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SUPREME COURT

OF THE

PHILIPPINES

FROM

NOVEMBER 28, 2008 TO DECEMBER 8, 2008

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. MTJ-07-1680. November 28, 2008]
(Formerly OCA I.P.I. No. 07-1876-MTJ)

KATIPUNAN NG TINIG SA ADHIKAIN, INC. (KATIHAN) by GODOFREDO S. BONGON, *complainant, vs.* **JUDGE LUIS ZENON O. MACEREN and SHERIFF ANTOLIN ORTEGA CUIZON, Metropolitan Trial Court, Branch 39, Quezon City,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FAILURE OF THE SHERIFF TO COMPLY WITH THE RULES OF COURT IN THE EXECUTION OF JUDGMENT CONSTITUTES SIMPLE NEGLECT OF DUTY. — Respondent sheriff is specifically mandated by the Rules not to destroy, demolish or remove improvements, except upon special order of the court. Thus, aside from the writ of execution implementing the decision based on the compromise agreement, another writ or order from the court is needed specifically allowing the removal of the improvements on the property subject of execution. Likewise, respondent sheriff cannot be excused for his failure to make periodic reports, as mandated

by Section 14, Rule 39 of the Rules of Court. Respondent sheriff's stubborn insistence that he was not negligent in furnishing the trial court with periodic reports is unacceptable. The Rules of Court is clear that if the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. The records reveal that on November 30, 2005, the MeTC issued the writ of execution. On the same date, respondent sheriff issued the notice to vacate. Thus, on December 30, 2005, it was incumbent upon him to submit a report to the MeTC on the reason why the judgment was not satisfied in full, and every thirty (30) days thereafter until the judgment is satisfied in full or until its effectivity expires. His excuse that Limsui's counsel assured him on July 3, 2006 that the associations agreed to remove the structures voluntarily is utterly devoid of merit. The submission of the return and periodic reports by the sheriff is not a duty that is to be taken lightly. It serves to update the court on the status of the execution and why the judgment was not satisfied. It also provides insights to the court as to how efficient court processes are after judgment has been promulgated. The overall purpose of the requirement is to ensure speedy execution of decisions. A sheriff's failure to make a return and to submit a return within the allowable period constitutes inefficiency and incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service. Under the Revised Uniform Rules on Administrative Cases in the Civil Service, respondent sheriff is guilty of simple neglect of duty, which is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is classified as a less grave offense which carries the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense. x x x We would like to reiterate once again that respondent sheriff's compliance with the Rules of Court is not merely directory but mandatory. He is expected to know the rules of procedure pertaining to his functions as an officer of the court.

R E S O L U T I O N

NACHURA, *J.*:

Before us is respondent Sheriff Antolin Ortega Cuizon's motion for reconsideration of the Decision of the Court dated August 17, 2007, suspending him for a period of three (3) months without pay with a warning that a commission of the same or similar acts will be dealt with more severely.

The antecedents:

Complainants were among the unlawful occupants of the parcels of land owned by Carmen Lopez, which were subsequently sold to Efrain Limsui (Limsui). On September 14, 2005, Limsui filed a case for ejectment and damages against the informal settlers of the property before the Metropolitan Trial Court (MeTC) of Manila, Branch 39, Quezon City. The case was entitled "*Efrain Limsui, represented by his Attorney-in-fact, Apolonio Magno v. Damayang Magkakapitbahay ng 81 Linaw Street, Inc. and B.I.G.K.I.S. Neighborhood Association, and their members and all persons claiming rights under them.*" Complainants' group was not impleaded as respondent in the complaint.

On September 19, 2005, summonses were served on the defendant associations. However, no answer was filed by them. On September 26, 2005, a Compromise Agreement was executed and presented to the MeTC. On November 2, 2005, the MeTC rendered a Decision based on the compromise agreement. Under the agreement, defendant associations consented to vacate the property voluntarily and remove the structures that they erected on the land, in exchange for the financial assistance that Limsui would give them.

On October 21, 2005, complainants filed a Verified Manifestation and Motion before the MeTC, stating that they were also residents of the land and that they were in danger of being evicted without due process of law. Respondent judge merely noted the verified manifestation and motion since complainants were not parties to the case.

On November 23, 2005, the MeTC issued an Order granting the issuance of the writ of execution for the enforcement of the Decision dated November 2, 2005. On November 30, 2005, a Writ of Execution was issued by the MeTC. On the same day, respondent sheriff issued a notice to vacate the property. On June 28, 2006, respondent sheriff, without authority from the MeTC, issued a final notice of demolition. On July 7, 2006, he submitted the Sheriff's Report to the MeTC, that is, after almost eight months from the issuance of the writ of execution.

Complainants filed the present administrative complaint against respondents. They contend that due to the writ of demolition issued by respondent judge, they were ejected from the property without due process of law. They aver that they should not be affected by the decision rendered by respondent judge because they are not parties to the case before the MeTC. They filed the administrative case against respondent sheriff because he issued a notice of demolition without order or authority from the MeTC.

On August 17, 2007, the Court issued the assailed Decision, the *fallo* of which reads:

> WHEREFORE, in view of the foregoing, the administrative complaint against Judge Luis Zenon O. Maceren is **DISMISSED** for lack of merit. Sheriff Antolin Ortega Cuizon is **SUSPENDED** for a period of three (3) months without pay, with a **WARNING** that the commission of the same or similar acts shall be dealt with more severely.
>
> SO ORDERED.

Respondent judge was exonerated from administrative liability because there was no concrete evidence that he acquiesced to, or participated in, respondent sheriff's act of directing the demolition of complainants' structures on the subject property without authority from the court. On the other hand, respondent sheriff was held administratively liable for exceeding his authority in issuing a final notice of demolition without any order from the MeTC and for belatedly filing the sheriff's report.

On September 26, 2007, respondent sheriff filed a Motion for Reconsideration, insisting that he committed no infraction

in issuing a notice of demolition without authority from the MeTC and for not filing the sheriff's report within the time mandated by the Rules of Court. He argued that he could not be held administratively liable for ordering the demolition of the structures because the parties themselves had agreed to the demolition under the compromise agreement. Likewise, he maintained that he could not be held liable for failure to make periodic reports on the progress of execution since in the Sheriff's Report dated July 7, 2006, he stated that on July 3, 2006, Limsui's counsel informed him that defendant associations agreed that they would voluntarily remove their structures on July 4, 2006.

We are not persuaded.

Granting that the demolition of the structures erected on the property was sanctioned by the decision based on the compromise agreement, an outright removal of the same is not allowed by the Rules of Court, Section 10(d), Rule 39 of which provides:

> (d) ***Removal of improvements on property subject of execution***. – When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, ***the officer shall not destroy, demolish or remove said improvements EXCEPT UPON SPECIAL ORDER OF THE COURT,*** issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.[1]

Respondent sheriff is specifically mandated by the Rules not to destroy, demolish or remove improvements, except upon special order of the court. Thus, aside from the writ of execution implementing the decision based on the compromise agreement, another writ or order from the court is needed specifically allowing the removal of the improvements on the property subject of execution.

Likewise, respondent sheriff cannot be excused for his failure to make periodic reports, as mandated by Section 14, Rule 39 of the Rules of Court which states that:

---

[1] Emphasis supplied.

SEC. 14. *Return of writ of execution.* – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. ***If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor.*** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. ***The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires.*** The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.[2]

Respondent sheriff's stubborn insistence that he was not negligent in furnishing the trial court with periodic reports is unacceptable. The Rules of Court is clear that if the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. The records reveal that on November 30, 2005, the MeTC issued the writ of execution. On the same date, respondent sheriff issued the notice to vacate. Thus, on December 30, 2005, it was incumbent upon him to submit a report to the MeTC on the reason why the judgment was not satisfied in full, and every thirty (30) days thereafter until the judgment is satisfied in full or until its effectivity expires. His excuse that Limsui's counsel assured him on July 3, 2006 that the associations agreed to remove the structures voluntarily is utterly devoid of merit.

The submission of the return and periodic reports by the sheriff is not a duty that is to be taken lightly. It serves to update the court on the status of the execution and why the judgment was not satisfied. It also provides insights to the court as to how efficient court processes are after judgment has been promulgated. The overall purpose of the requirement is to ensure speedy execution of decisions.[3] A sheriff's failure to make a return and to submit a return within the allowable period constitutes inefficiency and incompetence in the

[2] Emphasis supplied.

[3] *Tablante v. Rañeses*, A.M. No. P-06-2214, April 16, 2008, 551 SCRA 400.

performance of official duties, and conduct prejudicial to the best interest of the service.[4]

Under the Revised Uniform Rules on Administrative Cases in the Civil Service, respondent sheriff is guilty of simple neglect of duty, which is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. It is classified as a less grave offense which carries the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.[5]

Be that as it may, considering that there has been no previous administrative case against respondent sheriff and in order not to hamper the duties of his office, instead of suspending him for a period of three (3) months without pay, we reconsider our previous decision and lower the penalty to one (1) month and one (1) day suspension without pay.

We would like to reiterate once again that respondent sheriff's compliance with the Rules of Court is not merely directory but mandatory. He is expected to know the rules of procedure pertaining to his functions as an officer of the court.

WHEREFORE, in view of the foregoing, our Decision dated August 17, 2007 is hereby *MODIFIED*. Sheriff Antolin Ortega Cuizon is *SUSPENDED* for a period of one (1) month and one (1) day without pay, with a *STERN WARNING* that the commission of the same or similar acts shall be dealt with more severely. This resolution is immediately executory.

SO ORDERED.

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

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[4] *Grutas v. Madolaria*, A.M. No. P-06-2142, April 16, 2008, 551 SCRA 379.

[5] *Tablante v. Rañeses, supra* note 4, at 400-401.

THIRD DIVISION

[A.M. No. P-08-2542. November 28, 2008]
(Formerly A.M. No. 08-1-09-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CYRIL JOTIC, Court Interpreter III, Regional Trial Court, Branch 64, Tarlac City; and JOSELITO R. ESPINOSA, Process Server, Office of the Clerk of Court, Regional Trial Court, Tarlac City,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MAKING FALSE STATEMENT IN THE ATTENDANCE LOGBOOK CONSTITUTES DISHONESTY AND FALSIFICATION. —** The issue in this administrative case boils down to whether or not respondents Cyril B. Jotic and Joselito R. Espinosa were dishonest in not reflecting the correct time in their attendance logbook on November 16, 2007. The act of making a false statement in the attendance logbook renders an employee liable for dishonesty and falsification. Any willful concealment of fact in the logbook constitutes *mental dishonesty* amounting to misconduct. Dishonesty refers to 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. The respondent should be reminded that dishonesty is a malevolent act that has no place in the judiciary.

2. **ID.; ID.; ID.; HIGHEST SENSE OF HONESTY AND INTEGRITY REQUIRED OF A COURT EMPLOYEE. —** A court employee, being a public servant, must exhibit the highest sense of *honesty* and *integrity*. For everyone connected professionally with the judicial institution, the duty is imperative and sacred to build up its eminence as a true and revered temple of justice. *Republic Act 6713* – the Code of Conduct and Ethical Standards for Public Officials and Employees – enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government

service exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary. We have repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility, free from any suspicion that may taint the judiciary. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.

3. ID.; ID.; ID.; LENGTH OF SERVICE CONSIDERED IN NOT IMPOSING THE MAXIMUM ADMINISTRATIVE PENALTY FOR DISHONESTY AND FALSIFICATION. — Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292 and other Pertinent Civil Service Laws, dishonesty and falsification of public document are considered grave offenses for which the penalty of dismissal is prescribed even for the first offense. Section 9 of said Rule likewise provides that the "penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification from re-employment in the government service." This penalty is without prejudice to criminal liability of the respondent. The unwavering policy of the Court in the matter of falsification of public documents duly proven to have been committed by government employees, especially those under its administrative supervision, has been the imposition of the maximum administrative penalty. This penalty may seem a bit harsh, but its imposition is not without basis. x x x On numerous occasions, this Court did not hesitate in imposing such extreme punishment on employees found guilty of grave offenses. However, considering the length of service of Court Interpreter III Cyril B. Jotic, which is more than 15 years, and the length of service of Process Server Joselito R. Espinosa, which is more than 21 years, and the fact that this is their first offense, the Court deems it proper to reduce the recommended penalties of the OCA.

D E C I S I O N

NACHURA, *J.*:

On September 5, 2007, the Office of the Court Administrator (OCA) received an anonymous complaint[1] on the alleged anomalies in the Regional Trial Court (RTC), Tarlac City. According to the informant, certain employees were designated to punch in the Daily Time Records (DTRs) of the personnel of RTC, Tarlac City.

A team was dispatched to conduct a discreet investigation in order to validate the complaint.[2] The investigation was conducted on November 15 and 16, 2007.[3]

In a Memorandum[4] dated January 3, 2008 submitted to the Court, the OCA reported that on November 16, 2007, Court Interpreter Cyril Jotic, RTC, Branch 64; and Process Server Joselito Espinosa, Office of the Clerk of Court (OCC) of the same RTC, both of Tarlac City, made *untruthful statements* in their respective logbooks when they entered their time of attendance therein.

Quoted hereunder are the pertinent portions of the Memorandum:

> On November 16, 2007, the team arrived at RTC, Tarlac City around 8:05 a.m. Immediately, the team noticed that only a few employees were present. The Office of the Clerk of Court (OCC) and the staff room of Br. 63 were still closed. At the ground floor, only Sheriff Antonio Leano Jr., of the OCC was spotted who had not logged in at the [logbook] because the office was closed.
>
> x x x x x x x x x
>
> When the team returned to the OCC, it was already open and only two personnel were present. However, upon inspection of the

[1] *Rollo*, p. 4.

[2] *Id.* at 8.

[3] *Id.* at 9.

[4] *Id.* at 1-3.

[logbook] it was discovered that Process Server Joselito Espinosa made a superimposition of 8:05 a.m. over the originally written 7:40 a.m. When asked about the matter he reasoned that his watch was allegedly malfunctioning.

Around 9:00 a.m., the team decided to check again the logbook of RTC, Br. 64. Upon arrival thereat, it was noticed that Court Interpreter Cyril Jotic was writing on the logbook. Upon checking the same, the team found that Jotic logged her time at 7:58 a.m. below the delineation line made by the team. When asked why she logged in the time 7:58 a.m. she explained that she was a bit "*rattled"* and she really intended to write "8:58 a.m." Based on her declaration, the team wrote the time "8:58 a.m." in the logbook and signed the same. After the correction, Jotic started *acting discourteously by slamming the several chairs in the presence of the team* before she started working.

x x x x x x x x x

While the team was still in Br. 63, Jotic, accompanied by Atty. Marilyn Martin, Branch Clerk of Court, Br. 64 who was then carrying the logbook, barged in and angrily confronted the team. Jotic, raising her voice insisted that the team made a mistake in indicating her time of arrival. She claimed that she really arrived at 8:28 a.m. and not 8:58 a.m. Jotic rudely accused the team, particularly Atty. George B. Molo, of forcing her to indicate her alleged time of arrival as "8:58 a.m." Atty. Molo clarified that she could give her explanation regarding the matter should the Court require her to do so.

In a Resolution[5] of February 13, 2008, the Court directed both Process Server Joselito Espinosa and Court Interpreter III Cyril Jotic to comment on the charge.

In her Comment[6] dated April 3, 2008, Court Interpreter III Cyril Jotic states that on November 16, 2007, she arrived at the court at 8:28 a.m. and she was informed by Utility Worker Arsenia Bucad of the presence of an Investigating Team (team) from the Supreme Court conducting a spot inspection. She admitted that she wrote 7:58 a.m. instead of 8:28 a.m. on the

[5] *Id.* at 14.

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

logbook because she was "rattled" by the presence of the investigating team.

Respondent Jotic narrates that her attention was called by the team on why she wrote 7:58 a.m. in the logbook when in fact she was not present at that time. She replied, "*Ay sorry po sir, nagkamali ako ng sinulat, dapat 8:58 yan.*" Thereafter, Atty. George Molo (team member) indicated the time "8:58 a.m." as her time of arrival and initialed the said entry. The respondent argues that the team was not present when she made the entry in the logbook because she and her officemates had already signed the logbook when the team returned to their office at about 9:00 a.m.

After the team left RTC Br. 64, Civil Clerk Joy Agnes notified respondent Jotic that the superimposed entry of 8:58 a.m. was improbable, considering that the former arrived later and wrote 8:30 a.m. in the logbook. Branch Clerk of Court Marilyn Martin then decided to accompany respondent Jotic to explain the erroneous entry that the respondent made in the logbook.

The respondent denies that she barged into RTC Br. 63 and angrily confronted the team. She claims that she was "*hurt*" when the team refused to make the necessary correction because it was the respondent herself who declared that she arrived at 8:58 a.m. She, in turn, accuses the team of rude behavior in dealing with her and the personnel of RTC, Tarlac City.

In his Comment[7] dated April 2, 2008, Process Server Joselito Espinosa states that he did not commit dishonesty in indicating his time of arrival in the logbook. He *initially* entered the time 7:40 a.m. in the logbook based on his watch. He reasons that he made the entry 7:40 a.m. because it was the time indicated in his watch which was malfunctioning at that time. His attention was, however, called by Sheriff Leaño informing him that the correct time was 8:05 a.m. He then superimposed the time 8:05 a.m. over 7:40 a.m. to indicate the correct time of his

[7] *Id.* at 15-16.

arrival. To bolster his claim, he attached a copy of the affidavit[8] of Sheriff Leaño.

He admits that he made the superimposition, but the same was made in good faith to reflect the true time of his arrival.

Verification from the OCA Leave Division shows that for the period *July 2007* to *November 2007*, both respondents Joselito R. Espinosa and Cyril Jotic had incurred no tardiness, except on November 16, 2007, when the OCA conducted a *surprise inspection.*

Respondent Jotic admitted in her Comment that she *arrived* at 8:28 a.m. and *wrote* 7:58 a.m. in the logbook. Her claim that she was "*rattled*" by the presence of the team appears illogical and the same deserves scant consideration. The presence of the investigating team might have created a *tense atmosphere* but it would not have been enough to cause the respondent to lose her composure because the team was there only to investigate the alleged anomalies in RTC, Tarlac City. In the natural order of responses, the presence of the OCA investigating team should have made her enter the correct time in the logbook; it cannot, in any manner, be said that she was consensually impaired in doing so.

The OCA opines that the *true reason* behind respondent Jotic's uneasy feeling was attributable to the irregularity she committed and her dread of being discovered. *Human experience dictates that he who has nothing to hide is the last to quiver in fear*. It is not material whether the correct time of the respondent's arrival was 8:28 a.m. or 8:58 a.m. What is of significance is that she intentionally wrote the time 7:58 a.m. when actually she arrived at a much later time. The facts and the evidence, coupled with the respondent's own admission, sufficiently establish her culpability.

Respondent Jotic's act of reflecting an earlier time of arrival on November 16, 2007, when in truth she arrived at a later

[8] *Id.* at 17.

time, amounts to the falsification of a DTR, which, in this case, happens to be an attendance logbook.

The making of untrue statements in the attendance logbook quite palpably demonstrates a deliberate attempt to conceal or suppress information on her tardiness on said date.

It is also noted that the respondent, knowing fully well that the matter was not yet settled, *unyieldingly* wrote the time 8:28 a.m. in her DTR and submitted the same to the Leave Division-OCA. This shows respondent Jotic's stubbornness and persistence in having her way, no matter what.

The OCA finds appalling respondent Jotic's attempt to *sidetrack* the issue by accusing the members of the OCA investigating team of rude behavior. Her accusation *lacks substance*. Other than the respondent's bare allegation, there is no statement or document on record to suggest that the team members acted rudely in the course of their investigation. Neither is there any proof of any protestation by the personnel of RTC, Tarlac City as to the alleged "improper demeanor" of the team, except that of the respondent alone. On the contrary, it was respondent Jotic who acted discourteously – *slamming several chairs in the presence of the team members* – because of frustration, having been caught making an untruthful statement in the attendance logbook. Evidently, the respondent wanted to retaliate against the team members, considering that she admitted being "*hurt*" when the team refused her insistence to correct her entry in the logbook.

With respect to respondent Espinosa, he, too, cannot escape liability. The OCA finds his excuse – a malfunctioning watch – *absurd.* It is inconceivable that he arrived at 8:05 a.m. because as borne out by the OCA Report, the team arrived at around 8:05 a.m. and only Sheriff Antonio Leaño, Jr., was present but had not yet logged in his attendance on the logbook because the Office of the Clerk of Court was still closed. Respondent Espinosa admitted that his watch was malfunctioning and he only relied on Sheriff Leaño's information that the time of his arrival was 8:05 a.m. This explanation we find contrary to

common sense as it projects the sheriff as a timekeeper of some sort. Plain and simple, the respondent put up but a very lame excuse.

The OCA deems it surprising that both the respondents were consistently punctual from July 2007 to November 2007 save when the OCA investigation team conducted a surprise inspection. This circumstance casts doubt on the veracity of their respective time arrival entries in the attendance logbooks.

The OCA then recommended:

xxx xxx xxx

4. That Court Interpreter III Cyril B. Jotic, RTC, Br. 64, Tarlac City be found GUILTY of DISHONESTY and MISCONDUCT and accordingly be meted with the penalty of DISMISSAL from the service with forfeiture of all retirement benefits, except leave credits, with perpetual disqualification from re-employment in any government agency, including government-owned and controlled corporation, and with cancellation of civil service eligibility.

5. That Process Server Joselito R. Espinosa be found GUILTY of DISHONESTY and accordingly be meted with the penalty of DISMISSAL from the service with forfeiture of all retirement benefits, except leave credits, with perpetual disqualification from re-employment in any government agency, including government-owned and controlled corporation, and with cancellation of civil service eligibility.

6. That Atty. Marilyn M. Martin, Branch Clerk of Court, RTC, Br. 64, be required to explain why no administrative disciplinary action should be taken against her for failing to closely supervise the personnel of RTC, Br. 64, Tarlac City.

The Court agrees with the report of the OCA, except as to the penalty imposed.

The issue in this administrative case boils down to whether or not respondents Cyril B. Jotic and Joselito R. Espinosa were dishonest in not reflecting the correct time in their attendance logbook on November 16, 2007.

The act of making a false statement in the attendance logbook renders an employee liable for dishonesty and falsification. Any willful concealment of fact in the logbook constitutes *mental dishonesty* amounting to misconduct.

Dishonesty refers to 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.[9]

The respondent should be reminded that dishonesty is a malevolent act that has no place in the judiciary.[10]

A court employee, being a public servant, must exhibit the highest sense of *honesty* and *integrity*. For everyone connected professionally with the judicial institution, the duty is imperative and sacred to build up its eminence as a true and revered temple of justice.[11]

Republic Act 6713 – the Code of Conduct and Ethical Standards for Public Officials and Employees – enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service.[12] And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary.[13]

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[9] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary 1, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, A.M. Nos. 2001-7-SC & 2001-8-SC, July 22, 2005, 464 SCRA 1, 15; *Office of the Court Administrator v. Yan*, A.M. No. P-98-1281, April 27, 2005, 457 SCRA 389, 397; *Alabastro v. Moncada, Sr.*, A.M. No. P-04-1887, December 16, 2004, 447 SCRA 42, 53.

[10] *Concerned Citizen v. Garbal, Jr.*, A.M. No. P-05-2098, December 15, 2005, 478 SCRA 13, 25; *Corpuz v. Ramiterre*, Adm. Matter No. P-04-1779, November 25, 2005, 476 SCRA 108, 122; *Concerned Employees v. Generoso*, A.M. No. 2004-33-SC, August 24, 2005, 467 SCRA 614, 624.

[11] *Villanueva v. Milan*, A.M. No. P-02-1642, September 27, 2007.

[12] *Alawi v. Alauya*, 335 Phil. 1096, 1104 (1997).

[13] *Rabe v. Flores*, 338 Phil. 919, 925-926 (1997).

We have repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility, free from any suspicion that may taint the judiciary. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice, which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.[14]

In *Re: Memorandum dated Sept. 27, 1999 of Ma. Corazon M. Molo, OIC, Office of the Administrative Services, Office of the Court Administrator*,[15] it was held:

> No position demands greater moral righteousness and uprightness from the occupant than the judicial office. Those connected with the dispensation of justice bear a heavy burden of responsibility. Clerks of court, in particular, must be individuals of competence, honesty and probity, charged as they are with safeguarding the integrity of the court and its proceedings. This Court has consistently held that persons involved in the administration of justice ought to live up to the strictest standards of honesty and integrity in the public service. The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach.

This Court, speaking in *Pizarro v. Villegas*,[16] held that:

> We stress that the conduct of even minor employees mirrors the image of the courts they serve; thus, they are required to preserve the judiciary's good name and standing as a true temple of justice x x x.

The Court cannot turn a blind eye to what is plainly a transgression of the law. The slightest breach of duty by, and the slightest irregularity in the conduct of, court officers and

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[14] *Civil Service Commission v. Sta. Ana*, 435 Phil. 1, 9 (2002).

[15] 459 Phil. 973, 984-985 (2003), cited in *Report on the Financial Audit Conducted at the Municipal Trial Courts of Bani, Alaminos, and Lingayen, in Pangasinan*, A.M. No. 01-2-18-MTC, December 5, 2003, 417 SCRA 106.

[16] 398 Phil. 837, 844 (2000).

employees detract from the dignity of the courts and erode the faith of the people in the judiciary.

Under Section 23,[17] Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292[18] and other Pertinent Civil Service Laws, dishonesty and falsification of public document are considered grave offenses for which the penalty of dismissal is prescribed even for the first offense. Section 9 of said Rule likewise provides that the "penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification from re-employment in the government service." This penalty is without prejudice to criminal liability of the respondent.[19]

The unwavering policy of the Court in the matter of falsification of public documents duly proven to have been committed by government employees, especially those under its administrative supervision, has been the imposition of the maximum administrative penalty. This penalty may seem a bit harsh, but its imposition is not without basis. The *raison d'etre* for maintaining such severity was succinctly stated in *Mirano v. Saavedra*,[20] where the Court stated:

> Public service requires utmost integrity and strictest discipline. A public servant must exhibit at all times the highest sense of honesty and integrity. The administration of justice is a sacred task. By the very nature of their duties and responsibilities, all those involved in it must faithfully adhere to, hold inviolate, and invigorate the principle solemnly enshrined in the 1987 Constitution that a public

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[17] Sec. 23. Administrative offenses with its 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:

(a) Dishonesty (1st offense, Dismissal)

(b) Falsification of official documents (1st offense, Dismissal)

[18] Administrative Code of 1987.

[19] *Civil Service Commission v. Sta. Ana*, 450 Phil. 59 (2003).

[20] A.M. No. P-89-383, August 4, 1993, 225 SCRA 77.

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. The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Their conduct, at all times, must not only be characterized by propriety and decorum but, above all else, must be above suspicion. Indeed every employee of the judiciary should be an example of integrity, uprightness and honesty.[21]

On numerous occasions, this Court did not hesitate in imposing such extreme punishment on employees found guilty of grave offenses.[22] However, considering the length of service of Court Interpreter III Cyril B. Jotic, which is more than 15 years, and the length of service of Process Server Joselito R. Espinosa, which is more than 21 years, and the fact that this is their first offense, the Court deems it proper to reduce the recommended penalties of the OCA.

Lastly, the irregularities in timekeeping occurred in view of what we consider deficiency on the part of the Branch Clerk of Court, Atty. Marilyn M. Martin, in the supervision of the court personnel of RTC, Branch 64. Had she been fully attentive to her responsibilities as supervisor and had she not neglected to monitor the daily attendance and the presence of the court's employees in their respective work stations, the incidents subject of this administrative matter would not have happened so easily and unchecked.

WHEREFORE, the Court finds Court Interpreter III Cyril B. Jotic, RTC, Br. 64, Tarlac City and Process Server Joselito R. Espinosa *GUILTY* of *DISHONESTY* for which they are

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[21] *Id.*, citing *Hipolito v. Mergas,* 195 SCRA 6 (1991); *Sy v. Academia,* 198 SCRA 705 (1991).

[22] *Moner v. Ampatua,* A.M. No. SCC-98-3(P), September 3, 1998, 295 SCRA 20; *Marasigan v. Buena,* A.M. No. 95-1-01-MTCC, January 5, 1998, 284 SCRA 1; *Lumiqued v. Exevea,* G.R. No. 117565, November 18, 1997, 282 SCRA 125; *Re: Financial Audit in RTC, General Santos City,* A.M. No. 96-1-25-RTC, April 18, 1997, 271 SCRA 302.

ordered *SUSPENDED* for a period of ten (10) months without pay and other benefits with a stern *WARNING* that a repetition of the same offense will be dealt with more severely.

Clerk of Court Atty. Marilyn M. Martin of the Regional Trial Court, Branch 64, Tarlac City, is *ORDERED* to *SHOW CAUSE* within ten (10) days from notice of herein Resolution, why no disciplinary action should be taken against her for her failure to duly supervise the personnel in their branch. Let this administrative matter be given a separate docket number and raffled for assignment to a Justice.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 148435. November 28, 2008]

ROGELIO GUEVARRA and EDGARDO BANTUGAN, *petitioners, vs.* **SPOUSES ENGRACIO and CLAUDIA BAUTISTA, JESUS DANAO and CECILIA LACSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RELIEF FROM JUDGMENT; NATURE. — Relief from judgment is a remedy provided by law to any person against whom a decision or order is entered through fraud, accident, mistake, or excusable negligence. It is a remedy, equitable in character, that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake, or excusable negligence

from filing such motion or taking such appeal, he cannot avail of the remedy of petition for relief.

2. ID.; ID.; ID.; EXCUSABLE NEGLIGENCE, NOT A CASE OF. — Petitioners' counsel received the June 4, 1996 Order denying their motion for reconsideration. However, he failed to file a notice of appeal because, allegedly, the receipt of said order was not brought to his attention, as he was then busy preparing to leave for a conference in Baguio City. This, according to the petitioners, is a clear case of excusable negligence on the part of his counsel, warranting relief from judgment. Unfortunately for the petitioners, negligence, to be "excusable," must be such that ordinary diligence and prudence could not have guarded against it. Their counsel's oversight can hardly be characterized as excusable, much less unavoidable. It is settled that clients are bound by the mistakes, negligence and omission of their counsel. While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case do not convince this Court to take exception.

3. ID.; ID.; ID.; THE GROUND FOR RELIEF FROM JUDGMENT MUST BE ESTABLISHED FIRST BEFORE IT CAN BE GRANTED.— To strengthen their claim for relief from judgment, petitioners relied on their alleged meritorious defense, thereby focusing mainly on the grounds warranting the reversal of the January 5, 1996 Decision. We would like to emphasize at this point that fraud, accident, mistake, or excusable negligence should first be established before relief from judgment can be granted. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own (or that of his counsel) negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost through inexcusable negligence.

4. ID.; ID.; ID.; THE PETITION FOR RELIEF FROM JUDGMENT CANNOT BE AVAILED OF TO REVIVE A LOST APPEAL; RELEVANT RULING, CITED. — As held in *Insular Life Savings & Trust Co. v. Spouses Runes*, relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of the petitioners' counsel. Otherwise, all that a defeated party has to do to salvage his case would be to claim neglect or mistake

on the part of his counsel as a ground for reversing the adverse judgment, and there would then be no end to litigation, as every shortcoming of counsel could be the subject of challenge by his client. To reiterate, as clearly attempted by the petitioners, petition for relief from judgment cannot be availed of to revive a lost appeal. It must be established that the decision became final and executory, or that the judgment or order had been entered, by reason of fraud, accident, mistake, or excusable negligence. No such circumstance has been shown to exist in this case.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Estanislao L. Cesa, Jr. and *Marc Raymounf S. Cesa* for C. Lacson.
Santiago A. Cabrera for Sps. Bautista.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Court of Appeals (CA) Resolutions dated January 24, 2001[1] and May 30, 2001[2] in CA-G.R. CV No. 59563.

On June 9, 1988, spouses Engracio and Claudia Bautista (spouses Bautista) filed a Complaint[3] for *Reimbursement of Loan Payments and/or Collection of Money with Damages* against petitioners Rogelio Guevarra and Edgardo Bantugan, and spouses Aguinaldo and Remegia Santos (spouses Santos), before the Regional Trial Court (RTC) of Olongapo City. The

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[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Oswaldo D. Agcaoili and Mercedes Gozo-Dadole, concurring; *rollo*, pp. 100-101.

[2] *Id.* at 110-111.

[3] *Rollo*, pp. 28-33.

case was raffled to Branch 73, and was docketed as Civil Case No. 294-0-88. Petitioners, in turn, filed a Third-Party Complaint against Jesus Danao (Danao) and Cecilia Lacson (Lacson), as the amount borrowed was invested in the latter's project.

After trial, or on January 5, 1996, the RTC rendered a Decision[4] in favor of the spouses Bautista and against the petitioners, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against defendants Rogelio Guevarra and Edgardo Bantugan.
>
> 1. The defendants Guevarra and Bantugan are hereby ordered to pay the plaintiffs jointly and severally the amount of Two Hundred Thousand Pesos (₱200,000.00) with interest at 18% per annum from the date it was borrowed on February 20, 1987 up to the time that the full amount shall have been paid.
>
> 2. To pay the said amount within a period of sixty (60) days from receipt of this decision; and
>
> 3. To pay ₱15,000.00 as attorney's fees and ₱7,000.00 as litigation expenses.
>
> SO ORDERED.[5]

Petitioners' motion for reconsideration was denied on June 4, 1996. No appeal was taken; instead, on July 15, 1996, they filed a Petition for Relief From Judgment[6] as they failed to seasonably appeal allegedly because of accident, honest mistake and excusable negligence. In their petition for relief, petitioners attributed their failure to appeal the January 5, 1996 RTC Decision to the excusable negligence of their counsel, who, at the time of the receipt of said decision, was busy preparing for a conference in Baguio City. To strengthen their claim for relief from judgment, petitioners raised anew their defense[7] set up in the collection case.

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[4] Penned by Judge Alicia L. Santos; *id.* at 75-81.

[5] *Id.* at 81.

[6] *Id.* at 53-56.

[7] The grounds relied upon in their petition for relief are as follows:

On September 16, 1996, the RTC denied the petition for relief for lack of merit.[8] The court held that the issues raised by petitioners were the same as those raised in their motion for reconsideration which had already been resolved by the court. It added that there was no showing of fraud, accident, mistake or excusable negligence, to warrant a relief from judgment.[9]

Aggrieved, petitioners appealed the matter to the Court of Appeals; the same was docketed as CA-G.R. CV No. 59563. After the filing of the appellants' brief by the petitioners, Lacson filed a Motion to Dismiss[10] on the ground that the issues raised were questions pertaining to the merits of the collection case and not to the denial of the petition for relief.

In a Resolution dated January 24, 2001, the appellate court granted the motion and thus dismissed the appeal pursuant to Section 1(b), Rule 50[11] of the Rules of Court.[12] While petitioners

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a) That out of the ₱200,000.00 defendant-petitioner and the other defendants obtained from plaintiffs, the amount of ₱131,714.00 was given to third-party defendants Jesus Danao and Cecilia Lacson x x x.

b) That there are other documents x x x presented by herein petitioner to prove the liability of third-party defendants which unfortunately [were] not given weight and probative value by the Honorable Court;

c) That aside from documentary evidence, testimonial evidence were proffered which are sufficient enough to establish the culpability of third-party defendants. It is noteworthy that third-party defendants never appeared in Court to testify to rebut the allegations of herein defendant-petitioner which remained uncontested/unrebutted to date. (*Id.* at 54.)

[8] *Id.* at 57-59.

[9] *Id.* at 58.

[10] *Id.* at 94-95.

[11] Section 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules. x x x

[12] *Rollo*, p. 101.

apparently questioned the September 16, 1996 Order of the RTC denying their petition for relief, it appeared from their appellants' brief that they were, in fact, assailing the January 5, 1996 decision of the court on the merits of the case. As such, the appeal before the CA was filed beyond the reglementary period. The CA further held that no appeal may be taken from an order denying a petition for relief from judgment pursuant to Section 1(a), Rule 41 of the Rules.[13]

Acting on petitioners' motion for reconsideration, the appellate court sustained the denial of the appeal. The CA reiterated its findings that the issues raised were supportive of an appeal on the merits of the January 5, 1996 Decision and not of the September 16, 1996 Order.

Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT ERRED (SIC) THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE APPEAL INTERPOSED BY HEREIN PETITIONERS.

II.

WHETHER OR NOT THE TRIAL COURT ERRED IN DECLARING HEREIN PETITIONERS CIVILLY LIABLE IN THE INSTANT CASE.[14]

Before ruling on the petition, the Court notes that respondents Lacson and the spouses Bautista filed their respective Comments. For failure to serve the Resolution requiring respondent Danao to comment on the petition, we have repeatedly ordered the petitioners to furnish this Court with Danao's correct and present address. Considering the length of time that lapsed since Danao was first ordered to comment on the petition, he is now deemed to have waived his right to file the same.

The petition is without merit.

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[13] *Id.* at 100-101.

[14] *Id.* at 18.

Relief from judgment is a remedy provided by law to any person against whom a decision or order is entered through fraud, accident, mistake, or excusable negligence.[15] It is a remedy, equitable in character, that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake, or excusable negligence from filing such motion or taking such appeal, he cannot avail of the remedy of petition for relief.[16]

Petitioners' counsel received the June 4, 1996 Order denying their motion for reconsideration. However, he failed to file a notice of appeal because, allegedly, the receipt of said order was not brought to his attention, as he was then busy preparing to leave for a conference in Baguio City.[17] This, according to the petitioners, is a clear case of excusable negligence on the part of his counsel, warranting relief from judgment.

Unfortunately for the petitioners, negligence, to be "excusable," must be such that ordinary diligence and prudence could not have guarded against it. Their counsel's oversight can hardly be characterized as excusable, much less unavoidable. It is settled that clients are bound by the mistakes, negligence and omission of their counsel. While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case do not convince this Court to take exception.[18]

To strengthen their claim for relief from judgment, petitioners relied on their alleged meritorious defense, thereby focusing mainly on the grounds warranting the reversal of the January

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[15] *Basco v. Court of Appeals,* 392 Phil. 251, 263 (2000).

[16] *Insular Savings & Trust Company v. Spouses Runes,* 479 Phil. 995, 1006 (2004); *Basco v. Court of Appeals, id.*

[17] *Rollo,* p. 53.

[18] *Insular Savings & Trust Company v. Spouses Runes*, *supra* note 16, at 1006-1007.

5, 1996 Decision. We would like to emphasize at this point that fraud, accident, mistake, or excusable negligence should first be established before relief from judgment can be granted. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own (or that of his counsel) negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost through inexcusable negligence.[19]

As held in *Insular Life Savings & Trust Co. v. Spouses Runes*, [20] relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of the petitioners' counsel. Otherwise, all that a defeated party has to do to salvage his case would be to claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment, and there would then be no end to litigation, as every shortcoming of counsel could be the subject of challenge by his client.

To reiterate, as clearly attempted by the petitioners, petition for relief from judgment cannot be availed of to revive a lost appeal. It must be established that the decision became final and executory, or that the judgment or order had been entered, by reason of fraud, accident, mistake, or excusable negligence. No such circumstance has been shown to exist in this case.

WHEREFORE, premises considered, the petition is *DENIED*. The Resolutions of the Court of Appeals dated January 24, 2001 and May 30, 2001 are *AFFIRMED*.

SO ORDERED.

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

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[19] *Tuason v. Court of Appeals*, 326 Phil. 169, 178-179 (1996).

[20] *Id.* at 16.

THIRD DIVISION

[G.R. No. 149017. November 28, 2008]

VALENTE RAYMUNDO, *petitioner, vs.* **TEOFISTA ISAGON *VDA. DE* SUAREZ, DANILO I. SUAREZ, EUFROCINA SUAREZ, MARCELO I. SUAREZ, JR, EVELYN SUAREZ, *ET AL.*,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, NOT PROPER REMEDY; PROCEDURAL FLAW, DISREGARDED. — At the outset, we note that petitioner Valente incorrectly filed a petition for *certiorari* to appeal the CA decision. Petitioner should have filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. Simply imputing in a petition that the decision sought to be reviewed is tainted with grave abuse of discretion does not magically transform a petition into a special civil action for *certiorari*. The CA decision disposed of the merits of a special civil action, an original petition, filed thereat by herein respondents. That disposition is a final and executory order, appealable to, and may be questioned before, this Court by persons aggrieved thereby, such as petitioner Valente, via Rule 45. On this score alone, the petition should have been dismissed outright. However, we have disregarded this procedural flaw and now resolve this case based on the merits or lack thereof.

2. ID.; CIVIL PROCEDURE; ORDERS; INTERLOCUTORY ORDER, DEFINED. — We have defined an interlocutory order as referring to something between the commencement and the end of the suit which decides some point or matter but it is not the final decision on the whole controversy. It does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits. Upon the other hand, a final order is one which leaves to the court nothing more to do to resolve the case.

3. ID.; ID.; ID.; TEST TO DETERMINE WHETHER AN ORDER IS INTERLOCUTORY OR FINAL; APPLICATION. — On more than one occasion, we laid down the test to ascertain whether

an order is interlocutory or final *i.e.*, "Does it leave something to be done in the trial court with respect to the merits of the case?" If it does, it is interlocutory; if it does not, it is final. The key test to what is interlocutory is when there is something more to be done on the merits of the case. The Orders dated May 29, 1996 and September 6, 1996 issued by Judge Santos are interlocutory, and therefore, not appealable, as they leave something more to be done on the merits of the case. In fact, in paragraph (d) of Judge Santos' Order dated May 29, 1996, herein respondents were directed to submit evidence showing settlement of the estate of the deceased Marcelo Sr.

4. CIVIL LAW; SUCCESSION; HEIRS; DECLARATION OF HEIRSHIP IN SPECIAL PROCEEDING OF THE HEIRS IS NOT NECESSARY TO ANNUL THE JUDICIAL SALE OF THEIR SHARE; THE RULING IN *HEIRS OF YAPTINCHAY* IS NOT APPLICABLE.— Petitioner Valente insists that, following our ruling in *Heirs of Yaptinchay v. Del Rosario*, herein respondents must first be declared heirs of Marcelo Sr. before they can file an action to annul the judicial sale of what is, undisputedly, conjugal property of Teofista and Marcelo Sr. We disagree. Our ruling in *Heirs of Yaptinchay* is not applicable. Herein respondents' status as legitimate children of Marcelo Sr. and Teofista — and thus, Marcelo Sr.'s heirs — has been firmly established, and confirmed by this Court in *Suarez v. Court of Appeals*. True, this Court is not a trier of facts, but as the final arbiter of disputes, we found and so ruled that herein respondents are children, and heirs of their deceased father, Marcelo Sr. This having been settled, it should no longer have been a litigated issue when we ordered a remand to the lower court. In short, petitioner Valente's, Violeta's, Virginia's, and Maria Concepcion's representation in the RTC that our ruling in *Suarez* required herein respondents to present evidence of their affiliation with the deceased, Marcelo Sr., is wrong. x x x In *Heirs of Yaptinchay*, the complaint for annulment and/or declaration of nullity of certain TCT's was dismissed for failure of the petitioners to demonstrate "any proof or even a semblance of it" that they had been declared the legal heirs of the deceased couple, the spouses Yaptinchay. In stark contrast, the records of this case reveal a document, an Extrajudicial Settlement of Marcelo Sr.'s estate, which explicitly recognizes herein respondents as Marcelo Sr.'s legitimate children and heirs.

The same document settles and partitions the estate of Marcelo Sr. specifying Teofista's paraphernal properties, and separates the properties she owns in common with her children, herein respondents. Plainly, there is no need to re-declare herein respondents as heirs of Marcelo Sr., and prolong this case interminably. x x x Compulsory succession is a distinct kind of succession, albeit not categorized as such in Article 778 of the Civil Code. It reserves a portion of the net estate of the decedent in favor of certain heirs, or group of heirs, or combination of heirs, prevailing over all kinds of succession. The portion that is so reserved is the legitime. Article 886 of the Civil Code defines legitime as "that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs." Herein respondents are primary compulsory heirs, excluding secondary compulsory heirs, and preferred over concurring compulsory heirs in the distribution of the decedent's estate. Even without delving into the Extrajudicial Settlement of Marcelo Sr.'s estate in 1957, it must be stressed that herein respondents' rights to the succession vested from the moment of their father's death. Herein respondents' ownership of the subject properties is no longer inchoate; it became absolute upon Marcelo's death, although their respective shares therein remained *pro indiviso*. Ineluctably, at the time the subject properties were sold on execution sale to answer for Teofista's judgment obligation, the inclusion of herein respondents' share therein was null and void. In fine, Teofista's ownership over the subject properties is not absolute. Significantly, petitioner Valente does not even attempt to dispute the conjugal nature of the subject properties. Since Teofista owns only a portion of the subject properties, only that portion could have been, and was actually, levied upon and sold on auction by the provincial sheriff of Rizal. Thus, a separate declaration of heirship by herein respondents is not necessary to annul the judicial sale of their share in the subject properties.

APPEARANCES OF COUNSEL

Loyola & Associates for petitioner.
Oñasa Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

This petition, filed under Rule 65 of the Rules of Court, assails the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. SP No. 58090 which reversed, set aside and recalled the Regional Trial Court (RTC) Orders[3] in Civil Case No. 51203.

