title over the subject property is transferred to the vendee upon the full payment of the stipulated consideration. Upon the full payment of the purchase price, and absent any showing that the allocatee violated the conditions of the agreement, ownership of the subject land should be conferred upon the allocatee.[35] Since the extrajudicial partition transferring Constancia Socco's interest in the subject land to the respondent is valid, there is clearly no need for the respondent to purchase the subject property, despite the application for the

[33] Sec. 22, Rule 132 of the Revised Rules of Court states that:

SEC. 22. *How genuineness of handwriting proved.*— The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (*Manongsong v. Estimio*, 452 Phil. 862, 878 [2003].)

[34] Records, p. 112.

[35] *Spouses Tuazon v. Hon. Garilao*, 415 Phil. 62, 69 and 72 (2001).

purchase of the property erroneously filed by respondent. The only act which remains to be performed is the issuance of a title in the name of her legal heirs, now that she is deceased.

Moreover, the Court notes that the records have not clearly established the right of respondent's representative, Myrna Socco-Arizo, over the subject property. Thus, it is not clear to this Court why the DAR issued on 8 July 2005 a CLOA[36] over the subject property in favor of Myrna Socco-Arizo. Respondent's death does not automatically transmit her rights to the property to Myrna Socco-Beltran. Respondent only authorized Myrna Socco-Arizo, through a Special Power of Attorney[37] dated 10 March 1999, to represent her in the present case and to administer the subject property for her benefit. There is nothing in the Special Power of Attorney to the effect that Myrna Socco-Arizo can take over the subject property as owner thereof upon respondent's death. That Miguel V. Socco, respondent's only nephew, the son of the late Miguel R. Socco, and Myrna Socco-Arizo's brother, executed a waiver of his right to inherit from respondent, does not automatically mean that the subject property will go to Myrna Socco-Arizo, absent any proof that there is no other qualified heir to respondent's estate. Thus, this Decision does not in any way confirm the issuance of the CLOA in favor of Myrna Socco-Arizo, which may be assailed in appropriate proceedings.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87066, promulgated on 31 January 2006, is *AFFIRMED* with *MODIFICATION*. This Court withholds the confirmation of the validity of title over the subject property in the name of Myrna Socco-Arizo pending determination of respondent's legal heirs in appropriate proceedings. No costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez (Acting Chairperson), Nachura, and *Reyes, JJ.,* concur.

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[36] CA *rollo,* pp. 160-161.

[37] Records, p. 100.

THIRD DIVISION

[G.R. No. 177505. November 27, 2008]

HEIRS OF GORGONIO MEDINA, namely: LEONOR T. MEDINA, RAMON T. MEDINA, ABIEL T. MEDINA, ILUDIVINA M. ROSARI, CONCEPCION DE LA CRUZ, LEONOR M. BAKKER, SAMUEL T. MEDINA, VICTOR T. MEDINA, TERESITA M. SABADO, JOSEFINA M. CANAS and VERONICA M. DE GUZMAN, *petitioners, vs.* **BONIFACIO NATIVIDAD, represented by PHILIP M. NATIVIDAD,** *respondent.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF OFFICIAL RECORD; SPECIAL POWER OF ATTORNEY EXECUTED BEFORE A NOTARY PUBLIC IN A FOREIGN COUNTRY WITHOUT THE REQUIRED CONSULAR AUTHENTICATION CANNOT BE ADMITTED IN EVIDENCE BEFORE PHILIPPINE COURTS; CASE AT BAR.— In the case under consideration, the supposed special power of attorney involved was executed and acknowledged before Phyllis Perry, a Notary Public of the State of Washington, USA. This being the case, a certification or authentication, as required by Section 25 (now Section 24), Rules of Court, by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any other officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office, is required. A notary public in a foreign country is not one of those who can issue the required certificate. The records are bereft of evidence showing that there was compliance with Section 25 (now Section 24). Non-compliance therewith will render the special power of attorney not admissible in evidence. Not being duly established in evidence, the special power of attorney cannot be used by Philip Natividad to represent his father, Bonifacio Natividad, in this legal action against the petitioners. It is thus clear that this case was not

filed by the real party-in-interest (Bonifacio) or by one duly authorized by said party. Not being a real party-in-interest and sans the authority to pursue the case, Philip Natividad could not have validly commenced this case. The special power of attorney executed before a notary public in a foreign country without the requirements mentioned in Section 25 (now Section 24) of the Rules of Court cannot be admitted in evidence before Philippine courts. Both lower courts and respondent's contention that the lack of consular authentication is a mere technicality that can be brushed aside in order to uphold substantial justice, is untenable. The failure to have the special power of attorney authenticated is not merely a technicality — it is a question of jurisdiction. In *Lopez*, we pronounced that jurisdiction over the person of the real party-in-interest was never acquired by the courts. As a result, all proceedings in the lower courts were declared null and void *ab initio* and thus set aside.

APPEARANCES OF COUNSEL

Arreza & Associates for *petitioners.*
D.L. Wagas Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which seeks to set aside the Decision[1] of the Court of Appeals dated 20 November 2006 in CA-G.R. CV No. 82160 affirming with modification the Decision[2] of Branch 33 of the Regional Trial Court (RTC) of Guimba, Nueva Ecija, in Civil Case No. 1165-G and its Resolution[3] dated 16 April 2007 denying petitioners' motion for reconsideration.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Renato C. Dacudao and Rosmari D. Carandang, concurring; CA *rollo*, pp. 104-114.

[2] Records, pp. 178-182.

[3] CA *rollo*, p. 138.

The factual antecedents are as follows:

On 16 May 1969, Tirso Medina, Pacifico M. Ruiz, Gorgonio D. Medina, Vivencio M. Ruiz, and Dominica Medina, co-owners of a parcel of land (Lot 1199, Cad-162, Guimba Cadastre, plan Ap-23418) situated in Poblacion, Municipality of Guimba, Province of Nueva Ecija, containing an area of two thousand three hundred thirty nine (2,339) square meters, agreed to divide and allot for themselves the said land. A sketch[4] signed by the co-owners showed the respective portions of land allotted to each. Gorgonio D. Medina received two portions of said land. One portion was allotted to him alone, while the second portion was allotted to him together with Tirso Medina and Pacifico M. Ruiz. This second portion is labeled as "Gorgonio Medina, Tirso Medina and Pacifico M. Ruiz" which is adjacent to the portion labeled as "Dominica Medina."

On 29 March 1972, Gorgonio D. Medina, predecessor-in-interest of petitioners, executed a Deed of Absolute Sale [5] whereby he sold to respondent Bonifacio Natividad for ₱2,000.00 his share (1/3) in the second portion of land including the improvements found therein.

Subsequently, a case for Partition with Damages, docketed as Civil Case No. 781-G, was filed before the RTC of Guimba, Nueva Ecija, Branch 33, by Tirso Medina against the co-owners of Lot 1199, among whom are Gorgonio Medina and Bonifacio Natividad. Bonifacio Natividad had likewise already bought the share of Dominica Medina in the land.

The parties entered into a compromise agreement which they submitted to the Court. On 20 November 1989, the RTC approved the agreement and rendered its decision based on the same.[6] The Compromise Agreement as quoted by the Court reads:

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[4] See Sketch; records, p. 23.

[5] Records, pp. 9-10.

[6] *Rollo*, pp. 78-81.

COMPROMISE AGREEMENT

COME NOW the parties, assisted by their respective counsel(s), and unto this Honorable Court respectfully submit this Compromise Agreement in full and final settlement of their differences, to wit:

1. The parties herein are the exclusive co-owners of that certain parcel of land located at the Poblacion, Guimba, Nueva Ecija, known as Lot 1199, Guimba Cadastre and more particularly described as follows:

A parcel of land (Lot 1199, of the Cadastral Survey of Guimba Cad. 162, plan Ap-23418, L.R. Case No. G-51, L.R.C. Record No. N-40711), situated in the Poblacion, Municipality of Guimba, Province of Nueva Ecija. x x x containing an area of TWO THOUSAND THREE HUNDRED AND THIRTY NINE (2,339) SQUARE METERS, more or less. x x x.

xxx xxx xxx

2. The herein parties recognize and acknowledge that their respective shares in the property aforementioned as appearing in the aforesaid Original Certificate of Title No. 130366 have been modified by agreement between them to allot a portion thereof to their co-owner, Vivencio M. Ruiz, to compensate for valuable services rendered to the parties *vis-à-vis* the said property, separate and apart from his rightful share therein as participating heir of Maria Medina;

3. The plaintiff Tirso Medina hereby withdraws any/all statements appearing on record which he may have made in said case in the course of his testimony therein, and hereby asks the Honorable Court that said statements be expunged or withdrawn from the record;

4. The foregoing considered, the parties have determined that it is to their mutual convenience and advantage, and in accord with their common desire to preserve and maintain the existing family harmony and solidarity to terminate their present community of ownership in the property aforementioned by mutual agreement and adjudication, in the manner appearing in the Sketch Plan of Partition attached as an integral part hereof as Annex "A" where the property is subdivided into Lot 1, 2, 3, 4, 5, and 6 and adjudicated, as follows:

a. To Bonifacio Natividad, Lot No. 1, consisting of 480 square meters, more or less, representing the interests of Dominica Medina which was sold to him per document of "Sale of Rights, Waiver and

Renunciation" appearing as Doc. No. 367; Page No. 75; Book No. 10; Series of 1968 in the Notarial Register of Atty.

b. To VIVENCIO M. RUIZ, Lot No. 3 consisting of 370.21 square meters, more or less, as compensation for valuable services rendered; free and clear from any/all liens or encumbrances whatsoever or from the claims of any person whomsoever, except the present tenant/s thereon;

c. To the heirs of MARIA MEDINA, Lot No. 2 consisting of 370.21 square meters, more or less, without prejudice to sales and dispositions already made by the respective heirs of their interests and participations therein;

d. To TIRSO MEDINA, Lot No. 4 consisting of 369.29 square meters, more or less;

e. To the heirs of PACIFICO M. RUIZ, Lot No. 5 consisting of 369.29 square meters, more or less, and

f. To GORGONIA MEDINA, Lot No. 6, consisting of 369.29 square meters, more or less.[7]

On 8 October 1991, the trial court issued an order supplementing its decision dated 20 November 1989 which reads in part:

[T[hat the parties thereafter, engaged the services of one common geodetic engineer in the person of Rolly Francisco to conduct the survey and effect the subdivision of Lot 1199, which was subdivided into Lots A, B, C, D, E, and F, the area of which appears, thus:

Lot 1199-A with an area of 371 sq. ms., which lot now corresponds to Lot No. 4 adjudicated to Tirso Medina;

Lot 1199-B with an area of 371 sq. ms., which lot now corresponds to Lot No. 5 adjudicated to Pacifico Ruiz;

Lot 1199-C with an area of 371 sq. ms., which lot now corresponds to Lot No. 6 adjudicated to Gorgonio Medina;

Lot 1199-D with an area of 482 sq. ms., which lot now corresponds to Lot No. 1 adjudicated to Bonifacio Natividad;

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[7] *Id.* at 75-77.

Lot 1199-E with an area of 372 sq. ms., which lot now corresponds to Lot No. 2 adjudicated to Heirs of Maria Medina; and

Lot 1199-F with an area of 372 sq. ms., which lot now corresponds to Lot No. 3 adjudicated to Vivencio M. Ruiz; that in this subdivision made by the geodetic engineer, there was no change in the designation of the particular places adjudicated to the parties, except the change in areas allotted after the actual survey made.

WHEREFORE, finding the motion to be in order, the Court resolves to grant the same and hereby orders, that:

Lot 1199-A with an area of 371 sq. ms. is Lot 4, decision, adjudicated to Tirso Medina;

Lot 1199-B with an area of 371 sq. ms. is Lot 5, decision, adjudicated to Pacifico Ruiz;

Lot 1199-C with an area of 371 sq. ms. is Lot 6, decision, adjudicated to Gorgonio Medina;

Lot 1199-D with an area of 482 sq. ms. is Lot 1, decision, adjudicated to Bonifacio Natividad;

Lot 1199-E with an area of 372 sq. ms. is Lot 2, decision, adjudicated to Heirs of Maria Medina;

Lot 1199-F with an area of 372 sq. ms. is Lot 3, decision, adjudicated to Vivencio M. Ruiz.

This Order supplements the Decision dated November 20, 1989.[8]

Pursuant to the court-approved partition, Lot 1199-C, measuring 371 square meters, was registered in the name of Gorgonio Medina for which Transfer Certificate of Title (TCT) No. NT-230248 of the Registry of Deeds for the Province of Nueva Ecija was issued to him.[9]

On 11 June 2001, Bonifacio Natividad, thru his alleged Attorney-In-Fact, Philip M. Natividad, filed before the RTC of Guimba, Nueva Ecija, Branch 31, a Complaint for Annulment

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[8] *Id.* at 82-83.

[9] Records, p. 8.

of TCT No. NT-230248 and Damages.[10] It impleaded as respondents Abiel Medina and Veronica de Guzman who are occupying the said land. Bonifacio asks, among other things, that 1/3 of said land be surrendered to him because he had bought the same from Gorgonio Medina. In the Answer[11] filed by Abiel Medina and Veronica de Guzman, they argued, *inter alia*, that Philip Natividad had no legal capacity to sue because the Special Power of Attorney annexed to the Complaint did not grant him such authority. They further added that the Complaint failed to implead all the parties-in-interest considering that the ownership of the land covered by TCT No. NT-230248 had already passed to eleven heirs of Gorgonio Medina.

Bonifacio, thru Philip, filed a Motion for Bill of Particulars[12] praying that an order be issued by the court directing Abiel Medina and Veronica de Guzman to give the names and present addresses of all the heirs of Gorgonio Medina. Said motion was opposed.[13] In an order dated 15 October 2001, the trial court granted the motion.[14] Defendants complied with the court's order and submitted the names and addresses of all the heirs of Gorgonio Medina.[15]

On 7 January 2002, Bonifacio filed a Motion for Leave to Admit Amended Complaint with prayer that summons upon eight heirs be made through publication.[16] The Amended Complaint impleaded all the heirs of Gorgonio Medina (petitioners herein). In said amended complaint, a special power of attorney [17] dated 21 September 2001 allegedly executed by Bonifacio Natividad in the State of Washington, United States of America, and acknowledged before Phyllis Perry, a Notary Public of the State

[10] *Id.* at 2-11.

[11] *Id.* at 20-23.

[12] *Id.* at 18-19.

[13] *Id.* at 32-33.

[14] *Id.* at 36-37.

[15] *Id.* at 38-40.

[16] *Id.* at 43-45.

[17] *Id.* at 52.

of Washington, USA, was attached authorizing Philip Natividad to:

1. To file all appropriate cases in court against the heirs of Gorgonio Medina for the recovery of the lot that I purchased from said Gorgonio Medina by virtue of Deed of Absolute Sale executed on March 29, 1972 and notarized by Atty. Inocencio B. Garampil under Doc. No. 435, Page No. 87, Book No. 1, Series of 1972, which lot is now titled in the name of Gorgonio Medina under Transfer Certificate of Title No. NT-230248;
2. To institute all legal actions/cases in court for the annulment of said Transfer Certificate of Title No. NT -230248 which now covers the lot I bought from Gorgonio Medina;
3. To represent me in all proceedings/hearings of the above-mentioned case/s up to its termination;
4. To enter into a fair and reasonable compromise agreement and do all acts for the protection and preservation of my rights and interest over the above-mentioned lot;
5. To negotiate/transact with all persons, secure and sign all necessary documents for the attainment of the above purposes.

In an Order dated[18] 30 January 2002, the trial court approved the motion and admitted the Amended Complaint. It directed the issuance of the corresponding summons, the same to be published in a newspaper of general circulation for three consecutive weeks. As to plaintiff's authority to sue, the trial court ruled that said issue had been settled by the special power of attorney attached to the Amended Complaint.

On 17 May 2002, the heirs of Gorgonio Medina filed a Motion to Dismiss[19] which the trial court denied on 20 August 2002.[20] On 10 September 2002, the heirs filed their Answer raising the following defenses: prescription, laches, lack of cause of action,

[18] *Id.* at 58-59.

[19] *Id.* at 79-81.

[20] *Id.* at 90-91.

lack of legal capacity to sue by Attorney-in-Fact, indefeasibility of TCT No. NT-230248 and lack of jurisdiction over the case for failure of the plaintiff to comply with the mandatory requirement of the *Katarungang Pambarangay*. Plaintiff filed his Reply dated 18 September 2002 specifically denying the allegations contained in the Answer with Compulsory Counterclaim.[21]

During the Pre-Trial, the parties stipulated the following facts and issues:

a. TCT No. N-230248 in the name of Gorgonio Medina covers 371 square meters. This title was one of the titles issued as transfer from Original Certificate of Title No. 130366.[22]

b. TCT No. 230248 came into being by virtue of the decision in Civil Case No. 781-G, a case of partition among Gorgonio Medina and his co-heirs decided by RTC Branch 33.

c. The late Gorgonio Medina executed a Deed of Absolute Sale over 1/3 portion of his share in a parcel of land (Lot 1199, CAD-162 Guimba Cadastre) owned in common by him and his co-heirs.

d. The land subject of the deed of sale is not the one covered by TCT No. 230248.

Issues:

1. Whether the deed of sale of sale (sic) may be given effect notwithstanding the fact that the subject thereof is different from the portion covered by TCT No. 230248.

2. Whether Mr. Philip Natividad is duly authorized to represent his father, Bonifacio Natividad in this case.[23]

The parties manifested that after they shall have filed their respective memoranda, the case shall be submitted for decision.

In its decision dated 10 December 2003, the trial court ruled in favor of Bonifacio Natividad. The decretal portion of the decision reads:

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[21] *Id.* at 102-103.

[22] *Id.* at 148.

[23] Pre-Trial Order; Records, p. 145.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff ordering the defendants to convey to the plaintiff 1/3 portion of the lot covered by TCT No. 230248 together with the improvements thereon and to account for, and deliver to the plaintiff the income derived therefrom from the institution of this case up to the execution of this decision.

No pronouncement as to damages there being no reservation made by the plaintiff to present evidence thereof.[24]

On the issue of Philip Natividad's authority to represent his father, the court ruled that it was convinced that Philip was authorized to represent his father by virtue of a notarized special power of attorney executed by Bonifacio attached to the amended complaint. It explained that the document was a public document as defined under Section 20, paragraph (a) of Rule 132 of the Rules of Court, the same having been notarized by a notary public for the State of Washington, USA. In the absence of any evidence to show that said special power of attorney was falsified, it was sufficient authority for Mr. Natividad to represent his father.

The trial court likewise ruled that the deed of absolute sale executed by Gorgonio Medina in favor of Bonifacio Natividad may be given effect notwithstanding the fact that the portion of Lot 1199 specified as its object was different from the portion adjudicated to Gorgonio Medina. It declared that the 1/3 portion of the land covered by TCT No. NT-230248 shall be deemed the object of the deed of sale. It agreed with Bonifacio that what was sold by Gorgonio Medina to him (Bonifacio) was his share, right and participation in the land known as Lot 1199. At the time of the sale, Lot 1199 was not yet divided. Gorgonio Medina specified a portion of Lot 1199, expecting that portion to be adjudicated to him, but his expectation did not materialize because a different portion was adjudicated to him during the partition. It added that justice demanded that a portion of what was adjudicated to him be considered as the object of the deed of sale.

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[24] Records, p. 182.

The trial court further ruled that prescription and laches did not set in. Since there was an express trust created between Gorgonio Medina and Bonifacio Natividad, the action to compel the defendants to convey the property to Bonifacio did not prescribe. It explained that it is only when the trustee repudiates the trust that the prescriptive period of 10 years commences to run. In the instant case, Gorgonio Medina (trustee) repudiated the trust on 5 July 1993 when TCT No. NT-230248 was issued in his name. Thus, the filing of the complaint on 11 June 2001 was well within the ten-year prescriptive period.

On 22 December 2003, the petitioner-heirs of Gorgonio Medina filed a Notice of Appeal informing the trial court that they were appealing the decision to the Court of Appeals.[25] A Notice of Appeal having been seasonably filed by the petitioners, the entire records of the case were forwarded to the Court of Appeals.[26]

On 13 January 2004, Bonifacio Natividad filed a Motion for Execution Pending Appeal[27] which the trial court denied, it having lost jurisdiction over the case because the appeal was already perfected when the motion was filed.[28]

On 20 November 2006, the Court of Appeals rendered its decision affirming with modification the decision of the trial court. It disposed of the case as follows:

> WHEREFORE, the Decision of the RTC, Branch 33, Guimba, Nueva Ecija, dated December 10, 2003, is hereby AFFIRMED with the MODIFICATION ordering the defendants-appellants to convey to plaintiff-appellee an area equivalent to 90 square meters of the land covered by TCT No. NT-230248.[29]

The appellate court affirmed the findings of the trial court, but ruled that the trust established between the parties was an implied or constructive trust, and not an express trust. It added

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[25] *Id.* at 187.

[26] *Id.* at 188.

[27] *Id.* at 192-193.

[28] *Id.* at 203-205.

[29] CA *rollo*, p. 114.

that what should be conveyed to Bonifacio Natividad was only 1/3 of 270 square meters or 90 square meters, and not 1/3 of 371 square meters since what was sold to him was only a part of one of the two portions owned by Gorgonio Medina in the entire lot. Finally, it declared that the contention that the Complaint should have been dismissed for lack of cause of action, considering that the Special Power of Attorney executed abroad by Bonifacio Natividad in favor of his son was not properly authenticated before a consular officer, put a premium on technicalities at the expense of substantial justice. Litigation, it said, should, as much as possible, be decided on the merits and not on technicalities.

Petitioners filed a Motion for Reconsideration[30] which the Court of Appeals denied in a resolution dated 16 April 2007.[31]

Hence, the instant petition raising the following issues:

WHETHER OR NOT THE COMPROMISE AGREEMENT THAT THE TRIAL COURT APPROVED IN CIVIL CASE NO. 781-G NOVATED THE DEED OF ABSOLUTE SALE DATED 29 MARCH 1972 BETWEEN GORGONIO MEDINA AND BONIFACIO NATIVIDAD.

WHETHER OR NOT BONIFACIO NATIVIDAD IS ESTOPPED BY LACHES.

WHETHER OR NOT THE REGISTRATION OF LOT NO. 1199-C IN THE NAME OF GORGONIO MEDINA WAS IN FRAUD OF BONIFACIO NATIVIDAD.

WHETHER OR NOT A CONSTRUCTIVE TRUST WAS CREATED BETWEEN GORGONIO MEDINA AND BONIFACIO NATIVIDAD.

WHETHER OR NOT BONIFACIO NATIVIDAD'S CAUSE OF ACTION HAS ALREADY PRESCRIBED.

WHETHER OR NOT THE COMPLAINT STATES A CAUSE OF ACTION.

Among the issues raised by petitioners the last is what we shall first tackle. Petitioners contend that the Court of Appeals

[30] *Id.* at 117-130.