First, the long settled facts.

Marcelo and Teofista Isagon Suarez'[4] marriage was blessed with both material wealth and progeny in herein respondents, namely, Danilo,[5] Eufrocina, Marcelo Jr., Evelyn, and Reggineo,[6] all surnamed Suarez. During their marriage, governed by the conjugal partnership of gains regime, they acquired numerous properties, which included the following: (1) a parcel of land situated in Barrio Caniogan, Pasig with an area of 348 square meters covered by Transfer Certificate of Title (TCT) No. 30680; (2) property located in Pinagbuhatan, Pasig, with an area of 1,020 square meters under

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[1] Penned by Associate Justice Mariano M. Umali, with Associate Justices Ruben T. Reyes (now Associate Justice of the Supreme Court) and Rebecca de Guia-Salvador concurring, *rollo*, pp. 38-44.

[2] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Remedios Salazar-Fernando and Bienvenido L. Reyes concurring, *id.* at 47-48.

[3] Dated January 11, and March 14, 2000, penned by pairing Judge Santiago Estrella, *id.* at 49-55.

[4] Teofista Isagon Suarez is named as a respondent in the title of this case. However, in the list of parties contained in the petition, Teofista is not included as a respondent. Neither was she a party in CA-G.R. SP No. 58090.

[5] Herein respondents filed a Notice of Death and Substitution of Deceased Party plaintiff Danilo Suarez, Records, pp. 267-269.

[6] Elpidio, another offspring of Marcelo and Teofista and brother of herein respondents, is not impleaded as a respondent in this petition. His name does not appear as a plaintiff, petitioner, respondent or defendant, in the exchange of pleadings between the parties for the entirety of this grueling suit.

Tax Declaration No. A-016-01003; and (3) Lot Nos. 5, 6 & 7, Block 2 covered by Tax Declaration No. A-01700723 (subject properties).

After the death of Marcelo Sr. in 1955, Teofista and herein respondents, as well as Elpidio Suarez,[7] executed an Extrajudicial Settlement of Estate,[8] partitioning Marcelo Sr.'s estate, thus:

WHEREAS, the said deceased is survived by the parties hereto who are his only legal heirs: TEOFISTA ISAGON, being the surviving spouse, and EUFROCINA S. ANDRES, ELPIDIO SUAREZ, DANILO SUAREZ, EVELYN SUAREZ, MARCELO SUAREZ, JR. and REGGINEO SUAREZ, being the legitimate children of the deceased with the said TEOFISTA ISAGON;

WHEREAS, the minors ELPIDIO, SUAREZ, DANILO SUAREZ, EVELYN SUAREZ, MARCELO SUAREZ, JR. and REGGINEO SUAREZ are represented herein by EUFROCINA S. ANDRES, in her capacity as the guardian and legal administrator of the property of the said minors;

WHEREAS, there are no known debts or financial obligations of whatever nature and amount against the estate of the deceased;

NOW, THEREFORE, in consideration of the foregoing premises, the Parties have agreed to settle and liquidate the assets of the conjugal partnership between the deceased and TEOFISTA ISAGON, and to settle and adjudicate the estate of the said deceased, by and pursuance to these presents, in the following manner, to wit:

1. That TEOFISTA ISAGON, as the surviving spouse and partner of the deceased, shall receive in absolute and exclusive ownership the following properties as her lawful share in the assets of the conjugal partnership of gains between her and the deceased, to wit:

(a) Half (1/2) interest and participation in the parcel of land covered by Tax Declaration No. 6938, situated at Sitio Pantayan, Municipality of Taytay, Province of Rizal;

(b) Half (1/2) interest and participation in the parcel of land covered by Tax Declaration No. 6939, situated at Sitio Pantayan, Municipality of Taytay, Province of Rizal;

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[7] See note 6.

[8] Annex "A", Plaintiffs' Position Paper, records, pp. 591-602.

(c) Half (1/2) interest and participation in the parcel of land covered by TCT No. 38291, situated at Barrio Rosario, Municipality of Pasig, Province of Rizal;

(d) Half (1/2) interest and participation in the parcel of land covered by TCT No. 38290, situated at Barrio Rosario, Municipality of Pasig, Province of Rizal;

(e) TWELVE THOUSAND FIVE HUNDRED THIRTY PESOS AND NINETY (₱12,530.90) deposited with the Commercial Bank and Trust Company of the Philippines, and THIRTY-NINE PESOS (₱39.00) deposited with Prudential Bank.

2. That the Parties TEOFISTA ISAGON, EUFROCINA S. ANDRES, ELPIDIO SUAREZ, DANILO SUAREZ, EVELYN SUAREZ, MARCELO SUAREZ, JR. and REGGINEO SUAREZ, shall each and all receive and be entitled to a share equivalent to one-seventh (1/7) of the estate of the deceased MARCELO SUAREZ, which estate is comprised of the following properties, to wit:

(a) A parcel of land covered by TCT No. 30680, situated at Barrio Kaniogan, Municipality of Pasig, Province of Rizal, with an assessed value of ₱4,150.00.

(b) Three (3) parcels of land covered by TCT Nos. 33982, 33983 and 33984, situated at Barrio Pineda, Municipality of Pasig, Province of Rizal, with an assessed value of ₱560.00.

(c) A parcel of land covered by TCT 33986, situated at Barrio Pineda, Municipality of Pasig, Province of Rizal, with an assessed value of ₱440.00.

(d) Two (2) parcels of land, being Lots Nos. 42 and 44 of the amendment-subdivision plan TY-4653-Amd., being a portion of Lot 2 described on the original plan II-4653, G.L.R.O. Record No. _____, situated at Barrio Santolan, Municipality of Pasig, Province of Rizal, with a total assessed value of ₱590.00.

(e) Two parcels of land, being Lots Nos. 43 and 45 of the amendment-subdivision plan TY-4653-Amd., being a portion of Lot 2 described on the original plan II-4653, G.L.R.O. Record No. _____, situated at Barrio Santolan, Municipality of Pasig, Province of Rizal, with a total assessed value of ₱1,190.00.

(f) A parcel of land, being Lot No. 6, Block 269 of the subdivision plan pos-112, being a portion of Lot 2, Block 348, Psd-3188, G.L.R.O. Record Nos. 375,699 and 917, situated at San Felipe Neri, Province of Rizal, with an assessed value of ₱6,340.00.

(g) A parcel of land covered by OCT No. 391, situated in the Municipality of Taytay, Province of Rizal, with an assessed value of ₱1,840.00.

(h) TWELVE THOUSAND (12,000) shares of stock of the Consolidated Mines, Inc. represented by Certificate No. 71-5-B (for 1,000 shares) and Certificate No. 12736 (for 11,000 shares).

PROVIDED, that their title to the properties hereinabove mentioned shall be in common and the share of each heir being *pro indiviso*.

Curiously, despite the partition, title to the foregoing properties, explicitly identified in the Extrajudicial Settlement of Estate as forming part of Marcelo's and Isagon's property regime, remained in the couple's name. Not surprisingly, Teofista continued to administer and manage these properties. On the whole, apart from those now owned exclusively by Teofista, all the properties were held *pro indiviso* by Teofista and her children; and respective titles thereto were not changed, with Teofista as *de facto* administrator thereof.

In 1975, Rizal Realty Corporation (Rizal Realty) and Teofista, the latter owning ninety percent (90%) of the former's shares of stock, were sued by petitioner Valente Raymundo, his wife Violeta, Virginia Banta and Maria Concepcion Vito (plaintiffs) in consolidated cases for Rescission of Contract and Damages, docketed as Civil Case Nos. 21736 to 21739. Thereafter, in 1975, the then Court of First Instance (CFI) of Rizal, Branch 1, rendered judgment: (1) rescinding the respective contracts of plaintiffs with Rizal Realty and Teofista, and (2) holding the two defendants solidarily liable to plaintiffs for damages in the aggregate principal amount of about ₱70,000.00.[9]

[9] Decision of CFI, Pasig, Rizal, Branch 1 in Civil Case Nos. 21376-21379, *id.* at 629-639.

When the judgment of the CFI became final and executory, herein subject properties were levied and sold on execution on June 24, 1983 to satisfy the judgment against Teofista and Rizal Realty. The aforementioned plaintiffs were the highest bidder, and bought the levied properties for the amount of ₱94,170.00. As a result, a certificate of sale was issued to them and registered in their favor on August 1, 1983. On July 31, 1984, the Provincial Sheriff of Rizal issued a final deed of sale over the subject properties.

Parenthetically, before expiration of the redemption period, or on June 21, 1984, herein respondents filed a revindicatory action against petitioner Valente, Violeta, Virginia and Maria Concepcion, docketed as Civil Case No. 51203, for the annulment of the auction sale and recovery of ownership of the levied properties. Essentially, respondents alleged in their complaint that they cannot be held liable for the judgment rendered against their mother, Teofista, not having been impleaded therein; and consequently, the subject properties, which they own *pro indiviso* with their mother, can neither be levied nor be sold on execution.

Meanwhile, the RTC, Branch 151, formerly the CFI, Branch 1, in Civil Case Nos. 21376 to 21379, issued an Order[10] directing Teofista: (1) to vacate the subject properties, (2) to desist from despoiling, dismantling, removing or alienating the improvements thereon, (3) to place petitioner Valente, Violeta, Virginia and Maria Concepcion in peaceful possession thereof, and (4) to surrender to them the owner's duplicate copy of the torrens title and other pertinent documents. Herein respondents, joined by their mother, Teofista, filed a Motion for Reconsideration arguing that the subject properties are co-owned by them and further informing the RTC of the filing and pendency of Civil Case No. 51203. Nonetheless, the trial court denied Teofista's and herein respondents' motion, reiterated its previous order, which included, among others, the order for Teofista and all persons claiming right under her, to vacate the lots subject of the judicial sale.

[10] Dated October 10, 1984 and October 14, 1986.

Undaunted, Teofista and herein respondents filed a petition for *certiorari* before the CA to annul the foregoing orders. The appellate court, on July 6, 1987, dismissed Teofista's and herein respondents' petition, thus:

> We believe this petition cannot prosper for two reasons. First, as purported case for *certiorari* it fails to show how the respondent judge had acted without or in excess of jurisdiction or with grave abuse of discretion. The two orders being assailed were preceded by a final judgment, a corresponding writ of execution, a levy on execution and a judicial sale, all of which enjoy a strong sense presumption of regularity.
>
> Secondly, as far as [petitioner] Teofista Suarez is concerned, she cannot complain about the levy because she was a party in the consolidated cases where judgment was rendered against her in her personal capacity. Since she did not appeal from the decision, she cannot say that the judgment is erroneous for an obligation that belong to the corporation. And with respect to the children of Teofista Suarez, who are co-petitioners in this proceedings [herein respondents], suffice it to point out that not being parties in the consolidated cases, what they should have done was to immediately file a third party claim. The moment levy was made on the parcels of land, which they claim are theirs by virtue of hereditary succession, they should have seasonably filed such claim to protect their rights. As the record discloses, however, the children chose to remain silent, and even allowed the auction sale to be held, filing almost a year later a half-hearted complaint to annul the proceedings which they allowed to be dismissed by not diligently prosecuting it.
>
> In *Santos v. Mojica* (10 SCRA 318), a partition case with third- party claimants, the Supreme Court came out with the following ruling: "The procedure (a petition for *certiorari*) followed by him (a petitioner not party to the original partition case) in vindicating his right is not the one sanctioned by law, for he should have filed a separate and independent action making parties therein the sheriff and the plaintiffs responsible for the execution xxx. It can, therefore, be said that (he) acted improperly in filing the present petition because his remedy was to file a separate and independent action to vindicate his ownership over the land.
>
> WHEREFORE, the petition is denied and the restraining order previously issued is DISSOLVED, with costs against petitioners.[11]

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[11] Records, pp. 163-164.

On the other litigation front concerning Civil Case No. 51203, a writ of preliminary injunction was issued by the RTC Pasig, Branch 155, on February 25, 1985, enjoining petitioner Valente, Violeta, Virginia and Maria Concepcion from transferring to third parties the levied properties based on its preliminary finding that the auctioned properties are co-owned by Teofista and herein respondents. Subsequently, however, Civil Case No. 51203 was dismissed by the RTC, Branch 155, at the instance of petitioner Valente for failure of herein respondents to prosecute. But in yet another turn of events, the RTC, Branch 155, lifted its previous order of dismissal and directed the issuance of *alias* summons.

Thus, it was now petitioner Valente's, Violeta's, Virginia's and Maria Concepcion's turn to file a petition for *certiorari* with the CA, assailing the various orders of the RTC, Branch 155, which all rejected their bid to dismiss Civil Case No. 51203. The CA granted their petition, thus:

> And the fact that herein private respondents, as the legal heirs of Teofista *Vda. de* Suarez and supposedly not parties in Civil Case Nos. 21376 - 21379 does not preclude the application of the doctrine of *res judicata* since, apart from the requisites constitutive of this procedural tenet, they were admittedly the children of Teofista Suarez, who is the real party-in-interest in the previous final judgment. As successors-in-interest of Teofista Suarez, private respondents merely stepped into the shoes of their mother in regard to the levied pieces of property. Verily, there is identity of parties, not only where the parties in both actions are the same, but where there is privity with them as in the cases of successors-in-interest by title subsequent to the commencement of the action or where there is substantial identity.
>
> Finally, the action to annul the judicial sale filed by herein private respondents is not the reinvindicatory suit, much less the third party claim contemplated by Section 17 of Rule 39.
>
> WHEREFORE, the petition for *certiorari* is hereby granted and the questioned orders dated February 25, 1985, May 19, 1989 and February 26, 1990 issued in Civil Case No. 51203 are hereby annulled; further respondent judge is ordered to dismiss Civil Case No. 51203.[12]

[12] *Id.* at 168.

From this ruling, herein respondents appealed to the Supreme Court. In *Suarez v. Court of Appeals*,[13] we reversed the appellate court, thus:

> Even without touching on the incidents and issues raised by both petitioner [herein respondents] and private respondents [petitioner Valente, Violeta, Virginia and Maria Concepcion] and the developments subsequent to the filing of the complaint, [w]e cannot but notice the glaring error committed by the trial court.
>
> It would be useless to discuss the procedural issue on the validity of the execution and the manner of publicly selling en masse the subject properties for auction. To start with, only one-half of the 5 parcels of land [subject properties] should have been the subject of the auction sale.
>
> The law in point is Article 777 of the Civil Code, the law applicable at the time of the institution of the case:
>
> > The rights to the succession are transmitted from the moment of the death of the decedent."
> >
> > Article 888 further provides:
> >
> > "The legitime of the legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.
> >
> > The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided."
> >
> > Article 892, par. 2 likewise provides:
> >
> > "If there are two or more legitimate children or descendants, the surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children or descendants."
>
> Thus, from the foregoing, the legitime of the surviving spouse is equal to the legitime of each child.
>
> The proprietary interest of petitioners [herein respondents] in the levied and auctioned property is different from and adverse to that of their mother [Teofista]. Petitioners [herein respondents] became

[13] G.R. No. 94918, September 2, 1992, 213 SCRA 397.

co-owners of the property not because of their mother [Teofista] but through their own right as children of their deceased father [Marcelo Sr.]. Therefore, petitioners [herein respondents] are not barred in any way from instituting the action to annul the auction sale to protect their own interest.

WHEREFORE, the decision of the Court of Appeals dated July 27, 1990 as well as its Resolution of August 28, 1990 are hereby REVERSED and set aside; and Civil Case No. 51203 is reinstated only to determine that portion which belongs to petitioners and to annul the sale with regard to said portion.

It was at this point when another series of events transpired, culminating in the present petition.

Upon our reinstatement of Civil Case No. 51203, each and every pleading filed by herein respondents, as plaintiffs therein, was hotly contested and opposed by therein defendants, including petitioner Valente. Moreover, even at that stage, when the case had been remanded with a directive to "determine that portion which belongs to [herein respondents] and to annul the sale with regard to said portion," Civil Case No. 51203 had to be re-raffled and transferred, for varied reasons, to the different court branches in Pasig City. In between all these, petitioner Valente, along with the other defendants, repeatedly filed a Motion to Dismiss Civil Case No. 51203 for the purported failure of herein respondents to prosecute the case. Most of these Motions to Dismiss were denied.

With each transfer of Civil Case No. 51203, the judge to which the case was raffled had to study the records anew. Expectedly, part of the records went missing and were lost. On April 12, 1993, the Clerk of Court of RTC, Branch 71, to which Civil Case No. 51203 was remanded, filed a report on the records of the case, to wit:

1. The first volume of the record in the above-entitled case was recorded as received on June 20, 1990, by Sheriff Alejandro O. Loquinario;

2. That the staff of Branch 71 at this time was sharing a small room with Branch 161 at the First Floor of the Justice Hall, and as

the Branch was newly formed, it had no equipment or furniture of its own, and was still undermanned;

3. That sometime in August 1990, Branch 71 moved to the staffroom of Branch 159 at the Second Floor of the Justice Hall;

4. That on October 25, 1990, this Court received a Notice of Judgment dated October 22, 1990 from the Court of Appeals that ruled the dismissal of the above-entitled case, and as per standing instructions of Judge Graduacion A. Reyes-Claravall, the same was bound as volume 2 of the case;

5. That just before the Christmas vacation in 1991, the branch was forced to hastily move all of its records and equipment to Branch 69, because of the unexpected notice we received that the room we were occupying was to be demolished in order to meet the schedule for the renovation of the building;

6. That unfortunately, the room was demolished before the undersigned could make a last check to see if everything was transferred;

7. That it was only later on that this office discovered that important documents were indeed lost, including transcripts of stenographic notes in a case that was submitted for decision;

8. That sometime in May 1992, the branch moved its Office to its present location;

9. That on March 8, 1993, this Court received a copy of a Decision of the Supreme Court reversing the earlier ruling of the Court of Appeals;

10. That it was at this time that the first volume of this case, which was bundled along with other cases which were decided and/or archived, was reported as missing;

11. That from the time the same was found to be missing, Judge Claravall ordered that a search for the same be made in all of the offices wherein this branch was forced to share a room with, as well as the Court of Appeals, in the event that the same was transmitted to said Court;

12. That all the efforts were in vain, as said record could not be located anywhere;

13. That the undersigned now concludes that the first volume of the above-entitled case was probably lost during the renovation of the Justice Hall Building, and will have to be reconstituted with the use of documents in the possession of the parties, or documents entered as exhibits in other Courts.[14]

In this regard, herein respondents filed a Motion for Reconstitution of Records[15] of the case. Initially, petitioner Valente, and the other defendants — Violeta, Virginia and Maria Concepcion — opposed the motion.[16] However, the trial court eventually granted the motion for reconstitution, and ordered petitioner Valente and the other defendants to submit a copy of their Answer filed thereat and copies of other pleadings pertinent to the case.[17]

Thereafter, three (3) incidents, among numerous others, set off by the parties' pleadings, are worth mentioning, to wit:

1. A Motion for Leave to File and Admit Supplemental Complaint[18] filed by herein respondents. The Supplemental Complaint additionally prayed that the levy and sale at public auction of the subject properties be annulled and set aside, as the bid price was unconscionable and grossly inadequate to the current value of the subject properties. The Supplemental Complaint further sought a re-bidding with respect to Teofista's share in the subject properties. Finally, it prayed that TCT No. 6509 in the name of petitioner Valente, Violeta, Virginia and Maria Concepcion be cancelled and TCT No. 30680 in the name of Marcelo Suarez, married to Teofista Isagon, be reinstated.

2. A Manifestation and Motion (to Execute/Enforce Decision dated September 4, 1992 of the Supreme Court)[19]

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[14] Records, pp. 28-29.

[15] *Id.* at 31-33.

[16] *Id.* at 52-53.

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

[18] *Id.* at 243-248.

[19] *Id.* at 368-377.

filed by herein respondents pointing out that the Supreme Court itself had noted the current increased value of the subject properties and that petitioner Valente, Violeta, Virginia and Maria Concepcion unjustly enriched themselves in appropriating the subject properties worth millions then, for a measly bid price of ₱94,170.00, for a judgment obligation worth only ₱70,000.00.

3. An Urgent Motion [to direct compliance by plaintiffs (herein respondents) with Supreme Court Decision or to consider the matter submitted without evidence on the part of plaintiffs][20] filed by therein defendants, including herein petitioner Valente, pointing out that plaintiffs (herein respondents) have yet to comply with the RTC, Branch 67 Order commanding them to submit (to the RTC) any evidence showing settlement of the estate of the deceased Marcelo Suarez, in order for the court to determine the portion in the estate which belongs to Teofista. The Urgent Motion stated in paragraph 2, thus:

> 2. The defendants [including herein petitioner Valente] did everything possible to expedite the disposition of this case while the plaintiffs [herein respondents] did everything possible to DELAY the disposition of the same obviously because the plaintiffs [herein respondents] are in full possession and enjoyment of the property in dispute. In its decision of September 4, 1992, the SUPREME COURT nullified TWO final and executory DECISIONS of the Court of Appeals in an unprecedented action. In said decision, the Supreme Court ordered the plaintiffs [herein respondents] to establish with evidence their personality as heirs of Marcelo Suarez, and after being able to do so, to adduce evidence that would determine what portion belongs to plaintiffs hence the above matters need be litigated upon before the RTC can "annul the sale with regard to said portion" (belonging to the plaintiffs alleged heirs).

On these incidents, the records reveal the following Orders issued by the different branches of the RTC:

1. Order dated March 17, 1995, issued by Presiding Judge Rodrigo B. Lorenzo of Branch 266, Pasig City, admitting herein respondents' Supplemental Complaint.[21]

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[20] *Id.* at 515-520.

[21] *Id.* at 343.

2. Order dated January 22, 1996, issued by Judge Apolinario B. Santos resolving: (a) herein respondents' Manifestation and Motion (to execute/enforce Decision dated September 4, 1992 of the Supreme Court), and (b) therein defendants' (including herein petitioner Valente's) Request for Answer to Written Interrogatories.[22] The RTC, Branch 67, resolved the incidents, thus:

> From the foregoing uncontroverted facts, this Court is convinced beyond a shadow of doubt that the Decision of the Supreme Court of September 4, 1992, being the final arbiter in any judicial dispute, should be implemented for the following reasons:
>
> xxx xxx xxx
>
> On the request for Answers to Written Interrogatories filed by the defendants, it is obvious that at this stage of the proceedings where the Supreme Court had already pronounced the undisputed facts, which binds this court, the answer sought to be elicited through written interrogatories, therefore, are entirely irrelevant, aside from having been filed way out of time.
>
> WHEREFORE, premises considered, this court, implements the decision of the Supreme Court dated September 4, 1992 which mandates that:
>
> > "xxx and Civil Case No. 51203 is reinstated only to determine that portion which belongs to petitioner and to annul the sale with regard to said portion."
>
> In order to enforce such mandate of the Supreme Court, this court orders that:
>
> > a. The auction sale of the five (5) parcels of land and all prior and subsequent proceedings in relation thereto are declared null and void.
> >
> > b. Transfer Certificate of Title No. 6509 in the name of defendant Valente Raymundo is also declared null and void, and the Register of Deeds of Rizal, Pasig City, is ordered to issue a new one in the name of the deceased Marcelo Suarez or to reinstate Transfer Certificate of Title No. 30680 in the name of Marcelo Suarez.

[22] *Id.* at 406-410.

c. Teofista Suarez is ordered to reimburse the amount of ₱94,170.00, plus legal interest from the date of issuance of this order, and failing which, the portion of the estate of Marcelo Suarez belonging to the surviving spouse, Teofista Suarez, may be levied on execution.

d. [Herein respondents], including Teofista Suarez, are hereby ordered to submit to this court any evidence showing settlement of the estate of the deceased, Marcelo Suarez, in order for this court to determine the portion in the estate which belongs to Teofista Suarez.

Therein defendants, including petitioner Valente, filed a Motion for Reconsideration which the trial court denied on May 29, 1996.

3. Order dated September 10, 1996, issued by Judge Santos denying the appeal interposed by petitioner Valente from the January 22, 1996 and May 29, 1996 Orders, ruling that these are interlocutory orders, and, therefore, not appealable.[23]

4. Order dated April 8, 1999, issued by Pairing Judge Santiago Estrella which declared, thus:

Considering that counsel for the plaintiffs does not have the birth certificates of the heirs of the plaintiff to prove their affiliation with the deceased which is one of the matters written in the decision of the higher court which must be complied with, and in order for counsel for the plaintiffs [herein respondents] to have the opportunity to complete all documentary evidence and in view of abbreviating the proceedings and as prayed for, today's scheduled pre-trial is re-set for the last time to May 19, 1999 at 8:30 a.m.

In this connection, counsel for plaintiffs [herein respondents] is advised to secure all the documentary evidence she needs material to this case which will expedite the disposition of this case.[24]

This last Order and therein defendants' Urgent Motion spawned another contentious issue between the parties. In this connection, Judge Estrella issued an Order[25] requiring the parties to file

[23] *Id.* at 477.

[24] *Id.* at 524.

[25] Dated September 9, 1999, *id.* at 552.

their respective position papers due to the "divergent views on the nature of the hearing that should be conducted in compliance with" our decision in *Suarez*. Both parties duly filed their position papers, with herein respondents attaching thereto a copy of the Extrajudicial Settlement of Estate executed by the heirs of Marcelo Suarez in 1957.

In resolving this latest crossfire between the parties, the RTC, Branch 67, issued an Order dated January 11, 2000, which reads, in part:

> This Court is of the view that the Honorable Supreme Court is not a trier of facts, precisely it directed that the records of this case be remanded to the Regional Trial Court for further proceedings.
>
> xxx xxx xxx
>
> It is a matter of record that there was no trial on the merits completed in the Regional Trial Court. xxx The Supreme Court reversed the judgment of the Court of Appeals and ordered the reinstatement of Civil Case No. 51203. Naturally, there was no trial on the merits before this Court that allowed the parties to adduce evidence to establish their respective claims in the plaintiffs' [herein respondents] complaint and in the defendants' [including petitioner Valente] counter-claim, respectively. It is in this context that the Honorable Supreme Court reinstated the "action [of herein respondents] to annul the auction sale to protect their [herein respondents] own interest.
>
> While this Court is of the view that trial on the merits is necessary for the purpose of giving the plaintiffs [herein respondents] a chance to adduce evidence to sustain their complaint and the defendants [including petitioner Valente] to prove their defense, consistent with the directive of the Honorable Supreme Court (in its Decision promulgated on September 4, 1992), the Court is, however, confronted with the very recent decision of the Honorable Supreme Court in "*Heirs of Guido Yaptinchay, et al. vs. Del Rosario, et al.*, G.R. No. 124320, March 2, 1999" where it held that –
>
> > The declaration of heirship must be made in an administration proceeding, and not in an independent civil action. This doctrine was reiterated in *Solve vs. Court of Appeals* (182 SCRA 119, 128). The trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of

> the 1997 Revised Rules of Court, a civil action is defined as "one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong" while a special proceeding is "a remedy by which a party seeks to establish a status, a right, or a particular fact." It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right.
>
> In as much as the leading case on the matter is that of "*Heirs of Yaptinchay v. Del Rosario*, G.R. No. 124320, March 2, 1999" it is left with no choice but to obey said latter doctrine.
>
> WHEREFORE, the foregoing premises considered, this Court holds that in the light of the doctrine laid down in the case of "*Heirs of Yaptinchay vs. Del Rosario,* G.R. No. 124320, March 2, 1999" this case is dismissed without prejudice to the plaintiffs' [herein respondents'] filing a special proceeding consistent with said latest ruling.[26]

Herein respondents moved for reconsideration thereof which, however, was denied by the RTC, Branch 67 on March 14, 2000.[27]

Consequently, herein respondents filed a petition for *certiorari* before the CA alleging grave abuse of discretion in the trial court's order dismissing Civil Case No. 51203 without prejudice. All the defendants in the trial court were impleaded as private respondents in the petition. Yet, curiously, only petitioner Valente filed a Comment thereto. The appellate court granted the petition, recalled and set aside RTC, Branch 67's Orders dated January 11, 2000 and March 14, 2000, and reinstated Judge Santos' Orders dated May 29, 1996 and September 6, 1996. It disposed of the petition, thus:

> We agree with [herein respondents].
>
> On September 4, 1992, the Supreme Court (G.R. No. 94918) reversed the decision of the Court of Appeals and mandates that Civil Case No. 51203 be reinstated in order to determine the portion in the estate

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[26] Records, pp. 603-608.

[27] *Id.* at 677.

which belongs to Teofista Suarez. The sale of the parcels of land was declared null and void. Necessarily, the title (TCT No. 5809) in the name of respondents was also declared null and void. xxx

xxx xxx xxx

Hon. Apolinario Santos of Br. 67, Regional Trial Court, Pasig City, on January 22, 1996 and on motion of [herein respondents], issued an order to execute/enforce the decision of the Supreme Court xxx.

xxx xxx xxx

[Petitioner Valente, Violeta, Virginia and Maria Concepcion] filed a notice of appeal on the order of Judge Santos. The appeal, on motion of [herein respondents] was denied on September 10, 1996. *Obviously, the decision of the Supreme Court had become final and executory. Likewise, both orders of Judge Santos dated May 29, 1996 denying the motion for reconsideration and the denial of the notice of appeal dated September 6, 1996 had also become final and executory*.

The denial of petitioner Valente's Motion for Reconsideration prompted the filing of this present petition for *certiorari*.

Petitioner Valente posits that the appellate court committed grave abuse of discretion in recalling and setting aside the Orders of Judge Estrella and reinstating those of Judge Santos because:

1. The CA ruled that the Orders dated May 29, 1996 and September 6, 1996 issued by Judge Santos were final and executory, and yet the latter did not allow an appeal to be taken therefrom ratiocinating that the questioned orders were interlocutory, and therefore, not appealable; and

2. The CA ignored and violated the Supreme Court's ruling in *Heirs of Yaptinchay v. Del Rosario*[28] which held that a declaration of heirship must be made in a special proceeding and not in a civil action.

We find the petition bereft of merit.

At the outset, we note that petitioner Valente incorrectly filed a petition for *certiorari* to appeal the CA decision. Petitioner

[28] G.R. No. 124320, March 2, 1999, 304 SCRA 18.

should have filed a petition for review on *certiorari* under Rule 45 of the Rules of Court. Simply imputing in a petition that the decision sought to be reviewed is tainted with grave abuse of discretion does not magically transform a petition into a special civil action for *certiorari*. The CA decision disposed of the merits of a special civil action, an original petition, filed thereat by herein respondents. That disposition is a final and executory order, appealable to, and may be questioned before, this Court by persons aggrieved thereby, such as petitioner Valente, *via* Rule 45.

On this score alone, the petition should have been dismissed outright. However, we have disregarded this procedural flaw and now resolve this case based on the merits or lack thereof.

Petitioner asseverates that the assailed CA ruling "is unfair and it amounts to a trickery to prevent an appeal against a final order by claiming that the appealed order is merely interlocutory and later maintain that the same order has become final after declaring it to be interlocutory."

We reject petitioner's paltry contention. Petitioner apparently does not comprehend the distinction between an interlocutory order which is final and executory, and a final order which disposes of the controversy or case; much less, understand the available remedies therefrom.

We have defined an interlocutory order as referring to something between the commencement and the end of the suit which decides some point or matter but it is not the final decision on the whole controversy.[29] It does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits.[30] Upon the other hand, a final order is one which leaves to the court nothing more to do to resolve the case.[31]

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[29] *Bitong v. Court of Appeals*, G.R. No. 123553, July 13, 1998, 292 SCRA 503.

[30] *Philgreen Trading Construction Corporation v. Court of Appeals*, G.R. No. 120408, April 18, 1997, 271 SCRA 719.

[31] *Metropolitan Bank & Trust Company v. Court of Appeals*, G.R. No. 110147, April 17, 2001, 356 SCRA 563.

On more than one occasion, we laid down the test to ascertain whether an order is interlocutory or final *i.e.*, "Does it leave something to be done in the trial court with respect to the merits of the case?" If it does, it is interlocutory; if it does not, it is final. The key test to what is interlocutory is when there is something more to be done on the merits of the case.[32] The Orders dated May 29, 1996 and September 6, 1996 issued by Judge Santos are interlocutory, and therefore, not appealable, as they leave something more to be done on the merits of the case. In fact, in paragraph (d) of Judge Santos' Order dated May 29, 1996, herein respondents were directed to submit evidence showing settlement of the estate of the deceased Marcelo Sr.

Contrary to petitioner Valente's stance, there is no trickery or chicanery in the CA's distinction between an interlocutory and a final order. Indeed, as ruled by the CA, the RTC Order denying petitioner Valente's Notice of Appeal attained finality when he failed to file a petition for *certiorari* under Rule 65 of the Rules of Court.

We cannot overemphasize the rule that the correct identification of the nature of an assailed order determines the remedies available to an aggrieved party. The old Rules of Court in Section 2, Rule 41 reads, thus:

> SEC. 2. *Judgments or orders subject to appeal.*—Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.
>
> xxx xxx xxx

With the advent of the 1997 Rules of Civil Procedure, Section 1, Rule 41 now provides for the appropriate remedy to be taken from an interlocutory order, thus:

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[32] *Gavina Maglucot-Aw, et al., v. Leopoldo Maglucot, et al.*, G.R. No. 132518, March 28, 2000, 329 SCRA 78.

SECTION 1. *Subject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

xxx xxx xxx

(c) An interlocutory order;

xxx xxx xxx

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Clearly, the denial of therein defendants' (including petitioner Valente's) appeal from the Orders dated May 29, 1996 and September 6, 1996 was in order. Thus, the CA decision affirming the RTC's denial was correct.

Further, on this crucial distinction as applied to this case, petitioner Valente filed a petition for *certiorari* from the CA decision in CA-G.R. SP No. 58090, which is *not* an interlocutory order. It is a final order which completely disposed of the merits of the case with nothing more left to be done therein. The correct and available remedy available to petitioner Valente was, as previously discussed, a petition for review on *certiorari* under Rule 45 of the Rules of Court.

In fine, petitioner Valente erroneously sought relief through reversed remedies. He tried to appeal the interlocutory orders of the RTC which are unappealable. Thus, the RTC properly denied his Notice of Appeal, and the CA correctly upheld the RTC. He should have filed a petition for *certiorari*; under Rule 65. On the other hand, from the final order of the CA, he comes before this Court on a petition for *certiorari* under Rule 65, when the proper remedy is an appeal by *certiorari* under Rule 45.

In the recent case of *Jan-Dec Construction Corporation v. Court of Appeals*[33] we ruled in this wise:

[33] G.R. No. 146818, February 6, 2006, 481 SCRA 556.

As a rule, the remedy from a judgment or final order of the CA is appeal via petition for review under Rule 45 of the Rules.

Under Rule 45, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to the Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. It seeks to correct errors of judgment committed by the court, tribunal, or officer. In contrast, a special civil action for *certiorari* under Rule 65 is an independent action based on the specific grounds therein provided and proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. It is an extraordinary process for the correction of errors of jurisdiction and cannot be availed of as a substitute for the lost remedy of an ordinary appeal.

Independently of this procedural infirmity, even on the merits of the case, the petition does not fare otherwise. It must be dismissed for lack of merit.

Petitioner Valente insists that, following our ruling in *Heirs of Yaptinchay v. Del Rosario*,[34] herein respondents must first be declared heirs of Marcelo Sr. before they can file an action to annul the judicial sale of what is, undisputedly, conjugal property of Teofista and Marcelo Sr.

We disagree. Our ruling in *Heirs of Yaptinchay* is not applicable.

Herein respondents' status as legitimate children of Marcelo Sr. and Teofista — and thus, Marcelo Sr.'s heirs — has been firmly established, and confirmed by this Court in *Suarez v. Court of Appeals*.[35] True, this Court is not a trier of facts,[36] but as the final arbiter of disputes,[37] we found and so ruled that herein respondents are children, and heirs of their deceased

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[34] *Supra* note 28.

[35] *Supra* note 13.

[36] *Nicolas v. Desierto*, G.R. No. 154668, December 16, 2004, 447 SCRA 154.

[37] *Angara v. Electoral Commission,* 63 Phil. 139 (1936).

father, Marcelo Sr. This having been settled, it should no longer have been a litigated issue when we ordered a remand to the lower court. In short, petitioner Valente's, Violeta's, Virginia's, and Maria Concepcion's representation in the RTC that our ruling in *Suarez* required herein respondents to present evidence of their affiliation with the deceased, Marcelo Sr., is wrong.

As was set forth in the dispositive portion of *Suarez*, "Civil Case No. 51203 is reinstated only to determine that portion which belongs to [herein respondents] and to annul the sale with regard to said portion." There is clearly no intimation in our decision for the RTC to have to determine an already settled issue *i.e.*, herein respondents' status as heirs of Marcelo Sr.

Moreover, petitioner Valente cannot assail, directly or indirectly, the status of herein respondents as legitimate children of Marcelo Sr. and Teofista, and likewise demand that herein respondents first prove their filiation to Marcelo Sr. The following records bear out Marcelo, Sr.'s and Teofista's paternity of herein respondents, and the latter's status as legitimate children:

1. The CA decision in CA-G.R. SP Nos. 10646 to 10649 where Teofista, along with herein respondents, questioned the RTC, Branch 151's Orders dated October 10, 1984 and October 14, 1986. Although the CA ruled against Teofista and herein respondents, it explicitly recognized the latter's status as legitimate children of Teofista and Marcelo Sr.; and[38]

2. The CA decision in CA-G.R. SP No. 20320 which incorrectly ruled that herein respondents were, as children of Teofista, merely successors-in-interest of the latter to the property and by virtue thereof, bound by the judgment in Civil Case Nos. 21376 to 21379 consistent with the doctrine of *res judicata*.[39] We subsequently reversed this ruling on the wrong application of *res judicata* in the conclusive case of *Suarez*. We retained and affirmed, however, the CA's factual finding of herein respondents' status as heirs of Marcelo Sr. We

[38] RTC Records, pp. 162-164.

[39] *Id.* at 165-168.

categorically held therein that "the proprietary interest of [herein respondents] in the levied and auctioned [properties] is different from and adverse to that of [Teofista]. [Herein respondents] became co-owners of the property not because of [Teofista] but through their own right as children of their deceased father [, Marcelo Sr.]." Clearly, herein respondents' long possessed status of legitimate children of Marcelo Sr. and Teofista cannot be indirectly or directly attacked by petitioner Valente in an action to annul a judicial sale.

Articles 262,[40] 263,[41] 265 and 266[42] of the Civil Code, the applicable law at the time of Marcelo's death, support the foregoing conclusion, to wit:

Art. 262. The heirs of the husband may impugn the legitimacy of the child only in the following cases:

(1) If the husband should die before the expiration of the period fixed for bringing his action;

(2) If the husband should die after the filing of the complaint, without having desisted from the same;

(3) If the child was born after the death of the husband.

Art. 263. The action to impugn the legitimacy of the child shall be brought within one year from the recording of birth in the Civil Register, if the husband should be in the same place, or in a proper case, any of his heirs.

If he or his heirs are absent, the period shall be eighteen months if they should reside in the Philippines; and two years if abroad. If the birth of the child has been concealed, the term shall be counted from the discovery of the fraud.

Art. 265. The filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgment.

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[40] Now Article 171 of the Family Code.

[41] Now Article 170 of the Family Code.

[42] Articles 265 and 266 of the Civil Code are now Article 172 of the Family Code.

Art. 266. In the absence of the titles indicated in the preceding article, the filiation shall be proved by the continuous possession of status of a legitimate child.

In *Heirs of Yaptinchay*, the complaint for annulment and/or declaration of nullity of certain TCT's was dismissed for failure of the petitioners to demonstrate "any proof or even a semblance of it" that they had been declared the legal heirs of the deceased couple, the spouses Yaptinchay. In stark contrast, the records of this case reveal a document, an Extrajudicial Settlement of Marcelo Sr.'s estate, which explicitly recognizes herein respondents as Marcelo Sr.'s legitimate children and heirs. The same document settles and partitions the estate of Marcelo Sr. specifying Teofista's paraphernal properties, and separates the properties she owns in common with her children, herein respondents. Plainly, there is no need to re-declare herein respondents as heirs of Marcelo Sr., and prolong this case interminably.

Petitioner Valente, along with Violeta, Virginia and Maria Concepcion, became owners of the subject properties only by virtue of an execution sale to recover Teofista's judgment obligation. This judgment obligation is solely Teofista's, and payment therefor cannot be made through an execution sale of properties not absolutely owned by her. These properties were evidently conjugal properties and were, in fact, even titled in the name of Marcelo, Sr. married to Teofista. Thus, upon Marcelo Sr.'s death, by virtue of compulsory succession, Marcelo Sr.'s share in the conjugal partnership was transmitted by operation of law to his compulsory heirs.

Compulsory succession is a distinct kind of succession, albeit not categorized as such in Article 778[43] of the Civil Code. It reserves a portion of the net estate of the decedent in favor

[43] Art. 778. Succession may be:

(1) Testamentary;

(2) Legal or intestate; or

(3) Mixed.

of certain heirs, or group of heirs, or combination of heirs, prevailing over all kinds of succession.[44] The portion that is so reserved is the legitime. Article 886 of the Civil Code defines legitime as "that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs." Herein respondents are primary compulsory heirs,[45] excluding secondary compulsory heirs,[46] and preferred over concurring compulsory heirs in the distribution of the decedent's estate.[47]

Even without delving into the Extrajudicial Settlement of Marcelo Sr.'s estate in 1957, it must be stressed that herein respondents' rights to the succession vested from the moment of their father's death.[48] Herein respondents' ownership of the subject properties is no longer inchoate; it became absolute upon Marcelo's death, although their respective shares therein remained *pro indiviso*. Ineluctably, at the time the subject properties were sold on execution sale to answer for Teofista's judgment obligation, the inclusion of herein respondents' share therein was null and void.

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[44] Balane, *Jottings and Jurisprudence in Civil Law* (2002), p. 278.

[45] See Art. 887, paragraph 1 of the Civil Code: The following are compulsory heirs:

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants.

[46] *Id.*, paragraph 2: (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants.

[47] The legitime of the legitimate children/descendants of the decedent shall be satisfied first before that of the surviving spouse. The legitime of the surviving spouse, in the maximum portion allotted by law, never exceeds the share of a legitimate child when there is more than 1 legitimate child to inherit. In case the compulsory heirs are only 1 legitimate child and 1 surviving spouse, the share of the latter is only ¼ of the estate of the decedent.

[48] See Article 777 of the Civil Code: The rights to the succession are transmitted from the moment of the death of the decedent.

In fine, Teofista's ownership over the subject properties is not absolute. Significantly, petitioner Valente does not even attempt to dispute the conjugal nature of the subject properties. Since Teofista owns only a portion of the subject properties, only that portion could have been, and was actually, levied upon and sold on auction by the provincial sheriff of Rizal. Thus, a separate declaration of heirship by herein respondents is not necessary to annul the judicial sale of their share in the subject properties.

We note the recent case of *Portugal v. Portugal-Beltran*,[49] where we scrutinized our rulings in *Heirs of Yaptinchay* and the cited cases of *Litam v. Rivera*[50] and *Solivio v. Court of Appeals*,[51] and *Guilas v. CFI Judge of Pampanga*[52] cited in *Solivio*. We ruled thus:

> The common doctrine in *Litam, Solivio* and *Guilas* in which the *adverse parties are putative heirs to the estate of a decedent or parties to the special proceedings for its settlement* is that if the special proceedings are pending, or if there are no special proceedings filed but there is, under the circumstances of the case, a need to file one, then the determination of, among other issues, heirship should be raised and settled in said special proceedings. Where special proceedings had been instituted but had been finally closed and terminated, however, or if a putative heirs has lost the right to have himself declared in the special proceedings as co-heir and he can no longer ask for its re-opening, then an ordinary civil action can be filed for his declaration as heir in order to bring about the annulment of the partition or distribution or adjudication of a property or properties belonging to the estate of the deceased.
>
> In the case at bar, respondent, believing rightly or wrongly that she was the sole heir to Portugal's estate, executed on February 15, 1988 the questioned Affidavit of Adjudication under the second sentence of Rule 74, Section of the Revised Rules of Court. Said rule is an exception to the general rule that when a person dies leaving

[49] G.R. No. 155555, August 16, 2005, 467 SCRA 184.

[50] 100 Phil. 364 (1956).

[51] G.R. No. 83484, February 12, 1990, 182 SCRA 119.

[52] G.R. L-26695, January 31, 1972, 43 SCRA 111.

property, it should be judicially administered and the competent court should appoint a qualified administrator, in the order established in Sec. 6, Rule 78 in case the deceased left no will, or in case he did, he failed to name an executor therein.

xxx xxx xxx

It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceedings. And it is superfluous in light of the fact that the parties to the civil case—subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.

In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners xxx. [53]

All told, under the circumstances, in addition to the already settled status of herein respondents as heirs of Marcelo Sr., there is no need to dismiss Civil Case No. 51203 and require herein respondents to institute a separate special proceeding for a declaration of their heirship.

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 58090 is *AFFIRMED*. The Orders dated May 29, 1996 and September 6, 1996 issued by Judge Santos are *REINSTATED*. Costs against the petitioner.

SO ORDERED.