[31] *Id.* at 138.

committed a very grave error in not finding that the respondent was without any cause of action. Petitioners argue:

> The Complaint in this case was instituted by Philip M. Natividad in the name of Bonifacio Natividad upon the strength of a Special Power of Attorney executed by the latter in Washington, U.S.A. While the document appears to have been acknowledged before Phyllis Perry, a Notary Public for the jurisdiction of the State of Washington, U.S.A., it was not presented before a Philippine Consular Officer for the requisite authentication.
>
> The Revised Rules on Evidence require that a document acknowledged before a notary public being a public document, such record if kept in a foreign country, should be accompanied with a certificate that such officer has the custody thereof made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by an officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, authenticated by the seal of his office. In the absence of the requisite certification and authentication of the public document, the same cannot be proved and, therefore, inadmissible as evidence.
>
> Bonifacio Natividad's Special Power of Attorney not having been duly certified and authenticated, it cannot be duly proved. It is, therefore, deemed as not having been executed for purposes of instituting an action on his behalf. Without any valid authority to institute the action on behalf of his father, Philip Natividad is deemed to have instituted it on his own. Philip Natividad not being a party to the Deed of Absolute Sale between Gorgonio Medina and Bonifacio Natividad, he is undoubtedly not the real-party-in-interest because he does not have any material interest in the contract which is the source of Bonifacio Natividad's cause of action. He does not stand to be benefited or injured by a judgment in the suit and neither is he entitled to the avails of the suit.
>
> Not being the real party-in-interest, and being deemed to have brought the action on his own, Philip M. Natividad has no cause of action.[32]

The trial court was convinced that Philip Natividad was authorized by his father (Bonifacio) in this case by virtue of

[32] *Rollo*, pp. 47-49.

the special power of attorney that the latter issued. The special power of attorney, it claims, is a public document, the same having been notarized by a notary public of the State of Washington, USA. It said that there being no evidence showing that said document had been falsified, the same was sufficient authority for Philip to represent his father. The Court of Appeals considered the fact that the special power of attorney was not properly authenticated before a consular office to be a mere technicality and could not be the basis for the dismissal of the complaint for lack of cause of action.

On his part, respondent said the notarized special power of attorney which he appended to the complaint is a public document. It carries with it the presumption of regularity and any suspicion on the authenticity and due execution thereof cannot stand against said presumption absent evidence which is clear and convincing.

The question to be answered is: Is the Special Power of Attorney supposedly authorizing Philip Natividad to file the instant case in behalf of his father admissible in evidence?

In *Lopez v. Court of Appeals*,[33] we have ruled that a special power of attorney executed in a foreign country is, generally, not admissible in evidence as a public document in our courts. In said case, we said:

> Is the special power of attorney relied upon by Mrs. Ty a public document? We find that it is. It has been notarized by a notary public or by a competent public official with all the solemnities required by law of a public document. When executed and acknowledged in the Philippines, such a public document or a certified true copy thereof is admissible in evidence. Its due execution and authentication need not be proven unlike a private writing.
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> Section 25,[34] Rule 132 of the Rules of Court provides—
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> Sec. 25. Proof of public or official record. — An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer

[33] G.R. No. 77008, 29 December 1987, 156 SCRA 838, 841-843.

[34] Now Section 24, Rule 132 of the Rules of Court.

having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

From the foregoing provision, **when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office.** A city judge-notary who notarized the document, as in this case, cannot issue such certification.

Considering that the record of the case does not disclose any compliance with the provisions of Section 25, Rule 132 of the Rules of Court on the part of the petitioner, the special power of attorney in question is not admissible in evidence. As such, Mrs. Priscilla L. Ty cannot lawfully prosecute the case against the private respondents in the name of her principal as her authority through a special power of attorney had not been duly established in evidence. The litigation was not commenced by the real party-in-interest or by one duly authorized by the said party.

This being so, the Metropolitan Trial Court, the Regional Trial Court and the Court of Appeals never acquired jurisdiction over the person of the real party-in-interest — Angelita Lopez. For lack of

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Sec. 24. *Proof of official record*. – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

the requisite jurisdiction, all the proceedings in the said courts are null and void *ab initio*. All proceedings therein should be and are hereby set aside.

Accordingly, it is Our considered opinion, and We so hold, that a special power of attorney executed before a city judge-public notary in a foreign country, without the certification or authentication required under Section 25, Rule 132 of the Rules of Court, is not admissible in evidence in Philippine courts. (Emphasis supplied.)

In the case under consideration, the supposed special power of attorney involved was executed and acknowledged before Phyllis Perry, a Notary Public of the State of Washington, USA. This being the case, a certification or authentication, as required by Section 25 (now Section 24), Rules of Court, by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any other officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office, is required. A notary public in a foreign country is not one of those who can issue the required certificate.

The records are bereft of evidence showing that there was compliance with Section 25 (now Section 24). Non-compliance therewith will render the special power of attorney not admissible in evidence. Not being duly established in evidence, the special power of attorney cannot be used by Philip Natividad to represent his father, Bonifacio Natividad, in this legal action against the petitioners. It is thus clear that this case was not filed by the real party-in-interest (Bonifacio) or by one duly authorized by said party. Not being a real party-in-interest and sans the authority to pursue the case, Philip Natividad could not have validly commenced this case. The special power of attorney executed before a notary public in a foreign country without the requirements mentioned in Section 25 (now Section 24) of the Rules of Court cannot be admitted in evidence before Philippine courts.

Both lower courts and respondent's contention that the lack of consular authentication is a mere technicality that can be brushed aside in order to uphold substantial justice, is untenable. The failure to have the special power of attorney authenticated

is not merely a technicality — it is a question of jurisdiction. In *Lopez*, we pronounced that jurisdiction over the person of the real party-in-interest was never acquired by the courts. As a result, all proceedings in the lower courts were declared null and void *ab initio* and thus set aside.

In the case before us, the Regional Trial Court and the Court of Appeals did not acquire jurisdiction over the person of Bonifacio Natividad. Following our pronouncement in *Lopez*, all proceedings before these courts are voided and set aside. In light of this, we find no need to discuss the other issues raised.

WHEREFORE, premises considered, the instant petition is *GRANTED*. All the proceedings before the Regional Trial Court of Guimba, Nueva Ecija, Branch 33 (Civil Case No. 1165-G) and the Court of Appeals (CA-G.R. CV No. 82160) are hereby declared void, and the case is hereby *DISMISSED*. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177886. November 27, 2008]

SPOUSES LEOPOLDO S. VIOLA and MERCEDITA VIOLA, *petitioners, vs.* **EQUITABLE PCI BANK, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; MUST SUFFICIENTLY DESCRIBE THE DEBT SOUGHT TO BE SECURE; AN OBLIGATION IS NOT SECURED BY A

MORTGAGE UNLESS IT COMES FAIRLY WITHIN THE TERMS OF THE MORTGAGE; CASE AT BAR.— A mortgage must "sufficiently describe the debt sought to be secured, which description must not be such as to mislead or deceive, and an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage. x x x The immediately-quoted provision of the mortgage contract does not specifically mention that, aside from the principal loan obligation, it also secures the payment of "a penalty fee of three percent (3%) per month of the outstanding amount to be computed from the day deficiency is incurred up to the date of full payment thereon," which penalty as the above-quoted portion of the *Credit Line Agreement* expressly stipulates. Since an action to foreclose "must be limited to the amount mentioned in the mortgage" and the penalty fee of 3% per month of the outstanding obligation is not mentioned in the mortgage, it must be *excluded* from the computation of the amount secured by the mortgage.

2. ID.; ID.; OBLIGATIONS; A PENALTY FEE BEING PENAL IN NATURE MUST BE SPECIFIC AND FIXED BY THE PARTIES; CASE AT BAR.— "Penalty fee" is entirely different from "bank charges." The phrase "bank charges" is normally understood to refer to compensation for *services*. A "penalty fee" is likened to a compensation for *damages* in case of breach of the obligation. Being *penal* in nature, such fee must be specific and fixed by the contracting parties, unlike in the present case which slaps a 3% penalty fee per month of the outstanding amount of the obligation. Moreover, the "penalty fee" does not belong to the species of obligation enumerated in the mortgage contract, namely: "loans, credit and other banking facilities obtained x x x from the Mortgagee, . . . including the interest and bank charges, . . . the costs of collecting the same and of taking possession of and keeping the mortgaged properties, and all other expenses to which the Mortgagee may be put in connection with or as an incident to this mortgage . . ."

3. ID.; CONTRACTS; INTERPRETATION OF CONTRACTS; IN CASE OF AMBIGUITY IN A CONTRACT, SUCH AMBIGUITY MUST BE READ AGAINST THE PARTY WHO DRAFTED THE CONTRACT; CASE AT BAR.— Respondent's contention that the absence in the mortgage

> contract of a stipulation securing the payment of the 3% penalty fee per month on the outstanding amount is of no consequence, the deed of mortgage being merely an "accessory contract" that "must take its bearings from the principal *Credit Line Agreement*," fails. Such absence is significant as it creates an ambiguity between the two contracts, which ambiguity must be resolved in favor of petitioners and against respondent who drafted the contracts. Again, as stressed by the Court in *Philippine Bank of Communications*: There is also sufficient authority to declare that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it. A mortgage and a note secured by it are deemed parts of one transaction and are construed together, thus, **an ambiguity is created when the notes provide for the payment of a penalty but the mortgage contract does not**. Construing the ambiguity against the petitioner, it follows that **no penalty was intended to be covered by the mortgage**.

APPEARANCES OF COUNSEL

Francisco L. Rosario, Jr. for petitioners.

Sumalpong Matibag Magturo Banzon and Buenaventura for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Via a contract denominated as "CREDIT LINE AND REAL ESTATE MORTGAGE AGREEMENT FOR PROPERTY LINE"[1] (*Credit Line Agreement*) executed on March 31, 1997, Leo-Mers Commercial, Inc., as the Client, and its officers spouses Leopoldo and Mercedita Viola (petitioners) obtained a loan through a credit line facility in the maximum amount of ₱4,700,000.00 from the Philippine Commercial International Bank (PCI Bank), which was later merged with Equitable Bank and became known as Equitable PCI Bank, Inc. (respondent).

[1] Annex "A", Petition; *rollo*, pp. 28-41.

The *Credit Line Agreement* stipulated that the loan would bear interest at the "prevailing PCIBank lending rate" per annum on the principal obligation and a "penalty fee of three percent (3%) per month on the outstanding amount."

To secure the payment of the loan, petitioners executed also on March 31, 1997 a "Real Estate Mortgage"[2] in favor of PCIBank over their two parcels of land covered by Transfer Certificates of Title No. N-113861 (consisting of 300 square meters, more or less) and N-129036 (consisting of 446 square meters, more or less) of the Registry of Deeds of Marikina.

Petitioners availed of the full amount of the loan. Subsequently, they made partial payments which totaled ₱3,669,210.67. By respondent's claim, petitioner had since November 24, 2000 made no further payments and despite demand, they failed to pay their outstanding obligation which, as of September 30, 2002, totaled ₱14,024,623.22, broken down as follows:

(a)	Principal obligation	₱4,783,254.69
(b)	Past due interest from 11/24/00 to 09/30/02 at 15% interest	₱1,345,290.38
(c)	Penalty at 3% per month from 03/31/98 to 02/23/02	₱7,896,078.15
		₱14,024,623.22[3]

(Underscoring supplied)

Respondent thus extrajudicially foreclosed the mortgage before the Office of the Clerk of Court & *Ex-Officio* Provincial Sheriff of the Regional Trial Court (RTC) of Marikina City. The mortgaged properties were sold on April 10, 2003 for ₱4,284,000.00 at public auction to respondent, after which a Certificate of Sale dated April 21, 2003[4] was issued.

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[2] Annex "B", *id.* at 42-45.

[3] RTC Decision dated September 14, 2005, *id.* at 108-110.

[4] Annex "F", *id.* at. 51.

More than five months later or on October 8, 2003, petitioners filed a complaint[5] for annulment of foreclosure sale, accounting and damages before the Marikina RTC, docketed as Civil Case No. 2003-905-MK and raffled to Branch 192. Petitioners alleged, *inter alia*, that they had made substantial payments of ₱3,669,210.67 receipts of which were issued without respondent specifying "whether the payment was for interest, penalty or the principal obligation"; that based on respondent's statement of account, not a single centavo of their payments was applied to the principal obligation; that every time respondent sent them a statement of account and demand letters, they requested for a proper accounting for the purpose of determining their actual obligation, but all their requests were unjustifiably ignored on account of which they were forced to discontinue payment; that "the foreclosure proceedings and auction sale were not only irregularly and prematurely held but were null and void because the mortgage debt is only ₱2,224,073.31 on the principal obligation and ₱1,455,137.36 on the interest, or a total of only ₱3,679,210.67 as of April 15, 2003, but the mortgaged properties were sold to satisfy an inflated and erroneous principal obligation of *₱4,783,254.69, plus 3% penalty fee per month or 33% per year and 15% interest per year, which amounted to ₱14,024,623.22 as of September 30, 2002*"; that "the parties *never agreed and stipulated* in the *real estate mortgage contract*" that the *15% interest per annum on the principal loan and the 3% penalty fee per month on the outstanding amount* would be covered or secured by the mortgage; that assuming respondent could impose such interest and penalty fee, the same are "exorbitant, unreasonable, iniquitous and unconscionable, hence, must be reduced"; and that respondent is only allowed to impose the legal rate of interest of *12%* per annum on the principal loan absent any stipulation thereon.[6]

In its Answer, respondent denied petitioners' assertions, contending, *inter alia*, that the absence of stipulation in the mortgage contract securing the payment of 15% interest per annum on the principal loan, as well as the 3% penalty fee per

[5] Annex "G", *id.* at 52-57.

[6] *Id.* at 53-55.

month on the outstanding amount, is immaterial since the mortgage contract is "a mere accessory contract which must take its bearings from the principal *Credit Line Agreement*."[7]

During the pre-trial conference, the parties defined as *sole issue* in the case whether the mortgage contract **also secured** the payment of 15% interest per annum on the principal loan of ₱4,700,000.00 and the 3% penalty fee per month on the outstanding amount, which interest and penalty fee are stipulated only in the *Credit Line Agreement*.[8]

By Decision[9] of September 14, 2005, the trial court sustained respondent's affirmative position on the issue but found the questioned interest and penalty fee "excessive and exorbitant." Thus, it equitably reduced the interest on the principal loan from 15% to 12% per annum and the penalty fee per month on the outstanding amount from 3% to 1.5% per month.

Accordingly, the court nullified the foreclosure proceedings and the Certificate of Sale subsequently issued, "without prejudice" to the holding anew of foreclosure proceedings based on the "re-computed amount" of the indebtedness, "if the circumstances so warrant."

The dispositive portion of the trial court's Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

1) The interest on the principal loan in the amount of Four Million Seven Hundred Thousand (₱4,700,000.00) Pesos should be recomputed at 12% per annum;

2) The 3% per month penalty on delinquent account as stipulated by the parties in the Credit Line Contract dated March 31, 1997 is hereby REDUCED to 1.5% per month;

3) The foreclosure sale conducted on April 10, 2003 by the Clerk of Court and *Ex-Officio* Sheriff of Marikina, to satisfy the plaintiff's mortgage indebtedness, and the Certificate of Sale issued

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[7] Respondent's Answer with Counterclaims, *id.* at 58, 61-62.

[8] Order dated June 16, 2005, *id.* at 107.

[9] Annex "N", *id.* at 108-115.

as a consequence of the said proceedings, are declared NULL and VOID, without prejudice to the conduct of another foreclosure proceedings on the basis of the re-computed amount of the plaintiff's indebtedness, if the circumstances so warrant.

No pronouncement as to costs.

SO ORDERED. (Underscoring supplied)

Petitioners filed a Motion for Partial Reconsideration,[10] contending that the penalty fee per month on the outstanding amount should have been taken out of the coverage of the mortgage contract as it was not stipulated therein. By Order dated December 6, 2005, the trial court denied the motion.

On appeal by petitioners, the Court of Appeals, by Decision[11] of February 21, 2007, dismissed the same for lack of merit, holding that "the Real Estate Mortgage **covers not only** the principal amount [of ₱4,700,000.00] but also the 'interest and **bank charges**,' which [phrase bank charges] refers to the **penalty charges** stipulated in the Credit Line Agreement."[12]

Petitioners' Motion for Reconsideration having been denied by Resolution[13] of May 16, 2007, they filed the present Petition for Review on *Certiorari*, alleging that –

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN DECIDING THE CASE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT BY RULING THAT THERE IS NO AMBIGUITY IN CONSTRUING TOGETHER THE CREDIT LINE AND MORTGAGE CONTRACTS WHICH PROVIDED CONFLICTING PROVISIONS AS TO INTEREST AND PENALTY.[14]

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[10] Annex "O", *id.* at 116-126.

[11] Penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag; *rollo*, pp. 182-189.

[12] *Rollo*, p. 188.

[13] Annex "AA", Petition, *id.* at 202.

[14] Petition, *id.* at 7, 13.

The only issue is whether the mortgage contract also secured the penalty fee per month on the outstanding amount as stipulated in the *Credit Line Agreement*.

The Court holds not.

A mortgage must "sufficiently describe the debt sought to be secured, which description must not be such as to mislead or deceive, and an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage.[15]

In the case at bar, the parties executed two separate documents on March 31, 1997 – the *Credit Line Agreement* granting the Client a loan through a credit facility in the maximum amount of ₱4,700,000.00, and the Real Estate Mortgage contract securing the payment thereof. Undisputedly, both contracts were prepared by respondent and written in fine print, single space.

The *Credit Line Agreement* contains the following stipulations on interest and delinquency charges:

A. CREDIT FACILITY

9. INTEREST ON AVAILMENTS

The CLIENT shall pay the BANK interest on each availment against the Credit Facility at the rate of:

PREVAILING PCIBANK LENDING RATE

for the first interest period as defined in A(10) hereof. x x x.

xxx xxx xxx

15. DELINQUENCY

CLIENT's account shall be considered delinquent if the availments exceed the amount of the line and/or in case the Account is debited for unpaid interest and the Available Balance is insufficient to cover the amount debited. In such cases, the Available Balance shall become negative and the CLIENT shall pay the deficiency immediately in addition to collection expenses incurred by the BANK and a penalty fee of three percent (3%) per month of the outstanding amount to

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[15] *Philippine Bank of Communications v. Court of* Appeals, 323 Phil. 297, 312-313 (1996).

be computed from the day deficiency is incurred up to the date of full payment thereon.

x x x x.[16] (Underscoring supplied)

The Real Estate Mortgage contract states its coverage, thus:

That for and in consideration of certain loans, credit and other banking facilities obtained x x x from the Mortgagee, the principal amount of which is PESOS FOUR MILLION SEVEN HUNDERED THOUSAND ONLY (₱4,700,000.00) Philippine Currency, and for the purpose of securing the payment thereof, **including the interest and bank charges** accruing thereon, the costs of collecting the same and of taking possession of and keeping the mortgaged propert[ies], and all other expenses to which the Mortgagee may be put in connection with or as an incident to this mortgage, as well as the faithful compliance with the terms and conditions of this agreement and of the separate instruments under which the credits hereby secured were obtained, the Mortgagor does hereby constitute in favor of the Mortgagee, its successors or assigns, a mortgage on the real property particularly described, and the location of which is set forth, in the list appearing at the back hereof and/or appended hereto, of which the Mortgagor declare that he is the absolute owner and the one in possession thereof, free and clear of any liens, encumbrances and adverse claims.[17] (Emphasis and underscoring supplied)

The immediately-quoted provision of the mortgage contract does not specifically mention that, aside from the principal loan obligation, it also secures the payment of "a penalty fee of three percent (3%) per month of the outstanding amount to be computed from the day deficiency is incurred up to the date of full payment thereon," which penalty as the above-quoted portion of the *Credit Line Agreement* expressly stipulates.

Since an action to foreclose "must be limited to the amount mentioned in the mortgage"[18] and the penalty fee of 3% per month of the outstanding obligation is not mentioned in the mortgage, it must be excluded from the computation of the amount secured by the mortgage.

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[16] CA records (Folder I), pp. 7, 9-10.

[17] *Rollo*, p. 42.

[18] *Supra* note 15 at 312.

The ruling of the Court of Appeals in its assailed Decision that the phrase "including the interest and **bank charges**" in the mortgage contract "refers to the **penalty charges** stipulated in the Credit Line Agreement" is unavailing.

"Penalty fee" is entirely different from "bank charges." The phrase "bank charges" is normally understood to refer to compensation for services. A "penalty fee" is likened to a compensation for damages in case of breach of the obligation. Being *penal* in nature, such fee must be specific and fixed by the contracting parties, unlike in the present case which slaps a 3% penalty fee per month of the **outstanding** amount of the obligation.

Moreover, the "penalty fee" does not belong to the species of obligation enumerated in the mortgage contract, namely: "loans, credit and other banking facilities obtained x x x from the Mortgagee, . . . including the interest and bank charges, . . . the costs of collecting the same and of taking possession of and keeping the mortgaged properties, and all other expenses to which the Mortgagee may be put in connection with or as an incident to this mortgage . . ."

In *Philippine Bank of Communications v. Court of Appeals*[19] which raised a similar issue, this Court held:

> The sole issue in this case is whether, in the foreclosure of a real estate mortgage, the penalties stipulated in two promissory notes secured by the mortgage may be charged against the mortgagors as part of the sums secured, although the mortgage contract does not mention the said penalties.
>
> xxx xxx xxx
>
> We immediately discern that the mortgage contract does not at all mention the penalties stipulated in the promissory notes. However, the petitioner insists that the penalties are covered by the following provision of the mortgage contract:
>
> This mortgage is given as security for the payment to the MORTGAGEE on demand or at maturity, as the case may be, of all promissory notes, letters of credit, trust receipts, bills of exchange, drafts, overdrafts and all other obligations of every kind already

[19] *Supra* note 15.

incurred or which hereafter may be incurred….

xxx xxx xxx

The Court is unconvinced, for the cases relied upon by the petitioner are inapplicable. x x x.

xxx xxx xxx

The mortgage contract is also one of adhesion as it was prepared solely by the petitioner and the only participation of the other party was the affixing of his signature or "adhesion" thereto. Being a contract of adhesion, the mortgage is to be strictly construed against the petitioner, the party which prepared the agreement.

A reading, not only of the earlier quoted provision, but of the entire mortgage contract yields no mention of penalty charges. Construing this silence strictly against the petitioner, it can fairly be concluded that the petitioner did not intend to include the penalties on the promissory notes in the secured amount. This explains the finding by the trial court, as affirmed by the Court of Appeals, that "penalties and charges are not due for want of stipulation in the mortgage contract."

Indeed, **a mortgage must sufficiently describe the debt sought to be secured**, which description must not be such as to mislead or deceive, and **an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage**. In this case, the mortgage contract provides that it secures notes and other evidences of indebtedness. Under the rule of *ejusdem generis*, where a description of things of a particular class or kind is "accompanied by words of a generic character, the generic words will usually be limited to things of a kindred nature with those particularly enumerated . . . " **A penalty charge does not belong to the species of obligations enumerated in the mortgage, hence, the said contract cannot be understood to secure the penalty**.[20] (Emphasis and underscoring supplied)

Respondent's contention that the absence in the mortgage contract of a stipulation securing the payment of the 3% penalty fee per month on the outstanding amount is of no consequence, the deed of mortgage being merely an "accessory contract" that "must take its bearings from the principal *Credit Line*

[20] *Id.* at 301, 310-313.

Agreement,"[21] fails. Such absence is significant as it creates an ambiguity between the two contracts, which ambiguity must be resolved in favor of petitioners and against respondent who drafted the contracts. Again, as stressed by the Court in *Philippine Bank of Communications*:

> There is also sufficient authority to declare that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it.
>
> A mortgage and a note secured by it are deemed parts of one transaction and are construed together, thus, **an ambiguity is created when the notes provide for the payment of a penalty but the mortgage contract does not**. Construing the ambiguity against the petitioner, it follows that **no penalty was intended to be covered by the mortgage**. The mortgage contract consisted of three pages with no less than seventeen conditions in fine print; it included provisions for interest and attorney's fees similar to those in the promissory notes; and it even provided for the payment of taxes and insurance charges. Plainly, the petitioner can be as specific as it wants to be, yet it simply did not specify nor even allude to, that the penalty in the promissory notes would be secured by the mortgage. This can then only be interpreted to mean that the petitioner had no design of including the penalty in the amount secured.[22] (Emphasis and underscoring supplied)

WHEREFORE, the assailed Court of Appeals Decision of February 21, 2007 and Resolution of May 16, 2007 in CA-G.R. SP No. CA-G.R. CV No. 86412 affirming the trial court's decision are, in light of the foregoing disquisition, *AFFIRMED with MODIFICATION* in that the "penalty fee" per month of the outstanding obligation is *excluded* in the computation of the amount secured by the Real Estate Mortgage executed by petitioners in respondent's favor.

SO ORDERED.

Quisumbing (Chairperson), Tinga, Velasco, Jr., and *Brion, JJ.,* concur.

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[21] *Vide* note 7.

[22] *Id.* at 314.

THIRD DIVISION

[G.R. No. 177947. November 27, 2008]

SPS. GABRIEL LLANES and MARIA LLANES, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); APPLICATION FOR REGISTRATION OF TITLE; REQUISITES.— [T]he three requisites for the filing of an application for registration of title are: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation; and (3) that such possession has been under a *bona fide* claim of ownership since 12 June 1945 or earlier. Thus, Section 14(1) requires that the property sought to be registered should already be alienable and disposable at the time the application for registration of title is filed.

2. ID.; ID.; ID.; ID.; TO PROVE THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE, AN APPLICANT MUST CONCLUSIVELY ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT; CASE AT BAR.— To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government such as a presidential proclamation or an executive order, or an administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute. A certification by the CENRO of the DENR stating that the land subject of an application is found to be within the alienable and disposable site per a land classification project map is sufficient evidence to show the real character of the land subject of the application. In the instant case, the Spouses Llanes submitted to the MCTC Certifications from DENR Region IV and CENRO, Batangas City, to prove the alienability and disposability of the subject property.

3. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER OF EVIDENCE; COURT SHALL NOT CONSIDER EVIDENCE WHICH HAS NOT BEEN FORMALLY OFFERED; EXCEPTION; RATIONALE.— Section 34, Rule 132 the Rules of Court explicitly provides: **SEC. 34.** *Offer of evidence*.— The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. If the Court strictly applies the aforequoted provision of law, it would simply pronounce that the Court of Appeals could not have admitted the corrected CENRO Certification because it was not formally offered as evidence before the MCTC during the trial stage. Nevertheless, since the determination of the true date when the subject property became alienable and disposable is material to the resolution of this case, it behooves this Court, in the interest of substantial justice, fairness, and equity, to consider the corrected CENRO Certification even though it was only presented during the appeal to the Court of Appeals. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that the Court is empowered to suspend its rules or to exempt a particular case from the application of a general rule, when the rigid application thereof tends to frustrate rather than promote the ends of justice. Moreover, the Spouses Llanes should not be made to suffer the grave consequences, which include the possibility of losing their right to their property, arising from the mistake of CENRO, a government agency. CENRO itself admitted its blunder and willingly issued a corrected Certification. Very conspicuously, no other objection to the corrected CENRO Certification was raised except as to its late presentation; its issuance and authenticity were not challenged or placed in doubt.

4. CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; TAX DECLARATIONS AND RECEIPTS TOGETHER WITH ACTUAL POSSESSION OF LAND CONSTITUTE EVIDENCE OF GREAT WEIGHT AND CAN BE THE BASIS OF A CLAIM OF OWNERSHIP THROUGH PRESCRIPTION; RATIONALE.— While tax declarations and receipts are not incontrovertible evidence of ownership, they constitute, at the least, proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes not only manifests one's

sincere and honest desire to obtain title to the property, but also announces an adverse claim against the State and all other interested parties with an intention to contribute needed revenues to the government. Such an act strengthens one's *bona fide* claim of acquisition of ownership. Tax declarations are good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. Moreover, while tax declarations and receipts are not conclusive evidence of ownership and do not prove title to the land, nevertheless, when coupled with actual possession, they constitute evidence of great weight and can be the basis of a claim of ownership through prescription.

APPEARANCES OF COUNSEL

Dante SL. Resurreccion for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated 31 January 2007 and Resolution[2] dated 11 April 2007 of the Court of Appeals in CA-G.R. CV No. 80021. In its assailed Decision, the appellate court granted the appeal of herein respondent, Republic of the Philippines (Republic), and dismissed the Application for Registration of Title of herein petitioners, Spouses Gabriel and Maria Llanes (Spouses Llanes); consequently, it set aside the Decision[3] dated 10 July 2003 of the Municipal Circuit Trial Court (MCTC), Malvar-Balete, Batangas, in LRC Case

[1] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring; *rollo*, pp. 39-45.

[2] *Rollo*, p. 46.

[3] Penned by Judge Fermin M. Chavez; *rollo*, pp. 36-38.

No. N-073. In its assailed Resolution, the appellate court denied the Spouses Llanes' Motion for Reconsideration.

The facts of this case, as culled from the records, are as follows:

The Spouses Llanes applied for registration of their title over a parcel of land known as Lot No. 5812 of Plan AP-04-009967, Malvar Cadastre, with an area of 4,014 square meters, located in San Juan, Malvar, Batangas (subject property).

The subject property had been in the possession of Gabriel's grandmother, Eugenia Valencia (Eugenia), since the 1930s. She declared the said property for taxation purposes as evidenced by Tax Declarations No. 3470[4] (1948); No. 8942[5] (1955); and No. 12338,[6] No. 12365,[7] and No. 12371[8] (1963). It was classified as agricultural land and was being cultivated by Eugenia's son and Gabriel's father, Francisco Llanes (Francisco). Francisco planted the subject property with rice.[9]

n 1965, Gabriel's brother, Servillano Llanes (Servillano), purchased the subject property from Eugenia. Servillano personally cultivated the subject property by planting it with rice, and then later with coconut.[10] Servillano, together with his wife, Rita Valencia (Rita), declared the subject property for taxation purposes under Tax Declarations No. 14051[11] (1966), No. 1788[12] (1969), No. 1341[13] (1974), No. 0220[14] (1980),

[4] Records, p. 128.

[5] *Id.* at 127.

[6] *Id.* at 126.

[7] *Id.* at 125.

[8] *Id.* at 124.

[9] Testimony of Servillano Llanes, TSN, 15 September 2000, pp. 17, 19-22.

[10] *Id.* at 18, 23.

[11] Records, p. 123.

[12] *Id.* at 122.

[13] *Id.* at 121.

[14] *Id.* at 120.

No. 00645[15] (1982), and No. 011-00310[16] (1994).

On 29 December 1995, the subject property came into the possession of the Spouses Llanes when they purchased the same from Servillano and Rita. The said transaction was evidenced by a *Kasulatan ng Bilihan*.[17] Gabriel himself cultivated the subject property and planted it with rice, coffee, and black pepper.[18] The Spouses Llanes religiously paid[19] real property taxes on the subject property, as evidenced by their current Tax Declaration No. 011-00474[20] and Tax Clearance[21] issued by the Office of the Municipal Treasurer of Malvar, Batangas.

In 1996, however, the Spouses Llanes conveyed the subject property to ICTSI Warehousing, Inc. (ICTSI), by virtue of a Deed of Absolute Sale.[22]

On 10 April 1997, ICTSI filed an application for registration of title over the subject property before the Regional Trial Court (RTC) of Tanauan, Batangas, where the case was docketed as LRC Case No. T-349.[23]

On 12 May 1999, ICTSI filed before the RTC a Motion with Leave of Court to Amend Application for Registration of Title together with the Amended Application. It alleged that due to technicality, the sale between ICTSI and the Spouses Llanes could not push through. The tax declaration covering the subject property was still in the names of the Spouses Llanes and could not be transferred and declared in the name of ICTSI. Hence, there was a need to amend the application for registration of

[15] *Id.* at 119.

[16] *Id.* at 118.

[17] *Id.* at 115.

[18] Testimony of Gabriel Llanes, TSN, 15 September 2000, pp. 3-6, 11-12.

[19] *Id.* at 7-8.

[20] Records, p. 117.

[21] *Id.* at 129.

[22] *Id.* at 5.

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

title to substitute ICTSI with the Spouses Llanes as party applicants.[24] In an Order dated 24 May 1999,[25] as modified by the Order dated 15 June 1999,[26] the RTC granted the Motion with Leave of Court to Amend Application for Registration of Title and admitted the Amended Application for Registration of Title, thus substituting the Spouses Llanes as the party applicants in LRC Case No. T-349.[27]

When LRC Case No. T-349 was called for initial hearing, the Spouses Llanes presented several documents[28] to show compliance with the jurisdictional requirements of notice, posting, and publication, which were admitted by the RTC.

The Office of the Solicitor General (OSG) filed before the RTC its Notice of Appearance[29] as counsel for the Republic and deputized the public prosecutor to assist it in the proceedings in LRC Case No. T-349.

The Republic submitted to the RTC its Opposition[30] to the Spouses Llanes' application, anchored on the grounds that (1) neither the Spouses Llanes nor their predecessors-in-interest had been in open, continuous, exclusive and notorious possession and occupation of the subject property since 12 June 1945 or earlier; and (2) the muniments of title and/or tax declaration(s)

[24] *Id.* at 59.

[25] *Id.* at 57.

[26] *Id.* at 76.

[27] In its Order dated 24 May 1999 (Records, p. 57), the RTC granted the Motion with Leave of Court to Amend Application for Registration of Title and admitted the Amended Application for Registration of Title; but the RTC, instead of naming the Spouses Llanes as party applicants in place of ICTSI, inadvertently substituted the latter with one Ramon Aranda. Consequently, the Spouses Llanes filed a Manifestation/Motion (Records, pp. 74-75) before the RTC to modify its Order dated 24 May 1999 and name them as the proper party applicants in substitution of ICTSI. In its Order dated 15 June 1999, the RTC modified its prior Order dated 24 May 1999 and named the Spouse Llanes as party applicants in place of ICTSI in LRC Case No. T-349.

[28] Records, pp. 88-107.

[29] *Id.* at 25-26.

[30] *Id.* at 22-24.

and tax payment receipt(s) of the Spouses Llanes appeared to be of recent vintage and cannot constitute competent and sufficient evidence of *bona fide* acquisition of the land or of open, continuous, exclusive and notorious possession and occupation of the land in the concept of an owner.[31]

Considering that no private opposition to the Spouses Llanes' application was registered, an Order of General Default was issued by the RTC against the whole world with the exception of the Director of Lands (on behalf of the Republic), as represented by the OSG.[32]

On 21 April 1993, the Court issued Administrative Circular No. 64-93 delegating to first level courts the jurisdiction to hear and decide cadastral and land registration cases. Pursuant thereto, the RTC issued an Order dated 5 November 2001[33] remanding the entire records of the Spouses Llanes' application to the MCTC, where the case was docketed as LRC Case No. N-073.

The Spouses Llanes filed their formal offer of evidence before the MCTC. Among the evidence they submitted were the Certifications issued by the Department of Environment and Natural Resources (DENR) IV, Forest Management Bureau (FMB)[34] dated 9 March 2000 and by the Community Environment and Natural Resources Office (CENRO), Batangas City[35] dated 15 June 2000, both declaring the subject property as alienable and disposable.

On 10 July 2003, the MCTC rendered a Decision granting the Application for Registration of Title of the Spouses Llanes, the decretal portion of which reads:

WHEREFORE, and confirming the [O]rder of [G]eneral [D]efault, this Court hereby adjudicates and decrees the parcel Lot No. 5812

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

[32] As evidenced by an Order dated 3 July 2000; records, p. 108.

[33] Records, p. 144.

[34] *Rollo*, p. 77.

[35] *Id.* at 78.

subject matter of this application in the names of applicants, [Spouses Llanes], both of legal age, Filipinos, with residence and postal address at Brgy. Paligawan, Balete, Batangas as the true and absolute owners thereof.

Once this DECISION shall have become final let the corresponding decree of registration be issued.[36]

Unsatisfied with the aforesaid Decision, the Republic appealed to the Court of Appeals, arguing that the MCTC erred in granting the Application for Registration of Title of the Spouses Llanes because the latter failed to comply with the statutory requirement of possession for 30 years, the subject property becoming alienable and disposable only on 22 December 1997 per the CENRO Certification. The appeal of the Republic was docketed as CA-G.R. CV No. 80021.

It was only at this point that the Spouses Llanes realized that the Certifications issued to them by the government agencies concerned stated different dates when the subject property became alienable and disposable. Based on the DENR-FMB Certification, the subject property became alienable and disposable on 26 March 1928. However, according to the CENRO Certification, the subject property became alienable and disposable only on 22 December 1997. The Spouses Llanes then verified the correctness of the CENRO Certification and found that CENRO committed a mistake therein. CENRO itself rectified its gaffe by issuing another Certification dated 20 July 2004,[37] consistent with the DENR Certification, that the subject property became alienable and disposable on 26 March 1928. The Spouses Llanes attached the corrected CENRO Certification as Annex "A" to their Appellees' Brief submitted to the Court of Appeals, but the appellate court, without providing any reason, did not consider the same.

On 31 January 2007, the Court of Appeals rendered its Decision granting the appeal of the Republic, setting aside the MCTC Decision dated 10 July 2003, and dismissing the Application

[36] *Id.* at 41.

[37] *Id.* at 79.

for Registration of Title of the Spouses Llanes. The appellate court referred to the CENRO Certification stating that the subject property became alienable and disposable only on 22 December 1997 and, on the basis thereof, found that the subject property became alienable and disposable only after the original application for registration was filed on 10 April 1997. The Court of Appeals further held that the evidence presented by the Spouses Llanes on the nature of their possession could hardly be considered incontrovertible. The Spouses Llanes failed to discharge the burden of proving that the subject property was already alienable and disposable at the time they filed their application for registration of title. Similarly, the Spouses Llanes failed to establish that they and their predecessors-in-interest had occupied the subject property in the concept of an owner since 12 June 1945 or for the period required by law.

The Spouses Llanes moved for the reconsideration of the aforesaid Court of Appeals Decision but their motion was denied by the appellate court in its Resolution dated 11 April 2007.

Hence, the present Petition raising the sole issue of whether the Court of Appeals erred[38] in reversing and setting aside the grant by the MCTC of the Spouses Llanes' Application for Registration of Title based on its finding that the subject property became alienable and disposable only on 22 December 1997.

The Court rules in the affirmative and, thus, finds merit in the Petition at bar.

Primarily, the Spouses Llanes' Application for Registration of Title was filed under Presidential Decree No. 1529 otherwise known as "Property Registration Decree."

Section 14 of the Property Registration Decree, governing original registration proceedings, expressly provides:

SECTION 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

[38] *Id.* at 25-26.

(1) those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

From the aforequoted provisions, the three requisites for the filing of an application for registration of title are: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation; and (3) that such possession has been under a *bona fide* claim of ownership since 12 June 1945 or earlier. Thus, Section 14(1) requires that the property sought to be registered should already be alienable and disposable at the time the application for registration of title is filed.[39]

To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a positive act of the government such as a presidential proclamation or an executive order, or an administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute. A certification by the CENRO of the DENR stating that the land subject of an application is found to be within the alienable and disposable site per a land classification project map is sufficient evidence to show the real character of the land subject of the application.[40]

In the instant case, the Spouses Llanes submitted to the MCTC Certifications from DENR Region IV and CENRO, Batangas City, to prove the alienability and disposability of the subject property. However, the two Certifications contained different dates as to when the subject property became alienable and disposable: **26 March 1928** per the DENR Certification, but **22 December 1997** according to the CENRO Certification. The

[39] *Republic v. Court of Appeals*, G.R. No. 144057, 17 January 2005, 448 SCRA 442, 447-449.

[40] *Republic v. Candy Maker, Inc.*, G.R. No. 163766, 22 June 2006, 492 SCRA 272, 292.

discrepancy between the two Certifications was overlooked by the parties during the trial stage of the case before the MCTC. The MCTC granted the Spouses Llanes' Application for Registration of Title without mentioning the said discrepancy between the two Certifications. The discrepancy was discovered only when the present case was already before the Court of Appeals. The Spouses Llanes immediately verified and secured a corrected Certification from the CENRO, which confirmed the DENR Certification that the subject property became alienable and disposable on **26 March 1928**. The appellate court, however, did not consider the corrected CENRO Certification and, in ruling against the Spouses Llanes' application, still relied on the first CENRO Certification which incorrectly stated that the subject property became alienable and disposable only on 22 December 1997.

To determine whether the Court of Appeals properly disregarded the corrected CENRO Certification as evidence for the Spouses Llanes, the Court refers to the relevant rules on evidence. Section 34, Rule 132 the Rules of Court explicitly provides:

> **SEC. 34**. *Offer of evidence*.— The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

If the Court strictly applies the aforequoted provision of law, it would simply pronounce that the Court of Appeals could not have admitted the corrected CENRO Certification because it was not formally offered as evidence before the MCTC during the trial stage. Nevertheless, since the determination of the true date when the subject property became alienable and disposable is material to the resolution of this case, it behooves this Court, in the interest of substantial justice, fairness, and equity, to consider the corrected CENRO Certification even though it was only presented during the appeal to the Court of Appeals. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that the Court is empowered to suspend its rules or to exempt a particular case

from the application of a general rule, when the rigid application thereof tends to frustrate rather than promote the ends of justice.[41]

Moreover, the Spouses Llanes should not be made to suffer the grave consequences, which include the possibility of losing their right to their property, arising from the mistake of CENRO, a government agency. CENRO itself admitted its blunder and willingly issued a corrected Certification. Very conspicuously, no other objection to the corrected CENRO Certification was raised except as to its late presentation; its issuance and authenticity were not challenged or placed in doubt.

Since both the DENR Certification and the corrected CENRO Certification state that the subject property became alienable and disposable on 26 March 1928, and there is no evidence to the contrary, then the Court accepts it to be so.

Reviewing the evidence on record, the Court finds that the subject property has been in the possession of the Spouses Llanes and their predecessors-in-interest even prior to 12 June 1945. The Spouses Llanes presented the testimony of Servillano to support this. Servillano, Gabriel's brother, was born in 1927 and was already 73 years old by the time he testified before the RTC.[42] By 1935, he was already 8 years old and capable of perceiving the concept of ownership. To his knowledge, the subject property was then owned by his grandmother, Eugenia, and cultivated and planted with rice by his father, Francisco. The perimeter of the subject property was also planted with *madre* cacao and acacia trees.[43] He personally knew of these information because he was always with his father during the time that the latter cultivated the subject property. The subject property was subsequently transferred by way of sale from Eugenia to Servillano and his wife, Rita, in 1965;[44] and from Servillano and Rita to the Spouses Llanes in 1995.[45] Servillano's

[41] *Thermphil, Inc. v. Court of Appeals*, 421 Phil. 589, 595-596 (2001).

[42] TSN, 15 September 2000, p. 17.

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

[44] *Id.* at 19-21.

[45] *Id.* at 18-19.

testimony is evidence. He is testifying as the former owner of the subject property and Gabriel's predecessor-in-interest. His testimony was coherent and detailed, and contained no implausible claims. His relationship alone with Gabriel does not render his testimony suspect, and his credibility as a witness was not at all impeached by the Republic, which did not bother at all to cross-examine him.

In addition, generations of Gabriel's family have declared the subject property under their names and paid real property taxes thereon. The earliest tax declaration was in the name of Eugenia, issued as early as 1948. While tax declarations and receipts are not incontrovertible evidence of ownership, they constitute, at the least, proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes not only manifests one's sincere and honest desire to obtain title to the property, but also announces an adverse claim against the State and all other interested parties with an intention to contribute needed revenues to the government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.[46] Tax declarations are good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession.[47] Moreover, while tax declarations and receipts are not conclusive evidence of ownership and do not prove title to the land, nevertheless, when coupled with actual possession, they constitute evidence of great weight and can be the basis of a claim of ownership through prescription.[48]

The evidence submitted by the Spouses Llanes, taken as a whole, establishes that the subject property became alienable and disposable as early as 26 March 1928; and the Spouses Llanes and their predecessors-in-interest have been in open,

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[46] *Republic v. Alconaba*, G.R. No. 155012, 14 April 2004, 427 SCRA 611, 620.

[47] *Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals*, G.R. No. 132161, 17 January 2005, 448 SCRA 347, 369.

[48] *Heirs of Flores Restar v. Heirs of Dolores R. Cichon*, G.R. No. 161720, 22 November 2005, 475 SCRA 731, 741.

continuous, exclusive, and notorious possession of the subject property, in the concept of an owner, even prior to 12 June 1945. In contrast, the Republic did not present any evidence to refute that of the Spouses Llanes. To the Court, therefore, the Spouses Llanes were able to sufficiently discharge the burden of proof that they have an imperfect title to the subject property capable of judicial confirmation.

WHEREFORE, premises considered, the instant Petition is hereby *GRANTED*. The Decision and Resolution of the Court of Appeals dated 31 January 2007 and 11 April 2007, respectively, in CA-G.R. CV No. 80021, are hereby *REVERSED* and *SET ASIDE*. The Decision dated 10 July 2003 of the Municipal Circuit Trial Court, Malvar-Balete, Batangas, in LRC Case No. N-073, granting the application for registration of title to the subject property of the Spouses Gabriel and Maria Llanes, is hereby *REINSTATED*. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 178923. November 27, 2008]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ROLANDO L. MAGNO and the COURT OF APPEALS (SPECIAL FORMER FIFTH DIVISION),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* NATURE.— The rules are explicit that the special remedies

of *certiorari* and prohibition may only be availed of when the tribunal, corporation, board, officer, or person, exercising judicial, quasi-judicial, or ministerial functions, 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 or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* (as well as one for prohibition) will only prosper if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion has a technical and set meaning. Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, NOT A CASE OF.— Judging from the foregoing standards, there is no grave abuse of discretion in the case at bar. There is factual and legal justification for the denial by the Court of Appeals of the Ombudsman's Omnibus Motion. The Court notes that only Carreon was named a respondent in CA-G.R. SP No. 91080; the Ombudsman was not impleaded as a party in said case, even as a nominal party. The Ombudsman, despite receiving notices from said case, failed to immediately move to intervene in CA-G.R. SP No. 91080. Instead, the Ombudsman waited until the Court of Appeals rendered its judgment dismissing the charges against Magno before filing its Omnibus Motion to Intervene and for Reconsideration. The appellate court no longer allowed the Ombudsman to intervene.

3. ID.; CIVIL PROCEDURE; INTERVENTION; REQUIREMENTS FOR ALLOWANCE.— Intervention is not a matter of right but may be permitted by the courts only when the statutory conditions for the right to intervene are shown. Thus, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. To allow intervention, it must be shown that (a) the movant has a legal interest in the matter in litigation or otherwise qualified, and (b) consideration

must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second.

4. ID.; ID.; ID.; ID.; LACK OF LEGAL INTEREST TO INTERVENE; CASE AT BAR.— In the case at bar, the Court holds that the Ombudsman failed to sufficiently establish its legal interest to intervene in CA-G.R. SP No. 91080. Legal interest, which entitles a person to intervene, must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment. The Ombudsman invokes its disciplining authority over public officers and employees in an attempt to justify its intervention in CA-G.R. SP No. 91080. It was in the exercise of such disciplining authority that the Ombudsman conducted the investigation in OMB-ADM-0-00-0148, the administrative case against Magno and the other Parañaque City officials. As a result of such investigation, the Ombudsman rendered its Decision of 3 June 2005, finding Magno guilty of Grave Misconduct and dismissing him from service. That it was its decision, rendered as the disciplining authority over Magno, which was the subject of the appeal in CA-G.R. SP No. 91080, did not necessarily vest the Ombudsman with legal interest to intervene in the said case. Every decision rendered by the Ombudsman in an administrative case may be affirmed, but may also be modified or reversed on appeal – this is the very essence of appeal. In case of modification or reversal of the decision of the Ombudsman on appeal, it is the parties who bear the consequences thereof, and the Ombudsman itself would only have to face the error/s in fact or law that it may have committed which resulted in the modification or reversal of its decision.