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

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[53] *Supra* note 49, 198-200.

[*] Additional member in lieu of Associate Justice Ruben T. Reyes, per raffle dated November 19, 2007.

THIRD DIVISION

[G.R. No. 149322. November 28, 2008]

JAIME L. YANEZA, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, MANUEL A. DE JESUS and WILHELMINA M. MANZANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR EXTENSION OF TIME; MUST BE FILED PRIOR TO THE EXPIRATION OF THE PERIOD SET BY LAW. — A motion for extension of time to file a petition should be filed prior to the expiration or lapse of the period set by law, otherwise, there is no longer any period to extend and the judgment or order to be appealed from will have become final and executory. Once the judgment becomes final and executory, the appellate court is without jurisdiction to modify or reverse it.

2. ID.; ID.; APPEALS; EFFECT OF FAILURE TO PERFECT AN APPEAL. — We have repeatedly pronounced that perfection of an appeal in the manner and within the period prescribed by law is mandatory and jurisdictional. The failure to perfect an appeal is not a mere technicality as it deprives the appellate court of jurisdiction over the appeal. Hence, anyone seeking an exemption from the application of the reglementary period for filing an appeal has the burden of proving the existence of an exceptionally meritorious instance warranting such deviation.

3. CIVIL LAW; CONTRACTS; BREACH OF CONTRACT, NOT A CASE OF. — Breach of contract implies a failure, without legal excuse, to perform any promise or undertaking that forms part of the contract. Although the contract specifically stated the area covered by the sale, it did not contain a promise by the respondents that they will only occupy such area. Albeit apparently wrong, petitioner's cause of action should not have been based on the contract of sale.

4. ID.; ID.; RESCISSION OF A CONTRACT, NOT PROPER. — [R]escission of a contract will not be permitted for a slight or casual breach but only for a substantial and fundamental breach

as would defeat the very object of the parties in making the agreement. It must be a breach of faith that destroys or violates the reciprocity between the parties. The alleged breach by the respondents was definitely not of such level and magnitude. Most importantly, rescission of a contract presupposes the existence of a valid and subsisting obligation. The breach contemplated in Article 1191 is the obligor's failure to comply with an existing obligation. It would be useless to rescind a contract that is no longer in existence. Here, we find that the contract of sale sought to be canceled by the petitioner does not exist anymore; hence, the filing of the petition for cancellation was an exercise in futility.

5. ID.; ID.; NOVATION; ORIGINAL CONTRACT NOVATED BY A NEW ORAL AGREEMENT; STATUTE OF FRAUDS, NOT APPLICABLE TO CONSUMMATED CONTRACTS. — The records show that the parties' original agreement, embodied in the Deed of Absolute Sale, had already been superseded or novated by a new contract, albeit an oral one, covering an increased area of 280 sq m. In his testimony, petitioner admitted that he received from his brother, Cesar Yaneza, the ₱20,000.00 that respondents paid. This, taken with the respondents' narration of the circumstances surrounding the signing of the deed of sale and the subsequent renegotiation for an increased area, together with the Acknowledgment Receipt showing that an additional ₱40,000.00 was paid to the petitioner, reasonably leads us to believe that the parties had actually entered into a new agreement which covered the entire 280-sq m area where the access road was laid. The new contract of sale between the parties is valid despite it not being evidenced by any writing. The requirement under the Statute of Frauds does not affect the validity of the contract of sale but is needed merely for its enforceability. In any case, it applies only to contracts which are executory, and not to those which have been consummated either totally or partially, as in the new contract of sale herein.

APPEARANCES OF COUNSEL

Carlos Mayorico E. Caliwara for petitioner.
Joseph T. D. Estrella for private respondents.

D E C I S I O N

NACHURA, *J.*:

In this petition for *certiorari* and prohibition under Rule 65, Jaime L. Yaneza, petitioner, assails the Court of Appeals' denial of his Motion for Extension of Time to File Petition for Review on the ground that it was filed after the lapse of the reglementary period for filing the appeal.

Petitioner is the owner of a 603-square-meter parcel of land, denominated as Lot 2730-A and situated along Calle Kay Rumagit, Sitio Haligionan, Brgy. San Juan, Baras, Rizal. He purchased the property from a certain Rudy Llagas on June 19, 1990.

Respondents, Manuel A. de Jesus and Wilhelmina M. Manzano, are the owners of Lot 2732 which is adjacent to Lot 2730-A. The respondents' lot has no access to the nearest road except through a road which they constructed over a portion of Lot 2730-A.

On September 26, 1995, petitioner sent a letter to respondents informing them that he is the owner of Lot 2730-A and that he does not agree with the use of the portion of his lot as an access road because it will affect the configuration of his property. As an option, petitioner offered to sell to the respondents the entire property.[1]

Apparently, respondents did not agree to the proposition because two days later, petitioner wrote another letter to them, offering instead a perpetual easement of right of way (4 meters wide) and stating that he will prepare the necessary document to facilitate the transaction. [2]

Instead of a deed of perpetual easement, it appears that petitioner and respondents executed a Deed of Absolute Sale[3] on October 20, 1995 over a 175-sq m portion of Lot 2730-A,

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[1] *Rollo,* p. 83.

[2] *Id.* at 84.

[3] *Id.* at 126-128.

to be used as an access road 5-meters wide, for a consideration of ₱20,000.00. The Deed of Absolute Sale contained the following terms and conditions:

1] The portion subject of this sale agreement is as per the sketch plan attached herein as Annex "A" and made as an integral part of this instrument;

2] The total purchase for the aforesaid portion of lot shall be in the sum of TWENTY THOUSAND (₱20,000.00) PESOS, Philippine Currency, payable on cash basis upon the signing and execution of this deed, the signature of the VENDOR being his acknowledgment that he already received the said amount satisfactorily;

3] The realty taxes and assessments on the lot subject of this sale agreement, costs of preparation of the document of sale, all other taxes, cost of subdivision survey to segregate the portion of lot, and all the incidental expenses to facilitate issuance of the individual transfer certificate of titles for the resulting lots shall be for the sole account and expense of the VENDEE;

4] The use of the aforesaid portion of lot sold shall be for … the purpose of the … right of way of and for the abovesaid property of the VENDEE, whereby the VENDOR, by virtue whereof, shall have the perpetual right and/or privilege to use the same as right of way for his own purposes.

Almost a year later, or on September 12, 1996, petitioner informed respondents that he is canceling the deed of sale by way of a Deed of Cancellation[4] which he executed on his own.[5]

When respondents refused to honor the cancellation, petitioner filed a Complaint[6] for Cancellation of Contract with the Municipal Circuit Trial Court (MCTC) of Teresa-Baras on April 22, 1997. The complaint alleged that, contrary to what was stated in the Deed of Absolute Sale, respondents constructed an access road 8-m wide (with an area of 280 sq m); that the respondents have not complied with the conditions stated in the Deed of

[4] *Id.* at 92-95.

[5] *Id.* at 91.

[6] *Id.* at 76-79.

Absolute Sale and the Deed of Undertaking attached thereto; and that respondents have been dumping high piles of gravel, sand and soil along the access road in violation of the condition in the deed of sale that the access road will be used only for the purpose of a right of way. The complaint prayed for the court to declare as canceled the grant of right of way to respondents and to order them to pay moral and exemplary damages and attorney's fees.

In their Answer with Counterclaims, respondents averred that they purchased the disputed 280-sq m portion of Lot 2730-A from its previous owner, Rudy Llagas, as early as March 2, 1994. After the sale, they immediately constructed a 7 by 35-m road with a total area of 245 sq m, leaving a 1 by 35-m strip along the western portion as an easement along the irrigation canal. However, to buy peace and avoid any conflict with the petitioner, who was claiming to be the new owner, respondents agreed to pay ₱20,000.00 in consideration of the petitioner's desistance from further pursuing his claim over the 280 sq m area. Petitioner prepared the Deed of Absolute Sale and respondents agreed to sign it without prejudice to the resolution of the civil case (Civil Case No. 777-M), filed by Llagas against the petitioner, on the issue of the ownership of the property.[7]

Respondents narrated that, after they signed the Deed of Absolute Sale but before they could deliver the ₱20,000.00, they discovered that it covered only 175 sq m, not 280 sq m. There was an immediate renegotiation between the parties and, for an additional consideration of ₱40,000.00, petitioner agreed to sell the entire 280 sq m. Relying on the petitioner's assurance that he will prepare a new deed of sale to reflect the new agreement, respondents paid him the additional ₱40,000.00 as evidenced by an Acknowledgment Receipt. Despite several demands, petitioner failed to present the new deed of sale.[8]

According to the respondents, petitioner initially allowed them peaceful possession and use of the area even when he started

[7] *Id.* at 97-99.

[8] *Id.* at 99-100.

constructing his house adjacent to the access road. However, while petitioner was constructing his house, a serious misunderstanding took place between petitioner and respondents' caretaker, Benjamin Manzano, brought about by the latter's refusal to allow petitioner to tap water and electricity from the respondents' property. Petitioner allegedly retaliated and took possession of the eastern half portion of the 280-sq-m area by constructing a fence along the length of the access road, which reduced it to a narrow passage that could not allow trucks to pass through. On account of this dispute, Manzano, upon respondents' authority, filed a complaint before the *Barangay Lupon* to compel the petitioner to remove the fence but the petitioner did not attend the conciliation proceedings. Respondents obtained from the *barangay* a certification to file an action in court, but petitioner preempted them by filing the instant case. Respondents pointed out that the petitioner did not seek the intervention of the *Barangay Lupon* before he filed the instant case; hence, the petitioner's complaint should be dismissed for failure to state a cause of action.[9]

In claiming damages, respondents alleged that the construction of the fence caused them difficulties when they started developing their property because the trucks that carried the necessary materials could not pass through the access road. They purportedly incurred additional costs since they had to hire laborers to manually carry the construction materials from the *barangay* road to the construction site.[10]

Respondents further asserted that what was agreed upon was a sale and not only an easement of right of way. They denied the existence of the Deed of Undertaking which does not even bear their signatures. And respondents argued that the deed of sale may not be canceled unilaterally by the petitioner since they already acquired full ownership over the property by virtue thereof.[11]

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[9] *Id.* at 100-102.

[10] *Id.* at 102-103

[11] *Id.* at 104-107.

Finally, respondents stressed that it is the petitioner who is actually enjoying a right of way along the access road in compliance with the condition stated in the Deed of Absolute Sale. It is the petitioner who violated the terms of the contract when he obstructed the access road with the concrete fence he built thereon. For this violation, petitioner should be denied his right of way over the access road. Moreover, petitioner's property abuts the *barangay* road; hence, there is actually no need for him to be granted a right of way.

During trial, petitioner testified for himself and presented his brother, Cesar Yaneza, as witness. Petitioner narrated that Cesar handed to him the ₱20,000.00 and that he constructed the iron fence during the latter part of 1996 because respondents did not comply with the conditions set out in the Deed of Undertaking. Cesar Yaneza testified that he was the one who delivered the Deed of Absolute Sale to the office of respondent Manuel de Jesus in Manila and that the latter requested that he leave the Deed of Undertaking so that his wife can also sign the same, but he never returned the document despite several demands.

For the respondents, respondent Manuel de Jesus, Rudy Llagas and Benjamin Manzano testified. Rudy Llagas admitted that he indeed sold to the respondents the subject property which is on the western side; what he sold to the petitioner was on the eastern side of his property.[12] Respondent Manuel de Jesus swore that he and petitioner agreed on a price of ₱20,000.00 for the 5-m by 35-m area and an additional ₱40,000.00 to increase the area to 8-m by 35-m, so that the total consideration was ₱60,000.00. He claimed he had to agree to the additional amount because by then he had already constructed the gate to, and trucks could not enter, their property.[13] And finally, Benjamin Manzano attested that when petitioner started constructing his house, petitioner asked him if he could tap water and electricity from respondents' property, but he did

[12] *Id.* at 148.

[13] *Id.* at 149.

not agree. He said that, after a few days from said incident, petitioner constructed the low level iron fence in the middle of the road right of way.[14]

On September 6, 1999, the MCTC promulgated its decision dismissing the complaint and granting the respondents' counterclaims, thus:

In view of the foregoing considerations, this Court hereby resolves to order the following:

1. To dismiss the complaint as well as the plaintiff's claim for damages and attorney's fees;

2. For plaintiff to execute a new deed of absolute sale covering the access road or road right of way of 8 meters wide by 35 meter long, including the meter easement beside the irrigation canal; with a total area of 280 sq. m. from the northwest portion of Lot 2730, now covered by TCT No. 50181 of the Register of Deeds of Rizal, Morong Branch, without prejudice to the outcome of Civil Case No. 777-M filed by Rudy Llagas against plaintiff Jaime Yaneza;

3. To cancel and declare as null and void the plaintiff's right of way over the access road of defendants;

4. For plaintiff to remove at his expense, the steel fence or structure he caused to be constructed at about the middle of defendants' access road or found within the 280 sq.m. area that obstruct, impede or alter the full and peaceful use by defendants of subject realty;

5. To restore defendants to the full, adequate and peaceful possession and use of subject realty;

6. For plaintiff to pay to the defendants the following:

    a. ₱1,000,000.00 as actual damages;
    b. ₱1,300,000.00 as moral damages;
    c. ₱300,000.00 as exemplary damages;
    d. ₱300,000.00 as attorney's fees;
    e. ₱30,000.00 as reimbursement for incidental litigation expenses;

    f. 6% interest on the actual damages from the time they were incurred up to the time of finality of the decision;

[14] *Id*.

g. 6% interest on the award for moral, exemplary, attorney's fees and litigation expenses from the promulgation of the decision until its finality;
h. Costs.

SO ORDERED.[15]

On January 5, 2001, the Regional Trial Court (RTC), Morong, Rizal Branch 78, rendered a Decision[16] on petitioner's appeal affirming the MCTC Decision with the modification that the monetary award (item no. 6 of the dispositive portion) in favor of the respondents was deleted.

Respondents filed a motion for reconsideration with respect to the deletion of the award of damages, but the same was denied for failure to include a Notice of Hearing. Respondents filed a Petition for Relief from Judgment, the status of which was not disclosed by the parties in this petition.

Meanwhile, petitioner's counsel received a copy of the RTC Decision on February 6, 2001. On February 9, 2001, he withdrew his appearance for the petitioner. On February 22, 2001, petitioner, through his new counsel, filed an Urgent Motion for Extension of Time to File Petition for Review praying that they be given a period of 15 days from February 24, 2001, or until March 12, 2001, within which to file the petition.

On February 28, 2001, the CA issued a Resolution[17] denying the Urgent Motion for having been filed one day late and, consequently, dismissed the appeal. On March 27, 2001, petitioner filed a Motion for Reconsideration and a Motion for Leave of Court to Admit Petition for Review, but the CA denied the motions in its Resolution[18] dated July 25, 2001.

Disgruntled with the CA Resolutions, petitioner filed this Petition for *Certiorari* and Prohibition, raising the following issues:

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[15] *Id.* at 153-154.

[16] *Id.* at 70-75.

[17] *Id.* at 36.

[18] *Id.* at 35.

WHETHER THE PETITION SHOULD BE GIVEN DUE COURSE IN THE LIGHT OF THE CIRCUMSTANCES AFFECTING THE TIMELINESS OF THE FILING THEREOF.

WHETHER THE APPEALED DECISION OF THE REGIONAL TRIAL COURT WAS RENDERED AND WRITTEN AS REQUIRED BY THE 1987 PHILIPPINE CONSTITUTION AND THE RULES OF COURT.

WHETHER THE PLAINTIFF HAS NO CAUSE OF ACTION.

WHETHER THE PETITIONER MAY BE COMPELLED TO EXECUTE A DEED OF CONVEYANCE AGAINST HIS WILL AND IN VIOLATION OF HIS CONSTITUTIONAL RIGHT AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW, AND THE CIVIL LAW AGAINST UNJUST ENRICHMENT.[19]

The petition has no merit.

In the interest of substantial justice, petitioner begs this Court's indulgence for the late filing of his motion for extension of time, which he claims is due to an honest mistake.

Certainly, we cannot ascribe grave abuse of discretion upon a court that denies a motion for extension of time filed after the expiration of the reglementary period to file a petition. A motion for extension of time to file a petition should be filed prior to the expiration or lapse of the period set by law, otherwise, there is no longer any period to extend and the judgment or order to be appealed from will have become final and executory.[20] Once the judgment becomes final and executory, the appellate court is without jurisdiction to modify or reverse it.

We have repeatedly pronounced that perfection of an appeal in the manner and within the period prescribed by law is mandatory and jurisdictional.[21] The failure to perfect an appeal is not a mere technicality as it deprives the appellate court of jurisdiction over the appeal.[22] Hence, anyone seeking an

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[19] *Id.* at 349.

[20] *Ditching v. Court of Appeals,* 331 Phil. 665, 677 (1996).

[21] *Petilla v. Court of Appeals,* G. R. No. 150792, March 3, 2004, 424 SCRA 254, 261.

[22] *Zaragosa v. Nobleza,* G. R. No. 144560, May 13, 2004, 428 SCRA 410, 419.

exemption from the application of the reglementary period for filing an appeal has the burden of proving the existence of an exceptionally meritorious instance warranting such deviation.[23] But none obtains in this case.

Even on the merits, we find the petition noticeably infirm. The petitioner's complaint for cancellation of the contract was correctly dismissed by the MCTC.

Petitioner's cause of action for cancellation of the contract is based on a breach of contract as provided in Article 1191[24] of the Civil Code and is properly denominated "rescission," or "resolution" under the Old Civil Code. It is grounded on the respondents' alleged noncompliance with the conditions embodied in the Deed of Absolute Sale and the Deed of Undertaking. In particular, petitioner claims that respondents constructed a road three meters wider than what was agreed upon in the deed of sale and failed to comply with their undertaking to facilitate the transfer of the title over the subject area.

To state the obvious, the construction of the road beyond the stipulated area does not constitute a breach of contract. Breach of contract implies a failure, without legal excuse, to perform any promise or undertaking that forms part of the

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[23] *Eda v. Court of Appeals*, G.R. No. 155251, December 8, 2004, 445 SCRA 500, 528.

[24] Article 1191 of the New Civil Code provides:

> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 of the Mortgage Law.

contract.[25] Although the contract specifically stated the area covered by the sale, it did not contain a promise by the respondents that they will only occupy such area. Albeit apparently wrong, petitioner's cause of action should not have been based on the contract of sale.

Neither could the respondent be faulted for not facilitating the transfer of the title over the subject area. Respondents did not sign the Deed of Undertaking, and thus, could not have assumed the obligations contained therein. Moreover, considering that the respondents specifically denied the existence of the document and petitioner failed to authenticate it, the RTC was correct in declaring that it has no probative weight.

Besides, rescission of a contract will not be permitted for a slight or casual breach but only for a substantial and fundamental breach as would defeat the very object of the parties in making the agreement.[26] It must be a breach of faith that destroys or violates the reciprocity between the parties.[27] The alleged breach by the respondents was definitely not of such level and magnitude.

Most importantly, rescission of a contract presupposes the existence of a valid and subsisting obligation. The breach contemplated in Article 1191 is the obligor's failure to comply with an existing obligation.[28] It would be useless to rescind a contract that is no longer in existence. Here, we find that the contract of sale sought to be canceled by the petitioner does not exist anymore; hence, the filing of the petition for cancellation was an exercise in futility.

The records show that the parties' original agreement, embodied in the Deed of Absolute Sale, had already been

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[25] See Black's *Law Dictionary*, Fifth Edition, p. 171.

[26] *Barredo v. Leaño*, G.R. No. 156627, June 4, 2004, 431 SCRA 106, 115.

[27] *Francisco v. DEAC Construction, Inc.*, G.R. No. 171312, February 4, 2008, 543 SCRA 644, 655.

[28] *Velarde v. Court of Appeals*, 413 Phil. 360, 373 (2001).

superseded or novated by a new contract, albeit an oral one, covering an increased area of 280 sq m. In his testimony, petitioner admitted that he received from his brother, Cesar Yaneza, the ₱20,000.00 that respondents paid. This, taken with the respondents' narration of the circumstances surrounding the signing of the deed of sale and the subsequent renegotiation for an increased area, together with the Acknowledgment Receipt showing that an additional ₱40,000.00 was paid to the petitioner, reasonably leads us to believe that the parties had actually entered into a new agreement which covered the entire 280-sq m area where the access road was laid.

The new contract of sale between the parties is valid despite it not being evidenced by any writing.[29] The requirement under the Statute of Frauds does not affect the validity of the contract of sale but is needed merely for its enforceability. In any case, it applies only to contracts which are executory, and not to those which have been consummated either totally or partially,[30] as in the new contract of sale herein.

The existence of the new contract of sale over the 280-sq m area therefore having been established, it follows that the petitioner may be compelled to execute the corresponding deed of sale reflecting this new agreement. After the existence of the contract has been admitted, the party bound thereby may be compelled to execute the proper document.[31] This is clear from Article 1357, *viz.*:

> Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article [Article 1358], the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

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[29] See Article 1356 of the New Civil Code.

[30] *Swedish Match v. Court of Appeals*, G.R. No. 128120, October 20, 2004, 441 SCRA 1, 22.

[31] *Cenido v. Apacionado*, 376 Phil. 801, 820 (1999).

WHEREFORE, the petition is *DISMISSED***.** The assailed CA Resolutions dated February 28, 2001 and July 25, 2001 are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 149984. November 28, 2008]

SPOUSES ROLANDO M. ZOSA and LUISA Y. ZOSA, *petitioners, vs.* **HON. SANTIAGO ESTRELLA, in his capacity as Presiding Judge, Regional Trial Court of Pasig City, Branch 67, CHINATRUST (PHILS.) COMMERCIAL BANK CORPORATION, NOTARY PUBLIC JAIME P. PORTUGAL, THE REGISTER OF DEEDS FOR PASIG CITY, and CHAILEASE FINANCE CORPORATION,** *respondents.*

[G.R. No. 154991. November 28, 2008]

SPOUSES ROLANDO M. ZOSA and LUISA Y. ZOSA, *petitioners, vs.* **COURT OF APPEALS, HON. SANTIAGO ESTRELLA, in his capacity as Presiding Judge, Regional Trial Court of Pasig City, Branch 67, CHINATRUST (PHILS.) COMMERCIAL BANK CORPORATION, NOTARY PUBLIC JAIME P. PORTUGAL FOR PASIG CITY, and CHAILEASE FINANCE CORPORATION,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; SUCCESSIVE FILING OF A NOTICE OF APPEAL AND A PETITION FOR *CERTIORARI* BOTH TO ASSAIL THE TRIAL COURT'S DISMISSAL ORDER FOR NON-SUIT CONSTITUTES FORUM SHOPPING; RULING IN *YOUNG V. SY*, APPLIED. — The present controversy is on all fours with *Young v. Sy*, in which we ruled that the successive filing of a notice of appeal and a petition for *certiorari* both to assail the trial court's dismissal order for non-suit constitutes forum shopping. Thus, Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. There is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*. Ineluctably, the petitioner, by filing an ordinary appeal and a petition for *certiorari* with the CA, engaged in forum shopping. When the petitioner commenced the appeal, only four months had elapsed prior to her filing with the CA the Petition for *Certiorari* under Rule 65 and which eventually came up to this Court by way of the instant Petition (re: Non-Suit). The elements of *litis pendentia* are present between the two suits. As the CA, through its Thirteenth Division, correctly noted, both suits are founded on exactly the same facts and refer to the same subject matter—the RTC Orders which dismissed Civil Case No. SP-5703 (2000) for failure to prosecute. In both cases, the petitioner is seeking the reversal of the RTC orders. The parties, the rights asserted, the issues professed, and the reliefs prayed for, are all the same. It is evident that the judgment of one forum may amount to *res judicata* in the other. x x x The remedies of appeal and *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. This is a firm judicial policy. The petitioner cannot hedge her case by wagering two or more appeals, and, in the event that the ordinary appeal lags significantly behind the others, she cannot *post facto* validate this circumstance as a demonstration that the ordinary appeal

had not been speedy or adequate enough, in order to justify the recourse to Rule 65. This practice, if adopted, would sanction the filing of multiple suits in multiple *fora*, where each one, as the petitioner couches it, becomes a "precautionary measure" for the rest, thereby increasing the chances of a favorable decision. This is the very evil that the proscription on forum shopping seeks to put right. In *Guaranteed Hotels, Inc. v. Baltao*, the Court stated that the grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, the Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of the case. Thus, the CA correctly dismissed the petition for *certiorari* and the petition for review (G.R. No. 157745) filed with this Court must be denied for lack of merit. We also made the same ruling in *Candido v. Camacho*, when the respondent therein assailed identical court orders through both an appeal and a petition for an extraordinary writ. Here, petitioners questioned the June 26, 2000 Order, the August 21, 2000 Clarificatory Order, and the November 23, 2000 Omnibus Order of the RTC via ordinary appeal (CA-G.R. CV No. 69892) and through a petition for *certiorari* (CA-G.R. SP No. 62915) in different divisions of the same court. The actions were filed with a month's interval from each one. Certainly, petitioners were seeking to obtain the same relief in two different divisions with the end in view of endorsing whichever proceeding would yield favorable consequences. Thus, following settled jurisprudence, both the appeal and the *certiorari* petitions should be dismissed.

APPEARANCES OF COUNSEL

De Castro and Cagampang Law Offices for petitioners.
Angelito W. Chua Law Office for Chinatrust (Phils.) Commercial Bank Corp.

D E C I S I O N

NACHURA, *J.*:

The controversy between the parties started in August 1999 when respondent Chinatrust (Phils.) Commercial Bank Corporation (Chinatrust) demanded from the petitioners the payment of their outstanding loan totaling ₱89,426,732.29,[1] and, on account of the latter's failure to pay, extra-judicially foreclosed the mortgaged real property and its improvements under Transfer Certificate of Title No. 18718.[2] To keep the respondent notary public from carrying out the public auction sale of the subject property, petitioners instituted Civil Case No. 67620 for injunction, specific performance, and damages, with prayer for the issuance of an injunctive relief, before the Regional Trial Court (RTC) of Pasig City, Branch 67.[3]

In its September 28, 1999 Resolution,[4] the trial court issued a temporary restraining order (TRO) preventing the respondents from selling the property. It later issued a writ of preliminary injunction on October 15, 1999.[5]

Several months after respondent Chinatrust filed its December 9, 1999 Answer,[6] the trial court, on motion of the respondent, dismissed the complaint, on June 26, 2000, for petitioners' failure to prosecute.[7] Thereafter, it issued the August 21, 2000 Clarificatory Order[8] stating that, with the dismissal of the case,

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[1] *Rollo* (G.R. No. 154991), p. 77.

[2] *Id.* at 78.

[3] *Id.* at 49.

[4] *Id.* at 81-83.

[5] *Id.* at 85-86.

[6] *Id.* at 87-92.

[7] *Rollo* (G.R. No. 149984), p. 186.

[8] *Id.* at 187.

the writ of preliminary injunction earlier issued had been automatically dissolved. The trial court, in its November 23, 2000 Omnibus Order,[9] further denied petitioners' motion for reconsideration.

Aggrieved, petitioners, on December 4, 2000, filed a Notice of Appeal[10] questioning the June 26, 2000 Order,[11] the August 21, 2000 Clarificatory Order,[12] and the November 23, 2000 Omnibus Order[13] of the RTC. Their appeal was consequently docketed as **CA-G.R. CV No. 69892** with the Court of Appeals (CA).

On January 28, 2001, petitioners also filed with the CA, a petition for *certiorari*, prohibition and *mandamus* assailing the same Orders[14] of the trial court. This was docketed as **CA-G.R. SP No. 62915**.[15]

Later, the appellate court, in the assailed June 22, 2001 Decision,[16] dismissed for lack of merit the petition for extraordinary writ in CA-G.R. SP No. 62915.[17] It also denied

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[9] *Id.* at 188-189.

[10] *Id.* at 169, 221.

[11] *Supra* note 7.

[12] *Supra* note 8.

[13] *Supra* note 9.

[14] *Supra* notes 7 to 9.

[15] *Rollo* (G.R. No. 149984), pp. 166 and 223.

[16] Penned by Associate Justice Martin S. Villarama, with Associate Justices Conrado M. Vasquez, Jr. (now Presiding Justice of the appellate court) and Sergio L. Pestaño, concurring; *id.* at 19-25.

[17] The dispositive portion of the June 22, 2001 Decision reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED, for lack of merit.

Consequently, the assailed Orders dated June 26, 2000, August 21, 2000 and November 23, 2000 of the respondent judge in *Civil Case No. 67620*, entitled "*Spouses Rolando M. Zosa and Luisa Zosa v. ChinaTrust (Phils.) Commercial Bank Corporation and Notary Public Jaime Portugal for Pasig City*," are all hereby AFFIRMED and REITERATED.

petitioners' motion for reconsideration in the further challenged September 5, 2001 Resolution.[18]

In the meantime, on August 30, 2001, respondent Chailease Finance Corporation, the highest bidder in the auction sale, registered in its name the subject property.[19]

Subsequently, on May 16, 2002, the CA, in CA-G.R. CV No. 69892, rendered the challenged Resolution[20] dismissing petitioners' appeal for forum shopping and for the absence in the appellants' brief of page references to the record as required in Section 13(c) and (d) of Rule 44 of the Rules of Court.[21] The appellate court, on August 23, 2002, in the further assailed Resolution,[22] denied petitioners' motion for reconsideration.

Rejected repeatedly by the appellate court, petitioners instituted two petitions for review on *certiorari* before us: (1) **G.R. No. 149984** questioning the June 22, 2001 Decision[23] and the

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Costs against the petitioners.

SO ORDERED. (*Id.* at 24.)

[18] *Id.* at 30.

[19] *Rollo* (G.R. No. 154991), p. 108.

[20] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Candido V. Rivera and Sergio L. Pestaño, concurring, *id.* at 35.

[21] The pertinent portions of the May 16, 2002 Resolution reads:

Upon consideration of the defendants-appellees' Motion, we agree that the plaintiffs-appellants' appeal is dismissible under Section 1(f), Rule 50 of the 1997 Rules of Civil Procedure, in view of the absence on the appellants' brief of page references to the record as required in Sec. 13, par. (c) and (d), Rule 44.

More importantly, the plaintiffs-appellants are obviously guilty of forum shopping, it appearing that the issues in this appeal have already been raised in the related case numbered CA-G.R. SP No. 62915 which has already been decided by this Court through its former Twelfth Division on June 22, 2001.

WHEREFORE, let this appeal case be, as it is hereby, DISMISSED.

SO ORDERED. (*Id.*)

[22] *Id.* at 47.

[23] *Supra* note 16.

September 5, 2001 Resolution[24] in CA-G.R. SP No. 62915; and (2) **G.R. No. 154991** assailing the May 16, 2002 Resolution[25] and the August 23, 2002 Resolution[26] in CA-G.R. CV No. 69892. On December 2, 2002, we resolved to consolidate the two petitions.[27]

The petitions are denied. The present controversy is on all fours with *Young v. Sy*,[28] in which we ruled that the successive filing of a notice of appeal and a petition for *certiorari* both to assail the trial court's dismissal order for non-suit constitutes forum shopping. Thus,

> Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.
>
> There is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*.
>
> Ineluctably, the petitioner, by filing an ordinary appeal and a petition for *certiorari* with the CA, engaged in forum shopping. When the petitioner commenced the appeal, only four months had elapsed prior to her filing with the CA the Petition for *Certiorari* under Rule 65 and which eventually came up to this Court by way of the instant Petition (re: Non-Suit). The elements of *litis pendentia* are present between the two suits. As the CA, through its Thirteenth Division, correctly noted, both suits are founded on exactly the same facts and refer to the same subject matter—the RTC Orders which dismissed Civil Case No. SP-5703 (2000) for failure to prosecute. In both cases, the petitioner is seeking the reversal of the RTC orders. The parties, the rights asserted, the issues professed, and the reliefs prayed for,

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[24] *Supra* note 18.

[25] *Supra* note 20.

[26] *Supra* note 22.

[27] *Rollo* (G.R. No. 154991), p. 156.

[28] G.R. Nos. 157745 and 157955, September 26, 2006, 503 SCRA 151.

are all the same. It is evident that the judgment of one forum may amount to *res judicata* in the other.

xxx xxx xxx

The remedies of appeal and *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. This is a firm judicial policy. The petitioner cannot hedge her case by wagering two or more appeals, and, in the event that the ordinary appeal lags significantly behind the others, she cannot *post facto* validate this circumstance as a demonstration that the ordinary appeal had not been speedy or adequate enough, in order to justify the recourse to Rule 65. This practice, if adopted, would sanction the filing of multiple suits in multiple *fora*, where each one, as the petitioner couches it, becomes a "precautionary measure" for the rest, thereby increasing the chances of a favorable decision. This is the very evil that the proscription on forum shopping seeks to put right. In *Guaranteed Hotels, Inc. v. Baltao*, the Court stated that the grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, the Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of the case.

Thus, the CA correctly dismissed the petition for *certiorari* and the petition for review (G.R. No. 157745) filed with this Court must be denied for lack of merit.[29]

We also made the same ruling in *Candido v. Camacho*,[30] when the respondent therein assailed identical court orders through both an appeal and a petition for an extraordinary writ.[31]

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[29] *Id.* at 166-169.

[30] 424 Phil. 291 (2002).

[31] See however *Argel v. Court of Appeals*, 374 Phil. 867 (1999), in which the Court did not find forum shopping in the successive filing of an ordinary appeal and a petition for extraordinary writ to question the same order of the trial court. The Court, nonetheless, noted in *Argel* that the two remedies involve dissimilar issues and that the appellate court was apprised of the existence of the other. Thus, in *GSIS v. Bengson Commercial Buildings, Inc.*, 426 Phil. 111, 125 (2002), the Court, citing *Argel*, declared that "there is no forum shopping where, for instance, the special civil action for *certiorari* and the

Here, petitioners questioned the June 26, 2000 Order,[32] the August 21, 2000 Clarificatory Order,[33] and the November 23, 2000 Omnibus Order[34] of the RTC via ordinary appeal (CA-G.R. CV No. 69892) and through a petition for *certiorari* (CA-G.R. SP No. 62915) in different divisions of the same court. The actions were filed with a month's interval from each one. Certainly, petitioners were seeking to obtain the same relief in two different divisions with the end in view of endorsing whichever proceeding would yield favorable consequences.[35] Thus, following settled jurisprudence, both the appeal and the *certiorari* petitions should be dismissed.[36]

WHEREFORE, premises considered, the petitions for review on *certiorari* are *DENIED*.

SO ORDERED.

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

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appeal brought by a party do not involve the same issue." (Underscoring supplied.)

[32] *Supra* note 7.

[33] *Supra* note 8.

[34] *Supra* note 9.

[35] See *Top Rate Construction & Gen. Services, Inc. v. Paxton Development Corporation,* 457 Phil. 740, 764 (2003); *Quinsay v. Court of Appeals*, 393 Phil. 838, 842 (2000).

[36] *Candido v. Camacho*, *supra* note 30, at 301.

THIRD DIVISION

[G.R. No. 163794. November 28, 2008]

REPUBLIC OF THE PHILIPPINES, represented by ROMEO T. ACOSTA (formerly JOSE D. MALVAS), Director of Forest Management Bureau, Department of Environment and Natural Resources, *petitioner, vs.* **HON. NORMELITO J. BALLOCANAG, Presiding Judge, Branch 41, Regional Trial Court, Pinamalayan, Oriental Mindoro and DANILO REYES,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; POSSESSION; BUILDER OR PLANTER IN GOOD FAITH; RIGHTS OF; APPLICATION. — Correlatively, the courts in the reversion case overlooked the issue of whether Reyes, *vis-à-vis* his improvements, is a builder or planter in good faith. In the instant case, the issue assumes full significance, because Articles 448 and 546 of the Civil Code grant the builder or planter in good faith full reimbursement of useful improvements and retention of the premises until reimbursement is made. A builder or planter in good faith is one who builds or plants on land with the belief that he is the owner thereof, unaware of any flaw in his title to the land at the time he builds or plants on it. On this issue, we are disposed to agree with the CA that Reyes was a planter in good faith. Reyes was of the belief that he was the owner of the subject land; in fact, a TCT over the property was issued in his name. He tilled the land, planted fruit trees thereon, and invested money from 1970. He received notice of the Republic's claim only when the reversion case was filed on May 13, 1987. The trees are now full-grown and fruit-bearing. To order Reyes to simply surrender all of these fruit-bearing trees in favor of the State — because the decision in the reversion case declaring that the land is part of inalienable forest land and belongs to the State is already final and immutable — would inequitably result in unjust enrichment of the State at the expense of Reyes, a planter in good faith.

2. ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; DOCTRINE THEREOF, APPLIED. — *Nemo cum alterius detrimento locupletari potest*. This basic doctrine on unjust enrichment simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. Article 22 of the Civil Code states the rule in this wise: ART. 22. Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. The requisites for the application of this doctrine are present in the instant case. There is enrichment on the part of the petitioner, as the State would come into possession of — and may technically appropriate — the more than one thousand fruit-bearing trees planted by the private respondent. There is impoverishment on the part of Reyes, because he stands to lose the improvements he had painstakingly planted and invested in. There is lack of valid cause for the State to acquire these improvements, because, as discussed above, Reyes introduced the improvements in good faith. Thus, the Court of Appeals did not commit any error in ruling that Reyes is entitled to the benefits of Articles 448 and 546 of the Civil Code.

3. ID.; ID.; ID.; RIGHT OF A PLANTER IN GOOD FAITH TO BE REIMBURSED OF THE VALUE OF THE IMPROVEMENT, UPHELD. — However, we are mindful of the fact that the subject land is currently covered by Agro-Forestry Farm Lease Agreement (AFFLA) No. 175 issued by the Ministry of (now Department of Environment and) Natural Resources in favor of Atty. Augusto D. Marte, which will expire on December 21, 2011. By the terms of the AFFLA, the lessee shall, among others, do all in his power to suppress fires, cooperate with the Bureau of Forest Development (BFD) in the protection and conservation of the forest growth in the area and undertake all possible measures to insure the protection of watershed and environmental values within the leased area and areas adjacent thereto. This obligation to prevent any damage to the land subject of the lease is consonant with fundamental principles and state policies set forth in Section 16, Article II and Section 4, Article XII of the Constitution. To allow Reyes to remove the fruit-bearing trees now full-grown on the

subject land, even if he is legally entitled to do so, would be risking substantial damage to the land. It would negate the policy consideration underlying the AFFLA — to protect and preserve the biodiversity and the environment, and to prevent any damage to the land. Further, it would violate the implicit mandate of Article 547 of the Civil Code which provides: ART. 547. If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article. In this light, the options that Reyes may exercise under Articles 448 and 546 of the Civil Code have been restricted. It is no longer feasible to permit him to remove the trees he planted. The only equitable alternative would be to order the Republic to pay Reyes the value of the improvements he introduced on the property. This is only fair because, after all, by the terms of the AFFLA, upon the expiration of the lease or upon its cancellation if there be any violation or breach of its terms, all permanent improvements on the land shall pass to the ownership of the Republic without any obligation on its part to indemnify the lessee. However, the AFFLA is not due to expire until December 21, 2011. In the interim, it is logical to assume that the lessee, Atty. Augusto D. Marte, will derive financial gain from the fruits that the trees planted by Reyes would yield. In fact, Atty. Marte may already have profited therefrom in the past several years. It is, therefore, reasonable to grant the Republic the right of subrogation against the lessee who may have benefited from the improvements. The Republic may, thus, demand reimbursement from Atty. Marte for whatever amount it will have to pay Reyes for these improvements.

4. REMEDIAL LAW; JUDGMENTS; FINAL; EXCEPTION TO THE RULE ON IMMUTABILITY OF FINAL JUDGMENT, APPLIED. — As to the OSG's insistent invocation of *res judicata* and the immutability of final judgments, our ruling in *Temic Semiconductors, Inc. Employees Union (TSIEU)-FFW, et al. v. Federation of Free Workers (FFW), et al.* is instructive: It is axiomatic that a decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law; and whether it be made by the court that rendered it or by the highest court in the land. Any act which violates such principle must immediately be struck down. Indeed, the principle

of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but it extends to all bodies upon which judicial powers had been conferred. The only exceptions to the rule on the immutability of a final judgment are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. In the exercise of our mandate as a court of justice and equity, we rule in favor of Reyes *pro hac vice*. We reiterate that this Court is not precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality. Indubitably, to order the reversion of the subject land without payment of just compensation, in absolute disregard of the rights of Reyes over the improvements which he, in good faith, introduced therein, would not only be unjust and inequitable but cruel as well.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Miguel J. Lagman for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated June 4, 2004, in CA-G.R. SP No. 52261, which affirmed the Joint Order[3] of the Regional Trial Court (RTC) of *Pinamalayan*, Oriental Mindoro, Branch 41, dated December 28, 1998.

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[1] *Rollo*, pp. 26-51.

[2] Penned by Associate Justice Roberto A. Barrios (now deceased), with Associate Justices Mariano C. Del Castillo and Magdangal M. De Leon, concurring; *id.* at 53-66.

[3] Penned by public respondent Judge Normelito J. Ballocanag; *id.* at 115-118.

The facts, as summarized by the CA, are as follows:

Sometime in 1970, [private respondent Danilo] Reyes bought the subject 182,941-square-meter land at Bgy. Banus, Pinamalayan, Oriental Mindoro [subject land] from one Regina Castillo (or Castillo) in whose name it was titled under Original Transfer Certificate of Title No. P-2388 issued pursuant to Free Patent No. V-79606. Right after his purchase, Reyes introduced improvements and planted the land with fruit trees, including about a thousand mango[es], more than a hundred Mandarin citrus, and more than a hundred *guyabanos*. He also had the title transferred in his name and was issued TCT No. 45232.

Reyes so prized this land which he bought in good faith. Unfortunately, it turned out that about 162,500 square meters of this land is part of the timberland of Oriental Mindoro and, therefore, cannot be subject to any disposition or acquisition under any existing law, and is not registrable.

Thus, in the *Complaint* (Annex "A", pp. 15 to 21, *rollo*) for "*Cancellation of Title and/or Reversion*" filed by the Office of the Solicitor General (or OSG) in behalf of the Republic [petitioner], as represented by the Bureau of Forest Development (or BFD), it was explained that the source[,] Original Transfer Certificate of Title No. P-2388 of Castillo, issued pursuant to Free Patent No. V-79606, is spurious, fictitious and irregularly issued on account of:

> a) ONE HUNDRED SIXTY-TWO THOUSAND FIVE HUNDRED (162,500) SQUARE METERS, more or less, of the land covered by OCT No. P-2388 was, at the time it was applied for patent and or titling, a part of the timberland of Oriental Mindoro, per BFD Land Classification Map Nos. 2319 and 1715. Copy of said maps are attached hereto as Annexes "B" and "C";
>
> b) The 162,500 square meters covered by OCT No. P-2388 are entirely inside the 140 hectares Agro-Forestry Farm Lease Agreement No. 175 in favor of Atty. Augusto D. Marte[4] [Atty. Marte], copy of the Map of AFFLA No. 175 and AFFLA No. 175 are attached hereto as Annexes "D" and "E";

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[4] Also referred to as Atty. Augusto Sarte in other pleadings and documents.

c) Neither the private defendant nor his predecessors-in-interest have been in possession of the property because the rightful occupant is Atty. Augusto D. Marte by virtue of the Agro-Forestry Farm Lease Agreement [AFFLA] No. 175, issued to him by the Ministry of Natural Resources in 1986 to expire on December 21, 2011;

d) Since the parcel of land covered by TCT No. 45232, in the name of defendant Danilo Reyes, is a part of the timberland of Oriental Mindoro, per BFD Land Classification Map Nos. 2319 & 1715, the same cannot be the subject of any disposition or acquisition under any existing law (*Li Hong Giap vs. Director of Lands*, 55 Phil. 693; *Veno vs. Gov't. of P.I.* 41 Phil. 161; *Director of Lands vs. Abanzado*, 65 SCRA 5). (pp. 18 to 19, *rollo*)

Aside from the documentary evidence presented to support these allegations, the Republic presented as well and called to the witness stand:

a) Armando Cruz, the supervising cartographer of the DENR, who explained that based on Land Classification Map No. 1715 (Exh. "A") which was later amended to LC Map No. 2319 (Exh. "B"), the plotting shows that the 162,000 square meters covered by OCT No. 2388 are entirely inside the 140 hectares of the Agro-Forestry Farm Lease Agreement No. 175 in favor of Atty. Marte and the alienable and disposable area of Castillo's land is only around two (2) hectares;

b) Alberto Cardiño, an employee of the DENR who conducted the survey on the land under litigation, corroborated the testimony of Cruz that only two hectares is alienable and disposable land; and

c) Vicente Mendoza, a Geodetic Engineer, who expounded on the procedure before the title could be issued to an applicant for a disposable and alienable public land. He clarified that he did not make the survey for Castillo but upon presentation to him of the *carpeta* in open court he noticed that, while it appears to be valid, it however has no certification of the Bureau of Forestry - an essential requirement before title could be issued.

For his side, Reyes presented evidence showing his extensive development of and investment in the land, but however failed to traverse squarely the issue raised by the Republic against the inalienability and indisposability of his acquired land. His lame argument that the absence of the Certification by the Bureau of

Forestry on his *carpeta* does not necessarily mean that there was none issued, failed to convince the court *a quo*.