5. ID.; ID.; ID.; DISCIPLINING AUTHORITY IS PRECLUDED FROM INTERVENING IN THE APPEAL OF ITS DECISION; REASONS, REITERATED.— [T]he reason for disallowing the disciplining authority from appealing the reversal of its decision, as decided in *National Appellate Board of the National Police Commission v. Mamauag*, citing *Mathay, Jr. v. Court of Appeals*, is also true for precluding said disciplining authority from intervening in the appeal of

its decision, to wit: RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty. However, **the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service.** The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an **anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. In Pleyto v. Philippine National Police Criminal Investigation and Detection Group,** the Court further warned that: The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

6. ID.; ID.; ID.; THE PERIOD WITHIN WHICH A PERSON MAY INTERVENE IS RESTRICTED; APPLICATION.— Equally relevant herein is Section 2, Rule 19 of the Revised Rules of

Court, which states that the motion to intervene may be filed at any time before rendition of judgment by the court. The period within which a person may intervene is thus restricted. After the lapse of this period, it will not be warranted anymore. This is because, basically, intervention is not an independent action but is ancillary and supplemental to an existing litigation. In the instant case, the Ombudsman moved to intervene in CA-G.R. SP No. 91080 only after the Court of Appeals had rendered its decision therein. It did not offer any worthy explanation for its belated attempt at intervention, and merely offered the feeble excuse that it was not ordered by the Court of Appeals to file a Comment on Magno's Petition. Even then, as the Court has already pointed out, the records disclose that the Ombudsman was served with copies of the petition and pleadings filed by Magno in CA-G.R. SP No. 91080, yet it chose not to immediately act thereon.

7. ID.; ID.; ID.; FILING OF OMNIBUS MOTION TO INTERVENE DOES NOT TOLL THE RUNNING OF THE 60-DAY PERIOD TO FILE A PETITION FOR *CERTIORARI*.— According to Section 4, Rule 65 of the Revised Rules of Court, a petition for *certiorari* may be filed not later than 60 days from receipt of the judgment, order or resolution sought to be assailed in the Supreme Court. The Ombudsman received a copy of the Court of Appeals Decision dated 7 November 2006 on **9 November 2006.** It had only until **8 January 2008** to file a petition for *certiorari* assailing the said Decision. This period was not tolled by the filing by the Ombudsman of its Omnibus Motion on 24 November 2006, as the denial of its intervention by the appellate court in the assailed Resolution dated 14 June 2007 resulted in the non-admittance of its motion for reconsideration. Still, according to Section 4, Rule 65 of the Revised Rules of Court, only the filing of a motion for reconsideration interrupts the 60-day reglementary period for the filing of a petition for *certiorari*.

8. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; MISCONDUCT, DEFINED.— Misconduct has been defined as improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. It generally means wrongful, improper or unlawful conduct

motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.

9. ID.; ID.; ID.; ID.; SIMPLE AND GRAVE MISCONDUCT, DISTINGUISHED.— Simple Misconduct is distinct and separate from Grave Misconduct. The Court clarified in *Landrito v. Civil Service Commission* that "in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."

10. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; DENIAL THEREOF, PRESENT IN CASE AT BAR.— The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As found by the Court of Appeals, Magno was clearly deprived of his right to due process when he was convicted of a much serious offense, carrying a more severe penalty, without him being properly informed thereof or being provided with the opportunity to be heard thereon.

APPEARANCES OF COUNSEL

Office of Legal Affairs (Ombudsman) for petitioner.
Rome Dizon Tagra for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Revised Rules of Court seeking to nullify and set aside the Decision[1] dated 7 November 2006 and Resolution[2] dated 14 June 2007 of the Court of Appeals in CA-G.R. SP No. 91080 entitled, *Rolando L. Magno v. Lizabeth Carreon.*

[1] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Roberto A. Barrios and Mario L. Guariña III concurring; *Rollo*, pp. 22-32.

[2] *Id.* at 19.

The Court of Appeals reversed the Decision promulgated on 3 June 2005[3] and Order issued 22 August 2005[4] of the Office of the Ombudsman (Ombudsman) in OMB-ADM-0-00-0148 and denied the Omnibus Motion to Intervene and for Reconsideration of the Ombudsman in CA-G.R. SP No. 91080. The Ombudsman, in OMB-ADM-0-00-0148, dismissed from service private respondent Rolando L. Magno (Magno), Schools Division Superintendent of the Department of Education, Parañaque City Division, and Co-Chairman of the Parañaque City School Board (PCSB), for Grave Misconduct.

The following are the factual antecedents:

Lizabeth Carreon (Carreon) – alleging to be the legal representative of Kejo Educational System, Merylvin Publishing House, and Southern Christian Commercial which were distributors and suppliers of textbooks to public schools in Metro Manila – filed a complaint-affidavit[5] on 10 February 2000 before the Ombudsman against Magno and other officials of Parañaque City, particularly: Joey P. Marquez (Marquez), City Mayor and Chairman of the PCSB; Silvestre A. de Leon (de Leon), City Treasurer; Flocerfida Babida (Babida), City Budget Officer; Mar Jimenez (Jimenez), Executive Assistant to the City Mayor; and Antonette Antonio (Antonio), Assistant to the City Mayor (hereinafter collectively referred to as Magno, *et al.*). Carreon charged Magno, *et al.* with violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for allegedly having failed to pay the purchase price of books ordered and delivered to the different public schools in Parañaque City.[6]

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[3] Although the Decision was dated 30 August 2004, it was signed and approved by Ombudsman Simeon V. Marcelo only on 3 June 2005; Records, pp. 228-259.

[4] Although the Order was dated 23 June 2005, it was signed and approved by Ombudsman Simeon V. Marcelo only on 22 August 2005; CA *rollo*, pp. 82-92.

[5] Records, pp. 1-5.

[6] Section 3(e), (f) of Anti-Graf and Corrupt Practices (R.A. No. 3019), as amended states:

Carreon averred that sometime in the first quarter of 1998, she was approached by a close family friend, Noli Aldip (Aldip), who also happened to be a friend of Marquez. Aldip introduced her to Jimenez and Antonio; the two, in turn, introduced her to Magno. Immediately after their meeting, Jimenez and Antonio proposed to Carreon that if the companies she represented, *i.e.*, Kejo Educational System, Merylvin Publishing House, and Southern Christian Commercial, were willing to do business with PCSB, they could facilitate, through the Office of the City Mayor, book purchases for Parañaque City public schools. Magno, for his part, assured Carreon that he, Jimenez, and Antonio, could arrange the passage of the required PCSB Resolutions for said business transaction.

Carreon claimed that Jimenez and Antonio informed her that they had the go-signal of the City Mayor for the book purchases. Subsequently, she learned through Magno, Jimenez, and Antonio that the PCSB had already passed the following Resolutions in July 1998:

Resolution No.	**Purpose**	**Amount**
25	For 500 copies of Diksyonaryong Pilipino	₱1,122,250.00

Section 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

26	For 500 copies of Oxford Dictionary	1,247,500.00
28	For DECS Basic Textbooks in Grade II	2,021,250.00
29	For DECS Basic Textbooks	2,021,250.00
	TOTAL	**6,412,250.00**

Four months after, in November 1998, Carreon said that Magno, Jimenez, and Antonio notified her that the funding for the dictionary and textbook purchases had been arranged and, in fact, some of the necessary documents were already signed. Carreon was provided by Magno, Jimenez, and Antonio with copies of Requests for Allocation of Allotment (ROAs) and Disbursement Vouchers (DVs) signed by Magno; Purchase Requests (PRs) No. 0001391, No. 0001387, No. 0001388 and No. 0001390, signed by Marquez and Magno; as well as Purchase Orders (POs) for individual requests signed by Marquez and the Parañaque Purchasing Officer. Magno, Jimenez, and Antonio then advised Carreon to start making deliveries of the dictionaries and textbooks.

Allegedly relying on the representations of Magno, Jimenez, and Antonio, Carreon caused the deliveries of the dictionaries and textbooks, amounting to ₱6,412,201.91, to the PCSB, evidenced by delivery receipts dated 14, 21, and 22 December 1998,[7] signed by Teresita G. Diocadiz, Supply Officer of the PCSB. According to the Supplies and Materials Distribution Sheet, the dictionaries and textbooks were distributed to the various Parañaque public schools on 2 February 1999 by the officials of the PCSB, particularly Marquez and Magno.[8]

According to Carreon, she was assured several times that payments for the said dictionaries and textbooks would be released soon. On 17 January 2000, Carreon sent a demand letter to Marquez. For the first time, however, Marquez questioned the authenticity of his signatures on the PRs and POs for the dictionaries and textbooks.

[7] *Id.* at 26-36.

[8] *Id.* at 38.

Carreon asserted that the actions of Magno, *et al.* before, during, and subsequent to the delivery of the dictionaries and textbooks were done in evident bad faith and manifest evil design; and that the non-payment of said books caused her undue injury, in violation of Sections 3(e) and (f) of Republic Act No. 3019.

Carreon's complaint-affidavit gave rise to two separate proceedings before the Ombudsman: a criminal investigation, docketed as **OMB-0-00-0350**; and an administrative investigation, docketed as **OMB-ADM-0-00-0148**. The administrative charges against Magno, *et al.* were particularly for Misconduct and Oppression.

Apparently in negotiations for the amicable settlement of her claims, Carreon filed a Manifestation in OMB-0-00-0350 dated September 2000 before the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman withdrawing her complaint-affidavit, without prejudice to its re-filing in case the parties fail to reach an agreement.[9]

On 16 January 2001, finding enough basis to proceed with the administrative investigation of the case, the Director of the Administrative Investigation Bureau (AIB) of the Office of the Ombudsman issued an Order to proceed with the investigation on the administrative liability of Magno, *et al.* in OMB-ADM-0-00-0148, it appearing that the complaint was sufficient in form and substance. Magno, *et al.* were directed to file their counter-affidavits.[10]

In a letter[11] dated 28 March 2001 and addressed to the AIB Director, Magno, *et al.* (except Antonio), authorized Atty. Leo Luis Mendoza (Atty. Mendoza) to appear on their behalf in the preliminary conference on OMB-ADM-0-00-0148 and to present and submit the necessary documents/affidavits as may be required by law and/or the AIB.

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[9] *Id.* at 139; *People v. Marquez*, docketed as Criminal Cases No. 27778 to No. 27779 are pending before the Sandiganbayan.

[10] *Id.* at 68-76.

[11] *Id.* at 81.

On 16 April 2001, Atty. Mendoza filed a Manifestation[12] on behalf of Magno, *et al.* (except Antonio), adopting in OMB-ADM-0-00-0148 the Joint Counter-Affidavit already submitted in the criminal proceedings in OMB-0-00-0350.[13] In said Joint Counter-Affidavit, filed on 3 April 2000 by Magno, *et al.* (except Antonio) in OMB-0-00-0350, but which did not bear Magno's signature, it was asserted that the supposed contracts for the book purchases were null and void because the Board Resolutions approving the same were invalid and could not legally bind the city and its funds, given that the signatures of Marquez thereon were allegedly forged. It was further contended therein that the contracts for the book purchases violated existing law and rules and regulations regarding government contracts, since there was an absence of (1) public bidding, as mandated by Sections 356 and 366 of the Local Government Code; (2) a certification issued by Marquez, as PCSB Chairman, on the need for the dictionaries and textbooks purchased and where these were to be used; (3) a certification by the local budget officer, accountant, and treasurer, showing that an appropriation for the book purchases existed, that the estimated amount for the same had been obligated, and that the funds were available for the purpose, as required by Section 360 of the Local Government Code; and (4) Disbursement Vouchers properly issued and signed by the authorized public officials. The Joint Counter-Affidavit raised as additional ground for dismissal of the complaint-affidavit Carreon's lack of legal capacity to sue and lack of cause of action against the Parañaque City officials for failure to show any documentary proof that she was indeed the legal representative of the book distributors and suppliers. Hence, it was argued in the Joint Counter-Affidavit that Carreon delivered the books at her own risk and must bear the loss for the non-payment thereof. The same Joint Counter-Affidavit also presented the defenses for each of the Parañaque official involved. For Magno, in particular, it was admitted therein that he signed the ROAs and PRs for the books supplied by Kejo Educational System, Merylvin Publishing House, and Southern Christian Commercial, but it

[12] *Id.* at 90-92.

[13] *Id.* at 90-93.

was done in good faith and simply in compliance with his duty as the requesting or requisitioning official for PCSB. And, it was denied in the Joint Counter-Affidavit that Magno dealt with Carreon regarding these purchases.[14]

In the meantime, separate *Ex-Parte* Manifestations[15] were filed by Kejo Educational System,[16] Merylvin Publishing House,[17] and Southern Christian Commercial,[18] disclaiming the authority of Carreon to file with the Ombudsman the complaint-affidavit against Magno, *et al.* on their behalf.

After holding a preliminary conference, the Ombudsman issued on 23 November 2001 an Order submitting OMB-ADM-0-00-0148 for decision.

The Office of the Ombudsman rendered its Decision in OMB-ADM-0-00-0148 on 3 June 2005 holding only Magno and Jimenez guilty of Grave Misconduct and dismissing them from service. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, this Office rules and so holds that:

1. Respondent ROLANDO L. MAGNO is hereby FOUND GUILTY of the offense of GRAVE MISCONDUCT, and for which he is hereby meted the penalty of DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES, pursuant to Section 52(A-3), Rule IV, Uniform Rules on Administrative Cases in the Civil Service;

2. Respondent MARIO "MAR" L. JIMENEZ is hereby found guilty of GRAVE MISCONDUCT and for which he is hereby meted the penalty of DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES, pursuant to Section 52(A-3), Rule IV, Uniform Rules on Administrative Cases in the Civil Service. In view, however, of recent

[14] *Id.* at 105.

[15] *Id.* at 82-89.

[16] 30 March 2001.

[17] *Id.*

[18] 8 February 2001.

developments which now preclude this Office from dismissing him from office, it is (sic) hereby ordered the forfeiture of his retirement benefits and his perpetual disqualification for reemployment in the government service;

3. Respondents FLORCEFIDA M. BABIDA and SILVESTRE A. DE LEON are hereby ABSOLVED of the instant charge; and

4. For having been rendered moot and academic, the instant case against respondents JOEY P. MARQUEZ and ANTONETTE ANTONIO is hereby DISMISSED.[19]

Magno filed with the Ombudsman a Motion for Reconsideration of the afore-quoted Decision. He alleged in his Motion that he was not a signatory to the Joint Counter-Affidavit submitted on 3 April 2000 in OMB-0-00-0350 and adopted in OMB-ADM-0-00-0148; consequently, he argued that he "can not be adversely affected by whatever unfavorable allegations contained therein regarding the refusal of [the other Parañaque City officials] to pay Carreon due to lack of funds."[20] The 3 June 2005 Decision of the Ombudsman in OMB-ADM-0-00-0148, which adjudged Magno guilty of Grave Misconduct based on the Joint Counter-Affidavit which he did not execute, was clearly erroneous. Contrary to the allegations in the said Joint Counter-Affidavit, Magno did not deny signing the ROAs and the PRs for the book purchases but explained that it was only an initial step for the purchase of the dictionaries and textbooks, and was proper and legal since it was part of his official functions and duties. Moreover, to negate the claim of injury, Magno attached a certification[21] dated 15 August 2003, issued by the current Parañaque City Treasurer showing that payment for the dictionaries and textbooks

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[19] CA *rollo*, pp. 64-65.

[20] *Id.* at 267; Motion for Reconsideration filed before the Ombudsman.

[21] Annex 1 to the Motion for Reconsideration before the Ombudsman; *id.* at 273.

were already received by Kejo Educational System,[22] Merylvin Publishing House[23] and Southern Christian Commercial.[24]

The Ombudsman, in its Order issued on 22 August 2005, denied Magno's Motion for Reconsideration and affirmed its Decision of 3 June 2005.

Magno elevated his case to the Court of Appeals via a Petition for Review on *Certiorari* under Rule 43 of the Rules of Court, where it was docketed as CA-G.R. SP No. 91080. Magno grounded his appeal on the following arguments: that Carreon had no legal standing to institute the administrative case against him; that he signed the ROAs and PRs for the book purchases as part of his official duties, and that, even then, the said documents had no bearing unless approved by the appropriate officials of the Parañaque City government; and that since he was administratively charged only with Misconduct and Oppression for his supposed violation of Sections 3(e) and (f) of Republic Act No. 3019, he could not be found guilty of Grave Misconduct without violating his right to due process.

The Court of Appeals issued on 1 March 2006 a preliminary injunction to enjoin the implementation of the 3 June 2005 Decision of the Ombudsman in OMB-ADM-0-00-0148 dismissing Magno from service. Upon Carreon's failure to file a Comment on Magno's Petition in CA-G.R. SP No. 91080 as directed, the appellate court submitted the case for decision.

On 7 November 2006, the Court of Appeals reversed the Ombudsman and dismissed the administrative charges against Magno, ratiocinating that:

> The Office of the Ombudsman erred in finding [Magno] guilty of grave misconduct. [Magno] was charged with violation of Section 3 (e) and (f), R.A. 3019. He was not charged with grave misconduct, as to put him on notice that he stands accused of misconduct coupled with any of the elements of corruption, willful intent to violate the

[22] 30 April 2001.

[23] 9 November 2001.

[24] 28 February 2001 and 20 March 2001.

law or established rules. Therefore, he was not afforded the opportunity to rebut the elements of corruption, willful intent to violate the law, or flagrant disregard of established rules in grave misconduct, in violation of his constitutional right to be informed of the charges against him.[25]

On 24 November 2006, the Ombudsman filed with the Court of Appeals an Omnibus Motion to Intervene and for Reconsideration[26] of the appellate court's Decision in CA-G.R. SP No. 91080. The Ombudsman justified its move to intervene by reasoning that CA-G.R. SP No. 91080 concerned a decision rendered by the Ombudsman pursuant to its function as the disciplinary authority over public officials and employees. Its 3 June 2005 Decision in OMB-ADM-0-00-0148 finding Magno administratively liable for Grave Misconduct was based on substantial evidence. It did not violate due process, as due process never required the Ombudsman to limit its findings to the designation of the offense in the complaint.

Magno opposed the Omnibus Motion of the Ombudsman, contending that the latter was not a real party-in-interest, and its motion to intervene was already belatedly filed since such should have been filed before the Court of Appeals promulgated its Decision in CA-G.R. SP No. 91080.

In a Resolution[27] dated 14 June 2007, the Court of Appeals denied the Omnibus Motion of the Ombudsman, and pronounced that the arguments raised in Magno's Petition in CA-G.R. SP No. 91080 had already been adequately discussed and passed upon in the Decision dated 7 November 2006.

Hence, the Petition at bar, in which the Ombudsman asserts that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in the following manner:

> THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF

[25] *Rollo,* pp. 30-31.

[26] CA *rollo,* pp. 224-241.

[27] *Id.* at 273.

JURISDICTION IN DENYING THE OMNIBUS MOTION FOR INTERVENTION AND RECONSIDERATION FILED BY PETITIONER OMBUDSMAN, IT APPEARING THAT THE QUESTIONED RESOLUTION AND DECISION ARE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT UNDER THE FOLLOWING CIRCUMSTANCES:

A. PETITIONER OMBUDSMAN HAS SUFFICIENT LEGAL INTEREST WARRANTING ITS INTERVENTION IN CA-G.R. SP NO. 91080, ENTITLED "*ROLANDO L. MAGNO VS. LIZABETH CARREON*."

B. PETITIONER OMBUDSMAN DID NOT VIOLATE PRIVATE RESPONDENT MAGNO'S RIGHT TO DUE PROCESS WHEN IT DECLARED HIM ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT.

The Ombudsman prays that the Court issue (1) a writ of *certiorari* setting aside the 7 November 2006 Decision and 14 June 2007 Resolution of the Court of Appeals and reinstating the 3 June 2005 Decision and 22 August 2005 Resolution of the Ombudsman; and (2) a writ of prohibition perpetually restraining Magno and the Court of Appeals from enforcing the assailed Decision and Resolution.

The present Petition is without merit and is accordingly dismissed by this Court.

Petitions for *certiorari* and prohibition are special remedies governed by Rule 65 of the Revised Rules of Court, relevant provisions of which read:

SEC. 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.

xxx xxx xxx

SEC. 2. *Petition for prohibition.* – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are 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 or any other 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 commanding the respondent to desist from further proceeding in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The rules are explicit that the special remedies of *certiorari* and prohibition may only be availed of when the tribunal, corporation, board, officer, or person, exercising judicial, quasi-judicial, or ministerial functions, 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 or any other plain, speedy, and adequate remedy in the ordinary course of law.

A petition for *certiorari* (as well as one for prohibition) will only prosper if grave abuse of discretion is manifested.[28] The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[29] The term grave abuse of discretion has a technical and set meaning. Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power

[28] *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002).

[29] See *Suliguin v. COMELEC*, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233.

is exercised in an arbitrary and despotic manner because of passion or hostility.[30]

Judging from the foregoing standards, there is no grave abuse of discretion in the case at bar. There is factual and legal justification for the denial by the Court of Appeals of the Ombudsman's Omnibus Motion.

The Court notes that only Carreon was named a respondent in CA-G.R. SP No. 91080; the Ombudsman was not impleaded as a party in said case, even as a nominal party. The Ombudsman, despite receiving notices from said case, failed to immediately move to intervene in CA-G.R. SP No. 91080. Instead, the Ombudsman waited until the Court of Appeals rendered its judgment dismissing the charges against Magno before filing its Omnibus Motion to Intervene and for Reconsideration. The appellate court no longer allowed the Ombudsman to intervene.

Intervention is not a matter of right but may be permitted by the courts only when the statutory conditions for the right to intervene are shown. Thus, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.[31]

To allow intervention, it must be shown that (a) the movant has a legal interest in the matter in litigation or otherwise qualified, and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second.[32]

In the case at bar, the Court holds that the Ombudsman failed to sufficiently establish its legal interest to intervene in CA-G.R. SP No. 91080.

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[30] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 20-21 (2002).

[31] *Manalo v. Court of Appeals*, 419 Phil. 215, 233 (2001).

[32] *Yao v. Perello*, 460 Phil. 658, 664 (2003).

Legal interest, which entitles a person to intervene, must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment.[33]

The Ombudsman invokes its disciplining authority over public officers and employees in an attempt to justify its intervention in CA-G.R. SP No. 91080. It was in the exercise of such disciplining authority that the Ombudsman conducted the investigation in OMB-ADM-0-00-0148, the administrative case against Magno and the other Parañaque City officials. As a result of such investigation, the Ombudsman rendered its Decision of 3 June 2005, finding Magno guilty of Grave Misconduct and dismissing him from service.

That it was its decision, rendered as the disciplining authority over Magno, which was the subject of the appeal in CA-G.R. SP No. 91080, did not necessarily vest the Ombudsman with legal interest to intervene in the said case. Every decision rendered by the Ombudsman in an administrative case may be affirmed, but may also be modified or reversed on appeal – this is the very essence of appeal. In case of modification or reversal of the decision of the Ombudsman on appeal, it is the parties who bear the consequences thereof, and the Ombudsman itself would only have to face the error/s in fact or law that it may have committed which resulted in the modification or reversal of its decision.

Moreover, the reason for disallowing the disciplining authority from appealing the reversal of its decision, as decided in *National Appellate Board of the National Police Commission v. Mamauag*,[34] citing *Mathay, Jr. v. Court of Appeals*,[35] is also true for precluding said disciplining authority from intervening in the appeal of its decision, to wit:

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[33] *Nordic Asia, Ltd. v. Court of Appeals*, G.R. No. 111159, 13 July 2004, 434 SCRA 195, 199.

[34] G.R. No. 149999, 12 August 2005, 466 SCRA 624, 641-642.

[35] 378 Phil. 466, 483-484 (1999).

RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.

However, **the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service.** The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an **anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent.** Thus, in *Mathay, Jr. v. Court of Appeals*, decided after *Dacoycoy*, the Court declared:

> To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."
>
> In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate. (Emphasis ours.)

In *Pleyto v. Philippine National Police Criminal Investigation and Detection Group*,[36] the Court further warned that:

The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it,

[36] G.R. No. 169982, 23 November 2007, 538 SCRA 534, 549.

but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

Equally relevant herein is Section 2, Rule 19 of the Revised Rules of Court, which states that the motion to intervene may be filed at any time before rendition of judgment by the court. The period within which a person may intervene is thus restricted. After the lapse of this period, it will not be warranted anymore. This is because, basically, intervention is not an independent action but is ancillary and supplemental to an existing litigation.[37]

In the instant case, the Ombudsman moved to intervene in CA-G.R. SP No. 91080 only after the Court of Appeals had rendered its decision therein. It did not offer any worthy explanation for its belated attempt at intervention, and merely offered the feeble excuse that it was not ordered by the Court of Appeals to file a Comment on Magno's Petition. Even then, as the Court has already pointed out, the records disclose that the Ombudsman was served with copies of the petition and pleadings filed by Magno in CA-G.R. SP No. 91080, yet it chose not to immediately act thereon.

While there may be cases in which the Court admitted and granted a motion for intervention despite its late filing to give way to substantive justice, the same is not applicable to the case at bar, for here, not only did the Ombudsman belatedly

[37] *Manalo v. Court of Appeals, supra* note 31.

move for intervention in CA-G.R. SP No. 91080, but more importantly, it has no legal interest at all to intervene. The absence of the latter is insurmountable.

Since the Court of Appeals denied the intervention of the Ombudsman in CA-G.R. SP No. 91080, then the Court of Appeals could not admit, much less, take into account the Ombudsman's Motion for Reconsideration of the Decision dated 7 November 2006. In the absence of any validly filed Motion for Reconsideration of the said Decision or any appeal thereof taken to this Court within the prescribed period, then the same has become final and executory, and beyond the power of this Court to review even if the Decision should contain any errors.

The Ombudsman, however, insists that this Court delve into the merits of the Court of Appeals Decision dated 7 November 2006, on *certiorari* instead of appeal, alleging grave abuse of discretion on the part of the appellate court in promulgating the same.

Firstly, this Petition for *Certiorari* of the 7 November 2006 Decision of the Court of Appeals was filed beyond the reglementary period for doing so.

According to Section 4, Rule 65 of the Revised Rules of Court, a petition for *certiorari* may be filed not later than 60 days from receipt of the judgment, order or resolution sought to be assailed in the Supreme Court. The Ombudsman received a copy of the Court of Appeals Decision dated 7 November 2006 on **9 November 2006**. It had only until **8 January 2008** to file a petition for *certiorari* assailing the said Decision. This period was not tolled by the filing by the Ombudsman of its Omnibus Motion on 24 November 2006, as the denial of its intervention by the appellate court in the assailed Resolution dated 14 June 2007 resulted in the non-admittance of its motion for reconsideration. Still, according to Section 4, Rule 65 of the Revised Rules of Court, only the filing of a motion for reconsideration interrupts the 60-day reglementary period for the filing of a petition for *certiorari*.

The results would have been different had the Ombudsman been successful in the instant Petition to have the Resolution dated 14 June 2007 of the Court of Appeals, denying its motion to intervene, reversed; because, then, its motion for reconsideration of the Decision dated 7 November 2006 of the appellate court would have also been deemed admitted and would have suspended the running of the 60-day reglementary period for the filing of a petition for *certiorari*. Regrettably for the Ombudsman, it failed in this regard.

Secondly, even if this Court disregards the lapse of the reglementary period for the filing of a petition for *certiorari* assailing the 7 November 2008 Decision of the Court of Appeals, it will still not issue the writ prayed for by the Ombudsman since it is not persuaded that the assailed Decision had been rendered by the appellate court in grave abuse of discretion.

The administrative charges against Magno, arising from his alleged violation of Sections 3(e) and (f) of Republic Act No. 3019, were Misconduct and Oppression. Magno, in his pleadings filed before the Ombudsman, argued and presented evidence based on such charges. However, the Ombudsman finally adjudged him to be guilty of Grave Misconduct for which he was ordered dismissed from service.

Misconduct has been defined as improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. On the other hand, when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest, the public officer shall be liable for grave misconduct.[38]

[38] *Estarija v. Ranada*, G.R. No. 159314, 26 June 2006, 492 SCRA 652, 663.

Simple Misconduct is distinct and separate from Grave Misconduct. The Court clarified in *Landrito v. Civil Service Commission* [39] that "in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."

In point is the Court's ruling in *Civil Service Commission v. Lucas*,[40] where:

> The issues are (a) whether respondent Lucas was denied due process when the CSC found him guilty of grave misconduct on a charge of simple misconduct, and (b) whether the act complained of constitutes grave misconduct.
>
> Petitioner anchors its position on the view that "the formal charge against a respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, and not the designation of the offense."
>
> We deny the petition.
>
> As well stated by the Court of Appeals, there is an existing guideline of the CSC distinguishing simple and grave misconduct. In the case of *Landrito vs. Civil Service Commission*, we held that "in grave misconduct as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest," which is obviously lacking in respondent's case. Respondent maintains that as he was charged with simple misconduct, the CSC deprived him of his right to due process by convicting him of grave misconduct.
>
> We sustain the ruling of the Court of Appeals that: (a) a basic requirement of due process is that a person must be duly informed of the charges against him and that (b) a person can not be convicted of a crime with which he was not charged.

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[39] G.R. Nos. 104304-05, 22 June 1993, 223 SCRA 564, 567.

[40] 361 Phil. 486, 490-491 (1999).

Administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings.

The right to substantive and procedural due process is applicable in administrative proceedings.

The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. [41] As found by the Court of Appeals, Magno was clearly deprived of his right to due process when he was convicted of a much serious offense, carrying a more severe penalty, without him being properly informed thereof or being provided with the opportunity to be heard thereon.

WHEREFORE, premises considered, the instant Petition for *Certiorari* and Prohibition is *DISMISSED*, without prejudice to the outcome of the criminal cases still pending against private respondent Rolando L. Magno for the same acts.

SO ORDERED.

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

[41] *Firestone Tire and Rubber Company of the Philippine v. Lariosa,* G.R. No. 70479, 27 February 1987, 148 SCRA 187, 192.

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[G.R. No. 179848. November 27, 2008]

NESTOR A. JACOT, *petitioner, vs.* **ROGEN T. DAL and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; REACQUISITION; R.A. No. 9225 PRESCRIBES TWIN REQUIREMENTS FOR NATURAL-BORN FILIPINOS WHO HAVE BEEN NATURALIZED FOREIGN NATIONAL BUT REACQUIRED OR RETAINED PHILIPPINE CITIZENSHIP TO QUALIFY AS CANDIDATES FOR PHILIPPINE ELECTIONS.— Section 5(2) of Republic Act No. 9225 compels natural-born Filipinos, who have been naturalized as citizens of a foreign country, but who reacquired or retained their Philippine citizenship (1) to take the oath of allegiance under Section 3 of Republic Act No. 9225, and (2) for those seeking elective public offices in the Philippines, to additionally execute a **personal and sworn renunciation** of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, **to qualify as candidates in Philippine elections.** Clearly Section 5(2) of Republic Act No. 9225 (on the making of a personal and sworn renunciation of any and all foreign citizenship) requires of the Filipinos availing themselves of the benefits under the said Act to accomplish an undertaking other than that which they have presumably complied with under Section 3 thereof (oath of allegiance to the Republic of the Philippines). This is made clear in the discussion of the Bicameral Conference Committee on Disagreeing Provisions of House Bill No. 4720 and Senate Bill No. 2130 held on 18 August 2003 (precursors of Republic Act No. 9225), where the Hon. Chairman Franklin Drilon and Hon. Representative Arthur Defensor explained to Hon. Representative Exequiel Javier that the oath of allegiance is different from the renunciation of foreign citizenship. There is little doubt, therefore, that the intent of the legislators was not only for Filipinos reacquiring or retaining their Philippine

citizenship under Republic Act No. 9225 to take their oath of allegiance to the Republic of the Philippines, but also to explicitly renounce their foreign citizenship if they wish to run for elective posts in the Philippines. To qualify as a candidate in Philippine elections, Filipinos must only have one citizenship, namely, Philippine citizenship. By the same token, the oath of allegiance contained in the Certificate of Candidacy, which is substantially similar to the one contained in Section 3 of Republic Act No. 9225, does not constitute the personal and sworn renunciation sought under Section 5(2) of Republic Act No. 9225. It bears to emphasize that the said oath of allegiance is a general requirement for all those who wish to run as candidates in Philippine elections; while the renunciation of foreign citizenship is an additional requisite only for those who have retained or reacquired Philippine citizenship under Republic Act No. 9225 and who seek elective public posts, considering their special circumstance of having more than one citizenship.

2. ID.; ID.; ID.; ID.; ID.; THE FACT THAT A CANDIDATE RECEIVED THE HIGHEST NUMBER OF VOTES FOR AN ELECTIVE POSITION DOES NOT DISPENSE WITH, OR AMOUNT TO A WAIVER OF, THE TWIN REQUIREMENTS.— Petitioner also makes much of the fact that he received the highest number of votes for the position of Vice-Mayor of Catarman during the 2007 local elections. The fact that a candidate, who must comply with the election requirements applicable to dual citizens and failed to do so, received the highest number of votes for an elective position does not dispense with, or amount to a waiver of, such requirement. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed that the candidate was qualified. The rules on citizenship qualifications of a candidate must be strictly applied. If a person seeks to serve the Republic of the Philippines, he must owe his loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state. The application of the constitutional and statutory provisions on disqualification is not a matter of popularity.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; NEW THEORY, NOT ALLOWED.— Petitioner presents before this Court for the first time, in the instant Petition for *Certiorari*,

an "Affidavit of Renunciation of Allegiance to the United States and Any and All Foreign Citizenship," which he supposedly executed on 7 February 2007, even before he filed his Certificate of Candidacy on 26 March 2007. With the said Affidavit, petitioner puts forward in the Petition at bar a new theory of his case—that he complied with the requirement of making a personal and sworn renunciation of his foreign citizenship before filing his Certificate of Candidacy. This new theory constitutes a radical change from the earlier position he took before the COMELEC—that he complied with the requirement of renunciation by his oaths of allegiance to the Republic of the Philippines made before the Los Angeles PCG and in his Certificate of Candidacy, and that there was no more need for a separate act of renunciation. As a rule, no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Courts have neither the time nor the resources to accommodate parties who chose to go to trial haphazardly.

4. ID.; EVIDENCE; LATE SUBMISSION THEREOF, NOT ALLOWED.— Likewise, this Court does not countenance the late submission of evidence. Petitioner should have offered the Affidavit dated 7 February 2007 during the proceedings before the COMELEC. Section 1 of Rule 43 of the COMELEC Rules of Procedure provides that "In the absence of any applicable provisions of these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect." Section 34 of Rule 132 of the Revised Rules of Court categorically enjoins the admission of evidence not formally presented: SEC. 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. Since the said Affidavit was not formally offered before the COMELEC, respondent had no opportunity to examine and controvert it. To admit this document would be contrary to due process. Additionally, the piecemeal presentation of evidence is not in accord with orderly justice.

5. LEGAL ETHICS; ATTORNEYS; NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT; CASE AT BAR.— The justification offered by petitioner, that his counsel had advised him against presenting this crucial piece of evidence, is lame and unconvincing. If the Affidavit of 7 February 2007 was in existence all along, petitioner's counsel, and even petitioner himself, could have easily adduced it to be a crucial piece of evidence to prove compliance with the requirements of Section 5(2) of Republic Act No. 9225. There was no apparent danger for petitioner to submit as much evidence as possible in support of his case, than the risk of presenting too little for which he could lose. And even if it were true, petitioner's excuse for the late presentation of the Affidavit of 7 February 2007 will not change the outcome of petitioner's case. It is a well-settled rule that a client is bound by his counsel's conduct, negligence, and mistakes in handling the case, and the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently. The only exceptions to the general rule — that a client is bound by the mistakes of his counsel — which this Court finds acceptable are when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the rule results in the outright deprivation of one's property through a technicality. These exceptions are not attendant in this case. The Court cannot sustain petitioner's averment that his counsel was grossly negligent in deciding against the presentation of the Affidavit of 7 February 2007 during the proceedings before the COMELEC. Mistakes of attorneys as to the competency of a witness; the sufficiency, relevancy or irrelevancy of certain evidence; the proper defense or the burden of proof, failure to introduce evidence, to summon witnesses and to argue the case — unless they prejudice the client and prevent him from properly presenting his case — do not constitute gross incompetence or negligence, such that clients may no longer be bound by the acts of their counsel. Petitioner could not be so easily allowed to escape the consequences of his former counsel's acts, because, otherwise, it would render court proceedings indefinite, tentative, and subject to reopening at any time by the mere subterfuge of replacing counsel. Petitioner cites *De Guzman v. Sandiganbayan*, where therein petitioner De Guzman was unable to present a piece of evidence because his lawyer proceeded to file a demurrer to evidence, despite

the Sandiganbayan's denial of his prior leave to do so. The wrongful insistence of the lawyer in filing a demurrer to evidence had totally deprived De Guzman of any chance to present documentary evidence in his defense. This was certainly not the case in the Petition at bar. Herein, petitioner was in no way deprived of due process. His counsel actively defended his suit by attending the hearings, filing the pleadings, and presenting evidence on petitioner's behalf. Moreover, petitioner's cause was not defeated by a mere technicality, but because of a mistaken reliance on a doctrine which is not applicable to his case. A case lost due to an untenable legal position does not justify a deviation from the rule that clients are bound by the acts and mistakes of their counsel.

APPEARANCES OF COUNSEL

Soriano Velez & Partners Law Offices for petitioner.

The Solicitor General for public respondent.

Rogen T. Dal for private respondent and as counsel on his behalf.

D E C I S I O N

CHICO-NAZARIO, *J.:*

Petitioner Nestor A. Jacot assails the Resolution[1] dated 28 September 2007 of the Commission on Elections (COMELEC) *En Banc* in SPA No. 07-361, affirming the Resolution dated 12 June 2007 of the COMELEC Second Division[2] disqualifying him from running for the position of Vice-Mayor of Catarman, Camiguin, in the 14 May 2007 National and Local Elections, on the ground that he failed to make a personal renouncement of his United States (US) citizenship.

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[1] Per Curiam, with Chairman Benjamin S. Abalos, Sr., Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner, Rene V. Sarmiento, and Nicodemo T. Ferrer. *Rollo*, pp. 36-39.

[2] Penned by Presiding Commissioner Florentino A. Tuason, Jr. with Commissioners Rene V. Sarmiento and Nicodemo T. Ferrer, concurring; *Rollo*, pp. 31-35.

Petitioner was a natural born citizen of the Philippines, who became a naturalized citizen of the US on 13 December 1989.[3]

Petitioner sought to reacquire his Philippine citizenship under Republic Act No. 9225, otherwise known as the Citizenship Retention and Re-Acquisition Act. He filed a request for the administration of his Oath of Allegiance to the Republic of the Philippines with the Philippine Consulate General (PCG) of Los Angeles, California. The Los Angeles PCG issued on 19 June 2006 an Order of Approval[4] of petitioner's request, and on the same day, petitioner took his Oath of Allegiance to the Republic of the Philippines before Vice Consul Edward C. Yulo.[5] On 27 September 2006, the Bureau of Immigration issued Identification Certificate No. 06-12019 recognizing petitioner as a citizen of the Philippines.[6]

Six months after, on 26 March 2007, petitioner filed his Certificate of Candidacy for the Position of Vice-Mayor of the Municipality of Catarman, Camiguin.[7]

On 2 May 2007, respondent Rogen T. Dal filed a Petition for Disqualification[8] before the COMELEC Provincial Office in Camiguin against petitioner, arguing that the latter failed to renounce his US citizenship, as required under Section 5(2) of Republic Act No. 9225, which reads as follows:

> Section 5. Civil and Political Rights and Liabilities.—Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
>
> xxx xxx xxx

[3] *Id.* at 9.

[4] *Id.* at 94.

[5] *Id.* at 95.

[6] *Id.* at 50.

[7] *Id.* at 59.

[8] *Id.* at 40-42.

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

In his Answer[9] dated 6 May 2007 and Position Paper[10] dated 8 May 2007, petitioner countered that his Oath of Allegiance to the Republic of the Philippines made before the Los Angeles PCG and the oath contained in his Certificate of Candidacy operated as an effective renunciation of his foreign citizenship.

In the meantime, the 14 May 2007 National and Local Elections were held. Petitioner garnered the highest number of votes for the position of Vice Mayor.

On 12 June 2007, the COMELEC Second Division finally issued its Resolution[11] disqualifying the petitioner from running for the position of Vice-Mayor of Catarman, Camiguin, for failure to make the requisite renunciation of his US citizenship. The COMELEC Second Division explained that the reacquisition of Philippine citizenship under Republic Act No. 9225 does not automatically bestow upon any person the privilege to run for any elective public office. It additionally ruled that the filing of a Certificate of Candidacy cannot be considered as a renunciation of foreign citizenship. The COMELEC Second Division did not consider *Valles v. COMELEC*[12] and *Mercado v. Manzano*[13] applicable to the instant case, since Valles and Mercado were dual citizens since birth, unlike the petitioner who lost his Filipino citizenship by means of naturalization. The COMELEC, thus, decreed in the aforementioned Resolution that:

ACCORDINGLY, **NESTOR ARES JACOT** is **DISQUALIFIED** to run for the position of Vice-Mayor of Catarman, Camiguin for the

[9] *Id.* at 46-49.

[10] *Id.* at 61-65.

[11] *Id.* at 31-35.

[12] 392 Phil. 327 (2000).

[13] 367 Phil. 132 (1999).

May 14, 2007 National and Local Elections. If proclaimed, respondent cannot thus assume the Office of Vice-Mayor of said municipality by virtue of such disqualification.[14]

Petitioner filed a Motion for Reconsideration on 29 June 2007 reiterating his position that his Oath of Allegiance to the Republic of the Philippines before the Los Angeles PCG and his oath in his Certificate of Candidacy sufficed as an effective renunciation of his US citizenship. Attached to the said Motion was an "Oath of Renunciation of Allegiance to the United States and Renunciation of Any and All Foreign Citizenship" dated 27 June 2007, wherein petitioner explicitly renounced his US citizenship.[15] The COMELEC *en banc* dismissed petitioner's Motion in a Resolution[16] dated 28 September 2007 for lack of merit.

Petitioner sought remedy from this Court *via* the present Special Civil Action for *Certiorari* under Rule 65 of the Revised Rules of Court, where he presented for the first time an "Affidavit of Renunciation of Allegiance to the United States and Any and All Foreign Citizenship"[17] dated 7 February 2007. He avers that he executed an act of renunciation of his US citizenship, separate from the Oath of Allegiance to the Republic of the Philippines he took before the Los Angeles PCG and his filing of his Certificate of Candidacy, thereby changing his theory of the case during the appeal. He attributes the delay in the presentation of the affidavit to his former counsel, Atty. Marciano Aparte, who allegedly advised him that said piece of evidence was unnecessary but who, nevertheless, made him execute an identical document entitled "Oath of Renunciation of Allegiance to the United States and Renunciation of Any and All Foreign Citizenship" on 27 June 2007 after he had already filed his Certificate of Candidacy.[18]

Petitioner raises the following issues for resolution of this Court:

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[14] *Rollo*, p. 35.
[15] *Id.* at 74.
[16] *Id.* at 36-39.
[17] *Id.* at 96.
[18] *Id.* at 11-13.

I

WHETHER OR NOT PUBLIC RESPONDENT EXERCISED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT PETITIONER FAILED TO COMPLY WITH THE PROVISIONS OF R.A. 9225, OTHERWISE KNOWN AS THE "CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003," SPECIFICALLY SECTION 5(2) AS TO THE REQUIREMENTS FOR THOSE SEEKING ELECTIVE PUBLIC OFFICE;

II

WHETHER OR NOT PUBLIC RESPONDENT EXERCISED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT PETITIONER FAILED TO COMPLY WITH THE PROVISIONS OF THE COMELEC RULES OF PROCEDURE AS REGARDS THE PAYMENT OF THE NECESSARY MOTION FEES; AND

III

WHETHER OR NOT UPHOLDING THE DECISION OF PUBLIC RESPONDENT WOULD RESULT IN THE FRUSTRATION OF THE WILL OF THE PEOPLE OF CATARMAN, CAMIGUIN.[19]

The Court determines that the only fundamental issue in this case is whether petitioner is disqualified from running as a candidate in the 14 May 2007 local elections for his failure to make a personal and sworn renunciation of his US citizenship.

This Court finds that petitioner should indeed be disqualified.

Contrary to the assertions made by petitioner, his oath of allegiance to the Republic of the Philippines made before the Los Angeles PCG and his Certificate of Candidacy do not substantially comply with the requirement of a personal and sworn renunciation of foreign citizenship because these are distinct requirements to be complied with for different purposes.

Section 3 of Republic Act No. 9225 requires that **natural-born citizens** of the Philippines, who are already naturalized citizens of a foreign country, must take the following oath of allegiance to the Republic of the Philippines **to reacquire or retain their Philippine citizenship**:

[19] *Id.* at 188.

SEC. 3. *Retention of Philippine Citizenship*.—Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have reacquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

"I _____ solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion."

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

By the oath dictated in the afore-quoted provision, the Filipino swears allegiance to the Philippines, but there is nothing therein on his renunciation of foreign citizenship. Precisely, a situation might arise under Republic Act No. 9225 wherein said Filipino has dual citizenship by also reacquiring or retaining his Philippine citizenship, despite his foreign citizenship.

The afore-quoted oath of allegiance is substantially similar to the one contained in the **Certificate of Candidacy** which must be executed by **any person** who wishes **to run for public office** in Philippine elections. Such an oath reads:

I am eligible for the office I seek to be elected. I will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; and that I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion. I hereby certify that the facts stated herein are true and correct of my own personal knowledge.

Now, Section 5(2) of Republic Act No. 9225 specifically provides that:

Section 5. Civil and Political Rights and Liabilities.—Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

xxx xxx xxx

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

The law categorically requires persons seeking elective public office, who either retained their Philippine citizenship or those who reacquired it, to make a personal and sworn renunciation of any and all foreign citizenship before a public officer authorized to administer an oath simultaneous with or before the filing of the certificate of candidacy.[20]

Hence, **Section 5(2) of Republic Act No. 9225** compels **natural-born Filipinos, who have been naturalized as citizens of a foreign country, but who reacquired or retained their Philippine citizenship (1) to take the oath of allegiance under Section 3 of Republic Act No. 9225, and (2) for those seeking elective public offices in the Philippines**, to additionally execute a **personal and sworn renunciation** of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, **to qualify as candidates in Philippine elections**.

Clearly Section 5(2) of Republic Act No. 9225 (on the making of a personal and sworn renunciation of any and all foreign citizenship) requires of the Filipinos availing themselves of the benefits under the said Act to accomplish an undertaking other than that which they have presumably complied with under Section 3 thereof (oath of allegiance to the Republic of the Philippines). This is made clear in the discussion of the Bicameral

[20] *Lopez v. Commission on Elections*, G.R. No. 182701, 23 July 2008.