Hence, Judge Edilberto Ramos, the then Presiding Judge of Branch 41 of the Regional Trial Court of Pinamalayan, Oriental Mindoro, held[5] that:

The defendants in this case did not assail the evidence of the plaintiff but concentrated itself to the expenses incurred in the cultivation and in the planting of trees in that disputed areas. Aside thereto, the plaintiff cited that it is elementary principle of law that said areas not being capable of registration their inclusion in a certification of ownership or confer title on the registrant. (*Republic of the Philippines, et al. vs. Hon. Judge Jaime de los Angeles of the Court of First Instance of Balayan, Batangas, et al*., G.R. No. L-30240) It is also a matter of principle that public forest [are non-alienable public lands. Accession of public forests] on the part of the claimant, however long, cannot convert the same into private property. (*Vano v. Government of PI*, 41 Phils. 161)

In view thereof, it appears that the preponderance of evidence is in favor of the plaintiff and against the defendants and therefore it is hereby declared that Free Patent No. V-79606 issued on July 22, 1957 with Psu No. 155088 and OCT No. P-2388 in the name of Regina Castillo and its derivative TCT No. 45232 in the name of Danilo Reyes is hereby declared null and void; and the defendant Danilo Reyes is hereby ordered to surrender the owner's duplicate copy of TCT No. 45232 and to vacate the premises and directing the defendant Register of Deeds of Calapan, Oriental Mindoro, to cancel the title as null and void ab initio; and declaring the reversion of the land in question to the government subject to the Agro-Forestry Farm Lease Agreement No. 175, to form part of the public domain in the province of Oriental Mindoro.

The two-hectare lot, which appears disposable and alienable, is declared null and void for failure to secure certification from the Bureau of Forest Development.

The counter-claim of the defendant is hereby denied for lack of merit, with cost against the defendant.[6]

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[5] RTC Decision dated April 13, 1992; *rollo,* pp. 80-83.

[6] *Rollo,* pp. 54-57. (Emphasis supplied)

Reyes appealed the aforementioned RTC Decision to the CA. In its Decision[7] dated September 16, 1996, the CA affirmed the RTC Decision. His motion for reconsideration was denied.[8]

Thus, Reyes sought relief from this Court via a petition for review on *certiorari*. But in our Resolution[9] dated June 23, 1997, we resolved to deny his petition for failure to sufficiently show that the CA had committed any reversible error in the questioned judgment. On November 24, 1997, this Court denied with finality Reyes' motion for reconsideration.[10]

On February 4, 1998, Reyes filed a Motion[11] to Remove Improvements Introduced by Defendant Danilo D. Reyes on the Property which is the Subject of Execution in Accordance with Rule 39, Section 10, paragraph (d) of the 1997 Rules of Civil Procedure (motion).[12] There he averred that: he occupied in good faith the subject land for around thirty years; he had already spent millions of pesos in planting fruit-bearing trees thereon; and he employed many workers who regularly took care of the trees and other plants. Reyes prayed that he and/or his agents be given at least one (1) year from the issuance

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[7] Particularly docketed as CA-G.R. CV No. 39105; penned by Associate Justice Cancio C. Garcia (a retired member of this Court), with Associate Justices Eugenio S. Labitoria and Artemio G. Tuquero, concurring; *id.* at 84-98.

[8] CA Resolution dated January 24, 1997; *id.* at 102-104.

[9] *Id.* at 105.

[10] *Id.* at 106.

[11] *Id.* at 107-110.

[12] SEC. 10. *Execution of judgments for specific act.*

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(d) *Removal of improvements on property subject of execution.* - When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements, except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

of the corresponding order to remove his mango, citrus and *guyabano* trees, and that they be allowed to stay in the premises within that period to work on the cutting and removal of the said trees. He also asked the RTC that in the meantime that these trees are not yet removed, all the unharvested fruits be appropriated by him, as provided for by law, to the exclusion of all other persons who may take advantage of the situation and harvest said fruits.

Petitioner opposed the motion, citing the principle of accession under Article 440[13] of the Civil Code. It further argued that the subject land, being timber land, is property of public dominion and, therefore, outside the commerce of man and cannot be leased, donated, sold, or be the object of any contract. This being the case, there are no improvements to speak of, because the land in question never ceased to be a property of the Republic, even if Reyes claimed that he was a purchaser for value and in good faith and was in possession for more than thirty (30) years. Moreover, petitioner averred that, assuming Reyes was initially a planter/sower in good faith, Article 448 of the Civil Code cannot be of absolute application since from the time the reversion case was filed by the petitioner on May 13, 1987, Reyes ceased to be a planter/sower in good faith and had become a planter/sower in bad faith.[14]

Meanwhile, on March 2, 1998, Atty. Marte filed a Complaint for Injunction With an Ancillary Prayer for the Immediate Issuance of a Temporary Restraining Order against Reyes for allegedly encroaching upon and taking possession by stealth, fraud and strategy some 16 hectares of his leased area without his permission or acquiescence and planted trees thereon in bad faith despite the fact that the area is non-disposable and part of the public domain, among others.

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[13] ART. 440. The ownership of property gives the right of accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

[14] OSG Comment dated August 11, 1998; *rollo*, pp. 111-114.

But the respondent RTC dismissed the said complaint in the assailed Joint Order and ruled in favor of Reyes, finding Rule 39, Section 10, paragraph (d) of the 1997 Rules of Civil Procedure, applicable. The RTC ratiocinated:

> Under the circumstance, it is but just and fair and equitable that Danilo Reyes be given the opportunity to enjoy the fruits of his labor on the land which he honestly believes was legally his. He was not aware that his certificate of title which was derived from OCT No. P-2388 issued in 1957 *by the government itself* in the name of Regina Castillo contained legal infirmity, otherwise he would not have exposed (sic) himself from the risk of being ejected from the land and losing all improvements thereon. Any way, if the court will grant the motion for the defendant's (sic) Danilo Reyes to remove his improvements on the disputed property, it will not prejudice Augusto Marte, otherwise, as the court sees it, he will immensely [benefit] from the toils of Danilo Reyes.

and then disposed, as follows:

> WHEREFORE, premises considered, the motion to remove improvements filed by defendant Danilo Reyes dated January 28, 1998 is hereby GRANTED pursuant to the provisions of Section 10, paragraph (d) of Rule 39 of the 1997 Rules of Civil Procedure and he is given a period of one (1) year from the issuance of this ORDER to remove, cut and appropriate the fruit-bearing trees which he had planted in the property in disputes (sic).
>
> The COMMENT filed by the Office of the Solicitor General dated August 11, 1998 is hereby denied for lack of merit.
>
> The [C]omplaint for Injunction filed by Augusto D. Marte on March 2, 1998 against Danilo Reyes is hereby ordered dismissed for lack of merit.

Petitioner, through the OSG, filed its Motion for Reconsideration[15] which was denied by the RTC.[16] Aggrieved, petitioner went to the CA via *Certiorari* under Rule 65 of the

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[15] *Id.* at 119-130.

[16] RTC Order dated February 17, 1999; *id.* at 131.

Rules of Civil Procedure[17] ascribing to the RTC grave abuse of discretion and acting without jurisdiction in granting Reyes' motion to remove improvements.

However, the CA dismissed the petition for *certiorari*, and affirmed the ruling of the RTC, in this wise:

> It is notable that in the course of the suit for *"Cancellation of Title and/or Reversion"* there was not an iota of evidence presented on record that Reyes was in bad faith in acquiring the land nor in planting thereon perennial plants. So it could never be said and held that he was a planter/sower in bad faith. Thus, this Court holds that Reyes sowed and planted in good faith, and that being so the appropriate provisions on right accession are Articles 445 and 448 also of the Civil Code.[18]

Hence, this Petition based on the sole ground that:

> THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT HOLDING THAT THE MOTION TO REMOVE IMPROVEMENTS FILED BY PRIVATE RESPONDENT IS BUT AN INCIDENT OF THE REVERSION CASE OVER WHICH THE TRIAL COURT STILL HAS JURISDICTION DESPITE THE FACT THAT THE DECISION IN THE REVERSION CASE HAD LONG BECOME FINAL AND EXECUTORY.[19]

The OSG posits that Reyes' assailed motion is barred by prior judgment under Section 47, Rule 39 of the 1997 Rules of Civil Procedure because said motion merely sprang from the civil case of reversion tried and decided on the merits by the RTC, and the decision is already final, after it was duly affirmed by the CA and by this Court. The OSG stresses that one of Reyes' assigned errors in the reversion case before the CA was that the RTC "erred in not granting his (Reyes') counterclaims as well as his claims for improvements." The OSG claims that such assigned error was duly resolved by the CA when it held, to wit:

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[17] Petition for *Certiorari* dated April 5, 1999; *id.* at 132-144.

[18] *Rollo*, p. 63.

[19] *Id.* at 36.

The non-award of appellant's "counterclaims" is understandable.

To begin with, no evidence whatsoever was presented by the appellant to sustain his plea for damages. In fact, appellant never testified to prove his allegations as regards his counterclaims.

Then, too, there is no showing that appellant paid the docket fees for the court to acquire jurisdiction over his purported counterclaims (*Metal Engineering Resources Corp. vs. Court of Appeals*, 203 SCRA 273).

Lastly, the allegations made in the Answer in support of the so-called "counterclaims" clearly negate the nature of the claims as compulsory counterclaim like that of reimbursement of the useful expenses (*Cabangis vs. Court of Appeals*, 200 SCRA 414).[20]

Thus, the OSG posits that the issue of the improvements cannot be made the subject of the assailed motion on the pretext that such removal of improvements is merely incidental to the reversion case. The OSG submits that the consideration of the issue is now barred by *res judicata*. Lastly, the OSG argues that: the RTC and CA cannot vary a decision which has already attained finality; for purposes of execution, what is controlling is the dispositive portion of the decision; the RTC, except to order the execution of a decision which had attained finality, had long lost jurisdiction over the case; and the RTC erred and acted without jurisdiction when it granted Reyes' motion to remove the improvements when the dispositive portion of the decision in the reversion case did not provide for the removal of the same.[21]

In his Comment[22] on the OSG petition, Reyes avers that the points raised by the OSG are merely rehashed arguments which were adequately passed upon by the CA. He fully agrees with the ruling of the CA that: he is a planter/sower in good faith, as such, Articles 445 and 448 of the New Civil Code are applicable; his motion is not entirely a new case, but merely an

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[20] *Supra* note 7, at 97-98.

[21] *Supra* note 1.

[22] *Rollo*, pp. 195-200.

incident to the reversion case, a consequence of its grant and a legal solution to an important issue overlooked, if not ignored by the State and by the courts in their decisions in the reversion case; under Section 10, Rule 39 of the 1997 Rules of Civil Procedure, he is allowed to remove the improvements; and the instant Petition failed to abide with the proper manner as to the "proof of service" required under Section 13, Rule 13 of the 1997 Rules of Civil Procedure. Most importantly, Reyes avers that the land on which about 1,000 mango trees, 100 mandarin citrus trees and 100 guyabano trees are planted, was leased by the government to Atty. Marte, who entered into the possession of the subject land when the trees were already bearing fruits. Thus, if said trees are not removed, Atty. Marte would be unduly enriched as the beneficiary of these fruits without even spending a single centavo, at the expense of Reyes. Reyes posits that it is a well-established fact, unrebutted by the petitioner, that he planted these trees and to deny him the right to remove them would constitute a grave injustice and amount to confiscation without just compensation which is violative of the Constitution.

The OSG counters that copies of the instant Petition were properly served as shown by the photocopies of the registry return cards. Moreover, the OSG avers that granting, without admitting, that another person would stand to be benefited by the improvements that Reyes introduced on the land is beside the point and is not the fault of the petitioner because the particular issue of the improvements was already resolved with finality in the reversion case. The OSG claims that a lower court cannot reverse or set aside decisions or orders of a superior court, for to do so will negate the principle of hierarchy of courts and nullify the essence of review - a final judgment, albeit erroneous, is binding on the whole world.[23]

The instant Petition lacks merit.

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[23] OSG's Reply dated March 21, 2005; *id.* at 207-213, citing *Manila Electric Co. v. Philippine Consumers Foundation, Inc.*, 374 SCRA 262 (2002).

In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land.[24] Indeed, the ownership over the subject land reverted to the State by virtue of the decisions of the RTC and CA and our Resolution on the matter. But these decisions simply ordered the reversion of the property to the State, and did not consider the improvements that Reyes had introduced on the property or provide him with any remedy relative thereto. Thus, Reyes was left out in the cold, faced with the prospect of losing not only the land which he thought he owned, but also of forfeiting the improvements that he painstakingly built with his effort, time and money.

We cannot agree with the OSG that the denial by the CA of Reyes' counterclaim in the reversion case had the effect of completely foreclosing whatever rights Reyes may have over these improvements. We note that the counterclaim was denied because Reyes failed to prove that it was in the nature of a compulsory counterclaim, and he did not pay docket fees thereon, even as the CA found that Reyes "never testified to prove his allegations as regards his counterclaims." Yet, the records of the reversion case reveal that Reyes adduced ample evidence of the extent of the improvements he introduced and the expenses he incurred therefor. This is reflected in the findings of the CA in the case at bench, and we concur with the appellate court when it said:

> But this Court notes that while Reyes was half-hearted in his opposition to the reversion, he instead focused on proving the improvements he has introduced on the land, its extent and his expenses. Despite these proofs, the Decision of April 13, 1992 made no mention nor provision for the improvements on the land. With this legal vacuum, Reyes could not exercise the options allowed the sower and planter in good faith. This thus left him no other alternative but to avail of Paragraph (d) of Section 10 of Rule 39 of the 1997 Rules of Civil Procedure in order to collect or get a return of his

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[24] *Evangelista v. Santiago*, G.R. No. 157447, April 29, 2005, 457 SCRA 744, 764, citing *Heirs of Ambrocio Kionisala v. Heirs of Honorio Dacut*, 378 SCRA 206, 214-215 (2002).

investment as allowed to a sower and planter in good faith by the Civil Code.

Correlatively, the courts in the reversion case overlooked the issue of whether Reyes, *vis-à-vis* his improvements, is a builder or planter in good faith. In the instant case, the issue assumes full significance, because Articles 448[25] and 546[26] of the Civil Code grant the builder or planter in good faith full reimbursement of useful improvements and retention of the premises until reimbursement is made. A builder or planter in good faith is one who builds or plants on land with the belief that he is the owner thereof, unaware of any flaw in his title to the land at the time he builds or plants on it. [27]

On this issue, we are disposed to agree with the CA that Reyes was a planter in good faith. Reyes was of the belief that he was the owner of the subject land; in fact, a TCT over the property was issued in his name. He tilled the land, planted

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[25] Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such a case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after the proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[26] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[27] *Florentino v. Supervalue, Inc.*, G.R. No. 172384, September 12, 2007, 533 SCRA 156, 171, citing *Lopez v. Sarabia*, 439 SCRA 35, 49 (2004).

fruit trees thereon, and invested money from 1970. He received notice of the Republic's claim only when the reversion case was filed on May 13, 1987. The trees are now full-grown and fruit-bearing.

To order Reyes to simply surrender all of these fruit-bearing trees in favor of the State — because the decision in the reversion case declaring that the land is part of inalienable forest land and belongs to the State is already final and immutable — would inequitably result in unjust enrichment of the State at the expense of Reyes, a planter in good faith.

Nemo cum alterius detrimento locupletari potest.[28] This basic doctrine on unjust enrichment simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense.[29] There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[30] Article 22 of the Civil Code states the rule in this wise:

> ART. 22. Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

The requisites for the application of this doctrine are present in the instant case. There is enrichment on the part of the petitioner, as the State would come into possession of — and may technically appropriate — the more than one thousand fruit-bearing trees planted by the private respondent. There is impoverishment on the part of Reyes, because he stands to lose the improvements he had painstakingly planted and invested in. There is lack of

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[28] No one shall enrich himself at the expense of another.

[29] *Almocera v. Ong*, G.R. No. 170479, February 18, 2008, 546 SCRA 164, 176-177.

[30] *Allied Banking Corporation v. Lim, Sio Wan*, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 524, citing *Reyes v. Lim*, 408 SCRA 560 (2003).

valid cause for the State to acquire these improvements, because, as discussed above, Reyes introduced the improvements in good faith. Thus, the Court of Appeals did not commit any error in ruling that Reyes is entitled to the benefits of Articles 448 and 546 of the Civil Code.

Thus, even if we accept the submission that Reyes' entitlement to these benefits is not absolute because he can no longer claim good faith after the filing of the reversion case in 1987, still, there is no gainsaying that prior to that — all the way back to 1970 — he had possessed the land and introduced improvements thereon in good faith. At the very least, then, Reyes is entitled to these benefits for the 17 years that he had been a planter in good faith.

However, we are mindful of the fact that the subject land is currently covered by Agro-Forestry Farm Lease Agreement (AFFLA) No. 175 issued by the Ministry of (now Department of Environment and) Natural Resources in favor of Atty. Augusto D. Marte, which will expire on December 21, 2011. By the terms of the AFFLA, the lessee shall, among others, do all in his power to suppress fires, cooperate with the Bureau of Forest Development (BFD) in the protection and conservation of the forest growth in the area and undertake all possible measures to insure the protection of watershed and environmental values within the leased area and areas adjacent thereto. This obligation to prevent any damage to the land subject of the lease is consonant with fundamental principles and state policies set forth in Section 16,[31] Article II and Section 4,[32] Article XII of the Constitution.

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[31] SEC. 16. *The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.*

[32] SEC. 4. *The Congress shall, as soon as possible, determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased or diminished, except by law. The Congress shall provide, for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.*

To allow Reyes to remove the fruit-bearing trees now full-grown on the subject land, even if he is legally entitled to do so, would be risking substantial damage to the land. It would negate the policy consideration underlying the AFFLA — to protect and preserve the biodiversity and the environment, and to prevent any damage to the land. Further, it would violate the implicit mandate of Article 547 of the Civil Code which provides:

> ART. 547. If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article.

In this light, the options that Reyes may exercise under Articles 448 and 546 of the Civil Code have been restricted. It is no longer feasible to permit him to remove the trees he planted. The only equitable alternative would be to order the Republic to pay Reyes the value of the improvements he introduced on the property. This is only fair because, after all, by the terms of the AFFLA, upon the expiration of the lease or upon its cancellation if there be any violation or breach of its terms, all permanent improvements on the land shall pass to the ownership of the Republic without any obligation on its part to indemnify the lessee.

However, the AFFLA is not due to expire until December 21, 2011. In the interim, it is logical to assume that the lessee, Atty. Augusto D. Marte, will derive financial gain from the fruits which the trees planted by Reyes would yield. In fact, Atty. Marte may already have profited therefrom in the past several years. It is, therefore, reasonable to grant the Republic the right of subrogation against the lessee who may have benefited from the improvements. The Republic may, thus, demand reimbursement from Atty. Marte for whatever amount it will have to pay Reyes for these improvements.

As to the OSG's insistent invocation of *res judicata* and the immutability of final judgments, our ruling in *Temic*

Semiconductors, Inc. Employees Union (TSIEU)-FFW, et al. v. Federation of Free Workers (FFW), et al.[33] is instructive:

> It is axiomatic that a decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law; and whether it be made by the court that rendered it or by the highest court in the land. Any act which violates such principle must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but it extends to all bodies upon which judicial powers had been conferred.
>
> The only exceptions to the rule on the immutability of a final judgment are: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

In the exercise of our mandate as a court of justice and equity,[34] we rule in favor of Reyes *pro hac vice*. We reiterate that this Court is not precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality.[35] Indubitably, to order the reversion of the subject land without payment of just compensation, in absolute disregard of the rights of Reyes over the improvements which he, in good faith, introduced therein, would not only be unjust and inequitable but cruel as well.

WHEREFORE, the instant Petition is *DENIED*. The Decision dated June 4, 2004 of the Court of Appeals is *AFFIRMED* with *MODIFICATION* in that:

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[33] G.R. No. 160993, May 20, 2008. (Citations omitted).

[34] *Chieng v. Santos,* G.R. No. 169674, August 31, 2007, 531 SCRA 730, 748, citing *National Development Company v. Madrigal Wan Hai Lines Corporation,* 458, 1055 (3003).

[35] *Heirs of Maura So v. Obliosca,* G.R. No. 147082, January 28, 2008, 542 SCRA 406, 421-422.

1) The Regional Trial Court of Pinamalayan, Oriental Mindoro, Branch 41, is hereby *DIRECTED* to determine the actual improvements introduced on the subject land, their current value and the amount of the expenses actually spent by private respondent Danilo Reyes for the said improvements thereon from 1970 until May 13, 1987 with utmost dispatch.

2) The Republic, through the Bureau of Forest Development of the Department of Environment and Natural Resources, is *DIRECTED* to pay private respondent Danilo Reyes the value of such actual improvements he introduced on the subject land as determined by the Regional Trial Court, with the right of subrogation against Atty. Augusto D. Marte, the lessee in Agro-Forestry Farm Lease Agreement No. 175.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164242. November 28, 2008]

DESTILERIA LIMTUACO & CO., INC. and CONVOY MARKETING CORPORATION, *petitioners, vs.* **ADVERTISING BOARD OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION WILL NOT LIE WHEN THE ACT SOUGHT TO BE PROHIBITED IS THE ACT OF A PRIVATE ORGANIZATION. — [T]he petition filed in this case is one for prohibition, *i.e.*,

to command AdBoard to desist from requiring petitioners to secure a clearance and imposing sanctions on any agency that will air, broadcast or publish petitioners' ads without clearance. Under Section 2, Rule 65 of the Rules of Court, for petitioners to be entitled to such recourse, it must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial, quasi-judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its/his jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A respondent is said to be exercising judicial function by which he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function is a term which applies to the action and discretion of public administrative officers or bodies, which 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. Ministerial function is one which an officer or 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 or impropriety of the act done. The acts sought to be prohibited in this case are not the acts of a tribunal, board, officer, or person exercising judicial, quasi-judicial, or ministerial functions. What is at contest here is the power and authority of a private organization, composed of several members-organizations, which power and authority were vested to it by its own members. Obviously, prohibition will not lie in this case. The definition and purpose of a writ of prohibition excludes the use of the writ against any person or group of persons acting in a purely private capacity, and the writ will not be issued against private individuals or corporations so acting.

2. ID.; CIVIL PROCEDURE; FORUM SHOPPING; DEFINED; TEST TO DETERMINE PRESENCE OF FORUM SHIOPPING. — Forum shopping has been defined as the "institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition" or "the act of a party against whom an

adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or the special civil action of *certiorari*." The test in determining the presence of forum shopping is whether in the two or more cases pending, there is identity of: (a) parties; (b) rights or causes of action; and (c) reliefs sought, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration: all the requisites, in fine, of *auter action pendant.*

3. ID.; ID.; ID.; EXISTS WHEN THERE IS IDENTITY OF CAUSES OF ACTION; CASE AT BAR. — [I]t appears that petitioners already filed Civil Case No. 04-277, wherein they sought the revocation/ cancellation of AdBoard's registration and dissolution and the nullity of AdBoard's Code of Ethics for Advertising and ACRC Manual of Procedures for Screening and Filing of Complaints and Appeals (ACRC Manual), with the RTC. Although dubbed differently, the present petition is obviously an attempt on petitioners' part to have AdBoard's authority challenged in yet another forum. This is a clear act of forum shopping on petitioners' part. Civil Case No. 04-277 and the present petition both involve the same parties. The petitioners in this case are Destileria Limtuaco & Co., Inc. and Convoy Marketing Corp., while the respondent is AdBoard. On the other hand, the plaintiffs in Civil Case No. 04-277 also are petitioners, while the defendant is still AdBoard, only with the addition of Oscar T. Valenzuela, who is the Executive Director of AdBoard. Both cases also raise *practically* the same basic causes of action/issues and seek the same relief. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. The principle applies even if the reliefs sought in the two cases may be different. Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. There is identity in the causes of action in Civil Case No. 04-277 and the present petition for prohibition inasmuch as there is identity in the facts and evidence essential to the resolution of the identical issue raised in these cases. Both cases were instituted after AdBoard recalled the clearance for petitioners' *Ginagabi*

advertisement, and its members refused to air the same. Also, the main issue raised in the present petition and one of the issues raised in Civil Case No. 04-277 refer to AdBoard's authority and the legality of the AdBoard Code of Ethics and ACRC Manual. The determination of this issue in either case would clearly amount to *res judicata* in regard to the other.

APPEARANCES OF COUNSEL

Le Filipino Law Office for petitioners.
Rudolph E. Jularbal and *Geoffrey D. Andawi* for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

The present dispute focuses mainly on the power of the Advertising Board of the Philippines (AdBoard) to require its clearance prior to commercial advertising and to impose sanctions on its members who broadcast advertisements without its clearance.

AdBoard is an umbrella non-stock, non-profit corporation created in 1974[1] composed of several national organizations in the advertising industry, including: Advertising Suppliers Association of the Philippines (ASAP), **Association of Accredited Advertising Agencies Philippines (4As),** Cinema Advertising Association of the Philippines (CAAP), Independent Blocktimers Association of the Philippines (IBA), *Kapisanan ng mga Brodkaster ng Pilipinas* (KBP), Outer Advertising Association of the Philippines (OAAP), the Marketing & Opinion Research Society of the Philippines (MORES), Philippine Association of National Advertisers (PANA) and the Print Media Organization (PRIMO).

[1] The AdBoard was originally named the Philippine Board of Advertising (PBA) when it was first formed in May 1974.

Destileria Limtuaco & Co., Inc. (Destileria) was formerly a member of PANA.

In January 2004, Destileria and Convoy Marketing Corporation (Convoy), through its advertising agency, SLG Advertising (SLG), a member of the 4As, applied with the AdBoard for a clearance of the airing of a radio advertisement entitled, "*Ginagabi (Nakatikim ka na ba ng Kinse Anyos).*"

AdBoard issued a clearance for said advertisement. Not long after the ad started airing, AdBoard was swept with complaints from the public. This prompted AdBoard to ask SLG for a replacement but there was no response. With the continued complaints from the public, AdBoard, this time, asked SLG to withdraw its advertisement, to no avail. Thus, AdBoard decided to recall the clearance previously issued, effective immediately.[2] Said decision to recall was conveyed to SLG and AdBoard's members-organizations.[3]

Petitioners protested the AdBoard's decision, after which, they filed a Complaint which was later on amended, for Dissolution of Corporation, Damages and Application for Preliminary Injunction with prayer for a Temporary Restraining Order with the Regional Trial Court (RTC) of Makati, docketed as Civil Case No. 04-277.[4] The Amended Complaint sought the revocation/cancellation of AdBoard's registration and its dissolution on the grounds, *inter alia*, that it was usurping the functions of the Department of Trade and Industry (DTI) and the Movie and Television Review and Classification Board (MTRCB) by misrepresenting that it has the power to screen, review and approve all radio and television advertisements. Petitioners seek the nullity of AdBoard's "Code of Ethics for Advertising" and "ACRC Manual of Procedures for Screening and Filing of Complaints and Appeals."[5]

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[2] *Rollo,* pp. 128-129.

[3] *Id.*

[4] Entitled "*Destileria Limtuaco & Co., Inc. and Convoy Marketing v. Advertising Board of the Philippines, Inc. and Oscar T. Valenzuela.*"

[5] *Rollo,* pp. 186-187.

On May 20, 2004, AdBoard issued ACRC Circular No. 2004-02, reminding its members-organizations of Article VIII of the ACRC Manual of Procedures, which prohibits the airing of materials not duly screened by it.

Petitioners then filed with the Ombudsman a complaint for misconduct and conduct prejudicial to the best interest of the service against AdBoard's officers.

On July 16, 2004, petitioners filed the present petition for writ of prohibition and preliminary injunction under Rule 65 of the Rules of Court.

Petitioners argue that their right to advertise is a constitutionally protected right, as well as a property right. Petitioners believe that requiring a clearance from AdBoard before advertisements can be aired amounts to a deprivation of property without due process of law. They also argue that AdBoard's regulation is an exercise of police power which must be subject to constitutional proscriptions.

On the other hand, AdBoard seeks the dismissal of the petition for failure to observe the rule on hierarchy of courts and for failure to comply with certain requirements for the filing of the petition, namely: statement of material dates, attachment of certified true copy of ACRC Circular No. 2004-02, and defect in the certification of non-forum shopping.

As to the merits of petitioners' arguments, AdBoard counters that it derives its authority from the voluntary submission of its members to its jurisdiction. According to AdBoard, there is no law that prohibits it from assuming self-regulatory functions or from issuing clearances prior to advertising.

The petition is bereft of merit.

First of all, the petition filed in this case is one for prohibition, *i.e.*, to command AdBoard to desist from requiring petitioners to secure a clearance and imposing sanctions on any agency that will air, broadcast or publish petitioners' ads without such clearance.[6]

[6] *Rollo*, p. 17.

Under Section 2, Rule 65 of the Rules of Court, for petitioners to be entitled to such recourse, it must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial, quasi-judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its/his jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[7]

A respondent is said to be exercising judicial function by which he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function is a term which applies to the action and discretion of public administrative officers or bodies, which 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. Ministerial function is one which an officer or 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 or impropriety of the act done.[8]

The acts sought to be prohibited in this case are not the acts of a tribunal, board, officer, or person exercising judicial, quasi-judicial, or ministerial functions.[9] What is at contest here is the power and authority of a private organization, composed of several members-organizations, which power and authority were vested to it by its own members. Obviously, prohibition will not lie in this case. The definition and purpose of a writ of prohibition excludes the use of the writ against any person or group of

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[7] *Longino v. General*, G.R. No. 147956, February 16, 2005, 451 SCRA 423, 436.

[8] *Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 357.

[9] *Rivera v. Espiritu*, 425 Phil. 169, 180 (2002).

persons acting in a purely private capacity, and the writ will not be issued against private individuals or corporations so acting.[10]

Moreover, it appears that petitioners already filed Civil Case No. 04-277, wherein they sought the revocation/cancellation of AdBoard's registration and dissolution and the nullity of AdBoard's Code of Ethics for Advertising and ACRC Manual of Procedures for Screening and Filing of Complaints and Appeals (ACRC Manual), with the RTC. Although dubbed differently, the present petition is obviously an attempt on petitioners' part to have AdBoard's authority challenged in yet another forum. This is a clear act of forum shopping on petitioners' part.

Forum shopping has been defined as the "institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition" or "the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or the special civil action of *certiorari*." [11] The test in determining the presence of forum shopping is whether in the two or more cases pending, there is identity of: (a) parties; (b) rights or causes of action; and (c) reliefs sought,[12] such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration: all the requisites, in fine, of *auter action pendant*.[13]

Civil Case No. 04-277 and the present petition both involve the same parties. The petitioners in this case are Destileria

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[10] 63C Am. Jur. 2d Prohibition § 39.

[11] *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, G.R. No. 150986, March 2, 2007, 517 SCRA 203, 213.

[12] *Hydro Resources Contractors Corporation v. National Irrigation Administration*, G.R. No. 160215, November 10, 2004, 441 SCRA 614, 634.

[13] *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 306 (1996).

Limtuaco & Co., Inc. and Convoy Marketing Corp., while the respondent is AdBoard. On the other hand, the plaintiffs in Civil Case No. 04-277 also are petitioners, while the defendant is still AdBoard, only with the addition of Oscar T. Valenzuela, who is the Executive Director of AdBoard.

Both cases also raise *practically* the same basic causes of action/issues and seek the same relief.

The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action.[14] The principle applies even if the reliefs sought in the two cases may be different.[15] Otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought.[16]

There is identity in the causes of action in Civil Case No. 04-277 and the present petition for prohibition inasmuch as there is identity in the facts and evidence essential to the resolution of the identical issue raised in these cases. Both cases were instituted after AdBoard recalled the clearance for petitioners' *Ginagabi* advertisement, and its members refused to air the same. Also, the main issue raised in the present petition and one of the issues raised in Civil Case No. 04-277 refer to AdBoard's authority and the legality of the AdBoard Code of Ethics and ACRC Manual. The determination of this issue in either case would clearly amount to *res judicata* in regard to the other. Consequently, the present petition should be dismissed.

WHEREFORE, the petition is *DISMISSED* for lack of merit.

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[14] *Luzon Development Bank v. Conquilla*, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 557.

[15] *Korea Exchange Bank v. Gonzales*, G.R. Nos. 142286-87, April 15, 2005, 456 SCRA 224.

[16] *Luzon Development Bank case*, *supra* note 14.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164340. November 28, 2008]

OTILIA STA. ANA, *petitioner, vs.* **SPOUSES LEON G. CARPO and AURORA CARPO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; LIBERAL APPLICATION OF THE RULES, WHEN ALLOWED. — Rules of procedure are merely tools designed to facilitate the attainment of justice. If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from their operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, even the most mandatory in character, mindful of the duty to reconcile the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. Our recent ruling in *Tanenglian v. Lorenzo* is instructive: We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his

cause. In this case, petitioner was one day late in filing her Motion for Extension. To deny the Petition on this ground alone is too harsh a penalty for a day's delay, taking into consideration the time, resources and effort spent by petitioner and even by the respondents, in order to pursue this case all the way to this Court. Thus, we dispense with the apparent procedural defect and resolve this case on the merits. The ends of justice are better served when cases are determined on the merits — with all parties given full opportunity to ventilate their causes and defenses — rather than on technicality or some procedural imperfections.

2. ID.; JURISDICTION; DOCTRINE OF PRIMARY JURISDICTION; AGRARIAN DISPUTES ARE WITHIN THE PRIMARY AND EXCLUSIVE JURISDICTION OF THE PARAD AND THE DARAB; ISSUES OF RETENTION AND NON-COVERAGE OF A LAND UNDER AGRARIAN REFORM ARE WITHIN THE DOMAIN OF THE DAR SECRETARY. — Without doubt, the PARAD acted without jurisdiction when it held that the subject land was no longer covered by our agrarian laws because of the retention rights of the respondents. The CA likewise acted without jurisdiction when it ruled that the land had become non-agricultural based on a zoning ordinance of 1981— on the strength of a mere vicinity map. These rulings violated the doctrine of primary jurisdiction. The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction has initially been lodged in an administrative body of special competence. For agrarian reform cases, jurisdiction is vested in the Department of Agrarian Reform (DAR); more specifically, in the Department of Agrarian Reform Adjudication Board (DARAB). Executive Order 229 vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources. In *Department of Agrarian Reform v. Abdulwahid*, we held: As held by this Court in *Centeno v. Centeno* [343 SCRA 153], "the DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program." The DARAB has primary, original and appellate jurisdiction "to determine

and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under R.A. No. 6657, E.O. Nos. 229, 228 and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations." xxx. Simply put, agrarian disputes, as defined by law and settled in jurisprudence, are within the primary and exclusive original jurisdiction of the PARAD and the DARAB, while issues of retention and non-coverage of a land under agrarian reform, among others, are within the domain of the DAR Secretary.

3. ID.; ID.; AN ACTION FOR EJECTMENT FOR NON-PAYMENT OF LEASE RENTAL IS AN AGRARIAN DISPUTE COGNIZABLE AT THE INITIAL STAGE BY THE PARAD AND THEREAFTER BY THE DARAB. — Verily, there is an established tenancy relationship between petitioner and respondents in this case. An action for Ejectment for Non-Payment of lease rentals is clearly an agrarian dispute, cognizable at the initial stage by the PARAD and thereafter by the DARAB. But issues with respect to the retention rights of the respondents as landowners and the exclusion/exemption of the subject land from the coverage of agrarian reform are issues not cognizable by the PARAD and the DARAB, but by the DAR Secretary because, as aforementioned, the same are Agrarian Law Implementation (ALI) Cases.

4. ID.; ID.; COURTS OF JUSTICE AS WELL AS QUASI-JUDICIAL BODIES HAVE NO POWER TO DECIDE A QUESTION NOT IN ISSUE.— We take this opportunity to remind the PARAD and the CA that "courts of justice have no power to decide a question not in issue." A judgment that goes beyond the issues, and purports to adjudicate something on which the parties were not heard, is extra-judicial, irregular and invalid. This norm applies not only to courts of justice, but also to quasi-judicial bodies such as the PARAD. Accordingly, premature and irregular were the PARAD ruling on the retention rights of the respondents, and the CA decision on the non-agricultural character of the land subject of this controversy — these issues not having passed the scrutiny of the DAR Secretary — are premature and irregular.

5. ID.; ID.; THE OFFICE OF THE DAR SECRETARY IS IN A BETTER POSITION TO RESOLVE THE ISSUES ON RETENTION AND EXCLUSION/EXEMPTION FROM AGRARIAN REFORM COVERAGE. — Thus, we cannot allow ourselves to fall into the same error as that committed by the PARAD and the CA, and resolve the issue of the non-agricultural nature of the subject land by receiving, at this stage, pieces of evidence and evaluating the same, without the respondents having first introduced them in the proper forum. The Office of the DAR Secretary is in a better position to resolve the issues on retention and exclusion/exemption from agrarian reform coverage, being the agency lodged with such authority inasmuch it possesses the necessary expertise on the matter.

6. ID.; APPEAL; ISSUES NOT RAISED IN THE PROCEEDINGS BELOW SHOULD NOT BE RAISED FOR THE FIRST TIME ON APPEAL. — Likewise, we refrain from entertaining the issue raised by respondents that petitioner and her family are not landless tenants and are therefore not deserving of any protection under our laws on agrarian reform, because fairness and due process dictate that issues not raised in the proceedings below should not be raised for the first time on appeal.

7. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 3844; THE AGRICULTURAL TENANTS' FAILURE TO PAY THE LEASE RENTALS MUST BE WILLFUL AND DELIBERATE IN ORDER TO WARRANT HIS DISPOSSESSION OF THE LAND HE TILLS. — Under Section 37 of Republic Act No. 3844, as amended, coupled with the fact that the respondents are the complainants themselves, the burden of proof to show the existence of a lawful cause for the ejectment of the petitioner as an agricultural lessee rests upon the respondents as agricultural lessors. This proceeds from the principle that a tenancy relationship, once established, entitles the tenant to security of tenure. Petitioner can only be ejected from the agricultural landholding on grounds provided by law. Respondents failed to discharge such burden. The agricultural tenant's failure to pay the lease rentals must be willful and deliberate in order to warrant his dispossession of the land that he tills.

8. ID.; ID.; ID.; ABSENT DELIBERATE INTENT AND WILLFUL REFUSAL TO PAY, THE FAILURE OF THE TENANT TO PAY THE LANDHOLDER'S SHARE DOES NOT GIVE THE LATTER

THE RIGHT TO EJECT THE FORMER. — Petitioner's counsel opines that there appears to be no decision by this Court on the matter; he thus submits that we should use the CA decision in *Cabero v. Caturna*. This is not correct. In an *En Banc* Decision by this Court in *Roxas y Cia v. Cabatuando, et al*., we held that under our law and jurisprudence, mere failure of a tenant to pay the landholder's share does not necessarily give the latter the right to eject the former when there is lack of deliberate intent on the part of the tenant not to pay. This ruling has not been overturned. The term "deliberate" is characterized by or results from slow, careful, thorough calculation and consideration of effects and consequences. The term "willful," on the other hand, is defined as one governed by will without yielding to reason or without regard to reason.

9. ID.; ID.; ID.; ID.; CASE AT BAR. — We agree with the findings of the DARAB that it was not the fault of petitioner that the lease rentals did not reach the respondents because the latter chose to ignore the notices sent to them. To note, as early as November 10, 1986, Marciano executed an Affidávit stating that Leon refused to receive the respective lease rentals consisting of 37 cavans for November 1985 and July 1986. For 1987, Marciano wrote Leon two letters informing him of the availability of the lease rentals for April and October of the same year. On April 27, 1988, Marciano sought DAR intervention and mediation with respect to the execution of a leasehold contract and the fixing of the leasehold rentals. Meetings were set but respondents failed to attend. The dispute was referred to the *barangay* but the parties failed to amicably settle. These factual circumstances negate the PARAD findings of Marciano's and petitioner's deliberate and willful intent not to pay lease rentals. Good faith was clearly demonstrated by Marciano and petitioner when, because respondents refused to accept the proffered payment, they even went to the point of seeking government intervention in order to address their problems with respondents. Absent such deliberate and willful refusal to pay lease rentals, petitioner's ejectment from the subject land is not justified.

APPEARANCES OF COUNSEL

Reyes & Santos Law Offices for petitioner.

Villegas Gomos Dayao & Ricafrente Attorneys-at-Law for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated March 5, 2004 which reversed and set aside the Decision[3] of the Department of Agrarian Reform Adjudication Board (DARAB) dated June 24, 1998 and reinstated the Decision[4] of the Provincial Agrarian Reform Adjudicator (PARAD) of Laguna dated October 12, 1993.

The Facts

Respondent Leon Carpo[5] (Leon) and his brother Francisco G. Carpo are the registered co-owners of a parcel of land designated as Lot No. 2175 of the Santa Rosa Estate Subdivision, situated at Sta. Rosa, Laguna, covered by Transfer Certificate of Title (TCT) No. T-17272[6] of the Register of Deeds of Laguna, with an area of 91,337 square meters, more or less. A portion thereof, consisting of 3.5 hectares, pertained to Leon and his wife, respondent Aurora Carpo. It was devoted to rice and corn production (subject land) and was tenanted by one Domingo Pastolero (Domingo), husband of Adoracion Pastolero (Adoracion).[7] When Domingo passed away, Adoracion together with her son Elpidio Pastolero, assumed the tenancy rights of Domingo over the subject land.

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[1] *Rollo,* pp. 21-72.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justice Mercedes Gozo-Dadole and Associate Justice Eliezer R. Delos Santos, concurring; *id.* at 74-85.

[3] *Id.* at 135-141.

[4] *Id.* at 122-131.

[5] Also referred to as Leony Carpo and Leon Carpio in other pleadings and documents.

[6] Records, p. 232.

[7] Also referred to as Asuncion Pastolero in other pleadings and documents.

However, on December 29, 1983, Adoracion, by executing a notarized *Pinanumpaang Salaysay*[8] with the conformity of Leon, and for a consideration of ₱72,500.00, transferred her rights in favor of petitioner Otilia Sta. Ana[9] (petitioner) who, together with her husband, Marciano de la Cruz (Marciano), became the new tenants of the subject land.

At the outset, the parties had a harmonious tenancy relationship.[10] Unfortunately, circumstances transpired which abraded the relationship. The Department of Agrarian Reform (DAR) mediated in order to amicably settle the controversy, but no settlement was reached by the parties. Thus, the instant case.

In their Complaint for Ejectment due to Non-Payment of Lease Rentals[11] dated December 1, 1989, respondents alleged that it was their agreement with petitioner and Marciano to increase the existing rentals from 36 cavans to 45 cavans, and that, if respondents wanted to repossess the property, they only had to pay the petitioner the amount of ₱72,500.00, the same amount paid by the latter to Adoracion. Respondents further averred that despite repeated demands, petitioner refused to pay the actual rentals from July 1985 to September 1989, in violation of Presidential Decree (P.D.) No. 817; and that the subject land had been declared, upon the recommendation of the Human Settlements Committee, suitable for commercial

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[8] CA *rollo*, pp. 213-214.

[9] Also referred to as Otilla and Otelia Sta. Ana-de la Cruz and Ofelia de la Cruz in other pleadings and documents.

[10] In a handwritten affidavit dated July 18, 1985, Leon attested, to wit:

"Ito ay bilang pagpapatunay na si G. Marciano dela Cruz, aking magsasakang namumuwisan ay bayad ng lahat sa buwis sa aking bukid na kanyang sinasaka subalit mayroon pa naging utang na Dalawampu at pito (27) cavans at nangangako rin siya na ang nasabing utang ay babayaran niya bago sumapit ang Oktubre 31/85.

Sa katunayan ay lumagda kaming dalawa sa ibaba nito bilang pag-sangayon." (Records, p. 110)

[11] *Id.* at 3-6.

and industrial purposes, per Zoning Ordinance of 1981 of the Municipality of Sta. Rosa, Laguna. Respondents prayed that petitioner be ejected from the subject land and be directed to pay ₱75,016.00 as unpaid rentals.

In their Answer[12] dated January 26, 1990, petitioner and Marciano denied that there was an agreement to increase the existing rental which was already fixed at 36 cavans of *palay*, once or twice a year depending on the availability of irrigation water; that neither was there an agreement as to the future surrender of the land in favor of the respondents; that they did not refuse to pay the rentals because they even sent verbal and written notices to the respondents, advising them to accept the same; and that in view of the latter's failure to respond, petitioner and Marciano were compelled to sell the harvest and to deposit the proceeds thereof in Savings Account No. 9166 with the Universal Savings Bank at Sta. Rosa, Laguna under the names of Leon and Marciano. As their special affirmative defense, petitioner and Marciano claimed that Marciano is a farmer-beneficiary of the subject land pursuant to P.D. 27. Petitioner and Marciano prayed for the outright dismissal of the complaint and for the declaration of Marciano as full owner of the subject land.

Thereafter, trial on the merits ensued.