Conference Committee on Disagreeing Provisions of House Bill No. 4720 and Senate Bill No. 2130 held on 18 August 2003 (precursors of Republic Act No. 9225), where the Hon. Chairman Franklin Drilon and Hon. Representative Arthur Defensor explained to Hon. Representative Exequiel Javier that the oath of allegiance is different from the renunciation of foreign citizenship:

> CHAIRMAN DRILON. Okay. So, No. 2. "Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath." I think it's very good, ha? No problem?
>
> REP. JAVIER … **I think it's already covered by the oath.**
>
> CHAIRMAN DRILON. Renouncing foreign citizenship.
>
> REP. JAVIER. **Ah… but he has taken his oath already.**
>
> CHAIRMAN DRILON. **No…no, renouncing foreign citizenship.**
>
> xxx xxx xxx
>
> CHAIRMAN DRILON. Can I go back to No. 2. What's your problem, Boy? **Those seeking elective office in the Philippines.**
>
> REP. JAVIER. They are trying to make him renounce his citizenship thinking that *ano*…
>
> CHAIRMAN DRILON. His American citizenship.
>
> REP. JAVIER. To discourage him from running?
>
> CHAIRMAN DRILON. No.
>
> REP. A.D. DEFENSOR. No. **When he runs he will only have one citizenship. When he runs for office, he will have only one.** (Emphasis ours.)

There is little doubt, therefore, that the intent of the legislators was not only for Filipinos reacquiring or retaining their Philippine citizenship under Republic Act No. 9225 to take their oath of allegiance to the Republic of the Philippines, but also to explicitly

renounce their foreign citizenship if they wish to run for elective posts in the Philippines. To qualify as a candidate in Philippine elections, Filipinos must only have one citizenship, namely, Philippine citizenship.

By the same token, the oath of allegiance contained in the Certificate of Candidacy, which is substantially similar to the one contained in Section 3 of Republic Act No. 9225, does not constitute the personal and sworn renunciation sought under Section 5(2) of Republic Act No. 9225. It bears to emphasize that the said oath of allegiance is a general requirement for all those who wish to run as candidates in Philippine elections; while the renunciation of foreign citizenship is an additional requisite only for those who have retained or reacquired Philippine citizenship under Republic Act No. 9225 and who seek elective public posts, considering their special circumstance of having more than one citizenship.

Petitioner erroneously invokes the doctrine in *Valles*[21] and *Mercado*,[22] wherein the filing by a person with dual citizenship of a certificate of candidacy, containing an oath of allegiance, was already considered a renunciation of foreign citizenship. The ruling of this Court in *Valles* and *Mercado* is not applicable to the present case, which is now specially governed by Republic Act No. 9225, promulgated on 29 August 2003.

In *Mercado*, which was cited in *Valles*, the disqualification of therein private respondent Manzano was sought under another law, Section 40(d) of the Local Government Code, which reads:

SECTION 40. *Disqualifications*. The following persons are disqualified from running for any elective local position:

xxx xxx xxx

(d) Those with dual citizenship.

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[21] *Supra* note 12 at 340.

[22] *Supra* note 13 at 152-153.

The Court in the aforesaid cases sought to define the term "dual citizenship" *vis-à-vis* the concept of "dual allegiance." At the time this Court decided the cases of *Valles* and *Mercado* on 26 May 1999 and 9 August 2000, respectively, the more explicitly worded requirements of Section 5(2) of Republic Act No. 9225 were not yet enacted by our legislature.[23]

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[23] Even if Republic Act No. 9225 had not been enacted, petitioner would still not be able to rely on *Valles* and *Mercado*. The ruling in those cases was that when a person who was merely a dual citizen, not a person with dual allegiance, files a certificate of candidacy, this already constitutes as a renunciation of foreign citizenship. In these cases, this Court made an important distinction between "dual citizenship" and "dual allegiance." Dual citizenship is the result of the application of the different laws of two states, whereby a person is simultaneously considered a national by the said states. Dual allegiance, on the other hand, arises when a person simultaneously owes her loyalty to two or more states by undertaking a positive act. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition. Thus, Article IV, Section 5 of the Constitution provides that: "Dual allegiance of citizens is inimical to national interest and shall be dealt with by law." In both *Valles* and *Mercado*, the candidates whose qualifications are being challenged were dual citizens: They became citizens of another state without performing another act—both candidates, who have Filipino parents, became citizens of the foreign state where they were born under the principal of *jus soli* and had not taken an oath of allegiance to said foreign state. In contrast, herein petitioner has dual allegiance since he acquired his US citizenship through the positive and voluntary act of swearing allegiance to the US.

Other factual considerations need to be pointed out. It is significant to note that in *Valles*, therein private respondent Lopez executed a Declaration of Renunciation of Australian Citizenship which, consequently, led to the cancellation of her Australian passport, even before she filed her Certificate of Candidacy. The issue in that case was Lopez's reacquisition of her citizenship, not her failure to renounce her foreign citizenship. (*Valles v. Commission on Elections*, *supra* note 12 at 340-341.)

In *Mercado*, the Court took special notice of the fact that "private respondent's oath of allegiance to the Philippines, when considered with the fact that he has spent his youth and adulthood, received his education, practiced his profession as an artist, and taken part in past elections in this country, leaves no doubt of his election of Philippine citizenship." (*Mercado v. Manzano*, *supra* note 13 at 153.)

Herein petitioner's situation is markedly different since he actively elected to acquire a foreign citizenship and re-acquired his Filipino citizenship only a year before he filed his candidacy for a local elective position.

Lopez v. Commission on Elections[24] is the more fitting precedent for this case since they both share the same factual milieu. In *Lopez*, therein petitioner Lopez was a natural-born Filipino who lost his Philippine citizenship after he became a naturalized US citizen. He later reacquired his Philippine citizenship by virtue of Republic Act No. 9225. Thereafter, Lopez filed his candidacy for a local elective position, but failed to make a personal and sworn renunciation of his foreign citizenship. This Court unequivocally declared that despite having garnered the highest number of votes in the election, Lopez is nonetheless disqualified as a candidate for a local elective position due to his failure to comply with the requirements of Section 5(2) of Republic Act No. 9225.

Petitioner presents before this Court for the first time, in the instant Petition for *Certiorari*, an "Affidavit of Renunciation of Allegiance to the United States and Any and All Foreign Citizenship,"[25] which he supposedly executed on 7 February 2007, even before he filed his Certificate of Candidacy on 26 March 2007. With the said Affidavit, petitioner puts forward in the Petition at bar a new theory of his case—that he complied with the requirement of making a personal and sworn renunciation of his foreign citizenship before filing his Certificate of Candidacy. This new theory constitutes a radical change from the earlier position he took before the COMELEC—that he complied with the requirement of renunciation by his oaths of allegiance to the Republic of the Philippines made before the Los Angeles PCG and in his Certificate of Candidacy, and that there was no more need for a separate act of renunciation.

As a rule, no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness

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[24] *Supra* note 20.

[25] *Rollo*, p. 96.

and due process impel this rule.[26] Courts have neither the time nor the resources to accommodate parties who chose to go to trial haphazardly.[27]

Likewise, this Court does not countenance the late submission of evidence.[28] Petitioner should have offered the Affidavit dated 7 February 2007 during the proceedings before the COMELEC.

Section 1 of Rule 43 of the COMELEC Rules of Procedure provides that "In the absence of any applicable provisions of these Rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect." Section 34 of Rule 132 of the Revised Rules of Court categorically enjoins the admission of evidence not formally presented:

> SEC. 34. *Offer of evidence*. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Since the said Affidavit was not formally offered before the COMELEC, respondent had no opportunity to examine and controvert it. To admit this document would be contrary to due process.[29] Additionally, the piecemeal presentation of evidence is not in accord with orderly justice.[30]

The Court further notes that petitioner had already presented before the COMELEC an identical document, "Oath of Renunciation of Allegiance to the United States and Renunciation of Any and All Foreign Citizenship" executed on 27 June 2007,

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[26] *Tan vs. Commission on Elections*, G.R. Nos. 166143-47 and 166891, 20 November 2006, 507 SCRA 352, 373-374; *Vda. de Gualberto v. Go*, G.R. No. 139843, 21 July 2005, 463 SCRA 671, 678; *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001).

[27] *Villanueva v. Court of Appeals*, G.R. No. 143286, 14 April 2004, 427 SCRA 439, 448.

[28] *Filipinas Systems, Inc. v. National Labor Relations Commission*, 463 Phil. 813, 819 (2003)

[29] *Manongsong v. Estimo*, 452 Phil. 862, 879-880 (2003).

[30] *Cansino v. Court of Appeals*, 456 Phil. 686, 693 (2003).

subsequent to his filing of his Certificate of Candidacy on 26 March 2007. Petitioner attached the said Oath of 27 June 2007 to his Motion for Reconsideration with the COMELEC *en banc*. The COMELEC *en banc* eventually refused to reconsider said document for being belatedly executed. What was extremely perplexing, not to mention suspect, was that petitioner did not submit the Affidavit of 7 February 2007 or mention it at all in the proceedings before the COMELEC, considering that it could have easily won his case if it was actually executed on and in existence before the filing of his Certificate of Candidacy, in compliance with law.

The justification offered by petitioner, that his counsel had advised him against presenting this crucial piece of evidence, is lame and unconvincing. If the Affidavit of 7 February 2007 was in existence all along, petitioner's counsel, and even petitioner himself, could have easily adduced it to be a crucial piece of evidence to prove compliance with the requirements of Section 5(2) of Republic Act No. 9225. There was no apparent danger for petitioner to submit as much evidence as possible in support of his case, than the risk of presenting too little for which he could lose.

And even if it were true, petitioner's excuse for the late presentation of the Affidavit of 7 February 2007 will not change the outcome of petitioner's case.

It is a well-settled rule that a client is bound by his counsel's conduct, negligence, and mistakes in handling the case, and the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently.[31] The only exceptions to the general rule — that a client is bound by the mistakes of his counsel — which this Court finds acceptable are when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the rule results in the outright deprivation of one's property through a technicality.[32] These exceptions are not attendant in this case.

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[31] *People v. Kawasa*, 327 Phil. 928, 933 (1996).

[32] *R Transport Corporation v. Philippine Hawk Transport Corporation*, G.R. No. 155737, 19 October 2005, 473 SCRA 342, 347-348; *Trust*

The Court cannot sustain petitioner's averment that his counsel was grossly negligent in deciding against the presentation of the Affidavit of 7 February 2007 during the proceedings before the COMELEC. Mistakes of attorneys as to the competency of a witness; the sufficiency, relevancy or irrelevancy of certain evidence; the proper defense or the burden of proof, failure to introduce evidence, to summon witnesses and to argue the case — unless they prejudice the client and prevent him from properly presenting his case — do not constitute gross incompetence or negligence, such that clients may no longer be bound by the acts of their counsel.[33]

Also belying petitioner's claim that his former counsel was grossly negligent was the fact that petitioner continuously used his former counsel's theory of the case. Even when the COMELEC already rendered an adverse decision, he persistently argues even to this Court that his oaths of allegiance to the Republic of the Philippines before the Los Angeles PCG and in his Certificate of Candidacy amount to the renunciation of foreign citizenship which the law requires. Having asserted the same defense in the instant Petition, petitioner only demonstrates his continued reliance on and complete belief in the position taken by his former counsel, despite the former's incongruous allegations that the latter has been grossly negligent.

Petitioner himself is also guilty of negligence. If indeed he believed that his counsel was inept, petitioner should have promptly taken action, such as discharging his counsel earlier and/or insisting on the submission of his Affidavit of 7 February 2007 to the COMELEC, instead of waiting until a decision was rendered disqualifying him and a resolution issued dismissing his motion for reconsideration; and, thereupon, he could have heaped the

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International Paper Corporation v. Pelaez, G.R. No. 164871, 22 August 2006, 499 SCRA 552, 563.

[33] *Andrada v. People*, G.R. No. 135222, 4 March 2005, 452 SCRA 685, 693-694; *Custodio v. Sandiganbayan*, G.R. Nos. 96027-28, 8 March 2005, 453 SCRA 24, 45; *People v. Mercado*, 445 Phil. 813, 829 (2003); *Tesoro v. Court of Appeals*, 153 Phil. 580, 588-589 (1973); *United States v. Umali*, 15 Phil. 33, 35 (1910).

blame on his former counsel. Petitioner could not be so easily allowed to escape the consequences of his former counsel's acts, because, otherwise, it would render court proceedings indefinite, tentative, and subject to reopening at any time by the mere subterfuge of replacing counsel.[34]

Petitioner cites *De Guzman v. Sandiganbayan*,[35] where therein petitioner De Guzman was unable to present a piece of evidence because his lawyer proceeded to file a demurrer to evidence, despite the Sandiganbayan's denial of his prior leave to do so. The wrongful insistence of the lawyer in filing a demurrer to evidence had totally deprived De Guzman of any chance to present documentary evidence in his defense. This was certainly not the case in the Petition at bar.

Herein, petitioner was in no way deprived of due process. His counsel actively defended his suit by attending the hearings, filing the pleadings, and presenting evidence on petitioner's behalf. Moreover, petitioner's cause was not defeated by a mere technicality, but because of a mistaken reliance on a doctrine which is not applicable to his case. A case lost due to an untenable legal position does not justify a deviation from the rule that clients are bound by the acts and mistakes of their counsel.[36]

Petitioner also makes much of the fact that he received the highest number of votes for the position of Vice-Mayor of Catarman during the 2007 local elections. The fact that a candidate, who must comply with the election requirements applicable to dual citizens and failed to do so, received the highest number of votes for an elective position does not dispense with, or amount to a waiver of, such requirement.[37] The will of the people as expressed through the ballot cannot cure the vice of

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[34] *People v. Kawasa*, *supra* note 31 at 934-935.

[35] 326 Phil. 184 (1996).

[36] *Espinosa v. Court of Appeals*, G.R. No.128686, 28 May 2004, 430 SCRA 96, 105-106.

[37] *Labo, Jr. v. Commission on Elections*, G.R. Nos. 105111 and 105384, 3 July 1992, 211 SCRA 297, 308.

ineligibility, especially if they mistakenly believed that the candidate was qualified. The rules on citizenship qualifications of a candidate must be strictly applied. If a person seeks to serve the Republic of the Philippines, he must owe his loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state.[38] The application of the constitutional and statutory provisions on disqualification is not a matter of popularity.[39]

WHEREFORE, the instant appeal is *DISMISSED*. The Resolution dated 28 September 2007 of the COMELEC *en banc* in SPA No. 07-361, affirming the Resolution dated 12 June 2007 of the COMELEC Second Division, is *AFFIRMED*. Petitioner is *DISQUALIFIED* to run for the position of Vice-Mayor of Catarman, Camiguin in the 14 May 2007 National and Local Elections, and if proclaimed, cannot assume the Office of Vice-Mayor of said municipality by virtue of such disqualification. Costs against petitioner.

SO ORDERED.

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

Leonardo-de Castro, J., on official leave.

Brion, J., on leave.

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[38] *Frivaldo v. Commission on Elections*, G.R. No. 87193, 23 June 1989, 174 SCRA 245, 255.

[39] *Lopez v. Commission on Elections, supra* note 20.

THIRD DIVISION

[G.R. No. 181899. November 27, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLLY MONTESA *y* LUMIRAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES, REITERATED.— 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 where 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. The credibility, thus, 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. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENCE OF CIRCUMSTANCES THAT DISCREDIT.— 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 19 and 21 of September 1997, as well as her direct account of the heinous acts, is clear and consistent**.** 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 testimony of AAA as she relayed her painful ordeal in a candid manner. It found the testimonies of AAA to be credible and sincere. 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.; MULTIPLE EVIDENCE; PRESENCE OF PEOPLE NEARBY DOES NOT NEGATE THE COMMISSION OF RAPE.— It was not impossible for appellant to have raped AAA in the latter's room despite the presence of tenants in the room closely adjacent to that of AAA and in the rooms on the second floor of the house. We have held that lust is no respecter of time and place. Thus, rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants and even in places which, to many, would appear unlikely and high-risk venues for its commission. The presence of people nearby does not deter rapists from committing their odious act. Besides, there is no rule that rape can be committed only in seclusion.

4. ID.; ID.; ID.; VICTIM'S REACTION AFTER THE COMMISSION OF RAPE IS IRRELEVANT.— True, AAA testified that when Monalyn asked her if appellant went to her room on the night of 19 September 1997 and touched her private parts, she replied that appellant merely kissed her. Also, AAA did not seek assistance from her other neighbors with regard to the incidents. Nevertheless, these cannot be taken against AAA. A rape victim is oftentimes overwhelmed by fear rather than by reason. Hence, it is not uncommon for a young rape victim to conceal for some time the assault on her virtue because of a rapist's threat on her life. AAA testified that appellant repeatedly threatened to kill her if she would divulge the incidents to others. This was the reason why AAA hesitated from revealing the incidents to Monalyn and to her other neighbors. AAA's fear of appellant's threat was reasonable, considering that appellant frequently stayed in XXX. The fact

that AAA acted normally and did her usual chores after the incidents does not negate rape. How the rape victim comported herself after the incident was not significant, as it had nothing to do with the elements of the crime of rape. Further, AAA was barely 12 years old at the time of the incidents. At such a young age, AAA cannot be reasonably expected to act the way mature individuals would when placed in such a situation. Not all rape victims can be expected to act conformably to the usual expectations of everyone. People react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.

5. ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF COMMISSION, NOT A CASE OF.— Appellant testified that he was sleeping in Polly's house at Bal-os during the incidents. Katindig claimed that he and appellant went to sleep at around 9:00 p.m. of 19 September 1997; that he woke up at 6:00 a.m. of 20 September 1997 and saw appellant in Polly's house; that he and appellant went to sleep at around 9:00 p.m. of 21 September 1997; and that he woke up at 6:00 a.m. of 22 September 1997 and saw appellant in Polly's house. Be that as it may, Katindig did not testify that he saw appellant in Polly's house at about or past 10:00 p.m. up to midnight of the dates of the incidents. Katindig merely stated he and appellant slept at around 9:00 p.m. and when he woke up at 6 a.m. the following morning, he saw appellant in Polly's house. Thus, it was highly possible that since Katindig was sleeping at 9:00 p.m., he did not notice appellant's departure from Polly's house a little after 9:00 p.m. Appellant then proceeded to the house of AAA at XXX where he raped AAA. It is also highly probable that Katindig did not notice appellant's subsequent return to Polly's house from the crime scene before 6:00 a.m., because he was still sleeping. The foregoing view is buttressed by the records showing that XXX can be reached in an hour from Bal-os. There was, therefore, a huge possibility that appellant was present at the scene of the crime when it was committed at about 10:00 p.m. of 19 and 21 September 1997. Thus, the defense failed to prove that it was physically impossible for appellant to be at or near the crime scene when the incidents transpired. Besides, we have held that an alibi becomes less plausible as a defense

when it is corroborated only by relatives or friends of the accused. Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove. Alibi must be proved by the accused with clear and convincing evidence. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.

6. ID.; ID.; FRAME-UP; NOT A CASE OF.— Appellant concludes that he was a victim of a frame-up; that Junior Bonilla and Pepito were brothers; and that AAA and BBB were merely instigated by Junior Bonilla and Pepito to file the instant cases because he (appellant) was the reason why Junior Bonilla was terminated from his previous job in Philex. The defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove. In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence. In the cases under consideration, appellant failed to present any clear and convincing proof that AAA and BBB were induced by Junior Bonilla and Pepito to file the instant cases. Further, Pepito clarified in his testimony that he did not know, nor had he met, appellant prior to the reporting of the incidents by AAA and BBB. Pepito also testified that SPO1 Santes was the investigator in charge of the cases, and that the chief of the Hinoba-an Police Station was the one who filed the instant cases. Thus, appellant's bare allegation of frame-up must fail.

7. ID.; ID.; PROOF OF GUILT; NEGATIVE FINDING OF GONORRHEA ON THE ACCUSED DOES NOT NEGATE THE COMMISSION OF RAPE.— Appellant also asserted that he could not have been the rapist of AAA because Dr. Layda testified that he was not suffering from gonorrhea. He cited the finding of prosecution witness Dr. Abilla that AAA was infected with gonorrhea at the time of the latter's examination. Although Dr. Layda confirmed that appellant was not suffering from gonorrhea at the time of appellant's examination on 16 June 1998, this did not, however, conclusively show that appellant did not have gonorrhea at the time of the incidents on 19 and 21 September 1997. Dr. Layda admitted that gonorrhea could be cured by a daily intake of antibiotics for two weeks.

Dr. Layda also stated that antibiotics could be easily bought in drugstores. It could be then that after raping AAA on 19 and 21 September 1997, appellant took antibiotics and was thereafter cured of gonorrhea. This readily explains why Dr. Layda found in his examination conducted on 16 June 1998 that appellant was not infected with gonorrhea.

8. CRIMINAL LAW; RAPE; THE CIRCUMSTANCES THAT THE VICTIM WAS A MINOR AND THE OFFENDER WAS HER PARENT, ASCENDANT OR RELATIVE MUST BE BOTH ALLEGED AND PROVEN TO QUALIFY THE PENALTY TO DEATH.— Republic Act No. 7659 also provides that the death penalty shall be imposed if the rape victim was a minor and the offender was her parent, ascendant or relative. The information alleged that AAA was a minor (12 years old) during the incidents. Nevertheless, there was no allegation and proof that appellant was AAA's parent, ascendant, or relative. As such, AAA's minority cannot qualify the penalty to death. The penalty imposable on appellant, therefore, remains to be *reclusion perpetua* to death.

9. ID.; AGGRAVATING CIRCUMSTANCES DWELLING; CONSIDERED.— The information also alleged that appellant raped AAA in the latter's dwelling and such circumstance was duly proven during the trial. Under Article 14(3) of the Revised Penal Code, dwelling is an aggravating circumstance where the crime is committed in the dwelling of the offended party and the latter has not given provocation. Hence, we have steadfastly held that dwelling is an aggravating circumstance in the crime of rape. Dwelling is considered as an aggravating circumstance primarily because of the sanctity of privacy the law accords to human abode.

10. ID.;RAPE; PENALTY; PROPER PENALTY FOR RAPE WITH ONE AGGRAVATING CIRCUMSTANCE IS *RECLUSION PERPETUA* BUT OFFENDER IS NOT ELIGIBLE FOR PAROLE.— Article 63 of the Revised Penal Code provides that if the penalty is composed of two indivisible penalties, as in this case, and there is one aggravating circumstance, the greater penalty shall be applied. Since the aggravating circumstance of dwelling was present in these cases, the penalty of death should be imposed on appellant. Nonetheless, with the effectivity of Republic Act No. 9346

entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted out to appellant shall be *reclusion perpetua*. Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole.

11. ID.; ID.; CIVIL LIABILITY; AWARD OF ₱75,000.00 CIVIL INDEMNITY IS MANDATORY UPON A FINDING OF RAPE; REASON.— The RTC and the Court of Appeals were correct in awarding civil indemnity to AAA in each of the cases, since the grant of this damage is mandatory upon a finding of rape. Both courts also acted properly in fixing the amount thereof at ₱75,000.00. In *People v. Quiachon*, we explained that even if the penalty of death is not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 is still proper, as the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. In the present cases, appellant raped AAA in the latter's dwelling. This circumstance was alleged in the informations and proven during the trial.

12. ID.; ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES TO THE RAPE VICTIM IS PROPER.— The award of moral damages in each of the cases is proper because AAA is assumed to have suffered moral injuries. However, the amount of ₱50,000.00 imposed as moral damages should be increased to ₱75,000.00 based on prevailing jurisprudence. The Court of Appeals acted accordingly in granting exemplary damages to AAA in each of the cases because the rapes were attended by the aggravating circumstance of dwelling. Nevertheless, the amount of ₱30,000.00 imposed as exemplary damages should be reduced to ₱25,000.00 in conformity with our latest decisions.

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 of the Court of Appeals in CA-G.R. CR HC No. 00314, dated 22 December 2006,[1] affirming with modifications the Decision of the Regional Trial Court (RTC), Branch 61, of Kabankalan City, Negros Occidental, in Criminal Case Nos. 98-2035 and 98-2036,[2] finding accused-appellant Rolly Montesa *y* Lumiran guilty of rape and imposing upon him the supreme penalty of death in each of the cases.

The records of the case generate the following facts:

On 29 December 1997, two separate informations[3] were filed with the RTC charging appellant with rape, thus:

In Criminal Case No. 98-2035

That on the **19th** day of September, 1997, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, armed with a bladed weapon, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with AAA,[4] 12 years old, against her will, and in her own house.

In Criminal Case No. 98-2036

That on the **21st** day of September, 1997, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-name accused, by means of force,

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[1] Penned by Associate Justice Romeo F. Barza with Associate Justices Isaias P. Dicdican and Pampio A. Abarintos, concurring; *rollo*, pp. 4-15.

[2] Penned by Judge Edgardo L. delos Santos; CA *rollo*, pp. 63-80.

[3] CA *rollo*, pp. 11-14.

[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.

violence and intimidation, armed with a bladed weapon, did then and there, willfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with AAA, 12 years old, against her will, and in her own house.[5]

Subsequently, these cases were consolidated for joint trial. When arraigned on 29 April 1998, appellant, assisted by his counsel *de oficio*, pleaded "Not guilty" to the charges.[6] Trial on the merits thereafter followed.

The prosecution presented as witnesses AAA, BBB, Dr. Roena C. Abilla (Dr. Abilla), Felicito D. Patricio (Felicito), Police Officer 1 Jose Dennis T. Santes (PO1 Santes), and Pepito Bonilla (Pepito). Their testimonies are summarized as follows:

AAA, herein victim, testified that she and her mother, BBB, had been residents of XXX. Their house had two floors with two rooms at the ground floor and four rooms at the second floor. She and BBB occupied one of the rooms on the ground floor while the other room was rented by a certain Monalyn who operated a small eatery thereat. The second floor was leased to several tenants.[7]

On 15 September 1997, BBB left the house and went to *Barangay* (Brgy.) Damutan, Hinoba-an, Negros Occidental.

On the evening of 19 September 1997, AAA went out of the house and watched a "Betamax" movie in the house of a certain Emmy. She saw appellant and several other persons also watching it. After the show, she went home arriving therein at around 10:00 p.m. She was alone in the room of their house because BBB was still in Brgy. Damutan. While she was about to sleep, she saw appellant beside her bed. Appellant was naked from the waist down to the feet and armed with a 14-inch jagged knife. She also noticed that the cover of the room's window was removed. Thereupon, appellant took the room's kerosene lamp and blew out the light. Appellant approached her, pointed

[5] *Rollo,* p. 5.

[6] Records, p. 30.

[7] TSN, 8 July 1998, pp. 4-9.

the knife to her neck, and warned her not to shout. Appellant soaked his penis with his saliva, removed AAA's shorts and panty, and placed himself on top of her. Appellant inserted his penis into her vagina and made a push and pull movement. AAA felt pain in her vagina. She could not shout for help because appellant pointed the knife to her neck and threatened to stab her. She tried to free herself but appellant pinned her down strongly. Later, she felt a fluid in her vagina. Appellant rested for a while beside her. Thereafter, appellant again placed himself on top of her, inserted his penis into her vagina and made a pumping motion. Appellant then stood up, wiped his penis, and warned her not to tell anyone of what happened or he would kill her. Appellant left her and passed through the room's window.[8]

On the morning of 20 September 1997, Monalyn confronted AAA and asked if appellant went to her room the night before and touched her private parts. Afraid of appellant's threat to kill her, she replied that appellant merely kissed her.[9]

On 21 September 1997, at about 10:00 p.m., AAA was again sleeping alone in the room of their house. Later, appellant entered her room through the room's window. Appellant had no underwear and pants and was armed with a knife. Appellant took the kerosene lamp and blew out the light. She could not shout because appellant pointed the knife to her. Appellant approached her, wet his penis with his saliva, and placed himself on top of her. She resisted but appellant overpowered her. Appellant then inserted his penis into her vagina. She felt pain in her vagina. As appellant stood up, she saw liquid on appellant's penis. Appellant warned her not to tell BBB of what happened or he would kill her. Appellant took her panty and left the room through the window.[10]

On the morning of 22 September 1997, AAA took a shower and left the house. She went to the house of her classmate named Maricel and stayed there for six days because she was

[8] *Id.* at 25-32.

[9] *Id.* at 32-34.

[10] *Id.* at 35-38.

afraid that appellant would rape her again. On 27 September 1997, BBB arrived at Maricel's house to fetch her. AAA embraced BBB and cried. She told BBB that appellant raped her. Thereafter, she and BBB went to the police to report the incidents and later on to Dr. Abilla for physical examination.[11]

AAA declared that she knew appellant because she always saw him then in the canteen of Monalyn. She also stated that appellant stayed in the house of a certain Bong Lupega which was fifty (50) meters away from her house.[12]

BBB, a widow, narrated that AAA is her fifth and youngest child. Since her four other offspring were all married and had families of their own, only AAA remained in her custody and care. She and AAA were residents of XXX from 1989 to 1998. Their house had two floors with two rooms at the ground floor and four rooms at the second floor. She and AAA occupied one of the rooms on the ground floor while the other room was rented by Monalyn who operated a small canteen thereat. The second floor was leased to several tenants.[13]

On 15 September 1997, BBB left the house and went to Brgy. Damutan, Hinoba-an, Negros Occidental. She harvested rice in her farm located in the said *barangay*. Afterwards, she plowed the field of a certain Junior Bonilla which was also situated in the same *barangay* for which she was paid ₱100.00 a day.[14]

On 27 September 1997, BBB went home. Upon arriving at the house, she noticed that AAA was not around. She went out of the house to look for AAA. She found AAA in the house of Maricel. Thereupon, AAA embraced her and cried. AAA told her that she was raped by appellant. She and AAA reported the incidents to the police and lodged a criminal complaint for rape against appellant. The police referred them to Dr. Abilla for

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[11] *Id.* at 38-42.

[12] *Id.* at 19-24.

[13] TSN, 10 June 1998, pp. 32-38.

[14] *Id.* at 39 & 52-57.

AAA's physical examination. Subsequently, Dr. Abilla conducted a physical examination on AAA.[15]

BBB averred that she had known appellant because she always saw him eating in the canteen of Monalyn. She also averred that appellant stayed in the house of Bong Lupega which was 50 meters away from her house.[16]

Dr. Abilla, Municipal Health Officer of Hinoba-an, Negros Occidental, declared that she conducted a physical and vaginal examination on AAA on 27 September 1997 and on 7 October 1997. During the 27 September 1997 examination, she observed that AAA's vagina was protruding and stretched out. She also noted healed hymenal tear in the 6:00 o'clock and 9:00 o'clock positions on AAA's vagina. Further, the fourchette[17] was not anymore in an acute angle but already rounded. According to her, the foregoing findings indicated that AAA's vagina was penetrated.[18]

With respect to the 7 October 1997 examination, Dr. Abilla disclosed that when she inserted a small-size speculum into AAA's vagina with ease, there were moderate purulent discharges manifested on the vaginal canal. She explained that purulent discharges referred to a yellowish substance or *"na-na"* in layman's term. She concluded that AAA was infected with gonorrhea, a sexually transmitted disease.[19] She issued an official medical report on her foregoing findings,[20] to wit:

27 September 1997:

To: Officer-on-Duty
PNP – Hinoba-an

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[15] *Id.* at 39-44.

[16] *Id.* at 33-37.

[17] A small fold of membrane connecting the *labia minora* in the posterior part of the vulva - Webster's Third International Dictionary 1993 Edition.

[18] TSN, 10 June 1998, pp. 12-18.

[19] *Id.* at 18-23.

[20] Folder of Exhibits, pp. 1-3.

Physical examination of AAA showed signs of entry into the vagina.[21]

10 October 1997:

Physical Exam: Findings:
Vaginal Exam : No pubic hair

Labia minora are protruding and stretched out.

Healed hymenal tear at 6 and 9 o'clock position.

Fourchette is rounded, no longer in acute angle.

Speculum Exam: (done on October 7, 1997, 4:00 pm)

A small size speculum was inserted into the vagina with ease and vaginal canal showed moderate purulent discharges.

No hematomas, lacerations, contusions, abrasions, on other parts of the body.

Conclusion : Physical examination shows sign of entry on vagina. Presence of moderate amount of purulent discharges in the vaginal canal indicates infection, most likely gonorrhea.[22]

SPO1 Santes, desk officer of the Hinoba-an Police Station, testified that on 27 September 1997, AAA and BBB arrived at the said station and reported the incidents. Thereafter, an information was received by the station that appellant was staying in a house at Tabuk Suba, Brgy. 1, Hinoba-an, Negros Occidental. Upon the order of his superior, SPO1 Santes proceeded to the said place and found appellant. He invited appellant to the station to which the latter acceded. When he and appellant arrived at the station, AAA pointed to appellant as the one who raped her.[23]

[21] *Id.* at 3.

[22] *Id.* at 1.

[23] TSN, 7 July 1998, pp. 16-21.

Felicito, a longtime resident and *Sitio* Leader of XXX in the year 1997, recounted that he had known appellant because he always saw him buying something in her daughter's store at XXX; that he frequently saw appellant in the house of BBB; that appellant used to work as a machine operator in Philex Mining Corporation (Philex) located at Brgy. Damutan; that appellant used to sleep in Bong Lupega's house which was around 50 meters away from his house at XXX; that he had known BBB because the latter's house was about 50 meters away from his house; and that during the period of September 1997, he saw appellant in XXX.[24]

Pepito, a retired member of the Hinoba-an Police Station and resident of XXX, testified that he retired as policeman on 20 November 1998; that he was the Intelligence Division Head of the Hinoba-an Police Station prior to his retirement; that on 27 September 1997, AAA and BBB went to the Hinoba-an Police Station and reported the incidents; that he instructed SPO1 Santes to make a report as regards the incidents; and that AAA pointed to appellant as her rapist.[25]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (1) medical certificate of AAA dated 10 October 1997 issued by Dr. Abilla (Exhibit A);[26] (2) written report on the physical examination of AAA dated 28 September 1997 signed by Dr. Abilla (Exhibit B);[27] (3) sworn statement of BBB (Exhibit C);[28] (4) sworn statement of AAA (Exhibit D);[29] (5) blotter of the Hinoba-an Police Station regarding the incidents (Exhibit E);[30] and (6) criminal complaint for rape

[24] *Id.* at 2-13.

[25] TSN, 13 April 1999, pp. 2-9.

[26] Folder of Exhibits, pp. 1-2.

[27] *Id.* at 3.

[28] *Id.* at 4.

[29] *Id.* at 5.

[30] *Id.* at 7.

against appellant signed by BBB and filed before the Municipal Trial Court of Hinoba-an (Exhibit F).[31]

For its part, the defense presented the testimonies of appellant, Randy Katindig (Katindig), and Dr. Eriberto Layda (Dr. Layda) to refute the foregoing accusations. Appellant denied any liability and interposed the defenses of alibi and frame-up.

Appellant, a resident of *Barangay* 2, Poblacion, Hinoba-an, Negros Occidental, testified that he was hired by Philex in 1994 as a worker on its site at Brgy. Damutan, Hinoba-an, Negros Occidental. On 15 April 1997, Philex dismissed him for robbery. Thereafter, he frequently went to Basay, Negros Occidental, to solicit help from friends.[32]

On 19 September 1997, appellant left his house and went to Basay, arriving there at 10:30 a.m. He met his friend, Katindig, at about 4:20 p.m. Subsequently, he and Katindig proceeded to the house of a certain Polly at Bal-os, Negros Occidental. Polly was the younger brother of appellant's friend and a former co-employee named Junior. Appellant stayed in Polly's house from 19 September 1997 up to 22 September 1997. He never left Polly's house during the said period.[33]

Appellant denied knowing AAA and BBB and having stayed in the house of Bong Lupega. He claimed he never went to XXX. Also, AAA and BBB were merely instigated by Junior Bonilla to file the instant cases since the latter was terminated from work in Philex because of him.[34]

Katindig, a resident of Brgy. 2, Poblacion, Hinoba-an, Negros Occidental, narrated that he came to know appellant in January 1997. On 19 September 1997, Katindig left his residence and went to Basay, arriving there at 4:00 p.m. He proceeded to the house of a certain Diego to meet a certain Major Balodo. He met appellant in Diego's house. Appellant invited him to Polly's

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[31] *Id.* at 6.

[32] TSN, 12 August 1998, pp. 3-6.

[33] *Id.* at 6-12.

[34] TSN, 2 September 1998, p. 10; 15 September 1998, pp. 15-18.

house at Bal-os to which he acceded. Upon their arrival at Polly's house, appellant and Polly talked. Subsequently, Katindig left Polly's house and returned to Basay to meet Major Balodo. The former returned to Polly's house that evening and joined the latter and appellant in a drinking spree. Thereafter, the three of them slept in Polly's house at about 9:00 p.m. Katindig woke up the following morning of 20 September 1997 and left Polly's house. He went back to the latter's house at about 5:00 p.m. of the same day and had a drinking session with him and appellant. They all slept in Polly's house that evening.[35]

On the morning of 21 September 1997, Katindig left Polly's house and proceeded to Basay. He returned to the latter's house in the afternoon of the same day and talked with him and appellant. They slept in Polly's house that evening. On 22 September 1997, at around 2:00 p.m., he left the house and proceeded to Dumaguete. Later, his wife told him that appellant was arrested for rape. Appellant told him that he was a victim of a frame-up.[36]

Dr. Layda, Laboratory Department Head of the Corazon Locsin Montelibano Memorial Hospital, testified that he conducted a Clinical Microscopic Examination on appellant on 16 June 1998. The result thereof showed that appellant was not suffering from any sexually transmitted disease.[37]

The defense likewise adduced the said medical/laboratory report (Exhibit 1) on appellant signed by Dr. Layda as its sole documentary evidence.[38]

After trial, the RTC rendered a Decision convicting appellant of rape.[39] Appellant was sentenced to suffer capital punishment in each of the cases. He was also ordered to pay AAA in each of the cases the amount of ₱75,000.00 as civil indemnity and

[35] TSN, 29 July 1998, pp. 3-16.

[36] *Id.* at 16-26.

[37] TSN, 9 March 1999, pp. 2-11.

[38] Folder of Exhibits, p. 9.

[39] CA *rollo,* pp. 63-80.

₱50,000.00 as moral damages. The *fallo* of the RTC Decision reads:

> WHEREFORE, the Court finds the accused Rolly Montesa *y* Lumiran guilty beyond reasonable doubt of the crime of rape defined and punished under Article 335, paragraph 1 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659 and Republic Act No. 8353 and conformably sentences him to suffer the supreme penalty of death in each case. He is likewise ordered to indemnify the complainant (AAA) in the amount of Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages in each case.[40]

In view of the death penalty imposed on appellant, the instant cases were elevated to this Court for automatic review. However, pursuant to our ruling in *People v. Mateo*,[41] we remanded the cases to the Court of Appeals for disposition.

On 22 December 2006, the Court of Appeals promulgated its Decision affirming with modifications the RTC Decision.[42] The appellate court downgraded the death penalty to *reclusion perpetua* pursuant to Republic Act No. 9346. It also awarded AAA the amount of ₱30,000.00 as exemplary damages. Thus:

> WHEREFORE, the assailed Decision of the Regional Trial Court, Branch 61, City of Kabankalan, Negros Occidental, in Criminal Cases Nos. 98-2035 and 98-2036, finding accused-appellant ROLLY MONTESA guilty beyond reasonable doubt of rape is hereby AFFIRMED with MODIFICATION. Rolly Montesa is hereby meted the penalty of *reclusion perpetua*, and ordered to indemnify the victim, (AAA) in the amount of Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages in each case, and considering that the crime of rape was committed inside the dwelling of the victim, by way of exemplary damages, Thirty Thousand Pesos (₱30,000.00).

Appellant filed a Notice of Appeal on 16 January 2007.[43]

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[40] Records, p. 107.

[41] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[42] *Rollo,* pp. 4-15.

[43] CA *rollo,* pp. 161-163.

Before us, appellant assigned the following errors:

I.

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT COMMITTED THE CRIMES CHARGED, THE LOWER COURT GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF DWELLING THEREBY IMPOSING THE SUPREME PENALTY OF DEATH.[44]

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 where 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.[45]

The credibility, thus, 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.[46]

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 19 and 21 of September 1997, as well as her direct account of the heinous acts, is clear and consistent, *viz*:

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[44] *Id.* at 49.

[45] *People v. Mangitngit*, G.R. No. 171270, 20 September 2006, 502 SCRA 560, 572.

[46] *Id*.

Q When you were already prepared to sleep at about 10:00 o'clock in the evening of September **19**, 1997, what happened, if any?

A There was something which happened, Sir.

Q What was that?

A I saw Rolly Montesa already near my bed, no longer wearing his pants and brief, and when I looked at the window the cover was already removed.

Q How did you recognize that it was Rolly beside your bed as it was nighttime?

WITNESS -

A Because there was a light coming from the kerosene lamp, Sir.

PROSECUTOR GARDE –

Q Aside from seeing Rolly Montesa beside your bed without any pants and brief anymore, what else did you notice in him, if any?

A I saw him holding a knife when he was transferring the kerosene lamp and blew it off.

Q Will you please describe that knife you saw being held by Rolly Montesa when he was beside your bed?

A The length is about this, Sir.

INTERPRETER –

About one and one-half (1-1/2) feet -

COURT –

About fourteen (14) inches –

PROCEED.

PROSECUTOR GARDE –

Q How about the knife, please describe to us the knife?

WITNESS -

A It was a jagged knife, Sir.

Q After Rolly Montesa had blown off the kerosene lamp, what else did he do?

A After he blew off the kerosene lamp he approached me, removed my shorts and panty, placed himself on top of me, wet his penis with his saliva and inserted his penis inside my vagina.

Q All the time when Rolly Montesa was taking off your underwear and came near you, what did you do, if any – did you not shout?

A No, Sir.

Q Why did you not shout?

A Because he warned me that if I will shout, he will stab me, Sir.

Q What about that knife which he was holding when he was telling you that, what did he do with it?

WITNESS -

A He was pointing it towards my neck, Sir.

PROSECUTOR GARDE -

Q Was he able to have his penis inserted into your vagina?

A Yes, Sir.

Q Did you not do anything in order that he would not be able to insert his penis inside your vagina?

A I was struggling, Sir, to free myself from his hold.

Q Was there anything he was doing in counter-action to your struggle to free yourself from him?

A He was pinning me down strongly, Sir.

Q Will you please tell this Honorable Court for how long was Rolly Montesa on top of you and his penis inside your vagina, if you can recall?

WITNESS –

A Quite sometime, Sir.

PROSECUTOR GARDE –

Q What did you feel when he was doing this – while he was inserting his penis inside you (sic) vagina?

A I felt that there was some fluid on my private part.

Q How about your body?

A I felt his heavy weight above me as well as the pain.

Q How about your vagina?

A I also felt the pain in my vagina, Sir.

Q After you have felt something oozing from his penis, what else did you feel?

A I felt pain in my vagina, Sir.

Q After that what happened?

A After that he took a rest beside me by lying beside me, and afterwards he repeated the sexual act.

PROSECUTOR GARDE –

Q When you said repeated, you mean to say he inserted his penis again inside your vagina?

WITNESS –

A Yes, Sir.

Q Then, after the second sexual intercourse, what else happened?

A He continued holding the knife, pointing it toward (sic) my neck.

Q And after that what happened?

A He continued pinning me down, pushing himself up and down, Sir.

Q After that second act, what else did he do?

A After the second act, he stood up and wiped his penis where there was a secretion coming out, and warned me that if I tell somebody he will kill me.

Q Then, afterwards, what did he do?

A He left, Sir.

Q And when he left, where did he pass?

WITNESS –

A He passed thru the window where he entered.

xxx xxx xxx

Q Will you please tell the Honorable Court what was that unusual incident which happened in the evening of September **21**, 1997 in your room?

A He again passed in the window, Sir.

Q To whom are you referring when you said "he"?

A Rolly Montesa, Sir.

Q You mean the person who entered your room in the evening of September 19, 1997?

A Yes, Sir.

Q When he entered your room in the evening of September 21, 1997 what happened?

A Again, he blew off the kerosene lamp when he was already naked, without pants and brief, Sir.

PROSECUTOR GARDE –

Q And what happened after you saw him inside your room naked already?

WITNESS -

A I did not make any noise because I was afraid as he was holding a knife.

Q Was it the same knife which he used on September 19, 1997?

A Yes, Sir.

Q Was there anything which he did to you that night?

A Yes, Sir.

Q What did he do to you as he was already naked and holding a knife?

A The same thing happened, Sir. After putting off the kerosene lamp, he approached me, lubricated his penis with his saliva and inserted his penis inside my vagina.

Q Was he able to insert his penis inside your vagina?

WITNESS –

A Yes, Sir.

PROSECUTOR GARDE -

Q How did you know that his penis was already inside your vagina?

A I felt pain in my vagina after he inserted his penis inside my vagina.

xxx xxx xxx

Q How about you, when he was on top of your body and his penis was inside your vagina, what were you doing?

A I kept on moving, Sir.

Q What was the reason why you said you kept on moving?

A Because I felt pain when his penis was inside my vagina, and there was something oozing from his penis, Sir.

PROSECUTOR GARDE –

Q Where did that substance come from?

WITNESS -

A From the penis of Rolly Montesa, Sir.

Q After he was through, what happened?

A After that he stood up and warned me not to tell my mother or else he will kill me, and then went out of the window.[47]

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

[47] TSN, 8 July 1998, pp. 35-38.

she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are badges of truth.[48]

It is also significant to note that the RTC gave full credence to the testimony of AAA as she relayed her painful ordeal in a candid manner. It found the testimonies of AAA to be credible and sincere. 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.[49]

In addition to the aforesaid testimony of AAA, her physician, Dr. Abilla, corroborated AAA's testimony on material and relevant points. Her medico-legal report regarding AAA was also offered by the prosecution as its documentary evidence.

Appellant, however, maintained in his first assigned error that the foregoing testimony of AAA was unbelievable based on the following reasons: (1) it was impossible for him to have raped AAA in the latter's room because there were tenants in the room closely adjacent to that of AAA and in the rooms on the second floor of the house during the incidents; (2) when Monalyn asked AAA if appellant went to her room on the night of 19 September 1997 and touched her private parts, AAA replied that appellant merely kissed her; (3) AAA did not seek her neighbor's assistance with regard to the incidents; and (4) AAA acted normally and did her usual chores after the incidents.[50]

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[48] *People v. Arsayo,* G.R. No. 166546, 26 September 2006, 503 SCRA 275, 287-288.

[49] *People v. Bejic*, G.R. No. 174060, 25 June 2007, 525 SCRA 488, 504.

[50] CA *rollo,* pp. 60-62.