The PARAD's Ruling

On October 12, 1993, the PARAD ruled that petitioner and Marciano deliberately defaulted in the payment of the rentals due the respondents. The PARAD found that the deposit made with Republic Planters Bank was actually in the names of petitioner and Marciano, hence, personal to them. The PARAD also found that it was only during the hearing that petitioner and Marciano deposited the amount of ₱40,000.00 with the Universal Savings Bank for the unpaid rentals. As such the PARAD considered the deposits as late payments and as implied admission that indeed petitioner and Marciano did not pay the

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

past rentals when they fell due. The PARAD further held and disposed thus:

> The intent of the defendant to subject the said area under PD 27 should pass the criteria set. Foremost is the determination of the aggregate riceland of plaintiff. He must have more than seven (7) hectares of land principally devoted to the planting of palay. Area over seven (7) hectares shall be the one to be covered by PD 27 on Operation Land Transfer (OLT). In the case at bar, defendants failed to prove that plaintiff has more than the required riceland. In fact the subject 3.5 hectares are jointly owned by two. Hence, coverage for OLT is remote.
>
> Defendant claimed that plaintiff is covered by LOI 474, and therefore, he is zero retention of area. In reference to said law, wherein it provides landowner with other agricultural land of more than 7 hectares, or have other industrial lands from where he and his family derived resources, then, the owner cannot retain any riceland. However, this is not applicable in the instant case, as the defendant failed to prove that plaintiff has other source of income from where they will derive their sustenance.
>
> WHEREFORE, in view of the foregoing, Judgment is hereby rendered:
>
> a) Ordering the ejectment of defendant from the subject landholding for non-payment of lease rentals;
>
> b) Ordering the defendant Marciano de la Cruz to surrender the possession and cultivation of the subject land to herein plaintiffs;
>
> c) Ordering the defendant to pay as actual damage the amount of ₱75,016.00 corresponding to the unpaid rentals from July 18, 1985 up to September 16, 1989[; and]
>
> d) [D]eclaring the subject land not covered by Presidential Decree No. 27, Republic Act [No.] 6657, and Executive Order No. 228.
>
> SO ORDERED.

Petitioner and Marciano sought relief from the DARAB.[13]

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[13] Notice of Appeal dated January 6, 1994; *id.* at 220.

The DARAB's Ruling

On June 24, 1998, the DARAB held:

It is a fundamental rule in this jurisdiction that for non-payment of lease rentals to warrant the dispossession and ejectment of a tenant, the same must be made in a willful and deliberate manner (*Cabero v. Caturna, et al.*, CA-G.R. 05886-R, March 10, 1977). For a valid ouster or ejectment of a farmer-tenant, the willful and deliberate intent not to pay lease rentals and/or share can be ascertained when there is a determination of will not to do a certain act.

Considering the circumstances obtaining in this case, it cannot be concluded that the defendants-appellants deliberately failed or refused to pay their lease rentals. It was not the fault of defendants-appellants herein that the rentals did not reach the plaintiffs-appellees because the latter choose to lend a deaf ear to the notices sent to them. Clearly, therefore plaintiffs-appellees failed to show by substantial evidence that the defendants-appellants deliberately failed or refused to pay their lease rentals. It has been held that the mere failure of a tenant to pay the landowner's share does not necessarily give the latter the right to eject the former when there is lack of deliberate intent on the part of the tenant to pay (*Roxas y Cia v. Cabatuando,* 1 SCRA 1106).

Thus:

WHEREFORE, finding the appeal interposed by the defendants-appellants to be meritorious, the Decision appealed from is hereby **SET ASIDE** and another judgment issued as follows:

1. Enjoining plaintiffs-appellees to respect the peaceful possession and cultivation of the land in suit by the defendants-appellants; and

2. Directing the MARO of Sta. Rosa, Laguna to assist the parties in the proper accounting of lease rentals to be paid by the defendants-appellants to the plaintiffs-appellees.

No costs.

SO ORDERED.

Aggrieved, respondents appealed to the CA. On April 16, 2003, Marciano passed away.[14]

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[14] *Rollo,* p. 117.

The CA's Ruling

On March 5, 2004, the CA affirmed the factual findings of the PARAD that petitioner and Marciano failed to pay the rentals and that there was no valid tender of payment. The CA added that this failure to pay was tainted with bad faith and deliberate intent. Thus, petitioner and Marciano did not legally comply with their duties as tenants. Moreover, the CA held that the subject land was not covered by P.D. 27, Republic Act (R.A.) No. 6657 and Executive Order (E.O.) No. 228, since the same had become a residential, commercial and industrial land, to wit:

> In the case at bar, We opted to give more weight to the petitioners contention that the "subject landholding is for residential, commercial, and industrial purposes as declared by zoning ordinance of 1981 of the town of Sta. Rosa, Laguna upon recommendation of the Human Settlement Committee xxx." The vicinity map of the subject landholding shows that it is almost beside Nissan Motors Technopa[r]k and surrounded by the South Expressway and several companies such as the Coca-Cola Bottlers Philippines, Inc. and Toyota Motors Philippines along the Pulong Santa Cruz, National Road. The vicinity map shows therefore that the subject landholding is a residential, commercial, and industrial area exempted from the coverage of P.D. No. 27, Republic Act. No. 6657 and Executive Order No. 228.

The CA ruled in favor of the respondents in this wise:

> WHEREFORE, premises considered and pursuant to applicable law and jurisprudence on the matter, the present Petition is hereby **GRANTED**. Accordingly, the decision of the Department of Agrarian Reform Adjudication Board-Central Office, Elliptical Road, Diliman, Quezon City (promulgated on June 24, 1998) is hereby **REVERSED** and **SET ASIDE** and a new one entered- **REINSTATING** the decision of the Department of Agrarian Reform Adjudication Board-Region IV, Office of the Provincial Adjudicator, Sta. Cruz, Laguna (dated October 12, 1993). No pronouncement as to costs.
>
> SO ORDERED.

Petitioner filed a Motion for Reconsideration[15] assailing the aforementioned Decision which the CA, however, denied in its Resolution[16] dated June 28, 2004.

Hence, this Petition based on the following grounds:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ARROGATING UPON ITSELF WHAT IS OTHERWISE DAR'S POWER TO DETERMINE WHETHER THE SUBJECT AGRICULTURAL LAND HAS BECOME RESIDENTIAL/ INDUSTRIAL/COMMERCIAL.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT EQUATED "LAND RECLASSIFICATION" WITH "LAND CONVERSION" FOR PURPOSES OF DETERMINING THE PROPRIETY OF EJECTMENT OF AN AGRICULTURAL LESSEE.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT FAILED TO NOTE THAT AN EJECTMENT SUIT BASED ON A CLAIM OF NON-PAYMENT OF LEASE RENTAL IS DIAMETRICALLY ANTITHETICAL TO THE CLAIM THAT THE SUBJECT LAND IS NO LONGER AGRICULTURAL BUT "A RESIDENTIAL, COMMERCIAL AND INDUSTRIAL AREA EXEMPTED FROM THE COVERAGE OF P.D. NO. 27, REPUBLIC ACT NO. 6657 AND EXECUTIVE ORDER NO. 228.

THE DECISION DATED MARCH 5, 2004—INSOFAR AS IT ADOPTED THE FINDING OF DARAB-REGION IV, OFFICE OF THE PROVINCIAL ADJUDICATOR, STA. CRUZ, LAGUNA INSTEAD OF THAT OF THE DARAB-CENTRAL—IS VIOLATIVE OF SEC. 14, ART. VIII OF THE 1987 CONSTITUTION FOR HAVING DECIDED WITHOUT EXPRESSING THEREIN CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH SAID DECISION IS BASED.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RESORTING TO SURMISES AND CONJECTURES WHEN IT RULED THAT THE FAILURE OF THE HEREIN PETITIONER AND HER DECEASED HUSBAND TO DELIVER THE LEASE RENTALS TO HEREIN RESPONDENTS, WAS DONE SO IN BAD FAITH AND WITH DELIBERATE INTENT TO DEPRIVE THE LAND OWNERS THEREOF.

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[15] *Id.* at 86-116.

[16] *Id.* at 119-120.

Petitioner asseverates that there is no evidence to support respondents' claim that the failure to pay the lease rentals was tainted with malevolence, as the records are replete with acts indicative of good faith on the part of the petitioner and Marciano and bad faith on the part of respondents.

Moreover, petitioner claimed that the power to determine whether or not the subject land is non-agricultural, hence, exempt from the coverage of the Comprehensive Agrarian Reform Law (CARL), lies with the DAR, and not with the courts; that mere reclassification by way of a zoning ordinance does not warrant the dispossession of a tenant but conversion does, and entitles the tenant to payment of disturbance compensation; the legal concepts of reclassification and conversion are separate and distinct from each other; that respondents' complaint before the PARAD alleged and established the fact that the subject land is a riceland, therefore, agricultural; that the CA failed to explain why it upheld the findings of the PARAD on the issue of non-payment of lease rentals; and that though the issue of non-payment of lease rentals is a question of fact, due to the conflict of the factual findings of the PARAD and CA with those of the DARAB, petitioner asks that this Court review the evidence on record, and pursuant to the CA decision in *Cabero v. Caturna, et al.*,[17] rule on whether petitioner willfully and deliberately refused to pay lease rentals as to warrant her dispossession from the subject land.[18]

On the other hand, respondents aver that petitioner and her family are wealthy, as they own numerous properties in Sta. Rosa, Laguna including a luxurious house;[19] that, as such, petitioner cannot be considered as a landless tenant deserving the protection of agrarian reform laws; that the DARAB negated the highest degree of respect the factual findings of the PARAD deserved; that petitioner's claims that Marciano repeatedly made verbal

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[17] CA-G.R. 05886-R, March 10, 1977.

[18] Petitioner's Memorandum dated August 5, 2005; *rollo*, pp. 302-364.

[19] Respondents' Comment dated November 16, 2004; *id*. at 189-247 (with annexes).

and written notices[20] for Leon to accept their lease rentals were fraudulent designs to disguise the deliberate intent of petitioner not to pay the lease rentals; that when Leon went to petitioner's residence, petitioner did not pay the ₱10,000.00 due as lease rentals; that during the hearing before the PARAD, when respondents' counsel requested that they be furnished a bank certificate as to the existence of said bank deposits in Republic Planters Bank as of April 20, 1987 and October 1, 1987, petitioner herself commented, "*Nagdeposito ho talaga kami sa pangalan namin*";[21] that the statement of petitioner is an admission that bank deposits, if any, were made, not in the name of Leon as contained in the written notices, but rather in the names of petitioner and Marciano; that such certificate was not introduced in evidence and that upon inquiry, said deposits do not actually exist; that per recent inquiry, the bank deposit in Universal Savings Bank only contains ₱1,020.19 due to previous withdrawals made by Marciano; that the foregoing circumstances indicate a pattern of fraudulent misrepresentations by the petitioner to mislead the DARAB into believing that petitioner and Marciano did not deliberately refuse to pay the lease rentals; that from July 18, 1985 up to the present, petitioner failed to pay the lease rentals showing again, the deliberate refusal to pay; that this default on the part of the petitioner has been recurring for several years already, thus depriving the respondents as landowners of their share of the subject land in violation of the principle of social justice; that as raised in respondents Omnibus Supplemental Motion for Reconsideration[22] before

[20] Per record, the first written notice sent by Marciano was dated April 20, 1987 essentially stating that Leon may get the lease rentals worth ₱10,000.00 from Marciano's residence until May 4, 1987. If Leon failed to get said rentals before said date, said amount would be deposited in the Republic Planters Bank-Sta. Rosa Laguna Branch under Leon's name. The second written notice was dated October 1, 1987 essentially stating that if Leon or any of his representatives failed to get the lease rentals on or before October 15, 1987, Marciano would sell the *palay* due to Leon and deposit the proceeds thereof in the same bank under Leon's name. (Records, pp. 115-116.)

[21] TSN, March 5, 1990, p. 14.

[22] *Rollo,* pp. 469-501.

the DARAB and as found by the CA based on its vicinity map,[23] the subject land is of a residential, commercial and industrial character, exempted from agrarian reform coverage; and that the DARAB erred in not finding the sale of the tenancy rights of Adoracion to petitioner and Marciano for ₱72,500.00 violative of P.D. 27 even if the same was with Leon's consent. The sale, respondents contend was therefore, null and void *ab initio*, not susceptible of any ratification.[24]

Our Ruling

Before we resolve this case on the merits, a procedural issue must be disposed of.

Respondents strongly argue that the instant Petition was filed out of time because, while petitioner originally claimed to have received her copy of the CA Resolution[25] dated June 28, 2004, denying her Motion for Reconsideration,[26] on July 12, 2004, petitioner eventually admitted, after respondents showed proof to the contrary, that she actually received the said Resolution on July 7, 2004.[27] Thus, petitioner had only up to July 22, 2004 to appeal the CA's ruling to this Court. In this case, petitioner filed her Motion[28] for Extension of Time to File Petition for Review on *Certiorari* (Motion) on July 23, 2004. As such, there was no more period to extend. Further, the instant Petition was filed on August 27, 2004, or three (3) days beyond the thirty-day extended period. Hence, respondents submit that the CA decision had already become final and executory.[29]

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[23] CA *rollo*, p. 103.

[24] Respondents' Memorandum filed on October 18, 2005; *rollo*, pp. 383-425.

[25] *Id.* at 119-120.

[26] *Id.* at 86-116.

[27] Respondents' Opposition to the Motion for Extension of Time to File Petition for Review dated August 4, 2004; *id.* at 14-17.

[28] *Id.* at 3-7.

[29] Respondents' Supplement to the Memorandum dated June 13, 2007; *id.* (unpaged).

Petitioner alleges that on July 15, 2004, she met with her counsel to engage the latter's legal services. During said meeting, counsel asked petitioner about the date of receipt of the assailed CA Resolution. Petitioner replied that she received her copy on July 12, 2004. On July 20, 2004, counsel filed an Entry of Appearance with the CA.[30] On July 23, 2004, petitioner through counsel filed the Motion for Extension of Time to File Petition for Review. On August 11, 2004, petitioner received a copy of respondents' Opposition to the Motion. Thereafter, upon verification, petitioner admitted that she received the copy of the CA Resolution on July 7, 2004. Thus, her Motion was admittedly filed one day late. Petitioner begs the indulgence of this Court for her oversight and mistake, attributing the same to her lack of education and old age.

Rules of procedure are merely tools designed to facilitate the attainment of justice. If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from their operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, even the most mandatory in character, mindful of the duty to reconcile the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[31]

Our recent ruling in *Tanenglian v. Lorenzo*[32] is instructive:

We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where we dispense with the technicalities, we do not mean to undermine the force and

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[30] *Id.* at 8-10.

[31] *Land Bank of the Philippines v. Planters Development Bank*, G.R. No. 160395, May 7, 2008, citing *Great Southern Maritime Services Corporation v. Acuña*, 452 SCRA 422 (2005) and *Barnes v. Padilla*, 461 SCRA 533 (2005).

[32] G.R. No. 173415, March 28, 2008, 550 SCRA 348, 364, citing *Neypes v. Court of Appeals*, 469 SCRA 633, 643 (2005).

effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.

In this case, petitioner was one day late in filing her Motion for Extension. To deny the Petition on this ground alone is too harsh a penalty for a day's delay, taking into consideration the time, resources and effort spent by petitioner and even by the respondents, in order to pursue this case all the way to this Court. Thus, we dispense with the apparent procedural defect and resolve this case on the merits. The ends of justice are better served when cases are determined on the merits — with all parties given full opportunity to ventilate their causes and defenses — rather than on technicality or some procedural imperfections.[33]

The Petition is impressed with merit.

In sum, there are two (2) ultimate issues that require resolution in this case:

1) Whether the CA erred in ruling that the subject land had already become residential, commercial and/or industrial, thus, excluded from the coverage of our laws on agrarian reform; and

2) Whether the petitioner, as an agricultural tenant, failed to pay her lease rentals when the same fell due as to warrant her dispossession of the subject land.

On the first issue, we rule in the affirmative.

To recapitulate, the instant case sprang from a Complaint for Ejectment based on Non-Payment of lease rentals. Though an allegation was made by the respondents that the land had

[33] *Iglesia ni Cristo v. Ponferrada*, G.R. No. 168943, October 27, 2006, 505 SCRA 828, 843.

been declared, upon the recommendation of the Human Settlements Committee, suitable for commercial and industrial purposes, per Zoning Ordinance of 1981 of the Municipality of Sta. Rosa, no argument was advanced by respondents to support such allegation, in the same way that no prayer for the ejectment of the tenants was raised based on that allegation. The PARAD held that petitioner should be ejected for non-payment of lease rentals. It also ruled that the subject land is not covered by P.D. No. 27, R.A. No. 6657, and E.O. No. 228, not on the basis of the allegation in the complaint, but on the respondents' right of retention.

On appeal, the DARAB concentrated on the issue of petitioner's failure to pay lease rentals. When the DARAB ruled that petitioner and Marciano did not deliberately fail to pay said rentals, respondents raised a new issue in their Omnibus Motion that the transaction between Adoracion and petitioner was void in violation of P.D. No. 27, despite the conformity of Leon. This issue was not resolved by the DARAB.

Finally, when the case reached the CA, the appellate court affirmed the findings of the PARAD that petitioner and Marciano deliberately and in bad faith did not pay the lease rentals. The CA, however, also held that the subject land had already become a residential, commercial and industrial area based on the vicinity map showing that the land was surrounded by commercial and industrial establishments.

Without doubt, the PARAD acted without jurisdiction when it held that the subject land was no longer covered by our agrarian laws because of the retention rights of the respondents. The CA likewise acted without jurisdiction when it ruled that the land had become non-agricultural based on a zoning ordinance of 1981— on the strength of a mere vicinity map. These rulings violated the doctrine of primary jurisdiction.

The doctrine of primary jurisdiction precludes the courts from resolving a controversy over which jurisdiction has initially been lodged in an administrative body of special competence. For agrarian reform cases, jurisdiction is vested in the Department

of Agrarian Reform (DAR); more specifically, in the Department of Agrarian Reform Adjudication Board (DARAB). Executive Order 229 vested the DAR with (1) quasi-judicial powers to determine and adjudicate agrarian reform matters; and (2) jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the Department of Agriculture and the Department of Environment and Natural Resources.[34]

In *Department of Agrarian Reform v. Abdulwahid*,[35] we held:

> As held by this Court in *Centeno v. Centeno* [343 SCRA 153], "the DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program." The DARAB has primary, original and appellate jurisdiction "to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under R.A. No. 6657, E.O. Nos. 229, 228 and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations."
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> Under Section 3 (d) of R.A. No. 6657 (CARP Law), "agrarian dispute" is defined to include "(d) . . . any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

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[34] *Ros v. Department of Agrarian Reform*, G.R. No. 132477, August 31, 2005, 468 SCRA 471, 483-484, citing *Bautista v. Mag-isa Vda. de Villena*, 438 SCRA 259, 262-263 (2004).

[35] G.R. No. 163285, February 27, 2008, 547 SCRA 30, 40.

Simply put, agrarian disputes, as defined by law and settled in jurisprudence, are within the primary and exclusive original jurisdiction of the PARAD and the DARAB, while issues of retention and non-coverage of a land under agrarian reform, among others, are within the domain of the DAR Secretary.

Thus, Section 3, Rule II of the 2003 DARAB Rules of Procedure provides:

SECTION 3. Agrarian Law Implementation Cases. — The Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances, to wit:

3.1 Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of CLOAs and EPs, including protests or oppositions thereto and petitions for lifting of such coverage;

3.2 Classification, identification, inclusion, exclusion, qualification, or disqualification of potential/actual farmer-beneficiaries;

3.3 Subdivision surveys of land under CARP;

3.4 Recall, or cancellation of provisional lease rentals, Certificates of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall, or cancellation of EPs or CLOAs not yet registered with the Register of Deeds;

3.5 Exercise of the right of retention by the landowner;

3.6 Application for exemption from coverage under Section 10 of RA 6657;

3.7 Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990);

3.8 Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising;

3.9 Cases of exemption/exclusion of fish pond and prawn farms from the coverage of CARP pursuant to RA 7881;

3.10 Issuance of Certificate of Exemption for land subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) found unsuitable for agricultural purposes;

3.11 Application for conversion of agricultural land to residential, commercial, industrial, or other non-agricultural uses and purposes including protests or oppositions thereto;

3.12 Determination of the rights of agrarian reform beneficiaries to homelots;

3.13 Disposition of excess area of the tenants/farmer-beneficiary's landholdings;

3.14 Increase in area of tillage of a tenant/farmer-beneficiary;

3.15 Conflict of claims in landed estates administered by DAR and its predecessors; or

3.16 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

Verily, there is an established tenancy relationship between petitioner and respondents in this case. An action for Ejectment for Non-Payment of lease rentals is clearly an agrarian dispute, cognizable at the initial stage by the PARAD and thereafter by the DARAB.[36] But issues with respect to the retention rights of the respondents as landowners and the exclusion/exemption of the subject land from the coverage of agrarian reform are issues not cognizable by the PARAD and the DARAB, but by the DAR Secretary because, as aforementioned, the same are Agrarian Law Implementation (ALI) Cases.

It has not escaped our notice that, as this case progressed and reached a higher level in the hierarchy of tribunals, the respondents would, invariably, proffer an additional theory or defense, in order to effect petitioner's eviction from the land. As a consequence, the simple issue of ejectment based on non-payment of rentals has been muddled.

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[36] 2003 DARAB Rules of Procedure, Rule II, Section 1, Item No. 1.4.

Proof necessary for the resolution of the issue of the land being covered by, or excluded/exempted from, P.D. No. 27, R.A. No. 6657, and other pertinent agrarian laws, as well as of the issue of the right of retention of the respondents, was not offered in evidence. Worse, the PARAD resolved the issue of retention even if it was not raised by the respondents at that level, and even if the PARAD had no jurisdiction over the same.

Likewise, the CA ruled that the land had ceased being agricultural on the basis of a mere vicinity map, in open disregard of the Doctrine of Primary Jurisdiction, since the issue was within the province of the Secretary of DAR.

We take this opportunity to remind the PARAD and the CA that "courts of justice have no power to decide a question not in issue." A judgment that goes beyond the issues, and purports to adjudicate something on which the parties were not heard, is extra-judicial, irregular and invalid. This norm applies not only to courts of justice, but also to quasi-judicial bodies such as the PARAD. Accordingly, premature and irregular were the PARAD ruling on the retention rights of the respondents, and the CA decision on the non-agricultural character of the land subject of this controversy — these issues not having passed the scrutiny of the DAR Secretary — are premature and irregular.[37]

Thus, we cannot allow ourselves to fall into the same error as that committed by the PARAD and the CA, and resolve the issue of the non-agricultural nature of the subject land by receiving, at this stage, pieces of evidence and evaluating the same, without the respondents having first introduced them in the proper forum. The Office of the DAR Secretary is in a better position to resolve the issues on retention and exclusion/exemption from agrarian reform coverage, being the agency lodged with such authority inasmuch it possesses the necessary expertise on the matter.[38]

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[37] *Moraga v. Somo*, G.R. No. 166781, September 5, 2006, 501 SCRA 118, 133-134, citing *Mon v. Court of Appeals*, 427 SCRA 165, 171-172 (2004), *Bernas v. Court of Appeals*, 225 SCRA 119, 129 (1993), and *Department of Agrarian Reform v. Franco*, 471 SCRA 74, 93 (2005).

[38] *Roxas & Co., Inc., v. Court of Appeals*, G.R. No. 127876, December 17, 1999, 321 SCRA 106, 154.

Likewise, we refrain from entertaining the issue raised by respondents that petitioner and her family are not landless tenants and are therefore not deserving of any protection under our laws on agrarian reform, because fairness and due process dictate that issues not raised in the proceedings below should not be raised for the first time on appeal.[39]

On the second issue, we rule in the negative.

Under Section 37 of Republic Act No. 3844, [40] as amended, coupled with the fact that the respondents are the complainants themselves, the burden of proof to show the existence of a lawful cause for the ejectment of the petitioner as an agricultural lessee rests upon the respondents as agricultural lessors.[41] This proceeds from the principle that a tenancy relationship, once established, entitles the tenant to security of tenure. Petitioner can only be ejected from the agricultural landholding on grounds provided by law.[42] Section 36 of the same law pertinently provides:

> Sec. 36. Possession of Landholding; Exceptions. — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:
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> x x x x x x x x x
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> (6) The agricultural lessee does not pay the lease rental when it falls due: Provided, That if the non-payment of the rental shall be

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[39] *Tan v. Commission on Elections*, G.R. Nos. 166143-47, November 20, 2006, 507 SCRA 352, 373.

[40] Entitled "An Act to Ordain the Agricultural Land Reform Code and to Institute Land Reforms in the Philippines, Including the Abolition of Tenancy and the Channeling of Capital into Industry, Provide for the Necessary Implementing Agencies, Appropriate Funds therefor and for other purposes;" which took effect on August 8, 1963.

[41] *Mon v. Court of Appeals*; *supra* note 37, at 177.

[42] *Heirs of Enrique Tan, Sr. v. Pollescas*, G.R. No. 145568, November 17, 2005, 475 SCRA 203, 212.

due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished;

xxx xxx xxx

Respondents failed to discharge such burden. The agricultural tenant's failure to pay the lease rentals must be willful and deliberate in order to warrant his dispossession of the land that he tills.

Petitioner's counsel opines that there appears to be no decision by this Court on the matter; he thus submits that we should use the CA decision in *Cabero v. Caturna*. This is not correct. In an *En Banc* Decision by this Court in *Roxas y Cia v. Cabatuando, et al.*,[43] we held that under our law and jurisprudence, mere failure of a tenant to pay the landholder's share does not necessarily give the latter the right to eject the former when there is lack of deliberate intent on the part of the tenant to pay. This ruling has not been overturned.

The term "deliberate" is characterized by or results from slow, careful, thorough calculation and consideration of effects and consequences.[44] The term "willful," on the other hand, is defined as one governed by will without yielding to reason or without regard to reason.[45]

We agree with the findings of the DARAB that it was not the fault of petitioner that the lease rentals did not reach the respondents because the latter chose to ignore the notices sent to them. To note, as early as November 10, 1986, Marciano executed an Affidavi[46] stating that Leon refused to receive

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[43] G.R. No. L-16963, April 26, 1961, 1 SCRA 1106, 1108, citing Section 50 (c), Republic Act 1199 and *Paz, et al. v. Santos, et al.*, L-12047, September 30, 1959 (unreported- 106 Phil. 1161).

[44] Webster's *Third New International Dictionary of the English Language Unabridged*, Copyright © 1993.

[45] *Id*.

[46] Records, p. 112.

the respective lease rentals consisting of 37 cavans for November 1985 and July 1986. For 1987, Marciano wrote Leon two letters[47] informing him of the availability of the lease rentals for April and October of the same year. On April 27, 1988, Marciano sought DAR intervention and mediation with respect to the execution of a leasehold contract and the fixing of the leasehold rentals.[48] Meetings were set but respondents failed to attend.[49] The dispute was referred to the *barangay* but the parties failed to amicably settle.[50]

These factual circumstances negate the PARAD findings of Marciano's and petitioner's deliberate and willful intent not to pay lease rentals. Good faith was clearly demonstrated by Marciano and petitioner when, because respondents refused to accept the proffered payment, they even went to the point of seeking government intervention in order to address their problems with respondents. Absent such deliberate and willful refusal to pay lease rentals, petitioner's ejectment from the subject land is not justified.

WHEREFORE, the instant Petition is *GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 60640 is hereby *REVERSED* and *SET ASIDE*. The Decision of the Department of Agrarian Reform Adjudication Board (DARAB) dated June 24, 1998 in DARAB Case No. 2203 is *REINSTATED* without prejudice to the rights of respondent-spouses Leon and Aurora Carpo to seek recourse from the Office of the Department of Agrarian Reform (DAR) Secretary on the other issues they raised. No costs.

SO ORDERED.

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

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[47] *Supra* note 20.

[48] Records, p. 119.

[49] *Id.* at 120 and 122.

[50] *Id.* at 121.

THIRD DIVISION

[G.R. No. 166377. November 28, 2008]

MA. ISABEL T. SANTOS, represented by ANTONIO P. SANTOS, *petitioner, vs.* **SERVIER PHILIPPINES, INC. and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABSENT SPECIFIC PROHIBITION AGAINST THE PAYMENT OF BOTH BENEFITS IN THE RETIREMENT PLAN AND/OR COLLECTIVE BARGAINING AGREEMENT, THE RECEIPT OF RETIREMENT BENEFITS DOES NOT BAR THE RETIREE FROM RECEIVING SEPARATION PAY.— We have declared in *Aquino v. National Labor Relations Commission* that the receipt of retirement benefits does not bar the retiree from receiving separation pay. Separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer. Hence, they are not mutually exclusive. However, this is only true if there is no specific prohibition against the payment of both benefits in the retirement plan and/or in the Collective Bargaining Agreement (CBA). In the instant case, the Retirement Plan bars the petitioner from claiming additional benefits on top of that provided for in the Plan. xxx There being such a provision, as held in *Cruz v. Philippine Global Communications, Inc.*, petitioner is entitled only to either the separation pay under the law or retirement benefits under the Plan, and not both.

2. ID.; ID.; ID.; CLAIM FOR ILLEGAL DEDUCTION FALLS WITHIN THE JURISDICTION OF THE LABOR ARBITER AND THE NATIONAL RELATIONS COMMISSION. — Contrary to the

Labor Arbiter and NLRC's conclusions, petitioner's claim for illegal deduction falls within the tribunal's jurisdiction. It is noteworthy that petitioner demanded the completion of her retirement benefits, including the amount withheld by respondent for taxation purposes. The issue of deduction for tax purposes is intertwined with the main issue of whether or not petitioner's benefits have been fully given her. It is, therefore, a money claim arising from the employer-employee relationship, which clearly falls within the jurisdiction of the Labor Arbiter and the NLRC.

3. TAXATION; WITHHOLDING TAX; EXEMPTION OF RETIREMENT BENEFITS FROM WITHOLDING TAX, REQUIREMENTS; NOT COMPLIED WITH IN CASE AT BAR. — Section 32 (B) (6) (a) of the New National Internal Revenue Code (NIRC) provides for the exclusion of retirement benefits from gross income xxx. Thus, for the retirement benefits to be exempt from the withholding tax, the taxpayer is burdened to prove the concurrence of the following elements: (1) a reasonable private benefit plan is maintained by the employer; (2) the retiring official or employee has been in the service of the same employer for at least ten (10) years; (3) the retiring official or employee is not less than fifty (50) years of age at the time of his retirement; and (4) the benefit had been availed of only once. As discussed above, petitioner was qualified for disability retirement. At the time of such retirement, petitioner was only 41 years of age; and had been in the service for more or less eight (8) years. As such, the above provision is not applicable for failure to comply with the age and length of service requirements. Therefore, respondent cannot be faulted for deducting from petitioner's total retirement benefits the amount of ₱362,386.87, for taxation purposes.

APPEARANCES OF COUNSEL

Aguilar Salvador & Tria Law Offices for petitioner.
Alonso and Partners for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to set aside the Court of Appeals (CA) Decision,[1] dated August 12, 2004 and its Resolution[2] dated December 17, 2004, in CA-G.R. SP No. 75706.

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

Petitioner Ma. Isabel T. Santos was the Human Resource Manager of respondent Servier Philippines, Inc. since 1991 until her termination from service in 1999. On March 26 and 27, 1998, petitioner attended a meeting[3] of all human resource managers of respondent, held in Paris, France. Since the last day of the meeting coincided with the graduation of petitioner's only child, she arranged for a European vacation with her family right after the meeting. She, thus, filed a vacation leave effective March 30, 1998.[4]

On March 29, 1998, petitioner, together with her husband Antonio P. Santos, her son, and some friends, had dinner at *Leon des Bruxelles*, a Paris restaurant known for mussels[5] as their specialty. While having dinner, petitioner complained of stomach pain, then vomited. Eventually, she was brought to the hospital known as *Centre Chirurgical de L'Quest* where she fell into coma for 21 days; and later stayed at the Intensive Care Unit (ICU) for 52 days. The hospital found that the probable cause of her sudden attack was "alimentary allergy," as she had recently ingested a meal of mussels which resulted in a concomitant uticarial eruption.[6]

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[1] Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Delilah Vidallon-Magtolis and Arturo D. Brion (now a member of this Court), concurring; *rollo*, pp. 34-42.

[2] *Rollo*, p. 44.

[3] The meeting was entitled "Reunion DRH Internationale."

[4] *Rollo*, p. 35.

[5] Commonly known as "*tahong*" in the Philippines.

[6] *Rollo*, p. 35.

During the time that petitioner was confined at the hospital, her husband and son stayed with her in Paris. Petitioner's hospitalization expenses, as well as those of her husband and son, were paid by respondent.[7]

In June 1998, petitioner's attending physicians gave a prognosis of the former's condition; and, with the consent of her family, allowed her to go back to the Philippines for the continuation of her medical treatment. She was then confined at the St. Luke's Medical Center for rehabilitation.[8] During the period of petitioner's rehabilitation, respondent continued to pay the former's salaries; and to assist her in paying her hospital bills.

In a letter dated May 14, 1999, respondent informed the petitioner that the former had requested the latter's physician to conduct a thorough physical and psychological evaluation of her condition, to determine her fitness to resume her work at the company. Petitioner's physician concluded that the former had not fully recovered mentally and physically. Hence, respondent was constrained to terminate petitioner's services effective August 31, 1999.[9]

As a consequence of petitioner's termination from employment, respondent offered a retirement package which consists of:

Retirement Plan Benefits:	₱ 1,063,841.76
Insurance Pension at ₱20,000.00/month for 60 months from company-sponsored group life policy:	₱ 1,200,000.00
Educational assistance:	₱ 465,000.00
Medical and Health Care:	₱ 200,000.00[10]

Of the promised retirement benefits amounting to ₱1,063,841.76, only ₱701,454.89 was released to petitioner's

[7] *Id.* at 36.

[8] *Id*.

[9] Petitioner's termination from employment was embodied in a letter dated July 15, 1999; *id.* at 132-133.

[10] *Rollo*, p. 134.

husband, the balance[11] thereof was withheld allegedly for taxation purposes. Respondent also failed to give the other benefits listed above.[12]

Petitioner, represented by her husband, instituted the instant case for unpaid salaries; unpaid separation pay; unpaid balance of retirement package plus interest; insurance pension for permanent disability; educational assistance for her son; medical assistance; reimbursement of medical and rehabilitation expenses; moral, exemplary, and actual damages, plus attorney's fees. The case was docketed as NLRC-NCR (SOUTH) Case No. 30-06-02520-01.

On September 28, 2001, Labor Arbiter Aliman D. Mangandog rendered a Decision[13] dismissing petitioner's complaint. The Labor Arbiter stressed that respondent had been generous in giving financial assistance to the petitioner.[14] He likewise noted that there was a retirement plan for the benefit of the employees. In denying petitioner's claim for separation pay, the Labor Arbiter ratiocinated that the same had already been integrated in the retirement plan established by respondent. Thus, petitioner could no longer collect separation pay over and above her retirement benefits.[15] The arbiter refused to rule on the legality of the deductions made by respondent from petitioner's total retirement benefits for taxation purposes, as the issue was beyond the jurisdiction of the NLRC.[16] On the matter of educational assistance, the Labor Arbiter found that the same may be granted only upon the submission of a certificate of enrollment.[17] Lastly, as to petitioner's claim for damages and attorney's fees, the

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[11] Amounting to ₱362,386.87.

[12] *Rollo*, p. 37.

[13] *Id.* at 204-213.

[14] *Id.* at 209.

[15] *Id.* at 210-211.

[16] *Id.* at 211.

[17] *Id*.

Labor Arbiter denied the same as the former's dismissal was not tainted with bad faith.[18]

On appeal to the National Labor Relations Commission (NLRC), the tribunal set aside the Labor Arbiter's decision, ruling that:

> WHEREFORE, premises considered, Complainant's appeal is partly GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby SET ASIDE. Respondent is ordered to pay Complainant's portion of her separation pay covering the following: 1) ₱200,000.00 for medical and health care from September 1999 to April 2001; and 2) ₱35,000.00 per year for her son's high school (second year to fourth year) education and ₱45,000.00 per semester for the latter's four-year college education, upon presentation of any applicable certificate of enrollment.
>
> SO ORDERED.[19]

The NLRC emphasized that petitioner was not retired from the service pursuant to law, collective bargaining agreement (CBA) or other employment contract; rather, she was dismissed from employment due to a disease/disability under Article 284[20] of the Labor Code.[21] In view of her non-entitlement to retirement benefits, the amounts received by petitioner should then be treated as her separation pay.[22] Though not legally obliged to give the other benefits, *i.e.*, educational assistance, respondent volunteered to grant them, for humanitarian consideration. The

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[18] *Id.* at 211-212.

[19] *Id.* at 264-265

[20] ART. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[21] *Rollo*, pp. 260-261.

[22] *Id.* at 262.

NLRC therefore ordered the payment of the other benefits promised by the respondent.[23] Lastly, it sustained the denial of petitioner's claim for damages for the latter's failure to substantiate the same.[24]

Unsatisfied, petitioner elevated the matter to the Court of Appeals which affirmed the NLRC decision.[25]

Hence, the instant petition.

At the outset, the Court notes that initially, petitioner raised the issue of whether she was entitled to separation pay, retirement benefits, and damages. In support of her claim for separation pay, she cited Article 284 of the Labor Code, as amended. However, in coming to this Court *via* a petition for review on *certiorari*, she abandoned her original position and alleged that she was, in fact, not dismissed from employment based on the above provision. She argued that her situation could not be characterized as a disease; rather, she became disabled. In short, in her petition before us, she now changes her theory by saying that she is not entitled to separation pay but to retirement pay pursuant to Section 4,[26] Article V of the Retirement Plan, on disability retirement. She, thus, prayed for the full payment of her retirement benefits by giving back to her the amount deducted for taxation purposes.

In our Resolution[27] dated November 23, 2005 requiring the parties to submit their respective memoranda, we specifically stated:

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[23] Said benefits consist of the following: 1) ₱200,000.00 for medical and health care; and 2) educational assistance for petitioner's son; *id*. at 264-265.

[24] *Rollo*, p. 263.

[25] *Supra* note 1.

[26] Section 4. DISABILITY RETIREMENT.

In the event that a Member is retired by the Company due to permanent total incapacity or disability, as determined by a competent physician appointed by the Company, his disability retirement benefit shall be the Full Member's Account Balance determined as of the last valuation date. x x x; *rollo*, p. 359.

[27] *Rollo*, pp. 785-786.

No new issues may be raised by a party in the Memorandum and the issues raised in the pleadings but not included in the Memorandum shall be deemed waived or abandoned.

Being summations of the parties' previous pleadings, the Court may consider the Memoranda alone in deciding or resolving this petition.

Pursuant to the above resolution, any argument raised in her petition, but not raised in her Memorandum,[28] is deemed abandoned.[29] Hence, the only issue proper for determination is the propriety of deducting ₱362,386.87 from her total benefits, for taxation purposes. Nevertheless, in order to resolve the legality of the deduction, it is imperative that we settle, once and for all, the ground relied upon by respondent in terminating the services of the petitioner, as well as the nature of the benefits given to her after such termination. Only then can we decide whether the amount deducted by the respondent should be paid to the petitioner.

Respondent dismissed the petitioner from her employment based on Article 284 of the Labor Code, as amended, which reads:

Art. 284. DISEASE AS GROUND FOR TERMINATION

An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

As she was dismissed on the abovementioned ground, the law gives the petitioner the right to demand separation pay. However, respondent established a retirement plan in favor of all its

[28] *Id.* at 915-942.

[29] *Republic v. Kalaw*, G.R. No. 155138, June 8, 2004, 431 SCRA 401, 406.

employees which specifically provides for "disability retirement," to wit:

> Sec. 4. DISABILITY RETIREMENT
>
> In the event that a Member is retired by the Company due to permanent total incapacity or disability, as determined by a competent physician appointed by the Company, his disability retirement benefit shall be the Full Member's Account Balance determined as of the last valuation date. x x x.[30]

On the basis of the above-mentioned retirement plan, respondent offered the petitioner a retirement package which consists of retirement plan benefits, insurance pension, and educational assistance.[31] The amount of ₱1,063,841.76 represented the disability retirement benefit provided for in the plan; while the insurance pension was to be paid by their insurer; and the educational assistance was voluntarily undertaken by the respondent as a gesture of compassion to the petitioner.[32]

We have declared in *Aquino v. National Labor Relations Commission*[33] that the receipt of retirement benefits does not bar the retiree from receiving separation pay. Separation pay is a statutory right designed to provide the employee with the wherewithal during the period that he/she is looking for another employment. On the other hand, retirement benefits are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support, and are a form of reward for his loyalty and service to the employer.[34] Hence, they are not mutually exclusive. However, this is only true if there is no specific prohibition against the payment of

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[30] *Rollo*, p. 359.

[31] *Id.* at 134.

[32] *Id*.

[33] G.R. No. 87653, February 11, 1992, 206 SCRA 118.

[34] *Aquino v. National Labor Relations Commission*, G.R. No. 87653, February 11, 1992, 206 SCRA 118, 121-122.

both benefits in the retirement plan and/or in the Collective Bargaining Agreement (CBA).[35]

In the instant case, the Retirement Plan bars the petitioner from claiming additional benefits on top of that provided for in the Plan. Section 2, Article XII of the Retirement Plan provides:

> Section 2. NO DUPLICATION OF BENEFITS
>
> No other benefits other than those provided under this Plan shall be payable from the Fund. Further, in the event the Member receives benefits under the Plan, he shall be precluded from receiving any other benefits under the Labor Code or under any present or future legislation under any other contract or Collective Bargaining Agreement with the Company.[36]

There being such a provision, as held in *Cruz v. Philippine Global Communications, Inc.*,[37] petitioner is entitled only to either the separation pay under the law or retirement benefits under the Plan, and not both.

Clearly, the benefits received by petitioner from the respondent represent her retirement benefits under the Plan. The question that now confronts us is whether these benefits are taxable. If so, respondent correctly made the deduction for tax purposes. Otherwise, the deduction was illegal and respondent is still liable for the completion of petitioner's retirement benefits.

Respondent argues that the legality of the deduction from petitioner's total benefits cannot be taken cognizance of by this Court since the issue was not raised during the early stage of the proceedings.[38]

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[35] *Aquino v. National Labor Relations Commission*, G.R. No. 87653, February 11, 1992, 206 SCRA 118, 122; *University of the East v. Minister of Labor*, No. 74007, July 31, 1987, 152 SCRA 676; *Batangas Laguna Tayabas Bus Company v. Court of Appeals*, 163 Phil. 494 (1976).

[36] *Rollo*, p. 364.

[37] G.R. No. 141868, May 28, 2004, 430 SCRA 184.

[38] *Rollo*, p. 947.

We do not agree.

Records reveal that as early as in petitioner's position paper filed with the Labor Arbiter, she already raised the legality of said deduction, *albeit* designated as "unpaid balance of the retirement package." Petitioner specifically averred that ₱362,386.87 was not given to her by respondent as it was allegedly a part of the former's taxable income.[39] This is likewise evident in the Labor Arbiter and the NLRC's decisions although they ruled that the issue was beyond the tribunal's jurisdiction. They even suggested that petitioner's claim for illegal deduction could be addressed by filing a tax refund with the Bureau of Internal Revenue.[40]

Contrary to the Labor Arbiter and NLRC's conclusions, petitioner's claim for illegal deduction falls within the tribunal's jurisdiction. It is noteworthy that petitioner demanded the completion of her retirement benefits, including the amount withheld by respondent for taxation purposes. The issue of deduction for tax purposes is intertwined with the main issue of whether or not petitioner's benefits have been fully given her. It is, therefore, a money claim arising from the employer-employee relationship, which clearly falls within the jurisdiction[41] of the Labor Arbiter and the NLRC.

This is not the first time that the labor tribunal is faced with the issue of illegal deduction. In *Intercontinental Broadcasting*

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[39] *Id.* at 120.

[40] *Id.* at 211, 264.

[41] Article 217 of the Labor Code, as amended reads:

Article 217. JURISDICTION OF LABOR ARBITERS AND THE COMMISSION

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x, the following cases involving all workers, whether agricultural or non-agricultural:

x x x x x x x x x

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations x x x.

Corporation (IBC) v. Amarilla,[42] IBC withheld the salary differentials due its retired employees to offset the tax due on their retirement benefits. The retirees thus lodged a complaint with the NLRC questioning said withholding. They averred that their retirement benefits were exempt from income tax; and IBC had no authority to withhold their salary differentials. The Labor Arbiter took cognizance of the case, and this Court made a definitive ruling that retirement benefits are exempt from income tax, provided that certain requirements are met.

Nothing, therefore, prevents us from deciding this main issue of whether the retirement benefits are taxable.

We answer in the affirmative.

Section 32 (B) (6) (a) of the New National Internal Revenue Code (NIRC) provides for the exclusion of retirement benefits from gross income, thus:

(6) Retirement Benefits, Pensions, Gratuities, *etc*. –

a) Retirement benefits received under Republic Act 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided*, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided further*, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. x x x.

Thus, for the retirement benefits to be exempt from the withholding tax, the taxpayer is burdened to prove the concurrence of the following elements: (1) a reasonable private benefit plan is maintained by the employer; (2) the retiring official or employee has been in the service of the same employer for at least ten (10) years; (3) the retiring official or employee is not less than fifty (50) years of age at the time of his retirement; and (4) the benefit had been availed of only once.[43]

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[42] G.R. No. 162775, October 27, 2006, 505 SCRA 687.

[43] *Intercontinental Broadcasting Corporation (IBC) v. Amarilla*, G.R. No. 162775, October 27, 2006, 505 SCRA 687, 699.

As discussed above, petitioner was qualified for disability retirement. At the time of such retirement, petitioner was only 41 years of age; and had been in the service for more or less eight (8) years. As such, the above provision is not applicable for failure to comply with the age and length of service requirements. Therefore, respondent cannot be faulted for deducting from petitioner's total retirement benefits the amount of ₱362,386.87, for taxation purposes.

WHEREFORE, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated August 12, 2004 and its Resolution dated December 17, 2004, in CA-G.R. SP No. 75706 are *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 167755. November 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR VELUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROSECUTION FOR RAPE, GUIDING PRINCIPLES IN THE REVIEW OF 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.; CREDIBILITY OF WITNESSES; THE SUPREME COURT GENERALLY DEFERS TO THE FINDINGS OF THE TRIAL COURT WHERE THE CREDIBILITY OF THE TESTIMONY OF THE RAPE VICTIM IS IN ISSUE. — Appellant claims that the testimony of AAA is incredible and inconsistent. However, it is settled that when credibility is in issue, the Supreme Court generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial. In the instant case, the Court finds nothing on record to justify a departure from the findings of the trial court. The testimony of AAA leaves no doubt that appellant had in fact raped her. xxx.

3. ID.; ID.; ID.; TESTIMONIES OF CHILD VICTIMS OF RAPE ARE GIVEN FULL WEIGHT AND CREDIT, FOR YOUTH AND IMMATURITY ARE BADGES OF TRUTH. — As a rule, testimonies of child victims of rape are given full weight and credit, for youth and immaturity are badges of truth. 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.

4. ID.; ID.; ID.; IT IS UNNATURAL FOR A PARENT TO USE HIS OFFSPRING AS AN ENGINE OF MALICE, ESPECIALLY IF IT WILL SUBJECT A DAUGHTER TO DISGRACE. — This Court rejects appellant's contention that AAA was instructed by CCC and BBB on what to say before the Court. It bears stressing that "no young and decent lass will publicly cry rape if such were not the truth." Also, it is unnatural for a parent to use his offspring as an engine of malice, especially if it will subject a daughter to disgrace.

5. ID.; ID.; ID.; INACCURACIES AND INCONSISTENCIES ARE TO BE EXPECTED IN THE TESTIMONY OF A RAPE VICTIM. — Appellant argues that the description of AAA of her alleged rape is inconsistent with the testimony of Rivera. Appellant cites the testimony of AAA that she was facing downward and the appellant lay on top of her when the intercourse took place. Rivera, on the other hand, testified that he and AAA were lying

on their side and facing each other during the sexual intercourse. It must be remembered that a rape victim, most especially in case of a retarded person, cannot be expected to remember or recount in utmost clarity and consistency the details of her harrowing and humiliating experience. In addition, victims of rape are not expected to have an errorless recollection of the incident which was so humiliating, and painful that they might in fact be trying to obliterate it from their memory. Thus, inaccuracies and inconsistencies are to be expected in the rape victim's testimony.

6. ID.; ID.; ID.; THERE IS NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STRANGE, STARTLING OR FRIGHTFUL EXPERIENCE. — This Court agrees with the finding of the CA that the testimony of BBB was not incredible simply because she first sought the help of a *barangay kagawad* instead of immediately helping AAA. As repeatedly stressed, there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. Witnessing a crime is an unusual experience that elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn. The same observation can be applied to the reaction of Rivera who instead of immediately calling for help, opted to watch appellant and AAA for three minutes.

7. ID.; ID.; ID.; INCONSISTENCIES IN THE NARRATION OF THE WITNESSES ON MINOR DETAILS DO NOT AFFECT THE WEIGHT OF THEIR TESTIMONIES. — Inconsistencies in the narration of the prosecution witnesses on minor details do not affect the weight of their testimonies. Testimonies of the prosecution witnesses cannot be expected to be uniform to the last details. Moreover, the testimonies of witnesses to a crime could not be expected to be error-free all throughout. Different persons have different impressions and recollections of the same incident. Even the most truthful witnesses can make mistakes or innocent lapses that do not necessarily affect their credibility. Thus, findings of trial courts on the credibility of witnesses are entitled to great weight on appeal, and the rule is not changed simply because of some inconsequential inconsistencies that are discovered upon a fault-finding scrutiny of the records.

8. CRIMINAL LAW; RAPE; IN CASES WHERE PENETRATION WAS NOT FULLY ESTABLISHED, RAPE WAS NEVERTHELESS CONSUMMATED WHERE THE VICTIM TESTIFIED THAT SHE FELT PAIN. — Moreover, the Court does not agree with appellant's argument that the reply of AAA, "*Inilagay po niya sa aking oki,*" cannot be automatically be taken to mean that appellant placed his penis inside her vagina. Appellant contends that "*iniligay*" (to place) is not the same or synonymous with "*ipinasok*" (to insert or place inside). In the first place, as already mentioned, children have a very limited vocabulary. Moreover, in cases where penetration was not fully established, the Court had consistently enunciated that rape was nevertheless consummated on the victims testimony that *she felt pain*. The pain could be nothing but the result of penile penetration, sufficient to constitute rape. In the case at bar, AAA categorically testified that she felt pain.

9. ID.; ID.; NOT NEGATED BY ABSENCE OF EXTERNAL SIGNS OF PHYSICAL INJURIES; PROOF OF INJURIES IS NOT AN ESSENTIAL ELEMENT OF THE CRIME. — It is well settled that proof of hymenal laceration is not an element of rape, neither is a medico-legal report indispensable in the prosecution of a rape case, it being merely corroborative in nature. More importantly, a freshly broken hymen is not an essential element of rape, and healed lacerations do not negate rape, neither does the absence of spermatozoa negate rape. In addition, absence of external signs of physical injuries does not cancel out the commission of rape, since proof of injuries is not an essential element of the crime. It must be borne in mind that AAA has a mental capacity of a 4-5-year old. Most likely, she did not put up a resistance that could bring about physical injuries. Moreover, prosecution witness Dr. Eligio testified that AAA could have been "used" once or twice before in view of the presence of healed lacerations; and that if the penis is of normal size, subsequent intercourse would no longer cause lacerations.

10. REMEDIAL LAW; EVIDENCE; MENTAL RETARDATION OF THE RAPE VICTIM MAY BE PROVED BY EVIDENCE OTHER THAN MEDICAL/CLINICAL EVIDENCE. — Appellant relies heavily on this Court's pronouncement in *People of the Philippines v. Cartuano, Jr.*, that there must be proper historical and physical examination to determine the existence of mental retardation. However, in *People of the Philippines v. Acero*,

the Court held that said pronouncement did not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the mental retardation of the victim; and that mental retardation can be proved by evidence other than medical/clinical evidence, such as the testimonies of witnesses and even the observation of the trial court; and that the observation of the trial court, its impression of the demeanor and deportment of the victim and its conclusions anchored thereon are accorded high respect if not conclusive effect on the appellate court. In the case at bar, the RTC observed the mental retardation of AAA, as the same was apparently based on her demeanor and deportment during trial. Even prosecution witness De Guzman, a psychologist from the National Center for Mental Health, assessed that while AAA was then 14 years old, her mental capacity was only that of a 4-5-year old child. More importantly, appellant knew of the mental disability of AAA, the latter being his longtime neighbor. Appellant even acknowledged the same during his testimony. Thus, there is more than enough evidence to affirm the finding of the RTC that AAA was suffering from a mental disability when she was raped by appellant.

11. CRIMINAL LAW; RAPE; IMPOSABLE PENALTY. — Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed if the crime of rape is committed "when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime." The Information in this case alleges the mental disability of AAA and appellant's knowledge of the same at the time of the commission of the crime of rape. Both allegations were duly established beyond reasonable doubt during trial. Hence, the imposition of the death penalty by the trial court was proper. However, with the effectivity of Republic Act (R.A.) No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law, is *reclusion perpetua*. The applicability of R.A. No. 9346 is undeniable in view of the principle in criminal law that *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to the accused are given retroactive effect. In addition, appellant is not eligible for parole pursuantto Section 3 of R.A. No. 9346 xxx.

12. ID.; ID.; CIVIL LIABILITIES OF THE ACCUSED-APPELLANT. — As regards the award of damages, the CA modified the court *a quo*'s award as follows: ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages; and the costs. This Court sustains the amount of ₱75,000.00 as civil indemnity despite the reduction of the penalty imposed on appellant from death to *reclusion perpetua*. As this Court explained in *People of the Philippines v. Victor* the said award does not depend upon the imposition of the death penalty; rather, it is awarded based on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. On the other hand, the Court deems it proper to modify the amounts awarded for moral damages and exemplary damages to bring them at par with prevailing jurisprudence. Moral damages are awarded without need of proof for mental, physical and psychological suffering undeniably sustained by a rape victim. Exemplary damages are awarded when the victim of the crime is a young girl so as to set a public example against elders abusing and corrupting the youth. Thus, the amount awarded as moral damages is increased from ₱50,000.00 to ₱75,000.00, while the amount awarded as exemplary damages should be reduced from ₱30,000.00 to ₱25,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Sanidad Abaya Te Viterbo Enriquez and Tan Law Firm for accused-appellant.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

For review before this Court is the February 9, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00073 which affirmed the Decision[2] dated April 30, 2002 of the Regional

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa, *rollo*, pp. 3-25.

Trial Court (RTC) of Baler, Aurora, Branch 96, finding Nestor Veluz (appellant) guilty of one count of rape of a minor mental retardate and sentencing him to suffer the penalty of death, with modification as to the damages awarded to the victim.

The Information, dated December 13, 1999, in Criminal Case No. 2535, reads as follows:

> That on October 23, 1999 or earlier in x x x, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, and unlawfully and feloniously have carnal knowledge for four times of thirteen year old AAA[3] who has a mental age only of four (4) to five (5) years old and the said accused was then aware of the mental disability and or physical handicap of the said offended party.[4]

When arraigned, appellant pleaded "not guilty."[5] Thereafter, trial ensued.

The prosecution presented eight witnesses, namely: 1) Senior Police Officer 3 (SPO3) Loreto Gavina; 2) Nimia C. de Guzman; 3) Dr. Rodolfo Eligio; 4) BBB, the aunt of AAA; 5) AAA; 6)

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[2] CA *rollo*, pp. 21-24.

[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 of the Philippines v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, citing *People of the Philippines 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 of their immediate family members other than the accused shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "xxx" as in "No. xxx Street, xxx District, City of xxx."

[4] CA *rollo*, p. 8.

[5] Records, p. 28.

Corazon Rivera; 7) Loreto Cuaresma; and 8) CCC, the father of AAA.

On the other hand, the defense presented two witnesses, namely: 1) appellant and 2) Kathleen Veluz (Kathleen), his daughter.

The prosecution evidence seeks to establish the following facts:

AAA testified that she was called by Kathleen to go to the latter's house; and when inside the house, she was raped by appellant.[6]

Corazon Rivera (Rivera) testified that on October 23, 1999, at around 10 a.m., she went to the house of appellant to ask for *saluyot*. Upon reaching his house, Rivera peeped through the window and saw appellant and AAA lying on the elevated bamboo platform (*papag*). Appellant was naked and his buttocks was moving up and down while AAA's blouse was rolled up and both were lying down facing each other side by side. Rivera watched appellant doing the pumping motion for three minutes and then left to call BBB, the aunt of AAA.[7]

Upon reaching the house of appellant, BBB saw appellant and AAA lying naked on the bed. After seeing the scene inside the house of appellant, BBB called appellant and requested that AAA be allowed to go out. Since appellant did not immediately answer, BBB said that she would call a *bantay bayan*. BBB did not find a *bantay bayan* but instead she saw Loreto Cuaresma (Cuaresma), one of the *barangay kagawads*. Cuaresma told BBB to go ahead and that he would follow. When BBB went back to the house of appellant, she saw AAA at the back of the said house, sitting on the ground and perspiring. She asked AAA what happened and the latter answered, "*Iniyot ng matagal.*"[8] BBB asked AAA when she was "*iniyot*" and

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[6] TSN, March 5, 2001, pp. 5-6.

[7] TSN, November 13, 2001, pp. 5-9.

the latter answered, "*Nabayagon.*"[9]

Furthermore, BBB asked AAA how many times she had intercourse. AAA responded by showing her four fingers. In addition, when AAA told BBB that she had intercourse a long time ago, BBB asked if it happened again on that day and the answer was "*wen*" or yes.[10]

Cuaresma followed BBB after five minutes. Upon reaching the house of appellant, he saw AAA sitting and perspiring and her hair entangled. Cuaresma observed that AAA looked as if she was out of her mind. Cuaresma asked AAA what appellant did to her and the latter answered, "*Iniyot nak.*" When asked how many times, AAA raised her four fingers. Cuaresma asked AAA who molested her and the latter answered that it was appellant. Cuaresma then told BBB to bring AAA home and that he would look for CCC, the father of AAA.[11]

Upon locating CCC, Cuaresma told him that he should go home because something happened to AAA. Later, BBB told CCC that AAA was raped by appellant. CCC asked AAA if she was raped by appellant and the latter answered, "Yes."[12]

BBB and CCC immediately brought AAA to the XXX police station. SPO3 Loreto Gavina (SPO3 Gavina) told the group to bring AAA to a doctor for a medical examination.[13]

AAA was then brought to the YYY Memorial Hospital where Dr. Rodolfo V. Eligio (Dr. Eligio) conducted the examination. Dr. Eligio found that there were incomplete lacerations of the hymen at the 3 o'clock and 7 o'clock positions, but the same were old. Dr. Eligio concluded that AAA could have been "used" a week or two earlier and that in the absence of seminal fluid he

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[8] No English translation in the transcript; TSN, August 25, 2000, p. 6.

[9] *Id*.

[10] *Id.* at 3-8.

[11] TSN, November 14, 2001, pp. 2-6.

[12] TSN, January 8, 2002, pp. 2-5.

[13] TSN, June 22, 2000, p. 8.

could not tell whether AAA was raped on the day she was examined. However, Dr. Eligio clarified that if the ejaculation took place outside the vagina, it would explain why there was no sperm inside the vagina. Furthermore, Dr. Eligio manifested that if a woman had sex three times before and subsequently engages in sex for more than three times, the lacerations caused by the first intercourse would be healed; it does not mean that the subsequent intercourse would not anymore produce lacerations if the penis is big, but if the penis is of normal size, the subsequent intercourse would no longer cause lacerations.[14] Dr. Eligio put into writing his findings in a "medico legal certificate."[15]

After Dr. Eligio conducted his examination, BBB and CCC brought AAA back to the XXX police station at 5:15 p.m. They told SPO3 Gavina that AAA was really raped which prompted the group to look for appellant. Appellant was brought to the municipal building. While AAA and appellant were facing each other, SPO3 Gavina asked AAA several times whether she was raped by appellant. AAA answered "yes." SPO3 Gavina also asked AAA how many times appellant abused her; AAA raised her four fingers. According to SPO3 Gavina, CCC, the father of AAA, was not dictating to her when she was answering his questions. However, SPO3 Gavina noticed that AAA had difficulty in speech, that was why her companions were helping her to talk.[16] SPO3 Gavina then executed a *Sinumpang Salayaysay*[17] in connection with the investigation he conducted.

On November 17, 1999, Nimia C. de Guzman (De Guzman), a clinical psychologist, administered several examinations on AAA without the assistance of any relative. As a result of the examinations, De Guzman found out that while AAA was then 14 years old, her mental capacity was only that of a 4-5-year old child. De Guzman put her findings in a Psychological Report.[18]

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[14] TSN, June 23, 2000, pp. 3-7.

[15] Records, p. 10.

[16] TSN, June 22, 2000, pp. 5-11.

[17] Records, p. 9.

[18] TSN, June 22, 2000, pp. 12-16; records, pp. 13-15.

For the defense, evidence is as follows:

Kathleen, 12 years old, testified that on October 23, 1999, she did not call AAA to play; that she was at the house of her uncle on October 22, 1999 because her grandmother died, and that she went home in the morning of October 23, 1999 to get some clothes; and that appellant, her father, was not at their house in the morning of October 23, 1999. In addition, Kathleen claimed that she did not see AAA inside their house nor did she see AAA on her way home that day.[19]

Appellant testified as follows: on October 22, 1999, he and his three children were in the house of his brother-in-law because his mother-in-law died. He helped in preparing the tent, repaired the light, and along with Cuaresma, made the coffin of his mother-in-law. Appellant and Cuaresma did not sleep and stayed in the house. On October 23, 1999, appellant brought Cuaresma home at around 8:00 a.m. When appellant reached his house nobody was there and so appellant slept on the *papag*. When appellant woke up, he saw AAA inside the house. He asked AAA to leave, but she refused. Appellant went back to sleep because he trusted AAA and was confident that nothing would get lost in the house.

Appellant was awakened when BBB called AAA. He then realized that AAA was lying on his left arm. Appellant went down the house and told AAA to leave. AAA went out through the window because she was probably afraid of her aunt. Appellant told BBB that AAA was not there, but BBB did not believe him since she saw the slippers of AAA. Appellant claimed that it was not true that he had sexual intercourse with AAA for four times on October 23, 1999 because he was too tired and sleepy.[20]

On April 30, 2002, the RTC rendered a decision finding appellant guilty of the crime of rape, the dispositive portion of which reads as follows:

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[19] TSN, January 28, 2002, pp. 3-5.

[20] TSN, January 29, 2002, pp. 2-18.

WHEREFORE, premises considered, this Court finds accused Nestor Veluz **GUILTY** beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1(d) and punished under Article 266-B (10) and hereby sentences him to suffer the penalty of **Death**; and to pay victim AAA the amount of Seventy Five Thousand Pesos (Php75,000.00) by way of civil indemnity; and to pay the costs.

SO ORDERED.[21]

Appellant appealed to the CA.

The CA affirmed the RTC decision with modification as to damages, the dispositive portion of which reads as follows:

xxx xxx xxx

This Court finds accused-appellant Nestor Veluz **GUILTY** beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1(d) and punished under Article 266-B (10). Said accused-appellant is hereby ordered to suffer the penalty of **DEATH** and to pay private complainant AAA the amount of Seventy Five Thousand Pesos (Php75,000.00) as actual damages, Fifty Thousand Pesos (Php50,000.00) as moral damages, Thirty Thousand Pesos (Php30,000.00) as exemplary damages and the costs.

xxx xxx xxx

SO ORDERED.[22]

Hence, herein appeal with the following assignment of errors:

First Assignment of Error

THE TRIAL COURT ERRED IN FINDING THAT RAPE HAD BEEN PROVEN BEYOND REASONABLE DOUBT AS:

THE FACT OF CARNAL KNOWLEDGE BY THE ACCUSED-APPELLANT OF THE PRIVATE COMPLAINANT WAS NOT ESTABLISHED BY THE INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PRIVATE COMPLAINANT AND PROSECUTION WITNESSES CORAZON RIVERA AND BBB.

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[21] CA *rollo*, p. 24.

[22] *Rollo*, p. 24.

THE PHYSICAL EVIDENCE DO NOT SUPPORT THE TRIAL COURT'S FINDING, AND DISPROVE THE TESTIMONIES OF PRIVATE COMPLAINANT, CORAZON RIVERA AND BBB, THAT ACCUSED-APPELLANT RAPED THE PRIVATE COMPLAINANT ON OCTOBER 23, 1999.

Second Assignment of Error

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY AS THE QUALIFYING CIRCUMSTANCE OF MENTAL DISABILITY WAS NOT PROVEN IN ACCORDANCE WITH STANDARDS SET FORTH BY CONTROLLING CASE LAW.

Third Assignment of Error

THE TRIAL COURT ERRED IN AWARDING CIVIL INDEMNITY TO PRIVATE COMPLAINANT AS A CONSEQUENCE OF HER ALLEGED RAPE BY ACCUSED-APPELLANT.[23]

The appeal is not meritorious.

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.[24]

Appellant claims that the testimony of AAA is incredible and inconsistent. However, it is settled that when credibility is in issue, the Supreme Court generally defers to the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and observed their deportment during trial.[25] In the instant case, the Court finds nothing on record to justify a departure from

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[23] CA *rollo*, pp. 84-85.

[24] *People of the Philippines v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 108.

[25] *People of the Philippines v. Navida*, 400 Phil. 684, 696 (2000).

the findings of the trial court. The testimony of AAA leaves no doubt that appellant had in fact raped her, to wit:

xxx xxx xxx

Q. When you were already inside their house, did you see Nesty inside their house?
A. No answer sir.
Q. Was Nesty in the sala?
A. Yes sir.

Q. What did Nesty do when you were there?
A. *Iniyot po niya ako sir*.

xxx xxx xxx

Q. Where did he had [sic] sexual intercourse with you?
A. In the upper part of their house sir.

Q. Before he had sexual intercourse with you, what did he do to you?
A. No answer

Q. When you went to the house of Nesty what were you wearing then? Is it pants with t-shirt, shorts with t-shirt or skirt with t-shirt?
A. I was wearing a short sir.

Q. What is your upper garment?
A. He removed my clothes sir. (*Inalis po niya ang damit ko*).

Q. You said that he removed your clothes, you mean to say that he removed your shorts and your upper dress?
A. Yes, sir.

Q. When he removed your dress what did he do?
A. *Iniyot po ako*.

Q. You said that Nesty had sexual intercourse with you? Does Nesty has a clothes or naked?
A. Yes sir, he has clothes. (*Mayroon po*)

Q. When Nesty had sexual intercourse with you, have you seen his penis.
A. Yes sir.

Q. Now, were you able to see the penis of Nesty if he has a [sic] clothes?
A. He removed his shorts sir. (*Hinubad po niya ang short niya*)

Q. After removing his shorts, what did he do?
A. No answer.

Q. Does [sic] he standing when he removed his shorts?
A. He is standing sir.

xxx xxx xxx

Q. You said that Nesty had sexual intercourse with you, how many times?
A. Four times sir.

Q. Can you show it thru your fingers?
A. (The witness showed her four fingers)

Q. When Nesty was removing his shorts, do you still have clothes on?
A. I have sir.

Q. So, do you mean to tell us that he only removed your clothes after he had removed his shorts?
A. None sir. (*Wala po*)

Q. What do you mean by the word none?
A. No answer.

Q. You said that Nesty had sexual intercourse with you and you saw his penis, what did he do with his penis?
A. He placed his penis in my vagina sir. (*Inilagay po niya sa aking Oki*)

Q. What did you feel when he placed his penis in your vagina?
A. Painful sir. (*Masakit po sir*)

Q. After placing his penis in your vagina, what did you do?
A. No answer sir.

Q. When he placed his penis in your vagina were you lying down or standing?
A. Lying, sir.

Q. Were you facing downward or upward?
A. Downward sir.

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Q. When the penis is inside your vagina, where was Nesty? Was he beside you or on top of you?
A. He is on top of me sir.

Q. While he was on top with you what he is doing? Is is [sic] moving?
A. Yes sir.

Q. How was he moving? Moving sideward or up and down?
A. (The witness demonstrated her answer by swaying her hands)

Q. Did he stay long on top of you?
A. Yes sir.[26] (Emphasis supplied)

As a rule, testimonies of child victims of rape are given full weight and credit, for youth and immaturity are badges of truth.[27] 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.[28]

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[26] TSN, March 5, 2001, pp. 5-9.

[27] *People of the Philippines v. Tolentino*, 467 Phil. 937, 951 (2004).

[28] *People of the Philippines v. Banela*, 361 Phil. 61, 70 (1999).

In his Brief, appellant contends that the testimony of AAA are general statements and constitute the standard and stereotypical narration of rape.[29] The Court does not agree. Studies show that children, particularly very young children, make "perfect victims" of rape. Certainly, children have more problems in providing accounts of events because they do not understand everything they experience. Moreover, children have a very limited vocabulary.[30] Although AAA was 13 years old, she had the mental capacity of a 4-5-year old child. The lower courts, and this Court as well, could therefore not expect AAA to narrate and describe the exact details of how she was raped the way a 13-year old child could do.

Moreover, the Court does not agree with appellant's argument that the reply of AAA, "*Inilagay po niya sa aking oki*," cannot be automatically be taken to mean that appellant placed his penis inside her vagina. Appellant contends that "*iniligay*" (to place) is not the same or synonymous with "*ipinasok"* (to insert or place inside).[31] In the first place, as already mentioned, children have a very limited vocabulary. Moreover, in cases where penetration was not fully established, the Court had consistently enunciated that rape was nevertheless consummated on the victims testimony that *she felt pain*.[32] The pain could be nothing but the result of penile penetration, sufficient to constitute rape.[33] In the case at bar, AAA categorically testified that she felt pain.

This Court rejects appellant's contention that AAA was instructed by CCC and BBB on what to say before the Court. It bears stressing that "no young and decent lass will publicly cry rape if such were not the truth."[34] Also, it is unnatural for

[29] CA *rollo*, p. 87.

[30] *People of the Philippines v. Gaudia*, 467 Phil. 1025, 1039 (2004).

[31] *Rollo*, pp. 85-86.

[32] *People of the Philippines v. Sanchez*, 320 Phil. 60, 72 (1995).

[33] *People of the Philippines v. Palicte*, G.R. No. 101088, January 27, 1994, 229 SCRA 543, 547-548.

[34] *People of the Philippines v. Tabanggay*, 390 Phil. 67, 88 (2000).

a parent to use his offspring as an engine of malice, especially if it will subject a daughter to disgrace.[35]

The CA observed that AAA on redirect-examination answered "yes" to the query if her father and aunt told or "taught" her to tell the truth.[36] This Court agrees with the finding of the CA that even though AAA answered in the affirmative when she was asked if her father and BBB instructed her on what to say before the Court, the same cannot be taken literally, considering her mental condition.

Furthermore, AAA's testimony is corroborated by Rivera, to wit:

Q. Upon reaching his house, the house of Nestor Veluz, what did you do if any?
A. I tried to look at the window, sir.

Q. When you looked into the window what did you see if any?
A. I saw them lying, sir.

Q. You mention them in your statement to whom are you referring to?
A. Nestie and AAA, sir.

xxx xxx xxx

Q. What did you observed [sic] when you saw him inside the house?
A. They were naked, sir "*NAKAHUBAD*."

Court
Q. Which of the two are [sic] naked?
A. The man your honor he is moving and his bottocks [sic] was moving.

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[35] *People of the Philippines v. Baring*, 406 Phil. 839, 848 (2001).

[36] *Rollo*, p. 18.

Pros. Casar
Q. What did you observed [sic] in her physical appearance?
A. Her blouse was roll [sic] up, sir.

Q. How about Nestor Veluz where was he when the blouse of AAA was roll [sic] up?
A. They were lying down facing each other side by side, sir.

Q. You mention they who are those persons lying?
A. AAA and Veluz, sir.

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Q. In what manner the bottocks [sic] was moving?
A. It just moving up and down as demonstrated by the witness, sir [sic].

Q. Are you married?
A. Yes, sir.

Q. That motion of the bottocks [sic] of Nestor Veluz moving what was the motion if you know?

xxx xxx xxx

A. It is somewhat "*PAALON-ALON*," sir.

Q. Being a married woman what can you say about that?
A. "*INIYOT PO NIYA*", he was making a sexual intercourse [sic], sir.

Q. How long that you said Nestor Veluz doing this pumping motion on AAA?
A. More or less three minutes, sir.[37]

Appellant argues that the description of AAA of her alleged rape is inconsistent with the testimony of Rivera.[38] Appellant

[37] TSN, November 13, 2001, pp. 5-11.

[38] CA *rollo*, p. 87.

cites the testimony of AAA that she was facing downward[39] and the appellant lay on top of her[40] when the intercourse took place. Rivera, on the other hand, testified that he and AAA were lying on their side and facing each other during the sexual intercourse. It must be remembered that a rape victim, most especially in case of a retarded person, cannot be expected to remember or recount in utmost clarity and consistency the details of her harrowing and humiliating experience.[41] In addition, victims of rape are not expected to have an errorless recollection of the incident which was so humiliating, and painful that they might in fact be trying to obliterate it from their memory.[42] Thus, inaccuracies and inconsistencies are to be expected in the rape victim's testimony.[43]

This Court agrees with the finding of the CA that the testimony of BBB was not incredible simply because she first sought the help of a *barangay kagawad* instead of immediately helping AAA. As repeatedly stressed, there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[44] Witnessing a crime is an unusual experience that elicits different reactions from the witnesses and for which no clear-cut standard form of behavior can be drawn.[45] The same observation can be applied to the reaction of Rivera who instead of immediately calling for help, opted to watch appellant and AAA for three minutes.

Appellant contends that there was nothing in the testimony of BBB which corroborated AAA's testimony that appellant had carnal knowledge of her.[46] The foregoing is inconsequential,

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[39] TSN, March 5, 2001, p. 8.

[40] *Id.* at 9.

[41] *People of the Philippines v. Bulos*, 412 Phil. 222, 231-232 (2001).

[42] *People of the Philippines v. Caniezo*, 406 Phil. 761, 771 (2001).

[43] *People of the Philippines v. Tolentino, supra* note 27.

[44] *People of the Philippines v. Laceste*, 355 Phil. 136, 146 (1998).

[45] *Id*.

[46] CA *rollo*, p. 89.

considering that AAA positively identified appellant as her assailant. Likewise, the testimony of Kathleen to the effect that she did not call AAA to go to appellant's house on October 23, 1999 does not demolish the credibility of AAA. What is important is that, based on the prosecution evidence, the testimonies of AAA and Rivera have established the fact of carnal knowledge.

Furthermore, appellant questions the discrepancy between BBB's sworn statement and her testimony in open court as to the fact of her seeing appellant sucking the breast of AAA.[47] Appellant cites Rivera's testimony that when BBB looked into the window after having been fetched by Rivera, appellant and AAA had already left the place where Rivera saw them earlier and had gone down (*bumaba na sila*).[48] Thus, appellant argues that BBB could not have seen appellant sucking the breast of AAA.

Such argument must fail. Inconsistencies in the narration of the prosecution witnesses on minor details do not affect the weight of their testimonies. Testimonies of the prosecution witnesses cannot be expected to be uniform to the last details.[49] Moreover, the testimonies of witnesses to a crime could not be expected to be error-free all throughout. Different persons have different impressions and recollections of the same incident.[50] Even the most truthful witnesses can make mistakes or innocent lapses that do not necessarily affect their credibility.[51] Thus, findings of trial courts on the credibility of witnesses are entitled to great weight on appeal, and the rule is not changed simply because of some inconsequential inconsistencies that are discovered upon a fault-finding scrutiny of the records.[52]

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[47] *Id.* at 90.

[48] TSN, November 13, 2001, p. 9.

[49] *People of the Philippines v. Astorga*, 347 Phil. 701, 711 (1997).

[50] *People of the Philippines v. Fabro*, 343 Phil. 841, 846 (1997).

[51] *People of the Philippines v. Calegan*, G.R. No. 93846, June 30, 1994, 233 SCRA 537, 547.

[52] *People of the Philippines v. Loto*, G. R. Nos. 114523-24, September 5, 1995, 248 SCRA 59, 67.

Likewise, this Court is not persuaded by appellant's contention that there should have been visible signs of intercourse on the vagina of AAA such as discoloration of the inner lips or redness of the labia minora, none of which were found by Dr. Eligio.[53] Appellant argues that Dr. Eligio only found healed lacerations which belie AAA's claim that she was raped two hours prior to the medical examination. In addition, appellant argues that there should have been welts, marks or even bruises on the body of AAA resulting from her lying down on the bamboo floor.[54]

It is well settled that proof of hymenal laceration is not an element of rape, neither is a medico-legal report indispensable in the prosecution of a rape case, it being merely corroborative in nature.[55] More importantly, a freshly broken hymen is not an essential element of rape, and healed lacerations do not negate rape,[56] neither does the absence of spermatozoa negate rape.[57] In addition, absence of external signs of physical injuries does not cancel out the commission of rape, since proof of injuries is not an essential element of the crime.[58] It must be borne in mind that AAA has a mental capacity of a 4-5-year old. Most likely, she did not put up a resistance that could bring about physical injuries. Moreover, prosecution witness Dr. Eligio testified that AAA could have been "used" once or twice before in view of the presence of healed lacerations; and that if the penis is of normal size, subsequent intercourse would no longer cause lacerations.

Appellant relies heavily on this Court's pronouncement in *People of the Philippines v. Cartuano, Jr.*,[59] that there must be proper historical and physical examination to determine the

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[53] CA *rollo*, p. 97.

[54] *Id*.

[55] *People of the Philippines v. Lou*, 464 Phil. 413, 423 (2004).

[56] *People of the Philippines v. Orilla*, 467 Phil. 253, 274 (2004).

[57] *People of the Philippines v. Alibuyog*, 469 Phil. 385, 393 (2004).

[58] *People of the Philippines v. Mabonga*, G.R. No. 134773, June 29, 2004, 433 SCRA 51, 65.

[59] 325 Phil. 718, 747 (1996).

existence of mental retardation. However, in *People of the Philippines v. Acero*,[60] the Court held that said pronouncement did not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the mental retardation of the victim;[61] and that mental retardation can be proved by evidence other than medical/clinical evidence, such as the testimonies of witnesses and even the observation of the trial court; and that the observation of the trial court, its impression of the demeanor and deportment of the victim and its conclusions anchored thereon are accorded high respect if not conclusive effect on the appellate court.[62]

In the case at bar, the RTC observed the mental retardation of AAA, as the same was apparently based on her demeanor and deportment during trial.[63] Even prosecution witness De Guzman, a psychologist from the National Center for Mental Health, assessed that while AAA was then 14 years old, her mental capacity was only that of a 4-5-year old child.

More importantly, appellant knew of the mental disability of AAA, the latter being his longtime neighbor. Appellant even acknowledged the same during his testimony.[64] Thus, there is more than enough evidence to affirm the finding of the RTC that AAA was suffering from a mental disability when she was raped by appellant.

Thus, the Court finds no error in the CA's affirmance of the RTC decision convicting appellant of the crime of raping AAA.

Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed if the crime of rape is committed "when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime." The Information in this case alleges

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[60] *People of the Philippines v. Acero*, 469 Phil. 686 (2004).

[61] *Id.* at 692-693.

[62] *Id.* at 693, citing *People of the Philippines v. Dumanon*, 401 Phil. 658, 669-670 (2000).

[63] Records, p. 226.

[64] TSN, January 29, 2002, p. 12.

the mental disability of AAA and appellant's knowledge of the same at the time of the commission of the crime of rape. Both allegations were duly established beyond reasonable doubt during trial. Hence, the imposition of the death penalty by the trial court was proper.

However, with the effectivity of Republic Act (R.A.) No. 9346 entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" on June 24, 2006, the imposition of the penalty of death has been prohibited. Thus, the proper penalty to be imposed on appellant as provided in Section 2, paragraph (a) of said law, is *reclusion perpetua*.[65] The applicability of R.A. No. 9346 is undeniable in view of the principle in criminal law that *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to the accused are given retroactive effect.[66]

In addition, appellant is not eligible for parole pursuant to Section 3 of R.A. No. 9346, which states:

> SECTION 3. Persons convicted with *reclusion perpetua*, or those 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.

As regards the award of damages, the CA modified the court *a quo*'s award as follows: ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages; and the costs.

This Court sustains the amount of ₱75,000.00 as civil indemnity despite the reduction of the penalty imposed on appellant from death to *reclusion perpetua*. As this Court explained in *People of the Philippines v. Victor*[67] the said award does not depend upon the imposition of the death penalty; rather, it is awarded based on the fact that qualifying circumstances warranting the

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[65] *People of the Philippines v. Ortoa*, G.R. No. 176266, August 8, 2007, 529 SCRA 536, 555.

[66] *People of the Philippines v. Canuto*, G.R. No. 166544, July 27, 2007, 528 SCRA 366, 377.

[67] 354 Phil. 195, 209 (1998).

imposition of the death penalty attended the commission of the offense.[68]

On the other hand, the Court deems it proper to modify the amounts awarded for moral damages and exemplary damages to bring them at par with prevailing jurisprudence. Moral damages are awarded without need of proof for mental, physical and psychological suffering undeniably sustained by a rape victim.[69] Exemplary damages are awarded when the victim of the crime is a young girl so as to set a public example against elders abusing and corrupting the youth.[70] Thus, the amount awarded as moral damages is increased from ₱50,000.00 to ₱75,000.00,[71] while the amount awarded as exemplary damages should be reduced from ₱30,000.00 to ₱25,000.00.[72]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR HC No. 00073 dated February 9, 2005, finding appellant Nestor Veluz guilty beyond reasonable doubt of qualified rape is *AFFIRMED* with the *MODIFICATION* that the penalty of death meted out to appellant is reduced to *reclusion perpetua,* without eligibility for parole. In addition, appellant is ordered to pay AAA the amount of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱25,000.00 as exemplary damages.

No costs.

SO ORDERED.

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

Leonardo-de De Castro, J., on official leave.

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[68] *People of the Philippines v. Ortoa, supra* note 65, at 555-556.

[69] *People of the Philippines v. Sandig,* 454 Phil. 801, 813 (2003).

[70] *People of the Philippines v. Sambrano,* 446 Phil. 145, 161-162 (2003).

[71] *People of the Philippines v. Pandapatan,* G.R. No. 173050, April 13, 2007, 521 SCRA 304, 326.

[72] *Id*.

THIRD DIVISION

[G.R. No. 168923. November 28, 2008]

BIENVENIDO M. CADALIN, ROLANDO M. AMUL, DONATO B. EVANGELISTA, and PETITIONERS: AALAGOS, ROGELIO; ABACAN, GERARDO M.; ABAD, NICANOR; ABADE, RICARDO B.; ABAN, JOSE; ABANDO, ALEX B.; ABANDO, GREGORIO; ABANES, ANDRES A.; ABANES, MARTIN M.; ABANES, REYNALDO A.; ABANES, RODRIGO M.; ABANES, RODRIGO M.; ABANO, JOVENAL A.; ABANTE, ARIEL B.; ABANTE, EDUARDO; ABANTO, GREGORIO M.; ABARCA, FELMON M.; ABARQUEZ, EMIGDION N.; ABARRO, JOSE H.; ABARRO, JOSEFINO Q.; ABELANIO, CELSO S.; ABELLA, HERMINIO V.; ABESTANO, MIGUEL O.; ABILA, FERNANDO J.; ABOY, ERNESTO M.; ABRIL, MODESTO M.; ABUBO, RODRIGO G.; ABULON, JULIAN V.; ABUSTAN, JOSE JR., B.; ACAIN, FELIPE C.; ACAN, NORBERTO G.; ACERES, DANTE C.; ACERO, DANNY; ACHA, ROGELIO B.; ACLAN, EFREN; ACO, ROGELIO A.; ACUPAN, VICENTE A.; ADAJAR, CESAR L.; ADALIN, GREGORIO; ADALLA, GREGORIO; ADANA, MANUEL P.; ADAWAG, ANGEL G.; ADAWAG, CARLITO; ADAWAG, CRESENCIANO; ADAWAG, NOEL P.; ADAWAG, TEODULFO; ADRAYAN, ALFREDO B.; AGAPITO, GENEROSO M.; AGNE, BERNARDO R.; AGNE, FLORENTINO R.; AGNE, RIZALINO R.; AGUADO, ANICETO A.; AGUBA, RESTITUTO A.; AGUDO, GUILLERMO R.; AGUDO, QUITERIO R.; AGUE, FLORENTINO R.; AGUILA, BENJAMIN G.; AGUILA, BERNARDO F.; AGUILA, JOSUE G.; AGUILA, VICENTE G.; AGUILAR, ESPERIDION T.; AGUILAR, FRANCISCO; AGUINALDO, MANUEL P.; AGUIRRE, DANTE; AGUIRRE,

HERMINIO J.; AGUSTIN, GALICANO D.; ALABAY, NESTOR M.; ALABAY, AGRIPINO V.; ALAGAD, ALFONSO; ALAGAD, BERNARDO F.; ALAGAD, FERNANDO; ALBERTO, GONZALO JR., D.; ACOJIDO, REYNALDO S.; ACTA, LEOWILIN A.; ACUEZA, EUGENIO C.; ACUNA, MANUEL T.; ACUPAN, ANTONIO; ACUPAN, BENITO; ACUPAN, BENJAMIN D.; ACUPAN, EDUARDO B.; ACUPAN, EMMANUEL; ACUPAN, JUANITO P.; ACUPAN, MAXIMIANO A.; ACUPAN, REYNALDO C.; ACUPAN, ROMEO C.; ACUPAN, SOLANO; ALDOVER, ALFREDO L.; ALDOVER, BENCIO L.; ALEA, DIOSDADO A.; ALEGADA, WILFREDO; ALEJANDRE, ALEJANDRO; ALEJANDRE, BENJAMIN A.; ALEJANDRE, HILARION F.; ALEJANDRE, MAXIMINO R.; ALEJANDRE, NOEL P.; ALEJANDRINO, ANSELMO V.; ALEJANDRINO, ENRICO I.; ALEJANDRO, BENJAMIN; ALEJANDRO, EDUARDO L.; ALEJANDRO, EULALIO V.; ALEJANDRO, MAXIMINO; ALFECHE, INOCENCIO V.; ALFREDO, TEODOLFO M.; ALHAMBRA, CEZAR A.; ALINDAY, TOMAS C.; ALMENAR, ALBERTO Z.; ALMERO, ERNESTO C.; ALMONTE, ROMEO B.; ALMONTE, VIRGILIO B.; ALONZO, ARNALDO; ALORIA, AMADO C.; ALVAREZ, ALEXANDER; ALVAREZ, APOLINARIO A.; ALVAREZ, CAMILO; ALVAREZ, MANUEL C.; ALVAREZ, PABLO C.; ALVAREZ, RAUL A.; ALVAREZ, ROLANDO S.; AMA, PAFICO; AMBAL, EDMUNDO G.; AMBAL, HERMOGENES R.; ALBINO, SEPTIMO O.; ALBO, ALEJANDRO R.; ALBURO, ORLANDO; ALCAIRA, ALEXANDER R.; ALCALDE, ROLANDO A.; ALCANTARA, CONRADO LUIS D.; ALCANTARA, JAIME B.; ALCANTARA, JESUS M.; ALCANTARA, LAMBERTO Q.; ALCANTARA, MARIANITO JR.,

J.; ALCANTARA, MARIO C.; ALDEGUER, FEDERICO JR., T.; ALDIANO, PONCIANO C.; ANDAYA, JOAQUIN S.; ANDOY, LEOPOLDO R.; ANDRADA, DAN F.; ANDRADA, SIMEON; ANDULAN, REYNALDO B.; ANG, NESTOR V.; ANGELES, GERONIMO H.; ANGLO, ANTONIO T.; ANI, JEOFFREY; ANICETE, BELTRANICO S.; ANICETE, ROMEO S.; ANIS, BARTOLOME B.; ANSALDO, JOSE B.; ANTILLON, ELINIO P.; ANTIPONO, ARMANDO B.; ANTONIO, LARRY T.; APILADO, ANTONIO; APILADO, ARTURO P.; APOLINARIO, PEPITO; APOLINARIO, FRANCISCO; APUADO, VICTORIO C.; AQUINO, ABANES O.; AQUINO, ABNER O.; AQUINO, ANGEL D.; AQUINO, BARTOLOME; AQUINO, GRACIANO M.; AQUINO, ISIDRO; AQUINO, JIMMY B.; AQUINO, PASTOR; AQUINO, ROSENDO M.; AQUINO, RUBEN M.; ARACARIA, ALEXANDER; ARANDELA, PERCIVAL L.; ARANGORIN, ROBERTO A.; ARATEA, BENJAMIN O.; ARAULLO, ARTURO V.; AMBROCIO, BENJAMIN R.; AMBUNAN, JULIAN P.; AMISTAD, MARTIN G.; AMORES, CARLOS; AMPIL, JOSE R.; AMUL, SEBASTIAN B.; AMURAO, CRISPULO JR., C.; AMURAO, CRISPULO SR., T.; AMUTAN, FERNANDO L.; AMUTAN, MOISES; ANANDING, AMORSOLO S.; ANCHETA, BERNARD P.; ANCHETA, TEOTINIO O.; ANDAL, DANILO L.; ANDAMO, CARLOS P.; ARGUELLES, ANGELITO M.; ARGUELLES, EULALIO; ARGUELLES, HERMENIGILDO M.; ARICA, WILFREDO P.; ARIZA, DIONISIO R.; ARLITA, VICENTE; ARONSE, JUANITO P.; ARTITA, ROGELIO S.; ARUELIO, VICENTE; ASEDILLO, JOSE M.; ASPER, RODOLFO M.; ASUNAN, DANILO R.; ASUNCION, ANTONIO; ASUNCION, ARTEMIO M.; ASUNCION, EDGARDO; ASUNCION, REXY SR., L.;