It was not impossible for appellant to have raped AAA in the latter's room despite the presence of tenants in the room closely adjacent to that of AAA and in the rooms on the second floor of the house. We have held that lust is no respecter of time and place.[51] Thus, rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants and even in places which, to many, would appear unlikely and high-risk venues for its commission.[52] The presence of people nearby does not deter rapists from committing their odious act. [53] Besides, there is no rule that rape can be committed only in seclusion.[54]

True, AAA testified that when Monalyn asked her if appellant went to her room on the night of 19 September 1997 and touched her private parts, she replied that appellant merely kissed her. Also, AAA did not seek assistance from her other neighbors with regard to the incidents. Nevertheless, these cannot be taken against AAA. A rape victim is oftentimes overwhelmed by fear rather than by reason.[55] Hence, it is not uncommon for a young rape victim to conceal for some time the assault on her virtue because of a rapist's threat on her life.[56] AAA testified that appellant repeatedly threatened to kill her if she would divulge the incidents to others. This was the reason why AAA hesitated from revealing the incidents to Monalyn and to her other neighbors. AAA's fear of appellant's threat was reasonable, considering that appellant frequently stayed in XXX.

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[51] *People v. Balleno*, 455 Phil. 979, 987 (2003); *People v. Ortizuela*, G.R. No. 135675, 23 June 2004, 432 SCRA 574, 582; *People v. Belga*, 402 Phil. 734, 742 (2001).

[52] *Id*.

[53] *Id*.

[54] *People v. Labayne*, 409 Phil. 192, 208 (2001); *People v. Mariano*, 398 Phil. 820, 832 (2000); *People v. Aquino*, 448 Phil. 840, 853 (2003).

[55] *People v. Amaquin*, 427 Phil. 616, 630 (2002); *People v. Razonable*, 386 Phil. 771, 782 (2000).

[56] *People v. Blancaflor*, 466 Phil. 86, 99-100 (2004); *People v. Glodo*, G.R. No. 136085, 7 July 2004, 433 SCRA 535, 546.

The fact that AAA acted normally and did her usual chores after the incidents does not negate rape. How the rape victim comported herself after the incident was not significant, as it had nothing to do with the elements of the crime of rape.[57] Further, AAA was barely 12 years old at the time of the incidents. At such a young age, AAA cannot be reasonably expected to act the way mature individuals would when placed in such a situation.[58] Not all rape victims can be expected to act conformably to the usual expectations of everyone. People react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. In *People v. Luzorata*,[59] we held:

> This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt x x x.

Denial is inherently a weak defense, as it is negative and self-serving. It cannot prevail over the positive identification and testimony of credible witnesses who testify on affirmative matters.[60]

Appellant testified that he was sleeping in Polly's house at Bal-os during the incidents. Katindig claimed that he and appellant went to sleep at around 9:00 p.m. of 19 September 1997; that he woke up at 6:00 a.m. of 20 September 1997 and saw appellant in Polly's house; that he and appellant went to sleep at around 9:00 p.m. of 21 September 1997; and that he woke up at 6:00 a.m. of 22 September 1997 and saw appellant in Polly's house. Be that as it may, Katindig did not testify that he saw appellant

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[57] *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 541.

[58] *People v. Montemayor*, 444 Phil. 169, 186 (2003).

[59] 350 Phil. 129, 134 (1998).

[60] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 661-662.

in Polly's house at about or past 10:00 p.m. up to midnight of the dates of the incidents. Katindig merely stated he and appellant slept at around 9:00 p.m. and when he woke up at 6 a.m. the following morning, he saw appellant in Polly's house. Thus, it was highly possible that since Katindig was sleeping at 9:00 p.m., he did not notice appellant's departure from Polly's house a little after 9:00 p.m. Appellant then proceeded to the house of AAA at XXX where he raped AAA. It is also highly probable that Katindig did not notice appellant's subsequent return to Polly's house from the crime scene before 6:00 a.m., because he was still sleeping. The foregoing view is buttressed by the records showing that XXX can be reached in an hour from Bal-os. [61] There was, therefore, a huge possibility that appellant was present at the scene of the crime when it was committed at about 10:00 p.m. of 19 and 21 September 1997. Thus, the defense failed to prove that it was physically impossible for appellant to be at or near the crime scene when the incidents transpired. Besides, we have held that an alibi becomes less plausible as a defense when it is corroborated only by relatives or friends of the accused.[62]

Alibi is the weakest of all defenses, for it is easy to contrive and difficult to prove.[63] Alibi must be proved by the accused with clear and convincing evidence.[64] For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[65]

Appellant concludes that he was a victim of a frame-up; that Junior Bonilla and Pepito were brothers; and that AAA and

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[61] Records, pp. 101-102.

[62] *People v. Larranaga*, G.R. Nos. 138874-75, 21 July 2005, 463 SCRA 652, 662.

[63] *People v. Aguila, supra* note 60 at 662.

[64] *Dela Cruz v. Court of Appeals*, 414 Phil. 171, 184-185 (2001); *People v. Lustre*, 386 Phil. 390, 400 (2000).

[65] *Id*.

BBB were merely instigated by Junior Bonilla and Pepito to file the instant cases because he (appellant) was the reason why Junior Bonilla was terminated from his previous job in Philex.

The defense of frame-up, like alibi, has been invariably viewed by this Court with disfavor, for it can easily be concocted but is difficult to prove.[66] In order to prosper, the defense of frame-up must be proved by the accused with clear and convincing evidence.[67]

In the cases under consideration, appellant failed to present any clear and convincing proof that AAA and BBB were induced by Junior Bonilla and Pepito to file the instant cases. Further, Pepito clarified in his testimony that he did not know, nor had he met, appellant prior to the reporting of the incidents by AAA and BBB.[68] Pepito also testified that SPO1 Santes was the investigator in charge of the cases, and that the chief of the Hinoba-an Police Station was the one who filed the instant cases.[69] Thus, appellant's bare allegation of frame-up must fail.

Appellant also asserted that he could not have been the rapist of AAA because Dr. Layda testified that he was not suffering from gonorrhea. He cited the finding of prosecution witness Dr. Abilla that AAA was infected with gonorrhea at the time of the latter's examination.

Although Dr. Layda confirmed that appellant was not suffering from gonorrhea at the time of appellant's examination on 16 June 1998, this did not, however, conclusively show that appellant did not have gonorrhea at the time of the incidents on 19 and 21 September 1997. Dr. Layda admitted that gonorrhea could be cured by a daily intake of antibiotics for two weeks.[70] Dr.

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[66] *People v. De Guzman*, G.R. No. 177569, 28 November 2007, 539 SCRA 306, 318; *Rodriguez v. Eugenio*, A.M. No. RTJ-06-2216, 20 April 2007, 521 SCRA 489, 503.

[67] *Id*.

[68] TSN, 13 April 1999, p. 8.

[69] *Id.* at 5 and 8.

[70] TSN, 9 March 1999, p. 12.

Layda also stated that antibiotics could be easily bought in drugstores.[71] It could be then that after raping AAA on 19 and 21 September 1997, appellant took antibiotics and was thereafter cured of gonorrhea. This readily explains why Dr. Layda found in his examination conducted on 16 June 1998 that appellant was not infected with gonorrhea. Dr. Layda testified as follows:

PROSECUTOR GARDE –

Q Doctor, will you please tell us if this sexually transmitted disease like gonorrhea, is curable or not?

WITNESS –

A It is a curable disease, sir.

Q Are the drugs used to cure this kind of disease very easy to procure?

A The drugs are available in the drugstores, with prescriptions, sir.

Q If gonorrhea is treated immediately, how much time will it take to cure this disease?

A After taking the drugs, may be in two (2) weeks time, sir.

Q Can you give us the names of the drugs for this kind of disease?

A Antibiotics like amoxicillin – there are many drugs in the market for curing that type of disease, sir.

PROSECUTOR GARDE -

Q When you examined the patient on June 16, 1998, can we safely assume that if the patient had contacted gonorrhea sometime ago, he was already cured?

WITNESS -

A Yes, sir – he can go to a physician for proper treatment.[72]

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[71] *Id*.

[72] *Id.* at 12-13.

In his second assigned error, appellant argued that the RTC erred in appreciating the aggravating circumstance of dwelling and in imposing the death penalty.[73]

As the rapes were committed on 19 and 21 of September 1997, the applicable law is Section 11 of Republic Act No. 7659, otherwise known as the Death Penalty Law, which took effect on 31 December 1993. The said provision states that if rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death. Since the informations alleged that appellant used a jagged knife in raping AAA and such fact was proven during the trial, the penalty imposable on appellant is *reclusion perpetua* to death.

Republic Act No. 7659 also provides that the death penalty shall be imposed if the rape victim was a minor **and** the offender was her parent, ascendant or relative. The information alleged that AAA was a minor (12 years old) during the incidents. Nevertheless, there was no allegation and proof that appellant was AAA's parent, ascendant, or relative. As such, AAA's minority cannot qualify the penalty to death. The penalty imposable on appellant, therefore, remains to be *reclusion perpetua* to death.

The information also alleged that appellant raped AAA in the latter's dwelling and such circumstance was duly proven during the trial. Under Article 14(3) of the Revised Penal Code, dwelling is an aggravating circumstance where the crime is committed in the dwelling of the offended party and the latter has not given provocation. Hence, we have steadfastly held that dwelling is an aggravating circumstance in the crime of rape.[74] Dwelling is considered as an aggravating circumstance primarily because of the sanctity of privacy the law accords to human abode.[75]

Article 63 of the Revised Penal Code provides that if the penalty is composed of two indivisible penalties, as in this case,

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[73] CA *rollo*, pp. 62-64.

[74] *People v. Sapinoso*, 385 Phil. 374, 395 (2000); *People v. Prades*, 355 Phil. 150, 168 (1998); *People v. Padilla*, 312 Phil. 721, 737 (1995); *People v. Moreno*, G.R. No. 92049, 22 March 1993, 220 SCRA 292, 307.

[75] *Id.*

and there is one aggravating circumstance, the greater penalty shall be applied. Since the aggravating circumstance of dwelling was present in these cases, the penalty of death should be imposed on appellant. Nonetheless, with the effectivity of Republic Act No. 9346[76] entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the capital punishment of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted out to appellant shall be *reclusion perpetua*. Said section reads:

> 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.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law which provides:

> SECTION 3. Persons convicted of offenses punished 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.

Having determined the guilt of appellant for rape and the proper prison term imposable on him, we shall now assess the propriety of the damages awarded to AAA.

The RTC and the Court of Appeals were correct in awarding civil indemnity to AAA in each of the cases, since the grant of this damage is mandatory upon a finding of rape.[77] Both courts also acted properly in fixing the amount thereof at ₱75,000.00.

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[76] Approved on 24 June 2006.

[77] *People v. Dadulla*, G.R. No. 175946, 23 March 2007, 519 SCRA 48, 61.

In *People v. Quiachon*,[78] we explained that even if the penalty of death is not to be imposed on accused because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 is still proper, as the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. In the present cases, appellant raped AAA in the latter's dwelling. This circumstance was alleged in the informations and proven during the trial.

The award of moral damages in each of the cases is proper because AAA is assumed to have suffered moral injuries. [79] However, the amount of ₱50,000.00 imposed as moral damages should be increased to ₱75,000.00 based on prevailing jurisprudence.[80]

The Court of Appeals acted accordingly in granting exemplary damages to AAA in each of the cases because the rapes were attended by the aggravating circumstance of dwelling.[81] Nevertheless, the amount of ₱30,000.00 imposed as exemplary damages should be reduced to ₱25,000.00 in conformity with our latest decisions.[82]

WHEREFORE, after due deliberation, the Decision of the Court in CA-G.R. CR HC No. 00314, dated 22 December 2006, is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the award for moral damages is increased from ₱50,000.00

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[78] G.R. No. 170236, 31 August 2006, 500 SCRA 704, 719.

[79] *Id.* at 719.

[80] *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 133-134; *People v. Fernandez*, G.R. No. 172118, 24 April 2007, 522 SCRA 189, 205; *People v. Dela Cruz*, G.R. No. 166723, 2 August 2007, 529 SCRA 109, 118.

[81] *Article 2230 of the Civil Code*: "In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

[82] *People v. Ching, supra* note 80 at 134; *People v. Fernandez, supra* note 80; *People v. Dela Cruz, supra* note 80 at 118.

to ₱75,000.00 in each case; and (2) that for exemplary damages is reduced from ₱30,000.00 to ₱25,000.00 in each case.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 182136-37. November 27, 2008]

BON-MAR REALTY AND SPORT CORPORATION, *petitioner, vs.* **SPOUSES NICANOR AND ESTHER DE GUZMAN, EVELYN UY AND THE ESTATE OF JAYME UY, HON. LORNA CATRIS F. CHUA-CHENG, Presiding Judge, Branch 168 of RTC-Marikina City, (formerly Pasig City), HON. AMELIA A. FABROS, Branch 160 of RTC-San Juan, (formerly Pasig City), and THE REGISTRAR OF DEEDS OF SAN JUAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; WHEN A FINAL AND EXECUTORY JUDGMENT DOES NOT HAVE THE EFFECT OF *RES JUDICATA*.— The final and executory decision in CA-G.R. SP No. 82807 cannot have the effect of *res judicata* against BON-MAR because its situation has changed after the decision in Civil Case No. 67315 was rendered and after it became final and executory. In other words, when the decision in Civil Case No. 67315 became final and executory, the decision in CA-G.R. SP No. 82807 lost its applicability. Having been declared by final judgment the owner of the disputed lots as a successor-in-interest of

respondent DE GUZMANS – after the latter re-acquired title to the lots by virtue of the execution of the judgment in G.R. No. 109217, which is actually rooted in Civil Case No. 56393 – BON-MAR has acquired the legal interest to intervene in said case. Moreover, the evidence in Civil Case No. 67315 clearly indicate that indeed, the DE GUZMANS are attempting to execute *anew* the already executed judgment in Civil Case No. 56393. As successor-in-interest of the DE GUZMANS and possessing legal interest in the disputed lots by virtue of a final judgment in Civil Case No. 67315, BON-MAR became an indispensable party in Civil Case No. 56393, and should be allowed to intervene therein in order to protect itself against a possible double execution by the DE GUZMANS of the judgment in said case.

2. ID.; ID.; ID.; ANNULMENT OF JUDGMENT; NATURE.— The pendency of a case for annulment of the decision in Civil Case No. 67315 cannot affect the character of our disposition in the instant case; unless annulled, the decision in said case stands. It must be borne in mind that annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Having given the parties herein the opportunity to confront each other head on in Civil Case No. 56393, we cannot, on mere unilateral assertions, bordering on contumacious conduct, of obtaining a better resolution devoid of our "erroneous assumptions," see the wisdom of DE GUZMANS' argument that a resolution of the issues could be better had via a petition for annulment of judgment.

3. ID.; ID.; INTERVENTION; ALLOWED ALTHOUGH BELATEDLY FILED; REASON.— In several cases, intervention was allowed notwithstanding that it was belatedly filed. This is one of those cases. As stated earlier on, the evidence in Civil Case No. 67315 strongly suggests that the DE GUZMANS are attempting to recover anew upon an already executed judgment, which is contrary to law and equity. If this were true, we cannot allow it. BON-MAR should thus be heard in this respect. We do not subscribe to the DE GUZMANS' argument that since the decision in Civil Case No. 67315 cannot bind them, then the writ of possession should be issued in their favor. The most prudent course of action is to allow BON-MAR to be heard on its intervention *cum* third-party claim.

Rather than sow further chaos and confusion and open the door to fraud, falsehood and misrepresentation should BON-MAR's claim prove to be true, the trial court should hear its case. It must be remembered that BON-MAR is in possession of the disputed lots, and it appears that the reason why it is in possession thereof is because it is a transferee of the DE GUZMANS, *precisely* as a result of the execution of the decision in Civil Case No. 56393. Actual possession under claim of ownership raises a disputable presumption of ownership; the DE GUZMANS are not entitled to a writ of possession under the circumstances.

4. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; DENIAL THEREOF IN CASE AT BAR.— The trial court's arbitrary denial of BON-MAR's right to be heard on its claim as both adjudged owner and possessor of the subject lots is a violation of its right to due process. The writ of possession constitutes a veritable threat of deprivation of the subject property; BON-MAR should at least be heard under that threat, and not be made to find succor in another court.

APPEARANCES OF COUNSEL

Lawrence L. Ko Teh for Bon-Mar Realty and Sport Corporation.

Arrojado Serrano & Calizo for Sps. Uy.

Joseph Cohon for N. C. De Guzman, Jr.

*Fernandez & Associat*es for Registrar of Deeds of San Juan.

L.G. Yambao & Associates for Sps. Nicanor and E. De Guzman.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

This resolves spouses Nicanor and Esther de Guzman's (the DE GUZMANS) Motion for Reconsideration of this Court's Decision dated August 29, 2008, the dispositive portion of which reads:

WHEREFORE, the Court hereby resolves as follows:

1) The petition in CA-G.R. SP No. 94945 is GRANTED. The assailed Decision of the Court of Appeals dated November 14, 2007 denying BON-MAR Realty and Sport Corporation's petition for intervention in Civil Case No. 56393 and granting Spouses Nicanor, Jr. and Esther de Guzman's motion for issuance of a writ of possession, and the Resolution dated March 17, 2008 denying reconsideration thereof, are REVERSED and SET ASIDE. The Regional Trial Court of Pasig City, Branch 168, in Civil Case No. 56393 is DIRECTED to receive evidence on Bon-Mar Realty and Sport Corporation's third-party claim with a view to determining the nature and extent of its claim to the subject lots and to hold in abeyance the enforcement of the writ of possession.

2) The petition in CA-G.R. SP No. 97812 is DISMISSED. The November 14, 2007 Decision of the Court of Appeals granting the leave to intervene of the Spouses Nicanor, Jr. and Esther de Guzman in SCA No. 2988-SJ, as well as the March 17, 2008 Resolution denying the motion for reconsideration are REVERSED and SET ASIDE. SCA No. 2988-SJ is ordered DISMISSED for being the wrong mode of remedy.

SO ORDERED.[1]

Specifically, they assail the portion of the Decision directing the Regional Trial Court of Pasig City, Branch 168 to allow petitioner Bon-Mar Realty and Sport Corporation (BON-MAR) the opportunity to introduce evidence on its third-party claim in Civil Case No. 56393 with a view to determining the nature and extent of its claim to the subject lots, as well as the denial of their prayer for the issuance of a writ of possession.

The DE GUZMANS argue that since the decision in Civil Case No. 67315[2] cannot bind them, the same being a proceeding *quasi in rem*, BON-MAR should not be allowed to intervene in Civil Case No. 56393 and, instead, they should be granted a writ of possession over the disputed lots; that BON-MAR's intervention in Civil Case No. 56393 is not proper since the case is now at its execution stage; that *res judicata* should instead set in; and that since the final and executory decision in

[1] *Rollo*, p. 590.

[2] For nullification of title against Spouses Jayme and Evelyn Uy.

CA-G.R. SP No. 82807 has settled BON-MAR's status as a stranger to the litigation in Civil Case No. 56393, the latter should thus be precluded from intervening in said case. Finally, they question the Court's finding that the decision in Civil Case No. 67315 declared BON-MAR as the DE GUZMANS' successor-in-interest to the disputed lots.

The motion is denied for lack of merit.

It is clear that BON-MAR has acquired legal interest over the subject lots by virtue of the final and executory decision in Civil Case No. 67315, which adjudged it as the owner of the disputed lots. The Rules of Court provide that a person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action.[3]

The final and executory decision in CA-G.R. SP No. 82807 cannot have the effect of *res judicata* against BON-MAR because its situation has changed after the decision in Civil Case No. 67315 was rendered and after it became final and executory. In other words, when the decision in Civil Case No. 67315 became final and executory, the decision in CA-G.R. SP No. 82807 lost its applicability. Having been declared by final judgment the owner of the disputed lots as a successor-in-interest of respondent DE GUZMANS – after the latter re-acquired title to the lots by virtue of the execution of the judgment in G.R. No. 109217, which is actually rooted in Civil Case No. 56393 – BON-MAR has acquired the legal interest to intervene in said case. Moreover, the evidence in Civil Case No. 67315 clearly indicate that indeed, the DE GUZMANS are attempting to execute *anew* the already executed judgment in Civil Case No. 56393. As successor-in-interest of the DE GUZMANS and possessing legal interest in the disputed lots by virtue of a final judgment in Civil Case No. 67315, BON-MAR became an indispensable party in Civil Case No. 56393, and should be allowed to intervene therein in

[3] RULES OF COURT, Rule 19, Sec. 1.

order to protect itself against a possible double execution by the DE GUZMANS of the judgment in said case.

In several cases, intervention was allowed notwithstanding that it was belatedly filed.[4] This is one of those cases. As stated earlier on, the evidence in Civil Case No. 67315 strongly suggests that the DE GUZMANS are attempting to recover anew upon an already executed judgment, which is contrary to law and equity. If this were true, we cannot allow it. BON-MAR should thus be heard in this respect.

We do not subscribe to the DE GUZMANS' argument that since the decision in Civil Case No. 67315 cannot bind them, then the writ of possession should be issued in their favor. The most prudent course of action is to allow BON-MAR to be heard on its intervention *cum* third-party claim. Rather than sow further chaos and confusion and open the door to fraud, falsehood and misrepresentation should BON-MAR's claim prove to be true, the trial court should hear its case. It must be remembered that BON-MAR is in possession of the disputed lots, and it appears that the reason why it is in possession thereof is because it is a transferee of the DE GUZMANS, *precisely* as a result of the execution of the decision in Civil Case No. 56393. Actual possession under claim of ownership raises a disputable presumption of ownership; the DE GUZMANS are not entitled to a writ of possession under the circumstances.

The trial court's arbitrary denial of BON-MAR's right to be heard on its claim as both adjudged owner and possessor of the subject lots is a violation of its right to due process. The writ of possession constitutes a veritable threat of deprivation of the subject property; BON-MAR should at least be heard under that threat, and not be made to find succor in another court.

Contrary to the DE GUZMANS' claim that the decision in Civil Case No. 67315 did not declare BON-MAR as their

[4] *Pinlac v. Court of Appeals*, G.R. No. 91486, September 10, 2003, 410 SCRA 419; *Mago v. Court of Appeals*, 303 SCRA 600 (1999); *Tahanan Development Corp. v. Court of Appeals*, G.R. No. 55771, November 15, 1982, 118 SCRA 273; *Director of Lands v. Court of Appeals*, G.R. No. L-45168, September 25, 1979, 93 SCRA 238.

successor-in-interest with respect to the disputed lots, the evidence adduced therein certainly point to this conclusion. Indeed, the decision in said case is explicit enough:

> Contrary to the claim of defendants-spouses (UYS) that their source of titles is not from the titles of plaintiff (BON-MAR), the glaring fact, however, is the stark reality that these titles have been cancelled and restored to Nicanor de Guzman from where plaintiff (BON-MAR) acquired its titles.[5] (Words in parentheses supplied)

The pendency of a case for annulment of the decision in Civil Case No. 67315 cannot affect the character of our disposition in the instant case; unless annulled, the decision in said case stands. It must be borne in mind that annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy.[6] Having given the parties herein the opportunity to confront each other head on in Civil Case No. 56393, we cannot, on mere unilateral assertions, bordering on contumacious conduct, of obtaining a better resolution devoid of our "erroneous assumptions," see the wisdom of DE GUZMANS' argument that a resolution of the issues could be better had via a petition for annulment of judgment.

WHEREFORE, the Motion for Reconsideration is *DENIED WITH FINALITY.*

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

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[5] *Rollo*, p. 238.

[6] *Espinosa v. Court of Appeals*, G.R. No. 128686, May 28, 2004, 430 SCRA 96.

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— Testimonies of child victims of rape are given full weight and credit, for youth and immaturity are badges of truth. *(Id.)*

— The fact that an accused turned state witness does not necessarily render his testimony incredible. (Gandol *vs*. People, G.R. No. 178233, Dec. 04, 2008) p. 509

— The fact that the testimony came from a young barrio girl who charged her own father with rape added more credibility to her testimony. (People *vs*. Isang, G.R. No. 183087, Dec. 04, 2008) p. 549

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