ASUNCION, RODOLFO C.; ASUNCION, FELICIANO N.; ATIENZA, CARLITO C.; ATIENZA, JOSE R.; ATIENZA, JUSTO; ATIENZA, RESTITUTO A.; ATUD, LEONELITO M.; AUSTRIA, ANGEL; AUSTRIA, CALIXTO B.; AUSTRIA, OSCAR M.; AUSTRIA, SAVADOR T.; AVELLANA, JOSE; AVILA, VIRGILIO I.; AVUELTA, RICARDO JR., P.; AXALAN, BARTOLOME M.; AXALAN, BARTOLOME M.; AXALAN, LORETO JR.; AXALAN, MARINAO V.; ARAULLO, PRUDENCIO; ARAYATA, ESCOLASTICO; ARCANGEL, MANUEL DG.; ARCARIA, ALEXANDER; ARCIAGA, FRANCISCO P.; AREVALO, JOSE; AREVALO, JUANITO; AREVALO, MARIO A.; AREVALO, RAMON; AREVALO, RAMON A.; AREVALO, RODOLFO D.; ARGETE, GAVINO M.; ARGUELLES, ALFREDO; BAGASIN, LAMILO A.; BAGTING, VICENTE G.; BAGTING, VICENTE G.; BALABALO, LUIS; BALANTE, GERONIMO; BALATAZO, SILVERIO M.; BALBICRAN, GERARDO R.; BALBIERAN, ANATALIO B.; BALBIERAN, MAXIMO C.; BALBIERAN, ROMEO B.; BALBIERAN, ROMULO R.; BALBIERAN, VICENTE D.; BALBIN, RODOLFO C.; BALBIRAN, FERNANDO B.; BALCOBA, FEDERICO B.; BALINAS, PABLO G.; BALINGIT, RODOLFO F.; BALITBIT, RODOLFO; BALIWAG, CESARIO H.; BALOBO, ALFREDO S.; BALOBO, TEODORO V.; BANAAG, FALCONERI; BARASARI, RIZAL; BARBA, DANILO M.; BARBOZA, RAMON T.; BARCENA, FIDEL F.; BARIN, RODOLFO; BARLENA, FIDEL F.; BARLENA, FLORENTINO; BAROLA, ABDON V.; BARRIENTOS, BENJAMIN; BARRO, BERNARDO C.; BARTIDO, LEONARDO; BARTOLOME, MARCELO; BARZAGA, VIVENCIO T.; AXALAN, VICENTE R.; AYO,

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BODADILLA, DANILO A.; BOLANTE, GERONIMO E.; BOLANTE, GIL I.; BOLISAY, CARLITO M.; BONDOC, AUGUSTO; BONDOC, BENITO U.; BONDOC, DOMINGO; BONGT, DOMINGO S.; BOOC, PEPE S.; BOQUIREN, ARNULFO JR., M.; BOQUIREN, ARNULFO M.; BORDILLA, ERESTO J.; BORJA, JAMES SR., V.; BORNALES, RICARDO C.; BRACAMANTE, BAYANI S.; BRACAMANTE, VIRGILIO A.; BRACEROS, WILFREDO; BRAGAIS, DEMETRIO B.; BRAGANZA, NORBERTO E.; BRAVO, TINIOSO S.; BRECINO, ANGELES; BRIONES, EURECLYDON G.; BRIONES, ROMEO B.; BRIONES, TRANQUILINO Y.; BICOL, ANGELITO M.; BICOL, ANSELMO G.; BICOL, ARISTEO M.; BICOL, CELESTINO JR., C.; BICOL, CESARIO M.; BICOL, FELICISIMO M.; BICOL, FLORENTINO L.; BICOL, FRANCISCO G.; BICOL, ROGELIO M.; BICOL, ROMULO L.; BIGADION, NOEL S.; BILLONES, ROGELIO A.; BISCOCHO, ELEUTERIO B.; BISCOCHO, PETRONILLO M.; BITO, TEOFILO N.; BLANCO, FERNANDO; BLANCO, VIRGILIO; BULATAO, ALFREDO G.; BULLECER, RODOLFO R.; BUNAO, ISABELO M.; BUNGAY, AVENILO; BUNGAY, JEFFERSON Q.; BUSTAMANTE, ALEXANDER; BUSTAMANTE, JOSE G.; BUSTILLO, PABLITO G.; BUTIONG, VIRGILIO JR.; CAALIM, BENITO T.; CAALIM, ROMEO T.; CABALLA, HONESTO P.; CABALLERO, DELFIN C.; CABALLERO, JACINTO B.; CABANIGAN, BENEDICTO; CABATAY, MOISES; CABEZA, GUILLERMO; CABIGAN, ROSENDO Z.; CABILANGAN, PABLO G.; CABRERA, JOSE D.; CABRERA, HERMANELI; CABUHAT, REYNALDO T.; CAGANAP, JULIO R.; CAGATAN, DOROTEO G.; CAGATAN, PEDRO; CAGATAN, RODOLFO; CAGAYAT, JOVEN C.; CAHIGAS,

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MUNOZ, JOSE P.; MUNOZ, ROGELIO; NAJERA, ANGEL C.; NAPIZA, JUANITO N.; NAPIZA, LAMBERTO R.; NAPIZA, SALVADOR; NAPIZA, WILFREDO L.; NAPOLAN, ERNESTO C.; NARCISO, BENJAMIN B.; NARCISO, CARLOS G.; NARCISO, MARCELO A.; MINIMO, ELUETERIO V.; MINIMO, GASPAR V.; MINIMO, HERNANDO G.; MIRALES, ARNALDO I.; MIRANDA, ALFREDO P.; MIRANDA, BENJAMIN M.; MIRANDA, CRESENCIANO; MIRANDA, RUBEN H.; MISA, FELIXBERTO D.; MODESTO, CLAUDIO JR., A.; MOGOL, NOEL M.; MOLINA, ILDEFONSO C.; MOLINA, ROGELIO D.; MONDEJAR, ARMANDO B.; MONDIDO, OSCAR C.; MONTECINES, JUANITO O.; MONTON, GENEROSO D.; MONZON, CELSO N.; MONZON, COSME B.; MORADA, COSME B.; MORADA, RENATO V.; MORADA, RICARDO B.; MORADA, RODOLFO B.; MORADA, RODRIGO; MORAL, NESTOR K.; MORALES, ROLANDO M.; OCAMPO, RODRIGO E.; OCCIANO, ANTONIO B.; OCHOA, LORENZITO H.; OCSON, REYNALDO P.; OCTAVIANO, FRANCISCO; OCTAVIO, CARLITO P.; ODESA, ANTONIO L.; ODESA, BENJAMIN; OFICIAR, GIDEON S.; OLAES, ROMULO W.; OLARTE, GREGORIO E.; OLASCO, ANGEL M.; OLEDAN, LUIS; OLIMBA, GERMAN V.; OLIMBA, ZOSIMO V.; OLINDO, JUAN; OLIVA, MARCIAL B.; OLIVARES, FRANCISCO M.; OLIVIAGA, NOEL T.; ONG, RENATO S.; ONGKIKI, LEOPOLDO M.; OPEZ, VICENTE S.; ORALLO, BENJAMIN V.; NARCISO, MELITON B.; NARCISO, NARCISO L.; NATALIA, EDWIN B.; NATALIA, REYNALDO B.; NATI, CONRADO; NATIVIDAD, SAMUEL N.; NAVARETTE, FERNANDO C.; NAVARRO, MARIANO D.; NAVARRO, PACIFICO JR., D.; NAZARENO, FLORANTE A.; NAZARENO,

RESURRECCION D.; NAZARIO, RIZAL B.; NEGRITE, JOSUE D.; NEPOMUCENO, ALFREDO; NEPOMUCENO, ISIDRO M.; NER, VALENTE JR., T.; NG, HERBERT G.; NICOLAS, FLORENCIO; NINON, ERNESTO C.; NOFUENTE, MABINI M.; NOGUERA, RODOLFO M.; NUQUI, AVELINO; OBA, NEMESIO P.; OBANA, MARCIAL L.; OBANDO, LUIS G.; OBIAS, ROMEO M.; OCAMPO, DANILO D.; OCAMPO, EDGARDO; PAGUIO, RICARDO T.; PAJARES, ANTONIO V.; PAKINGGAN, EMILIO C.; PALABRICA, LEANDRO P.; PALASIN, SEBASTIAN D.; PALIMA, ANICETO C.; PALMA, RICARDO M.; PALO, QUINCIANO; PALOMA, ABELARDO E.; PALPAL-LATOC, JOSE A.; PAMATIAN, JOSE C.; PAN, GONZALO; PAN, PORFIRIO C.; PANCHO, JOSE V.; PANGAN, BUENEVIDO; PANGAN, ERNESTO S.; PANGAN, JAVIER M.; PANGANIBAN, FRANCISCO D.; PANGAYAO, FELIPE P.; PANGGAT, REGIDOR M.; PAPA, ANGEL A.; ORBISTA, PEDRO JR.; ORDAS, REYNALDO N.; ORDONEZ, RICARDO; ORIAL, ROMEO S.; ORIGENES, ROMEO L.; ORINE, CIPRIANO T.; ORLANES, EUFROCINO B.; ORTANEZ, DANILO R.; ORTEGA, ANTONIO V.; OSIAS, WILFREDO; OVERA, ABELARDO F.; OWAY, LUIS A.; PA-A, VIRGILIO P.; PAALAN, DAVID; PACANZA, FEDERICO C.; PACHECO, JESUS N.; PACHO, ERNIE; PACIFICO, NAVARRO JR., D.; PADILLA, ALFONSO L.; PADILLA, JESUS N.; PADUA, RUFINO C.; PAEZ, ERLANDO P.; PAGADUAN, BENEDICTO V.; PAGLICAUAN, MARIO M.; PAGSANJAN, DANILO P.; PAGSISIHAN, NUMERIANO; PAGUIO, CARLITO; PEREGRINA, LEOPOLDO M.; PERENO, FERNANDO; PEREZ, ANTOLIANO E.; PEREZ, ANTONIO; PEREZ, ARNEL; PEREZ, CARMELITO L.; PEREZ, DANILO M.; PEREZ, DIONISIO M.;

PEREZ, EDUARDO M.; PEREZ, EFREN G.; PEREZ, JIMMY; PEREZ, JUAN; PEREZ, LEON E.; PEREZ, ROMEO E.; PEREZ, ROMULO M.; PEREZ, WILLIAM; PERIGIL, CENON P.; PERINO, FERNANDO G.; PESCO, ALBERTO T.; PIELAGO, ELEODORO A.; PILLAJERA, TOMAS JR., B.; PINEDA, DELMAR P.; PARALA, GORGONIO P.; PARAS, JOEL; PAREN, JUANITO; PARUNGAO, ANTONIO D.; PASAMBA, WALDEMAR S.; PASCUA, EDUARDO C.; PASCUAL, EDMUNDO V.; PASCUAL, ISAGANI M.; PASIA, FRANCISCO V.; PASIMIO, JOSE R.; PASION, JOSE V.; PASIONA, IRENEO G.; PASMIO, EDILBERTO JR.; PATAG, ROMEO I.; PAYRA, JOSE I.; PAYRA, LUISITO S.; PEDRIGUERA, FERNANDO; PELLAS, CHESTER; PENA, ANGELITO M.; PENA, ANTERO F.; PENDRAS, DIONISIO M.; PENILLA, CARLOS; PEPITO, LOPE T.; PERALTA, HERMINIO; PERALTA, REYNALDO M.; PERAN, RODRIGO P.; PEREA, FRANCISCO L.; PEREA, JUANITO L.; PEREA, OLIMPIO T.; PUEYO, DANTE; PUEYO, REYNALDO Q.; PULIDO, RODOLFO E.; PUNAY, CORNELIO F.; PUNIO, ALEJANDRO F.; PUNIO, GREGORIO F.; PUNZALAN, WILFREDO D.; PURISIMA, ROGELIO P.; QUEBRAL, JOSELITO C.; QUIABO, ROBERTO C.; QUIMAN, FEDERICO T.; QUINTO, ALFREDO L.; QUINTO, JUANITO M.; QUINTOS, ROMEO; QUIOBO, ROGELIO C.; QUITEVIS, ELPIDIO R.; QUOBO, ROBERTO; RABANO, BENJAMIN D.; RABINO, DESIDERIO R.; RACABO, EDUARDO W.; PINEDA, SALVADOR; PINILI, VICTORIO E.; PINPIN, ELIZALDE C.; PINPIN, FRANCISCO; PINPIN, MODESTO M.; PINPIN, WILFREDO C.; PINTO, ROMEO A.; PITAO, MATEO F.; PLAMERAS, ROGELIO C.; PLANTA, ARIEL I.; PLATA, PACIENCIO M.; POBLETE, ARTURO; POBLETE, DOMINADOR

N.; POBLETE, LEONARDO N.; POBLETE, SENECO P.; POLLOS, JAIME; PONDALIS, DOMINGO B.; PONIEG, BERNARDO Q.; PORTUGAL, NORBERTO D.; PORTUGUEZ, LAUREANO C.; PREILA, DOMINADOR; PRIMERO, ANGELITO G.; PRIMO, LEONARDO; PRIVADO, PEDERICO R.; PRUDENTE, BUENAVENTURA; PRUDENTE, CARMELITO; RAVELAS, RODRIGO; RAVELAS, ROGELIO R.; RAVELAS, TEODORICO R.; RAVELAS, VICENTE F.; RAYA, ROMEO S.; RAYMUNDO, RICARDO E.; RAYMUNDO, WILFREDO D.; REBONG, ALBERT E.; RECOLASO, ERNESTO E.; RECOLIZADO, BIENVENIDO B.; REDAZA, ALBERTO M.; REGULTO, QUIRICO; REJUSO, ARTHUR; RELLAMA, RAUL D.; RELLAMA, TORIBIO M.; RELLOSA, JAIME; RELOVA, CASIANO M.; REMO, ILUMINADO S.; REMOQUILLO, EUGENIO A.; REMOQUILLO, RODOLFO A.; RAMELO, JOSELITO F.; RAMIREZ, EUGENIO P.; RAMIREZ, FERNANDO; RAMIREZ, ILDEFONSO R.; RAMIREZ, LEO; RAMIREZ, LIRIO C.; RAMIREZ, LITO C.; RAMIREZ, LUIS A.; RAMIREZ, RICARDO G.; RAMIREZ, RODOLFO; RAMOS, ALBERTO M.; RAMOS, ANSELMO C.; RAMOS, EMETERIO P.; RAMOS, FROILAN M.; RAMOS, JOSE N.; RAMOS, LEONCIO; RAMOS, MANOLITO V.; RAMOS, NOMER M.; RAMOS, ROQUE A.; RAMOS, TOBIAS R.; RAMOS, OSCAR B.; RANADA, JOSE G.; RANADA, MARCELO; RANADA, PEPITO C.; RANGEL, PONCIANO P.; RAQUEDAN, REYNALDO T.; RAVELAS, FEDERICO; RAVELAS, LARRY; RAVELAS, LORENZO D.; RAVELAS, MANUEL F.; REYES, ROMEO B.; REYES, ROMEO S.; REYES, ROMULO M.; REYES, SERGIO L.; REYES, SISENANDO P.; REYES, SOLOMON B.; REYES,

VICENTE G.; REYNOSO, EUGENIO F.; REYNOSO, LINDSEY F.; RICAZA, VIRGILIO G.; RICO, ANTONIO F.; RICO, ERNESTO F.; RICO, FERNANDO M.; RIETA, EMMANUEL S.; RIETA, RICARDO V.; RIETA, RODELIO G.; RIETA, RODELIO JR., V.; RIVADA, CARLOS A.; RIVERA, BENITO JR.; REMOTO, FIDEL O.; REMOTO, JESUS O.; RENTOZA, GERARDO; RESPALL, LUCIEN M.; RESVALLES, ISIAS; RETANAN, GAUDENCIO R.; RETENER, TOMAS B.; REY, REDENTOR C.; REYES, ABNER M.; REYES, ALBERTO L.; REYES, ALFREDO S.; REYES, ALVIN C.; REYES, AMABLE S.; REYES, BENEDICTO F.; REYES, CESAR C.; REYES, ERNESTO F.; REYES, FLORENCIO; REYES, GREGORIO B.; REYES, JACINTO JR., M.; REYES, JOSE A.; REYES, JOSE C.; REYES, MAXIMO; REYES, NEPTALI M.; REYES, NESTOR E.; REYES, PABLO; REYES, RIGOR Y.; REYES, RIZALINO R.; REYES, ROGELIO G.; REYES, ROLANDO G.; RONQUILO, REYNOSO P.; ROQUE, AVELINO M.; ROQUE, GERARDO R.; ROQUILLO, QUIRINO; ROSALES, ALFREDO E.; ROSALES, ANGEL P.; ROSALES, ARMANDO E.; ROSALES, MARIO E.; ROSALES, PIDO; ROSALES, RAMON M.; ROSARIO, VIRGILIO L.; ROVELOS, BERNARDINO; RUBIO, WILFREDO; SA-ANOY, RAMON A.; SABATIN, HONORIO P.; SABELITA, SANTIAGO L.; SABINO, MENANDRO L.; SACDALAN, REYNALDO P.; SACRO, ROMEO A.; RIVERA, BENJAMIN M.; RIVERA, JOSE M.; RIVERA, NILO S.; RIVERA, ROGELIO C.; RIZAL, NAZARIO B.; ROBALE, EDGARDO C.; ROBILLOS, BERNARDO J.; ROBLES, LEO B.; ROBLES, PABLO A.; ROBLES, RUBEN; ROBLEZA, JOSE C.; ROBLEZA, RODOLFO; ROBLEZA, RODRIGO C.; ROBLEZA, RUSTICO C.; ROCABO, EDUARDO; RODRIGUEZ,

ANTONIO R.; RODRIGUEZ, BERNARDO R.; RODRIGUEZ, ELIGIO T.; RODRIGUEZ, HENRY A.; RODRIGUEZ, REYNALDO B.; RODRIGUEZ, ROMEO B.; ROMALES, EDGARDO H.; ROMEO, ALMONTE; ROMERO, ABAD ARTURO C.; RONA, SALVADOR T.; RONDILLA, ERNESTO J.; RONQUILLO, ELIAS; RONQUILLO, ELISE; RONQUILLO, LUIS V.; RONQUILLO, RODOLFO C.; RONQUILLO, SEGUNDINO L.; SANOHAN, FRANCISCO F.; SANOZA, ESTEBAN B.; SANSALIAN, ARTURO A.; SANSALIAN, EDUARDO C.; SANSALIAN, LITO; SANSALIAN, MARIO A.; SANSALIAN, RAFAEL A.; SANTA, ADRIANO; SANTIAGO, APOLONIO P.; SANTIAGO, CELSO G.; SANTIAGO, GIOVANNI D.; SANTIAGO, JOSELITO S.; SANTIAGO, RIZALINO T.; SANTIAGO, SERGIO; SANTIAGO, ULDARICO P.; SANTOS, ARTURO L.; SANTOS, DOMINADOR JR., R.; SANTOS, EDILBERTO G.; SADDI, EMILIO S.; SAGUI, ALEXANDER T.; SALAZAR, EDGARDO; SALGATAR, PEDRO L.; SALONGA, EDGARDO; SALONGA, HERMINIO P.; SALTA, AVELINO R.; SALTA, BENJAMIN P.; SALTA, ERNESTO P.; SALTA, TRINIDAD P.; SALVADOR, CARLITO R.; SALVADOR, DOMINGO I.; SALVADOR, ERNESTO I.; SALVADOR, MELECIO I.; SALVADOR, ROGELIO N.; SALVADOR, ROLANDO I.; SAMPARADA, JOSE; SAN JOSE, NEMESIO S.; SAN JOSE, RICARDO S.; SAN JUAN, EDGARDO I.; SAN MATEO, NUMERIANO; SAN PEDRO, ERNESTO Z.; SAN PEDRO, RODOLFO Z.; SAN PEDRO, ROGELIO Z.; SANCHA, ADRIANO V.; SANCHA, GERONIMO M.; SANCHEZ, ARTEMIO B.; SANCHEZ, FRANCISCO F.; SANCHEZ, FRANKLIN G.; SANCHEZ, NICASIO; SIMBAJON, ARTHUR B.; SALVADOR, DOMINGO SR.; SOGUI, ALEXANDER B.; SOLANO, DOMINGO;

SOLANTE, JOSELITO C.; SOLANTE, PAQUITO E.; SOLETO, NORBERTO; SOLIMAN, ERDY M.; SOLIMAN, FRANCISCO M.; SOLIS, CARLITO M.; SOLIS, CONRADO III G.; SOLIS, CONRADO JR., A.; SOLIS, EDGARDO; SOLIS, ERNESTO M.; SOLIS, ISAGANI M.; SOMERA, DEMETRIO R.; SORIANO, NICANOR V.; SORIANO, PROCESO M.; SORONO, HERMOGENES S.; SANTOS, EFREN S.; SANTOS, GABRIEL S.; SANTOS, JOSE H.; SANTOS, JUANITO; SANTOS, LUISITO B.; SANTOS, LUISITO B.; SANTOS, NICANOR; SANTOS, ORLANDO S.; SANTOS, RENATO D.; SANTOS, WILFREDO; SAPUYOT, MIGUEL; SARMIENTO, RICARDO M.; SARMIENTO, SILVESTRE; SATRE, MAXIMO JR., L.; SAYAS, RICARDO; SENA, JAIME M.; SENO, QUIRINO O.; SERA, ROBERTO; SERNA, JULIAN G.; SERQUINA, ALEX S.; SERRA, DOMINADOR; SERRANO, EMILIANO B.; SERRANO, RICARDO; SERVAN, FILOMENO M.; SIDRO, ROMEO B.; SIGUA, FERNANDO M.; SILANG, AMADO M.; SILANG, FAUSTINO D.; SILVA, ANICETO G.; SILVA, EDGARDO M.; SILVERIO, ARCADIO JR., C.; SILVERIO, ROLANDO; TANGUINOO, PETER; TAPIA, TAGUMPAY R.; TAPIA, VICENTE JR., R.; TARAYA, ALBERTO P.; TARIMAN, ROMEO T.; TARUC, FERMIN; TARUC, FERMISO JR.; TARUC, WILLIAM; TATING, ROBERTO T.; TEBELIN, TEODULO O.; TEMPLO, HENRY; TEMPLO, LEVY S.; TEMPLO, TEDDY S.; TEMPROSA, MENANDRO P.; TEOSECO, ROMAN L.; TESALONA, BAYANI T.; TIAMSIM, IRENEO; SORONO, MELQUIADES S.; SOTTO, EDUARDO L.; STA. MARIA, ERNESTO G.; STELLA, VICENTE D.; STO. DOMINGO, ALBERTO; SUAMEN, RAFAEL; SUANSING, ROLANDO C.; SUAZO, ANTONIO B.; SULTAN, RODOLFO T.; SUNGLAO, MARIO; SUPANG, FELIMON R.;

TABADA, JESUS C.; TABLAIN, VENANCIO; TABLAN, JULIO E.; TABLAN, PASTOR E.; TABOSO, AMADO M.; TAFALLA, ADOLFO D.; TAGORDA, ANASTACIO JR., J.; TAGUINOD, BENJAMIN JR.; TALATAC, ISAIAS; TALATO, GAUDENCIO M.; TALIBSAO, MAXIMINO H.; TALISAY, NAVAS; TALUSIK, FELICISIMO T.; TALUTO, GAUDENCIO M.; TAMAYO, JAIME C.; TAMPELIX, MACARIO L.; TAN, JOESUS; TANAG, ELENO C.; TANAG, LEORINO C.; TANGUIA, AUGUSTO B.; UNTALAN, WILFREDO V.; UNTALAN, WILLIE; URSOLINO, SERGIO A.; VALDERAMA, ANTONIO T.; VALDERAMA, RAMON T.; VALDEZ, ROGELIO R.; VALENCIANO, NILO G.; VALERA, ANICETO A.; VALERO, MAXIMO A.; VALES, AUGUSTO L.; VALLADA, AURELIO S.; VALLAR, FEDERICO P.; VALLARTA, TOMAS JR., L.; VARGAS, ISAIAS V.; VASQUEZ, EDGARDO C.; VEGA, ABRAHAM; VELASQUEZ, BENJAMIN; VELASQUEZ, CONSTANTINO B.; TIAMZON, RODOLFO S.; TIBUS, NICO V.; TIBUS, SAMSON V.; TIO, NORBERTO B.; TIOSECO, FIDEL L.; TIPOSO, LEONILO; TIU, JUAN JR., G.; TOLENTINO, AMADO S.; TOLENTINO, ANGEL G.; TOLENTINO, ARNEL T.; TOLENTINO, BIENVENIDO S.; TOLENTINO, DOMINGO G.; TOLENTINO, MARIO M.; TORRALBA, FELIPE; TORRALBA, GERONIMO M.; TORRES, BENEDICTO; TORRES, JOVITO V.; TORRES, MAXIMIANO Y.; TORRES, NEMESIO; TORRES, RAYMUNDO S.; TRA, ROGELIO S.; TRAVISON, RODOLFO S.; TRESVALLES, ISIAS V.; TRIAS, ANTONIO; TRIAS, FRANCISCO G.; TRIAS, RENATO S.; TRILLANES, RENE M.; TUAZON, GAVIN U.; TUNGCOL, BENEDICTO; UBALDO, PLACIDO C.; UMALI, FRANCISCO A.; UNIDA, SIMPLICIDO; UNIDAD, REYNALDO R.;

VILLAHERMOSA, DOMINGO O.; VILLALOBOS, ROLANDO C.; VILLALUZ, ANTONIO; VILLANUEVA, CARLITO; VILLANUEVA, DANILO A.; VILLANUEVA, DANILO N.; VILLANUEVA, ELITO S.; VILLANUEVA, ERNESTO N.; VILLANUEVA, MANUEL N.; VILLARBA, ANGEL; VILLAREAL, JOSE V.; VILLARINO, FELICISIMO T.; VILLARINO, JUANITO P.; VILLARINO, LEONARDO; VILLAROSA, FRANCISCO M.; ABANTO, NICK; VELASQUEZ, ELPIDIO B.; VELASQUEZ, MARIO M.; VERDADERO, EUGENIO C.; VERDAN, OSCAR A.; VERGARA, ALFREDO S.; VERGARA, BIENVENIDO; VERGARA, IGNACIO P.; VERGARA, LEGORIO S.; VERGARA, PEDRO; VERNAL, VICTORIO; VERNES, MARIANO N.; VERZONILLA, RUFINO V.; VERZOSA, RAMON R.; VIAR, GUILLERMO E.; VICMUNDO, FELICITO P.; VICTORIA, DELFIN V.; VICTORIA, GILBERT; VICTORIA, JUBERT D.; VICTORIANO, ALFREDO; VICTORIANO, AUGUSTO; VICTORIANO, HERMANE; VIDALLON , TEOFILO P.; VIERNES, SABINO N.; VIERNES, MARIANO N.; VILLAROMAN, RAFAEL D.; VILLA, JESUS J.; VILLABLANCO, JOVEN; VILLAFLORES, EDGARDO G.; VILLAFLORES, FRANCISCO; VILLAGERA, CEFERINO; VILLAHERMOSA, ALEX; VILLANUEVA, ROGELIO R.; VILLAR, ALFREDO A.; VILLAR, NEPHTALI D.; VILLAR, RAUL R.; VO, HERMINIO V.; YANGLO, ALEJANDRO M.; YLAYA, GALILEO C.; YNGENTE, VICENTE D.; YULO, BUENAVENTURA M.; YUVIENGCO, MEYNARDO L.; ZALAVARIA, CARLOS R.; ZAMORA, PRIMO B.; ZARA, FRANCISCO; ZULUETA, JOSE B.; ZUNIGA, ORO C.; ACUPAN, JUANITO; ACUPAN, ROMEO; ALDEGUER, JAIME B.; BAS, FERNANDO; BAUTISTA,

LEONARDO; BENITEZ, JOVITO N.; BLANCO, ALBERTO B.; CIFRA, HERNAN N.; ELISAN, RISTITUTO; ENGON, VICENTE; HERMOSO, ROBERTO; LOZA, CRISOSTOMO; VIAR, ROMEO E.,[1] *petitioners, vs.* **HON. COURT OF APPEALS, BROWN & ROOT INTERNATIONAL, INC. (now Kellog Brown & Root), ASIA INTERNATIONAL BUILDERS CORP., and NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; NATIONAL LABOR RELATIONS COMMISSION; HAS AMPLE AUTHORITY TO ENTERTAIN TARDY APPEALS IF THE CIRCUMSTANCES OF THE CASE WARRANT LIBERALITY CONSIDERING THE AMOUNT AND THE ISSUES INVOLVED. — Ruling first on the procedural issues raised, we find as flimsy the petitioners' contention that the December 3, 2002 NLRC Decision granting their claims has already attained finality as no timely motion for reconsideration was filed and no bond was posted by the private respondents. The records reveal that while AIBC's motion for reconsideration was filed one day late, BRII timely filed its motion on January 16, 2003; thus, insofar as the latter is concerned, the NLRC decision has not yet attained finality. This fact notwithstanding, the NLRC, in the light of our ruling in *Surigao del Norte Electric Cooperative v. National Labor Relations Commission*, has ample authority to entertain tardy appeals if the circumstances of the case warrant liberality considering the amount and the issues involved. This principle applies with greater force to this case because what is involved is not an appeal but a mere motion for reconsideration. The NLRC, in the interest of due process, can very well disregard technicalities of procedure.

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[1] The listing in the petition of the petitioners' names is not entirely accurate as there appear to be duplications and misspellings. Nevertheless, the case title herein reflects the imprecise enemeration of petitioners.

2. ID.; ID.; ID.; APPEAL BOND; NOT REQUIRED IN ORDER THAT THE COMMISSION MAY ENTERTAIN A MOTION FOR RECONSIDERATION OF ITS DECISION. — As regards the appeal bond, we agree with private respondents' contention that neither Article 223 of the Labor Code, as amended, nor the Rules of Procedure of the NLRC requires the posting of a bond for the Commission to entertain a motion for reconsideration of its decision. An appeal bond is required only for the perfection of an appeal of a Labor Arbiter's decision involving a monetary award.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL LIE ONLY WHEN GRAVE ABUSE OF DISCRETION OR AN ACT WITHOUT OR IN EXCESS OF JURISDICTION ON THE PART OF THE LABOR TRIBUNALS IS CLEARLY SHOWN. — Proceeding now to the meat of the instant controversy, we find that the NLRC, except with respect to the aforementioned 149 claimants listed in Annex "B" of the September 2, 1991 Resolution, did not abuse its discretion, much more gravely, when it reconsidered its December 3, 2002 Decision and denied the claims of the rest of the petitioners. At this juncture, we emphasize that *certiorari* under Rule 65 of the Rules of Court will lie only when grave abuse of discretion or an act without or in excess of jurisdiction on the part of the labor tribunals is clearly shown. It is incumbent, then, for petitioners to establish before the appellate court that the labor tribunal capriciously and whimsically exercised its judgment as would amount to lack of jurisdiction, or that it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and that its abuse of discretion was so patent and gross as to constitute an evasion of positive duty enjoined or a refusal to act at all in contemplation of law.

4. ID.; APPEALS; APPELLATE COURTS ACCORD THE FACTUAL FINDINGS OF THE LABOR TRIBUNAL NOT ONLY RESPECT BUT ALSO FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE. — Further, deference to the expertise acquired by the labor tribunal and the limited scope granted the Court in the exercise of *certiorari* jurisdiction restrain any probe into the correctness of the NLRC's evaluation of evidence. Oft-repeated is the rule that appellate courts accord the factual findings of the labor tribunal not only respect but

also finality when supported by substantial evidence, as in the instant case. Thus, we find no reversible error in the CA's ruling affirming the NLRC's decision, with the exception again of the aforesaid 149 claimants.

5. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MONEY CLAIMS; PRESCRIPTIVE PERIOD. — Granting *arguendo* that these 1,146 petitioners are similarly situated as the claimants listed in Annexes "B", "D" and "E" of the September 2, 1991 NLRC Resolution, which were the subjects of the 1997-2001 implementation proceedings, still we cannot grant their purported claims because they belatedly asserted their claims only in the implementation proceedings via a *Submission and Manifestational Motion* dated July 7, 2000. We stress that Article 291 of the Labor Code, as amended, provides that "[a]ll money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred."

6. ID.; ID.; ID.; ID.; APPELLATE COURT CANNOT SUBSTITUTE ITS OWN JUDGMENT OR DISCRETION FOR THAT OF THE LABOR TRIBUNAL IN DETERMINING WHAT EVIDENCE IS ENTITLED TO BELIEF. — Even if we disregard the rule on prescription, still we cannot allow these alleged similarly situated claimants to recover because, as found by the NLRC, **they were not able to present substantial evidence in support of their claims.** Suffice it to state at this point that the appellate court cannot substitute its own judgment or discretion for that of the labor tribunal in determining what evidence is entitled to belief.

7. ID.; ID.; ID.; ID.; ABSENT ANY PALPABLE INEQUITY IN ITS TERMS, THE COMPROMISE AGREEMENT MUST BE RECOGNIZED AS A VALID AND BINDING TRANSACTION. — In an attempt to lend substance to the instant petition, the petitioners whose claims have already been settled now want this Court to nullify the said compromise agreements. Unfortunately, we cannot accommodate them, except for the 149 Annex "B" complainants, because the records reveal that these compromise agreements were entered into voluntarily by

the claimants with the assistance of counsel, approved subsequently by the court and the labor tribunal, and settled for a reasonable and acceptable consideration. We note at this point that the (1) first-time claimants, (2) those listed in Annex "A" whose claims were dismissed, and (3) those listed in Annex "C" whose claims were set aside, are not entitled to receive anything from private respondents. Yet, by virtue of the compromise agreements executed, they were able to gain a hefty sum. The execution of these agreements, therefore, was not only in accord with Article 227 of the Labor Code, as amended, but was likewise in consonance with the guidelines we set in *Periquet v. National Labor Relations Commission* for valid quitclaims and waivers. In a compromise agreement putting an end to a lawsuit, each of the parties is motivated by the hope of gaining, balanced by the danger of losing. Absent any palpable inequity in its terms, and there appears no such inequity obtaining in this case, the same must be recognized as a valid and binding transaction.

8. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHOULD RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE OR GIVES THE APPEARANCE OF INFLUENCING THE COURT. — As a last point, we emphasize that this case dragged on for more than two decades, not because of the complexity of the issues involved, but primarily due to the spiteful practice of petitioners' counsel in giving false hopes to their clients despite the utter barrenness of their claims. Worse, the said counsel, particularly Atty. Gerardo A. del Mundo, misled the court and the labor tribunal by bombarding them with thousands of claimants, millions of pesos worth of claims and blown-up media attention to disguise the bankruptcy of the case. We remind Atty. del Mundo and all lawyers of the need for fidelity to the principles embodied in the Lawyer's Oath and in the Code of Professional Responsibility. A lawyer owes candor, fairness and good faith to the Court and to his clients, and he shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing, the Court.

APPEARANCES OF COUNSEL

Gerardo A. Del Mundo Law Office for petitioners.
Celestino C. Hilvano for Fajardo, *et al.*
Romulo Mabanta Buenaventura Sayoc & Delos Angeles for Brown & Root Int'l., Inc.
J.F. Fabrero and Associates Accounting & Law Offices for Asia Int'l. Builders Corp.

D E C I S I O N

NACHURA, *J.*:

The numerous claimants herein, 2,123[2] overseas Filipino workers, the enormous amount of their claim, US$609,695,262.42, the more than two decades of their protracted crusade before the labor tribunal and the courts, and the voluminous records that have accumulated make this case appear to be extremely contentious and inordinately complicated. But, then, as the commonest of clichés goes, appearances can be truly deceiving.

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 31, 2004 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 77272 and the July 14, 2005 Resolution[4] denying the motion for reconsideration thereof.

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[2] This is the total number of claimants as stated in the body of the petition. Actual count, however, of the named petitioners, including those whose names have been duplicated and misspelled, reveals only the total of 2,046. Also, removing the duplicated names results in a total of 2,019 petitioners.

[3] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring; CA *rollo*, Vol. II, pp. 1257-1297.

[4] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Marina L. Buzon and Santiago Javier Ranada (retired) concurring; CA *rollo*, Vol. III, pp. 1722-1725.

This petition had its origins in 1984 when numerous claimants led by Bienvenido M. Cadalin, Rolando M. Amul and Donato B. Evangelista instituted a class suit with the Philippine Overseas Employment Administration (POEA) for money claims, among which are the benefits provided by Amiri Decree No. 23 of Bahrain, Retirement and Savings Plan benefits, *etc*., arising from their recruitment by respondent Asia International Builders Corp. (AIBC) and employment by Brown & Root International, Inc. (BRII).[5] Several other complaints were filed by other groups of claimants with the same money claims.[6] The said POEA cases, L-84-06-555, L-85-10-777, L-85-10-779 and L-86-05-460, were consequently consolidated. On January 30, 1989, the POEA Administrator rendered his decision awarding US$824,652.44 in favor of only 324 claimants.[7]

On appeal, the National Labor Relations Commission (NLRC) promulgated its September 2, 1991 Resolution disposing of the cases as follows:

> WHEREFORE, premises considered, the Decision of the POEA in these consolidated cases is modified to the extent and in accordance with the following dispositions:
>
> 1. The claims of the 94 complainants identified and listed in Annex "A" hereof are dismissed for having prescribed;
>
> *2. Respondents AIBC and Brown & Root are hereby ordered, jointly and severally, to pay the 149 complainants, identified and listed in Annex "B" hereof, the peso equivalent, at the time of payment, of the total amount in US dollars indicated opposite their respective names;*
>
> 3. The awards given by the POEA to the 19 complainants classified and listed in Annex "C" hereof, who appear to have worked elsewhere than in Bahrain are hereby set aside.

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[5] *Cadalin v. POEA's Administrator*, G.R. No. 104776, December 5, 1994, 238 SCRA 721, 739.

[6] *Cadalin v. POEA's Administrator*, *supra* note 5, at 740-742.

[7] *Cadalin v. POEA's Administrator*, *supra* note 5, at 743-744.

4. All claims other than those indicated in Annex "B", including those for overtime work and favorably granted by the POEA, are hereby dismissed for lack of substantial evidence in support thereof or are beyond the competence of this Commission to pass upon.

In addition, this Commission, in the exercise of its powers and authority under Article 218 (c) of the Labor Code, as amended by R.A. 6715, hereby directs Labor Arbiter Fatima J. Franco of this Commission to summon parties, conduct hearings and receive evidence, as expeditiously as possible, and thereafter submit a written report to this Commission (First Division) of the proceedings taken, regarding the claims of the following:

(a) complainants identified and listed in Annex "D" attached and made an integral part of this Resolution, whose claims were dismissed by the POEA for lack of proof of employment in Bahrain (these complainants numbering 683, are listed in pages 13 to 23 of the decision of the POEA, subject of the appeals) and,

(b) complainants identified and listed in Annex "E" attached and made an integral part of this Resolution, whose awards decreed by the POEA, to Our mind, are not supported by substantial evidence.

SO ORDERED.[8]

Considering that all the motions for reconsideration of the NLRC decision were denied, the parties elevated the consolidated cases to us via petitions for *certiorari* under Rule 65, G.R. Nos. 104776, 104911-14 and 105029-32, which we likewise consolidated.[9]

On December 5, 1994, the Court rendered its Decision dismissing the three consolidated petitions after finding no grave abuse of discretion on the part of the NLRC.[10]

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[8] *Rollo* (G.R. Nos. 105029-32), pp. 120-122; *Cadalin v. POEA's Administrator*, *supra* note 5, at 744-745.

[9] *Cadalin v. POEA's Administrator*, *supra* note 5, at 745-746.

[10] *Cadalin v. POEA's Administrator*, *supra* note 5, at 777-778. The decision was penned by Associate Justice Camilo D. Quiason (retired).

With the dismissal of the *certiorari* petitions, the NLRC went on to implement its September 2, 1991 Resolution. Pursuant to the second portion of the said resolution (dealing with the claimants under Annexes "D" and "E"), the NLRC, through its labor arbiters, conducted formal hearings, mandatory conferences and conciliation hearings.[11] In the course of the proceedings, which lasted from 1997 to 2001, alleged similarly-situated claimants, 19 batches in all, joined the cases through a *Submission and Manifestational Motion dated July 7, 2000*.[12] Compromise agreements with AIBC and BRII were also entered into by several groups of claimants.[13]

In a Compliance and Manifestation dated August 30, 2001,[14] the counsel for the claimants, Atty. Gerardo A. Del Mundo, submitted *18 names of remaining claimants* under Annexes "D" and "E" of the September 2, 1991 Resolution, who opted to continue with the litigation until its final resolution. These 18 were joining the 1,297 claimants for recovery of actual and other forms of damages and the 1,690 claimants for recovery of retirement and savings benefits.[15]

Nevertheless, in disposing of the case, the NLRC considered only 1,975 claimants for retirement and savings benefit, and 1,223 out of the 1,975 claimants for benefits under the Amiri Decree.[16] Thus, on December 3, 2002, the NLRC rendered its decision[17] granting all the said claims. The *fallo* of the decision reads:

WHEREFORE, judgment is hereby rendered ordering respondents Brown & Root International, Inc. (BRII) and Asia International Builders Corporation (AIBC) to pay, jointly and solidarily, all the complainants/

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[11] CA *rollo*, Vol. I, pp. 160, 166-167.

[12] *Id.* at 164-165.

[13] *Id.* at 164.

[14] *Id.* at 607-609.

[15] *Id.* at 608.

[16] *Id.* at 166.

[17] *Id.* at 130-216.

OFWs their respective monetary claims in the total amount of SIX HUNDRED NINE MILLION SIX HUNDRED NINETY-FIVE THOUSAND TWO HUNDRED SIXTY-TWO U.S. DOLLARS & 42/100 (US$609,695,262.42) as of this date, as indicated in the following Annexes to this Decision which shall form as, and hereby made, integral parts hereof, to wit:

1. Annex "A" in the total amount of US$123,389,048.48 consisting of all the claims of six hundred sixty-five (665) complainants identified and listed thereunder who shall each receive the full amount in United States Dollars indicated opposite their respective names or its peso equivalent at the time of actual payment as and for Friday/ Holiday Pay [Overtime], Annual Leaving Differential [V. L.], Leaving Indemnity, Unexpired Portion of Contract, Travel Reserved Fund (T.R.F.), Hazard Pay (100% B.S.), and U.S. Labor Law EEOC plus legal interest of six percent (6%) per annum for the period from the date the employee was illegally dismissed from service until the decision becomes final and executory, after which time, the interest rate shall be twelve percent (12%) per annum until the amount due are actually paid or satisfied;

2. Annex "B" in the total amount of US$110,164,456.32 consisting of all the claims of five hundred fifty-eight (558) complainants identified and listed thereunder who shall each receive the full amount in United States Dollars indicated opposite their respective names or its peso equivalent at the time of actual payment, as and for Friday/ Holiday Pay [Overtime], Annual Leaving Differential [V.L.], Leaving Indemnity, Unexpired Portion of Contract, Travel Reserved Fund (T.R.F.), Hazard Pay (100% B.S.), and U.S. Labor Law EEOC plus legal interest of six percent (6%) per annum for the period from the date the employee was illegally dismissed from service until the decision becomes final and executory, after which time, the interest rate shall be twelve percent (12%) per annum until the amounts due are actually paid or satisfied;

3. Annex "C" in the total amount of US$3,532,005.00 consisting of all the claims of one thousand nine hundred seventy-five (1,975) complainants identified and listed thereunder who shall each receive the full amount in United States

> Dollars indicated opposite their respective names or its peso equivalent at the time of actual payment, as and for their R & S or retirement pay benefits plus legal interest of six percent (6%) per annum for the period from the date the employee was illegally dismissed from service until the decision becomes final and executory, after which time, the interest rate shall be twelve percent (12%) per annum until the amounts due are actually paid or satisfied;

plus legal interests computed at US$256,032,910.58 as of this date.

Respondents BRII and AIBC are further hereby adjudged and ordered to pay, jointly and solidarily, each of the complainants in Annexes "A" and "B" the sum of US$50,000.00, or a total amount of US$61,150,000.00 as and by way of moral and exemplary damages.

Further, respondents are ordered to pay, jointly and severally, attorney's fees equivalent to ten percent (10%) of all the foregoing monetary awards, or in the total amount of US$55,426,842.04.

All other claims are hereby dismissed for lack of merit.

SO ORDERED.[18]

Despite the favorable decision, petitioners, on one hand, filed a partial motion for reconsideration asking the NLRC to award additional benefits.[19] On the other hand, AIBC and BRII filed their separate motions for reconsideration on January 3, 2003 and January 16, 2003, respectively.[20]

Ruling in the main that it had no jurisdictional authority to award the claims, the NLRC in its May 7, 2003 Resolution[21] reversed its earlier decision and disposed of the case as follows:

WHEREFORE, Our December 3, 2002 decision is set aside. Judgment is hereby rendered:

1. Granting the twin motions for reconsideration of BRII and AIBC and thereby:

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[18] *Id.* at 213-215.

[19] *Id.* at 73.

[20] *Id.* at 78.

[21] *Id.* at 70-129.

a) treating, the complaint of the 149 complainants listed in Annex "B" of the September 2, 1991 resolution of the Commission as closed and terminated due to the satisfaction of the awards thereon;

b) treating, [except for the 19 claimants as earlier discussed] the complaint of those listed in Annexes "D" and "E" of the same September 2, 1991 resolution as closed and terminated in view of the approved settlement reached by the parties and the full satisfaction of the considerations thereon;

c) directing respondents BRII and AIBC to solidarily pay: (1) Dominador P. Serra; (2) Felix M. Diaz; (3) Leo B. Robles; and (4) Arturo V. Macaraig the peso equivalent of the same benefits awarded to those listed in Annex "B" of Our September 2, 1991 resolution;

d) directing respondents BRII and AIBC to solidarily pay each of the following fifteen (15) complainants:

1. Amado Aloria
2. Wilfredo Arica
3. Rodolfo B. Celis
4. Felix J. Coronel
5. Generoso Del Rosario
6. Pedro G. De Leon
7. Armando Lucero
8. Alfredo Macalino
9. Eduardo W. Racabo
10. Ruben Robels
11. Rodolfo Robleza
12. Vicente Bagting
13. Felix Coronel
14. Carlito Espino
15. Romeo Macaraig

the peso equivalent of US$500.00, the same settlement amount paid by BRII to the other complainants listed in Annexes "D" and "E" of Our September 2, 1991 resolution;

2. Denying complainants' December 20, 2002 partial motion for reconsideration, for being without merit.

SO ORDERED.[22]

Petitioners promptly filed a petition for *certiorari* under Rule 65 before the CA, which was docketed as CA-G.R. SP No. 77272.[23] Finding, however, that the NLRC did not act whimsically, capriciously or in wanton disregard of the law when it issued the May 7, 2003 Resolution, the appellate court upheld the same on May 31, 2004,[24] thus:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the instant petition is DISMISSED for lack of merit and the assailed decision dated May 7, 2003 AFFIRMED. Without costs.

SO ORDERED.[25]

On July 14, 2005, the CA further denied the two motions for reconsideration filed by petitioners and another claimant, Amado S. Tolentino.[26]

From the said ruling of the appellate court, two petitions for review on *certiorari* under Rule 45 were filed before this Court: (1) the instant case, G.R. No. 168923 filed by alleged 2,123 claimants; and (2) G.R. No. 168925 filed by claimant Tolentino. This Court, nonetheless, denied Tolentino's petition on November 7, 2005, for his failure to sufficiently show that the CA committed any reversible error in the challenged decision.[27] An entry of judgment was later issued on February 21, 2006.[28]

Left, then, for resolution of the Court is this petition,[29] in which the petitioners raise the following grounds:

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[22] *Id.* at 126-128.

[23] *Id.* at 2-69.

[24] CA *rollo*, Vol. II, pp. 1257-1297.

[25] *Id.* at 1297.

[26] *Supra* note 4.

[27] *Rollo* (G.R. No. 168925), p. 351.

[28] *Id.* at 380.

[29] *Rollo* (G.R. No. 168923), pp. 3-96.

A. WHETHER THE RESPONDENT COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION AND DISMISSING THE PETITION FOR LACK OF MERIT DESPITE THE GROSS FAILURE OF PRIVATE RESPONDENTS TO FILE WITHIN THE 10-DAY PERIOD THEIR MOTIONS FOR RECONSIDERATION, AND NON-COMPLIANCE OF THE MANDATORY REQUIREMENT OF FILING SUPERSEDEAS BOND IN THE AMOUNT OF US$609 MILLION OR ACTUAL AWARDS IN VIOLATION OF LAW AND JURISPRUDENCE.

B. WHETHER THE HONORABLE COURT OF APPEALS ERRED IN SETTING ASIDE THE AWARDS GRANTED IN THE NLRC DECISION OF DECEMBER 03, 2002 AND AFFIRMING THE QUESTIONED NLRC RESOLUTION OF MAY 07, 2003 REVERSING THE FINAL AND EXECUTORY JUDGMENT WITHOUT OR IN EXCESS OF ITS JURISDICTION COMMITTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.

C. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING AS APPLICABLE THE DOCTRINE OF FINALITY OF THE NLRC DECISION OF SEPTEMBER 2, 1991 SINCE THERE WAS NO FINALITY YET CONSIDERING THE REMAND AND RE-OPENING OF THE CASES MANDATED BY THE SAME NLRC DECISION OF SEPTEMBER 2, 1991.

D. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE THEORY OF THE PRIVATE RESPONDENTS THAT PETITIONERS' ACTION ARE BARRED BY PRESCRIPTION.

E. THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED THE LAW AND JURISPRUDENCE ON ILLEGAL QUITCLAIMS AND WAIVERS.

F. THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO OR IN EXCESS OF JURISDICTION WHEN IT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS OF RESOLVING ON THE MERITS THE

CLAIMS OF 1,975 AWARDEES AND OTHER SIMILARLY SITUATED PETITIONERS WHO HAVE VALID AND BINDING CLAIMS AGAINST THE PRIVATE RESPONDENTS.[30]

The pivotal issue for resolution in this case is whether the alleged 2,123[31] petitioners are entitled to their claim of US$609,695,262.42.

We rule in the negative. However, we partially grant the petition insofar as it relates to the 149 claimants listed in Annex "B" of the September 2, 1991 Resolution of the NLRC.

Ruling first on the procedural issues raised, we find as flimsy the petitioners' contention that the December 3, 2002 NLRC Decision granting their claims has already attained finality as no timely motion for reconsideration was filed and no bond was posted by the private respondents. The records reveal that while AIBC's motion for reconsideration was filed one day late, BRII timely filed its motion on January 16, 2003;[32] thus, insofar as the latter is concerned, the NLRC decision has not yet attained finality. This fact notwithstanding, the NLRC, in the light of our ruling in *Surigao del Norte Electric Cooperative v. National Labor Relations Commission*,[33] has ample authority to entertain tardy appeals if the circumstances of the case warrant liberality considering the amount and the issues involved.[34] This principle applies with greater force to this case because what is involved is not an appeal but a mere motion for reconsideration. The NLRC, in the interest of due process, can very well disregard technicalities of procedure.[35]

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

[31] *Supra* notes 1 and 2.

[32] CA *rollo*, Vol. I, pp. 77-82.

[33] 368 Phil. 537 (1999).

[34] *Surigao del Norte Electric Cooperative v. National Labor Relations Commission*, *supra* note 33, at 550-551, citing *Kathy-O Enterprises v. National Labor Relations Commission*, 286 SCRA 729, 738-739 (1998).

[35] Rules of Procedure of the NLRC, Series of 1999, Rule VII, Section 10, which now appears in the same rule and section of the 2005 Revised Rules of Procedure of the NLRC.

As regards the appeal bond, we agree with private respondents' contention that neither Article 223 of the Labor Code, as amended, nor the Rules of Procedure of the NLRC requires the posting of a bond for the Commission to entertain a motion for reconsideration of its decision. An appeal bond is required only for the perfection of an appeal of a Labor Arbiter's decision involving a monetary award.[36]

Proceeding now to the meat of the instant controversy, we find that the NLRC, except with respect to the aforementioned 149 claimants listed in Annex "B" of the September 2, 1991 Resolution, did not abuse its discretion, much more gravely, when it reconsidered its December 3, 2002 Decision and denied the claims of the rest of the petitioners. At this juncture, we emphasize that *certiorari* under Rule 65 of the Rules of Court will lie only when grave abuse of discretion or an act without or in excess of jurisdiction on the part of the labor tribunals is clearly shown.[37] It is incumbent, then, for petitioners to establish before the appellate court that the labor tribunal capriciously and whimsically exercised its judgment as would amount to lack of jurisdiction, or that it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and that its abuse of discretion was so patent and gross as to constitute an evasion of positive duty enjoined or a refusal to act at all in contemplation of law.[38]

Further, deference to the expertise acquired by the labor tribunal and the limited scope granted the Court in the exercise of *certiorari* jurisdiction restrain any probe into the correctness of the NLRC's evaluation of evidence.[39] Oft-repeated is the

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[36] Rules of Procedure of the NLRC, Series of 1999, Rule VI, Section 6, in relation to Rule VII, Section 14 (Section 15 in the 2005 Revised Rules of Procedure).

[37] *Palomado v. National Labor Relations Commission,* G.R. No. 96520, June 28, 1996, 257 SCRA 680, 689.

[38] *Machica v. Roosevelt Services Center, Inc.*, G.R. No. 168664, May 4, 2006, 489 SCRA 534, 547.

[39] *Aquino v. Court of Appeals*, G.R. No. 149404, September 15, 2006, 502 SCRA 76, 85.

rule that appellate courts accord the factual findings of the labor tribunal not only respect but also finality when supported by substantial evidence,[40] as in the instant case. Thus, we find no reversible error in the CA's ruling affirming the NLRC's decision, with the exception again of the aforesaid 149 claimants.

To elucidate, the total claimants in this case are actually 2,046, including those whose names have been duplicated and misspelled. Removing the duplicated names in the caption of the petition reveals a total of 2,019 petitioners, namely:[41]

1. AALAGOS, Rogelio
2. ABACAN, Gerardo M.
3. ABAD, Nicanor
4. ABADE, Ricardo B.
5. ABAN, Jose
6. ABANDO, Alex B.
7. ABANDO, Gregorio
8. ABANES, Andres A.
9. ABANES, Martin M.
10. ABANES, Reynaldo A.
11. ABANES, Rodrigo M.
12. ABANO, Jovenal A.
13. ABANTE, Ariel B.
14. ABANTE, Eduardo
15. ABANTO, Gregorio M.
16. ABANTO, Nick
17. ABARCA, Felmon M.
18. ABARQUEZ, Emigdion N.
19. ABARRO, Jose H.
20. ABARRO, Josefino Q.
21. ABELANIO, Celso S.
22. ABELLA, Herminio V.
23. ABESTANO, Miguel O.
24. ABILA, Fernando J.
25. ABOY, Ernesto M.
26. ABRIL, Modesto M.
27. ABUBO, Rodrigo G.
28. ABULON, Julian V.
29. ABUSTAN, Jose Jr., B.
30. ACAIN, Felipe C.
31. ACAN, Norberto G.
32. ACERES, Dante C.
33. ACERO, Danny
34. ACHA, Rogelio B.
35. ACLAN, Efren
36. ACO, Rogelio A.
37. ACOJIDO, Reynaldo S.
38. ACTA, Leowilin A.
39. ACUEZA, Eugenio C.
40. ACUNA, Manuel T.
41. ACUPAN, Antonio
42. ACUPAN, Benito
43. ACUPAN, Benjamin D.
44. ACUPAN, Eduardo B.
45. ACUPAN, Emmanuel
46. ACUPAN, Juanito P.
47. ACUPAN, Maximiano A.
48. ACUPAN, Reynaldo C.
49. ACUPAN, Romeo C.
50. ACUPAN, Solano
51. ACUPAN, Vicente A.
52. ADAJAR, Cesar L.
53. ADALIN, Gregorio

[40] *Sonza v. ABS-CBN Broadcasting Corporation*, G.R. No. 138051, June 10, 2004, 431 SCRA 583, 594.

[41] *Supra* notes 1 and 2.

54. ADALLA, Gregorio
55. ADANA, Manuel P.
56. ADAWAG, Angel G.
57. ADAWAG, Carlito
58. ADAWAG, Cresenciano
59. ADAWAG, Noel P.
60. ADAWAG, Teodulfo
61. ADRAYAN, Alfredo B.
62. AGAPITO, Generoso M.
63. AGNE, Bernardo R.
64. AGNE, Florentino R.
65. AGNE, Rizalino R.
66. AGUADO, Aniceto A.
67. AGUBA, Restituto A.
68. AGUDO, Guillermo R.
69. AGUDO, Quiterio R.
70. AGUE, Florentino R.
71. AGUILA, Benjamin G.
72. AGUILA, Bernardo F.
73. AGUILA, Josue G.
74. AGUILA, Vicente G.
75. AGUILAR, Esperidion T.
76. AGUILAR, Francisco
77. AGUINALDO, Manuel P.
78. AGUIRRE, Dante
79. AGUIRRE, Herminio J.
80. AGUSTIN, Galicano D.
81. ALABAY, Agripino V.
82. ALABAY, Nestor M.
83. ALAGAD, Alfonso
84. ALAGAD, Bernardo F.
85. ALAGAD, Fernando
86. ALBERTO, Gonzalo Jr., D.
87. ALBINO, Septimo O.
88. ALBO, Alejandro R.
89. ALBURO, Orlando
90. ALCAIRA, Alexander R.
91. ALCALDE, Rolando A.
92. ALCANTARA, Conrado Luis D.
93. ALCANTARA, Jaime B.
94. ALCANTARA, Jesus M.
95. ALCANTARA, Lamberto Q.
96. ALCANTARA, Marianito Jr., J.
97. ALCANTARA, Mario C.
98. ALDEGUER, Federico Jr., T.
99. ALDEGUER, Jaime B.
100. ALDIANO, Ponciano C.
101. ALDOVER, Alfredo L.
102. ALDOVER, Bencio L.
103. ALEA, Diosdado A.
104. ALEGADA, Wilfredo
105. ALEJANDRE, Alejandro
106. ALEJANDRE, Benjamin A.
107. ALEJANDRE, Hilarion F.
108. ALEJANDRE, Maximino R.
109. ALEJANDRE, Noel P.
110. ALEJANDRINO, Anselmo V.
111. ALEJANDRINO, Enrico I.
112. ALEJANDRO, Benjamin
113. ALEJANDRO, Eduardo L.
114. ALEJANDRO, Eulalio V.
115. ALEJANDRO, Maximino
116. ALFECHE, Inocencio V.
117. ALFREDO, Teodolfo M.
118. ALHAMBRA, Cezar A.
119. ALINDAY, Tomas C.
120. ALMENAR, Alberto Z.
121. ALMERO, Ernesto C.
122. ALMONTE, Romeo B.
123. ALMONTE, Virgilio B.
124. ALONZO, Arnaldo
125. ALORIA, Amado C.
126. ALVAREZ, Alexander
127. ALVAREZ, Apolinario A.
128. ALVAREZ, Camilo
129. ALVAREZ, Manuel C.
130. ALVAREZ, Pablo C.
131. ALVAREZ, Raul A.
132. ALVAREZ, Rolando S.
133. AMA, Pafico
134. AMBAL, Edmundo G.
135. AMBAL, Hermogenes R.
136. AMBROCIO, Benjamin R.
137. AMBUNAN, Julian P.
138. AMISTAD, Martin G.
139. AMORES, Carlos
140. AMPIL, Jose R.
141. AMUL, Rolando
142. AMUL, Sebastian B.
143. AMURAO, Crispulo Jr., C.
144. AMURAO, Crispulo Sr., T.

145. AMUTAN, Fernando L.
146. AMUTAN, Moises
147. ANANDING, Amorsolo S.
148. ANCHETA, Bernard P.
149. ANCHETA, Teotinio O.
150. ANDAL, Danilo L.
151. ANDAMO, Carlos P.
152. ANDAYA, Joaquin S.
153. ANDOY, Leopoldo R.
154. ANDRADA, Dan F.
155. ANDRADA, Simeon
156. ANDULAN, Reynaldo B.
157. ANG, Nestor V.
158. ANGELES, Geronimo H.
159. ANGLO, Antonio T.
160. ANI, Jeoffrey
161. ANICETE, Beltranico S.
162. ANICETE, Romeo S.
163. ANIS, Bartolome B.
164. ANSALDO, Jose B.
165. ANTILLON, Elinio P.
166. ANTIPONO, Armando B.
167. ANTONIO, Larry T.
168. APILADO, Antonio
169. APILADO, Arturo P.
170. APOLINARIO, Francisco
171. APOLINARIO, Pepito
172. APUADO, Victorio C.
173. AQUINO, Abanes O.
174. AQUINO, Abner O.
175. AQUINO, Angel D.
176. AQUINO, Bartolome
177. AQUINO, Graciano M.
178. AQUINO, Isidro
179. AQUINO, Jimmy B.
180. AQUINO, Pastor
181. AQUINO, Rosendo M.
182. AQUINO, Ruben M.
183. ARACARIA, Alexander
184. ARANDELA, Percival L.
185. ARANGORIN, Roberto A.
186. ARATEA, Benjamin O.
187. ARAULLO, Arturo V.
188. ARAULLO, Prudencio
189. ARAYATA, Escolastico
190. ARCANGEL, Manuel DG.
191. ARCARIA, Alexander
192. ARCIAGA, Francisco P.
193. AREVALO, Jose
194. AREVALO, Juanito
195. AREVALO, Mario A.
196. AREVALO, Ramon A.
197. AREVALO, Rodolfo D.
198. ARGETE, Gavino M.
199. ARGUELLES, Alfredo
200. ARGUELLES, Angelito M.
201. ARGUELLES, Eulalio
202. ARGUELLES, Hermenigildo M.
203. ARICA, Wilfredo P.
204. ARIZA, Dionisio R.
205. ARLITA, Vicente
206. ARONSE, Juanito P.
207. ARTITA, Rogelio S.
208. ARUELIO, Vicente
209. ASEDILLO, Jose M.
210. ASPER, Rodolfo M.
211. ASUNAN, Danilo R.
212. ASUNCION, Antonio
213. ASUNCION, Artemio M.
214. ASUNCION, Edgardo
215. ASUNCION, Feliciano N.
216. ASUNCION, Rexy Sr., L.
217. ASUNCION, Rodolfo C.
218. ATIENZA, Carlito C.
219. ATIENZA, Jose R.
220. ATIENZA, Justo
221. ATIENZA, Restituto A.
222. ATUD, Leonelito M.
223. AUSTRIA, Angel
224. AUSTRIA, Calixto B.
225. AUSTRIA, Oscar M.
226. AUSTRIA, Savador T.
227. AVELLANA, Jose
228. AVILA, Virgilio I.
229. AVUELTA, Ricardo Jr., P.
230. AXALAN, Bartolome M.
231. AXALAN, Loreto Jr.,
232. AXALAN, Marinao V.
233. AXALAN, Vicente R.
234. AYO, Herbert
235. AZAGRA, Jaime A.
236. BABAEL, Sherlito S.

237. BABAGAY, Conrado T.
238. BABAGAY, Gerardo
239. BABASA, Wilhem S.
240. BABILONIA, Alfredo C.
241. BACAL, Felimon
242. BACAMANTE, Virgilio A.
243. BACANI, Jose L.
244. BACARAT, Paisal G.
245. BADUA, Emerito M.
246. BAES, Filoteo A.
247. BAGADIONG, Guillermo T.
248. BAGADIONG, Noel S.
249. BAGASIN, Lamilo A.
250. BAGTING, Vicente G
251. BALABALO, Luis
252. BALANTE, Geronimo
253. BALATAZO, Silverio M.
254. BALBICRAN, Gerardo R.
255. BALBIERAN, Anatalio B.
256. BALBIERAN, Maximo C.
257. BALBIERAN, Romeo B.
258. BALBIERAN, Romulo R.
259. BALBIERAN, Vicente D.
260. BALBIN, Rodolfo C.
261. BALBIRAN, Fernando B.
262. BALCOBA, Federico B.
263. BALINAS, Pablo G.
264. BALINGIT, Rodolfo F.
265. BALITBIT, Rodolfo
266. BALIWAG, Cesario H.
267. BALOBO, Alfredo S.
268. BALOBO, Teodoro V.
269. BANAAG, Falconeri
270. BARASARI, Rizal
271. BARBA, Danilo M.
272. BARBOZA, Ramon T.
273. BARCENA, Fidel F.
274. BARIN, Rodolfo
275. BARLENA, Fidel F.
276. BARLENA, Florentino
277. BAROLA, Abdon V.
278. BARRIENTOS, Benjamin
279. BARRO, Bernardo C.
280. BARTIDO, Leonardo
281. BARTOLOME, Marcelo
282. BARZAGA, Vivencio T.
283. BAS, Fernando
284. BASILAN, Juan L.
285. BASMAYOR, Artemio A.
286. BASTRO, Reynaldo U.
287. BATACLAN, Mario
288. BATAIN, Romeo
289. BATICA, Ernesto Sr., S.
290. BATICA, Hobino O.
291. BATICA, Roberto S.
292. BATINGA, Elueterio P.
293. BATITIS, Ceferino
294. BAUAN, Victoriano A.
295. BAUAN, Vivencio C.
296. BAUTISTA, Ceferino O.
297. BAUTISTA, Emegdio P.
298. BAUTISTA, Gaudencio S.
299. BAUTISTA, Irene P.
300. BAUTISTA, Jose D.
301. BAUTISTA, Leonardo
302. BAUTISTA, Mamerto S.
303. BAUTISTA, Ruperto B.
304. BAUTISTA, Rustico
305. BAUTISTA, Teodoro S.
306. BAUTISTA, Virgilio O.
307. BAYA, Inoncencio
308. BAYA, Jesus R.
309. BAYACAL, Venancio Jr., V.
310. BAYACAL, Winefredo
311. BAYLON, Lolito F.
312. BEBIT, Wenniefredo B.
313. BELEN, Enrico P.
314. BELIR, Ben G.
315. BELTRAN, Diego
316. BELTRAN, Ebrulfo G.
317. BELTRAN, Eric B.
318. BELTRAN, Largion G.
319. BENITEZ, Jovito N.
320. BENITEZ, Raul B.
321. BENSON, Perfecto F.
322. BERGONIO, Ireneo G.
323. BERMUDEZ, Isabelo
324. BERMUDEZ, Rolando
325. BERNAL, Victorio
326. BERNALES, Emiliano Jr., L.
327. BERON, Danilo
328. BERSAMIN, Benjamin A.

329. BERSAMIN, Dindo L.
330. BERWITE, Renato P.
331. BICOL, Angelito M.
332. BICOL, Anselmo G.
333. BICOL, Aristeo M.
334. BICOL, Celestino Jr., C.
335. BICOL, Cesario M.
336. BICOL, Felicisimo M.
337. BICOL, Florentino L.
338. BICOL, Francisco G.
339. BICOL, Larry C.
340. BICOL, Rogelio M.
341. BICOL, Romulo L.
342. BIGADION, Noel S.
343. BILLONES, Rogelio A.
344. BISCOCHO, Eleuterio B.
345. BISCOCHO, Petronillo M.
346. BITO, Teofilo N.
347. BLANCO, Alberto B.
348. BLANCO, Fernando
349. BLANCO, Virgilio
350. BLAS, Rogelio
351. BLAY, Nestor M.
352. BLAY, Rodrigo M.
353. BOADO, Elpidio A.
354. BOBADILLA, Cesar
355. BOBADILLA, Danilo A.
356. BOBADILLA, Laudico A.
357. BOBIER, Felix M.
358. BOBONGO, Dionisio O.
359. BODADILLA, Cesar A.
360. BODADILLA, Danilo A.
361. BOLANTE, Geronimo E.
362. BOLANTE, Gil I.
363. BOLISAY, Carlito M.
364. BONDOC, Augusto
365. BONDOC, Benito U.
366. BONDOC, Domingo
367. BONGT, Domingo S.
368. BOOC, Pepe S.
369. BOQUIREN, Arnulfo Jr., M.
370. BORDILLA, Eresto J.
371. BORJA, James Sr., V.
372. BORNALES, Ricardo C.
373. BRACAMANTE, Bayani S.
374. BRACAMANTE, Virgilio A.
375. BRACEROS, Wilfredo
376. BRAGAIS, Demetrio B.
377. BRAGANZA, Norberto E.
378. BRAVO, Tinioso S.
379. BRECINO, Angeles
381. BRIONES, Eureclydon G.
381. BRIONES, Romeo B.
382. BRIONES, Tranquilino Y.
383. BROTONEL, Ceferino G.
384. BRUCE, Cesar B.
385. BRUGE, Amado
386. BUENAFE, Tomas V.
387. BUENAFLOR, Marianito N.
388. BUEVENTURA, Archimedes N.
389. BUENAVENTURA, Basilio N.
390. BUENAVENTURA, Ruperto Jr., E.
391. BUENCONSEJO, Guillermo
392. BUENTE, Tomas
393. BUENVIAJE, Manuel
394. BUENVIAJE, Vicento
395. BUGAY, Reynaldo D.
396. BULAMBAO, Buenaventura D.
397. BULANHAGUI, Ariel F.
398. BULATAO, Alfredo G.
399. BULLECER, Rodolfo R.
400. BUNAO, Isabelo M.
401. BUNGAY, Avenilo
402. BUNGAY, Jefferson Q.
403. BUSTAMANTE, Alexander
404. BUSTAMANTE, Jose G.
405. BUSTILLO, Pablito G.
406. BUTIONG, Virgilio Jr.,
407. CAALIM, Benito T.
408. CAALIM, Romeo T.
409. CABALLA, Honesto P.
410. CABALLERO, Delfin C.
411. CABALLERO, Jacinto B.
412. CABANIGAN, Benedicto
413. CABATAY, Moises
414. CABEZA, Guillermo
415. CABIGAN, Rosendo Z.
416. CABILANGAN, Pablo G.
417. CABRERA, Hermaneli
418. CABRERA, Jose D.
419. CABUHAT, Reynaldo T.
420. CADALIN, Bienvenido

421. CAGANAP, Julio R.
422. CAGATAN, Doroteo G.
423. CAGATAN, Pedro
424. CAGATAN, Rodolfo
425. CAGAYAT, Joven C.
426. CAHIGAS, Nestor B.
427. CAILAO, Amante
428. CAILES, Dorito A.
429. CALADO, Fernando M.
430. CALAJOS, Rogelio L.
431. CALAMBA, Felipe S.
432. CALAUAG, Ricardo C.
433. CALAUAGAN, Patronicio L.
434. CALCENA, Isagani
435. CALDERON, Oscar C.
436. CALDERON, Reynaldo V.
437. CALLEJA, Nestor D.
438. CALMA, Alejandro Jr., P.
439. CALMA, Fernando R.
440. CALMA, Jerry D.
441. CALMA, Miguel M.
442. CALMA, Renato R.
443. CALURA, Joven C.
444. CALURA, Renato R.
445. CAMACHO, Nelson T.
446. CAMACHO, Santos T.
447. CAMANA, Roberto M.
448. CAMANAG, Florante C.
449. CAMANAG, Sotero P.
450. CAMPANO, Pacifico
451. CAMPOSAGRADO, Alejandro M.
452. CANDA, Edgardo M.
453. CANDOR, Irineo P.
454. CANDOR, Irmer L.
455. CANTOS, Geronimo M.
456. CANTOS, Primitivo
457. CANTOS, Severino
458. CAPACETE, Ramon Jr., G.
459. CAPARAS, Gaspar V.
460. CAPONPON, Epifanio
461. CAPONPON, Ricardo
462. CARLOS, Narciso
463. CARREON, Armando
464. CARTEL, Jose H.
465. CASA, Crisendo
466. CASADO, Emmanuelito P.
467. CASINO, Renato
468. CASTANARES, Dalmacio R.
469. CASTANEDA, Menandro M.
470. CASTELO, Elias Jr., D.
471. CASTILLO, Anselmo S.
472. CASTILLO, Arnel L.
473. CASTILLO, Benigno A.
474. CASTILLO, Cornelio L.
475. CASTILLO, Emeterio L.
476. CASTILLO, Ferdinand L.
477. CASTILLO, Joaquin
478. CASTILLO, Jose L.
479. CASTILLO, Joseph B.
480. CASTILLO, Leonicio B.
481. CASTILLO, Lourdino M.
482. CASTILLO, Manuel
483. CASTILLO, Mario E.
484. CASTILLO, Nardito M.
485. CASTILLO, Natalio L.
486. CASTILLO, Nestor
487. CASTILLO, Pablo L.
488. CASTILLO, Romeo P.
489. CASTILLO, Vidal J.
490. CASTRO, Cesar M.
491. CASTRO, Crisaldo M.
492. CASTRO, Danilo M.
493. CASTRO, Prudencio
494. CASTRO, Ramon M.
495. CASTROJERES, Remar
496. CATAPANG, Conrado M.
497. CATAPANG, Ireneo
498. CATIBOG, Pepito M.
499. CATIBOG, Rodolfo
500. CATIBOG, Sesinando
501. CATIPAN, Dominador D.
502. CATLI, Jaime B.
503. CATUD, Conrado A.
504. CAY, Prumencio F.
505. CAYANAN, Francisco D.
506. CAYAS, Reynaldo
507. CECELIO, Romeo O.
508. CEFERINO, Durana D.
509. CELESTINO, Victorino R.
510. CELIS, Augusto
511. CELIS, Rodolfo B.
512. CENENA, Nestor

513. CENTENO, Emmanuel C.
514. CENTURA, Gorgonio C.
515. CEREZO, Elmo A.
516. CEREZO, Herminigildo A.
517. CERRO, Camilo C.
518. CETES, Henry
519. CHAN, Benjamin M.
520. CHAN, Generoso M.
521. CHAVEZ, Cesar A.
522. CHUA, Antonio C.
523. CHUA, Cecilio H.
524. CIABAL, Vivencio B.
525. CIFRA, Hernan N.
526. CIFRA, Vicente C.
527. CLARETE, Rodrigo
528. CLARETE, Vienvenido
529. CLAUD, Crizaldo D.
530. CLAVIO, Bienvenido M.
531. COCJIN, Jose Jr., B.
532. COLMENAR, Baltazar R.
533. COLOMA, Augusto V.
534. COMPLE, Damiano S.
535. CONCEPCION, Manuel Jr., C.
536. CONCEPCION, Turiano V.
537. CONCEPCION, Virgilio C.
538. CONSTANTINO, Rolando A.
539. CONSTANTINO, Teresito A.
540. CONTEMPRATO, Cesar P.
541. CONTEMPRATO, Lauro G.
542. CONTI, Bayani
543. CONTI, Edmundo C.
544. CONTI, Reynaldo C.
545. CORALES, Armando C.
546. CORALES, Jesus M.
547. CORCUERA, Renato
548. CORDERO, Mari F.
549. CORDOVA, Carlos Jr., V.
550. CORNISTA, Rino T.
551. CORNISTA, Romeo G.
552. CORONADO, Alfonso S.
553. CORONADO, Apolinario V.
554. CORONEL, Abelardo
555. ORONEL, Felix M.
556. CORPUZ, Leonardo P.
557. CORTEJO, Joel O.
558. CORTEMPRATO, Cesar
559. CORTEZ, Edgardo D.
560. CORVERA, Francisco O.
561. COSINO, Renato R.
562. COSINO, Sofronio B.
563. COSTALES, Felipe Sr., B.
564. COSTALES, Francisco Sr.,
565. CREDITO, Celedenio R.
566. CREDITO, Enrico R.
567. CRISOSTOMO, Igmedio Jr., G.
568. CRUES, Alberto A.
569. CRUES, Teodulfo G.
570. CRUETA, Antonio B.
571. CRUSIS, Manolito R.
572. CRUZ, Anacleto Jr., V.
573. CRUZ, Arturo I.
574. CRUZ, Augusto B.
575. CRUZ, Danilo M.
576. CRUZ, Ernesto
577. CRUZ, Hilario C.
578. CRUZ, Panchi G.
579. CRUZ, Roberto P.
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581. CRUZ, Rodolfo B.
582. CRUZ, Teodoro S.
583. CUARESMA, Dionisio A.
584. CUDAL, Raymundo
585. CUENCO, Edeltrudo F.
586. CUENCO, Edgar F.
587. CUESTINO, Victorino
588. CUEVAS, Abdon S.
589. CUEVAS, Manuel C.
590. CUIZON, Felimon
591. CULLERA, Manuel M.
592. CUNANAN, Mario I.
593. CUSAP, Ernesto O.
594. CUSTODIO, Eduardo G.
595. DACASIN, Danilo B.
596. DACASIN, Fernando B.
597. DAGONDON, Fermio
598. DAGUINSIN, Richard A.
599. DALANON, Vicente D.
600. DALUZ, Nicolas
601. DATAAN, Teodoro C.
602. DATAN, Jose C.
603. DATAY, Andres F.
604. DATAY, Crisanto A.

605. DATILES, Miguel A.
606. DATINGUINOO, Desiderio A.
607. DATINGUINOO, Nicasio C.
608. DATOON, Jose
609. DAVID, Adolfo
610. DAVID, Eduardo
611. DAVID, Enrico T.
612. DAVID, Fabio
613. DAVID, Victoriano S.
614. DAYACAP, Edgardo N.
615. DAYANDAYAN, Tomestocles
616. DAYANGHIRANG, Rufino T.
617. DAYRIT, Bayani
618. DAYRIT, Leonardo S.
619. DAYRIT, Ricardo
620. DAYRIT, Victoriano C.
621. DE ADE, Bayani R.
622. DE CASTRO, Cristobal L.
623. DE CASTRO, Primitivo L.
624. DE CASTRO, Rene T.
625. DE CASTRO, Romeo A.
626. DE CHAVEZ, Pedro
627. DE DIOS, Cesar J.
628. DE GUZMAN, Angelito Jr.,
629. DE GUZMAN, Benedicto N.
630. DE GUZMAN, Celerino
631. DE GUZMAN, Donato
632. DE GUZMAN, Francisco C.
633. DE GUZMAN, Rolando F.
634. DE GUZMAN, Roman A.
635. DE GUZMAN, Romulo L.
636. DE JESUS, Liberto
637. DE JESUS, Primo
638. DE JESUS, Reynaldo C.
639. DE LEMON, Victorio SR., R.
640. DE LEMOS, Benito Jr.
641. DE LEMOS, Victoria
642. DE LEON, Dominador A.
643. DE LEON, Enrique C.
644. DE LEON, Ernesto C.
645. DE LEON, Jose S.
646. DE LEON, Pedro G.
647. DE LUMBAN, Joselito L.
648. DE LUNA, Napoleon S.
649. DE RAMA, Falconery R.
650. DE RAMA, Federico J.
651. DE RAMA, Onofre L
652. DE RAMA, Ricardo L.
653. DE RAMA, Rolando A.
654. DE SILOS, Rodolfo B.
655. DE TORRES, Arnulfo
656. DE TORRES, Leonardo
657. DE TORRES, Nemesio A.
658. DE VERA, Ignacio C.
659. DE VERA, Marciano D.
660. DE VERA, Marciano V.
661. DE VERA, Nestor DR.
662. DE VERA, Reynaldo M.
663. DE VERA, Wilfredo M.
664. DE VILLA, Rodolfo C.
665. DEL MUNDO, Danilo L.
666. DEL MUNDO, Pedro C.
667. DEL MUNDO, Walfredo L.
668. DEL PILAR, Florentino
669. DEL PILAR, Lorencio
670. DEL PRADO, Vicente P.
671. DEL RIO, Pastor
672. DEL ROSARIO, Alberto
673. DEL ROSARIO, Alfredo
674. DEL ROSARIO, Cesar S.
675. DEL ROSARIO, Generoso F.
676. DEL ROSARIO, Guerero
677. DEL ROSARIO, Teodorico
678. DEL ROSARIO, Vedasto
679. DELA CRUZ, Alberto
680. DELA CRUZ, Daniel
681. DELA CRUZ, Domingo V.
682. DELA CRUZ, Edgar R.
683. DELA CRUZ, Emiliano Jr.,
684. DELA CRUZ, Ernesto T.
685. DELA CRUZ, Federico N.
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689. DELA CRUZ, Reynaldo B.
690. DELA CRUZ, Rodelio
691. DELA CRUZ, Walfredo B.
692. DELA CRUZ, Zosimo
693. DELA MERCED, Ernani

694. DELA PENA, Doroteo
695. DELA RAMA, Ricardo C.
696. DELA VEGA, Abraham
697. DELBORO, Joselito T.
698. DELGADO, Rufino M.
699. DELLOSA, Joselito Fidel T.
700. DELOS REYES, Eusebio I.
701. DELOS REYES, Leonardo
702. DELOS REYES, Silverio Sr., V.
703. DELOS SANTOS, Emaldo D.
704. DELOS SANTOS, Felizardo M.
705. DELOS SANTOS, Serafin A.
706. DELOSO, Joselito T.
707. DENIEGA, Juanito F.
708. DIATA, Ernesto F.
709. DIAZ, Antonio R.
710. DIAZ, Eduardo A.
711. DIAZ, Ernesto E.
712. DIAZ, Felix
713. DIAZ, Melchor
714. DIAZ, Renato B.
715. DIAZ, Telesforo M.
716. DIAZ, Nicanor S.
717. DIGA, Gerardo C.
718. DIMAANO, Rodolfo M.
719. DIMAAPI, Romeo P.
720. DIMAPILIS, Leoncio I.
721. DIMATATAC, Jose A.
722. DIMATATAC, Romulo
723. DIMATULAC, Clemente B.
724. DIMAULATAN, Vivencio C.
725. DIMAYUGA, Luis
726. DINGLASAN, Aniano M.
727. DINGLASAN, Manuel A.
728. DIONISIO, Rolando V.
729. DISINGANIO, Domingo J.
730. DISMAYA, Philip G.
731. DIZON, Modesto
732. DIZON, Reynaldo S.
733. DOCTOLERO, Benjamin
734. DOLOIRAS, Marcelino D.
735. DOMINGO, Rodolfo
736. DOMINGUEZ, Antonio S.
737. DOZA, Benjamin E.
738. DUAG, Elpidio I.
739. DUMAGUIN, Saturnino H.
740. DUMAGUN, Perseverando H.
741. DUMALI, Felipe
742. DUPA, Benjamin D.
743. DURAN, Danilo C.
744. DURAN, Gregorio D.
745. DURANA, Ceferino
746. EBRADA, Gilbert
747. EBRADA, Gilberto
748. EBRADA, Ricardo P.
749. EDUARTE, Renato A.
750. EISMA, Godofredo E.
751. EJERCITO, Antonio Jr.,
752. ELIAS, Carlito
753. ELISAN, Ristituto
754. ELLO, Ardon B.
755. ELLO, Ubed B.
756. EMMAN, Johnny M.
757. ENANO, Josefino R.
758. ENCANTO, Jose T.
759. ENCARNACION, Reynaldo A.
760. ENGALLA, Jaime M.
761. ENGAY, Vicente
762. ENGON, Vicente
763. ENGUANCHO, Edgardo
764. ENGUERO, Elmer F.
765. ENRIQUEZ, Rolando G.
766. EQUIPADO, Elias Jr., F.
767. ERIDAO, Eduarte C.
768. ESCARILLA, Ramon Jr. T.
769. ESCARILLO, Wilfredo
770. ESCARMOSA, Felizaro
771. ESCARMOSA, Miguel B.
772. ESCATOTO, Eladio L.
773. ESCOBAR, Armando
774. ESCOTA, Gilberto B.
775. ESCUYOR, Romeo T.
776. ESEO, Ernesto Sr., A.
777. ESGUERRA, Democrito M.
778. ESGUERRA, John
779. ESPANOL, Miguel L.
780. ESPARAGO, Noel
781. ESPINA, Pascual F.
782. ESPINA, Robert
783. ESPINO, Arturo B.
784. ESPINO, Carlito J.
785. ESPINO, Edgardo B.
786. ESPINO, Honorio E.

787. ESPINO, Horacio
788. ESPINO, Silverio D.
789. ESPINOSA, Graciano
790. ESPINOSA, Policapio C.
791. ESPINOSA, Teodoro
792. ESPIRITU, Angelito B.
793. ESPIRITU, Eduardo S.
794. ESPIRITU, Ernesto S.
795. ESPIRITU, Gregorio S.
796. ESPIRITU, Ildefonso R.
797. ESPIRITU, Leonardo Jr., A.
798. ESPIRITU, Manuel S.
799. ESPIRITU, Reynaldo B.
800. ESPIRITU, Rodolfo C.
801. ESPIRITU, Rodolfo S.
802. ESPIRITU, Rodrigo C.
803. ESPIRITU, Rolando E.
804. ESPORAS, Manuel M.
805. ESPREGANTE, Julian
806. ESQUIVEL, Arturo S.
807. ESTACIO, Bob L.
808. ESTACIO, Romeo P.
809. ESTANDARTE, Dioscoro
810. ESTANISLAO, Igmidio
811. ESTAVA, Nestor M.
812. ESTEAN, Ernesto M.
813. ESTERON, Melanio R.
814. ESTRADA, Benjamin S.
815. ESTRADA, Feliciano E.
816. ESTRELLA, Geronimo
817. ESTUAR, Conrado E.
818. ESTUYE, Clyde
819. ETCHON, Reynaldo D.
820. ETCHON, Reynaldo O.
821. EVANGELISTA, Antonio S.
822. EVANGELISTA, Donato
823. EVANGELISTA, Eduardo M.
824. EVANGELISTA, Rolando
825. EVANGELISTA, Valerio A.
826. FABABIER, Manuel M.
827. FABRICANTE, Primo
828. FACTORAN, Felicisimo D.
829. FADRIQUELA, Sesenio
830. FAJARDO, Efren G.
831. FAJARDO, Eliseo
832. FAJARDO, Pedro E.
833. FALLER, Reynaldo C.
834. FALQUEZA, Porfirio
835. FALTADO, Ruben
836. FARAON, Ciriaco
837. FAUSTINO, Wilfredo
838. FEDERICO, Abundio B.
839. FERIA, Carino
840. FERNANDEZ, Agaton B.
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843. FERNANDEZ, Serman O.
844. FERNANDO, Leonardo S.
845. FERNANDZ, Ely E.
846. FERRER, Artemio C.
847. FERRER, Cenon
848. FERRER, Ernesto
849. FERRER, Leopoldo S.
850. FIGURACION, Misael M.
851. FIRMA, Rizaldo F.
852. FLORES, Agapito C.
853. FLORES, Armando F.
854. FLORES, Benjamin D.
855. FLORES, Edilberto M.
856. FLORESCA, Eligio B.
857. FORES, Edgardo C.
858. FRAGADA, Gregorio
859. FRAMIL, Rosauro R.
860. FRANCIA, Isabelito P.
861. FRANCISCO, Buenaventura M.
862. FRANCISCO, Cornelio Y.
863. FRANCISCO, Edgardo J.
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865. FRANCISCO, Manuel S.
866. FRANCISCO, Mario B.
867. FRANCISCO, Olegario B.
868. FRANCISCO, Rolando B.
869. FRANCISCO, Valeriano B.
870. FRANE, Philbert M.
871. FRANZUELA, Ildefonso M.
872. FRIRME, Daniel Pedro C.
873. FURTO, Reynaldo L.
874. FURTO, Wenfredo L.
875. GABAWAN, Jesus E.
876. GABAWAN, Rodolfo A.
877. GABAY, Castaniro
878. GABAY, Constancio F.

879. GABAY, Teodorico A.
880. GABUTAN, Esmerado
881. GALANG, Balbino C.
882. GALANG, Cesar
883. GALLARDO, Wilfredo A.
884. GALOSO, Santiago N.
885. GALVEZ, Romeo A.
886. GAMBOA, Gabriel C.
887. GAMMAD, Potenciano D.
888. GAMUTAN, Irobengito M.
889. GANAS, Hilario M.
890. GANDAMON, Bernardo
891. GANZON, Juan A.
892. GARCIA, Alfredo Jr.,
893. GARCIA, Andres Jr., A.
894. GARCIA, Angelito P.
895. GARCIA, Bernardino N.
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904. GARCIA, Pedro C.
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906. GARCIA, Ponciano J.
907. GARCIA, R.E.
908. GARCIA, Rafael P.
909. GARCIA, Roberto S.
910. GARCIA, Rolando
911. GAROFIL, Osias G.
912. GARON, Raymundo C.
913. GASCON, Rolando
914. GATCHALIAN, Ernesto E.
915. GATCHALIAN, Jose
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917. GATULAYAO, Conrado
918. GAWAN, Jose A.
919. GAYA, Jose M.
920. GAYA, Leonardo T.
921. GAYETA, Avelino DM.
922. GELLID, Manol F.
923. GELLIDO, Ernesto D.
924. GEMOTO, Roberto
925. GENEROSO, Agapito
926. GERON, Raymundo
927. GERONIMO, Julio M.
928. GERONIMO, Roberto A.
929. GOMEZ, Patricio Jr., V.
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943. GRULLO, Jorge T.
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954. GUNO, Ricardo K.
955. GUPIT, Francisco G.
956. GUTIERREZ, Dennis J.
957. GUTIERREZ, Ignacio B.
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960. HALCON, Danilo
961. HERMOSO, Roberto
962. HERNANDEZ, Angelito
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975. HINAHON, Rostito
976. HINGADA, Felecisimo
977. HINGALA, Felismo
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979. HLARIO, Expedito
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981. HONRADEZ, Maximino B.
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991. ILOG, Vicente M.
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993. INASIANG, Santiago
994. INSIGNE, Conrado A.
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997. ISLA, Graciano G.
998. JACLA, Floriano V.
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1001. JACOB, Hery L.
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1003. JANACO, Alejandro M.
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1008. JARO, Cesar
1009. JARO, Ferdinand
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1011. JASMIN, Mario
1012. JAUDALSO, Roberto E.
1013. JAVIER, Antonio C.
1014. JAVIER, Buenvenido
1015. JAVIER, Conrado N.
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1018. JERVOSO, Juanito N.
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1036. JOYA, Rodolfo E.
1037. JUCAR, Cesar G.
1038. JUSTO, Renato E.
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1133. LUCEA, Ronito E.
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1137. LUMANGLAS, Eleodoro A.
1138. LUNA, Thomas V.
1139. LUNA, Vicente
1140. LUSUNG, Onofre M.
1141. MAALIHAN, Pelagio D.
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1145. MAAMO, Victorio
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1147. MACABEBE, Leonides R.
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1152. MACALDO, Victor C.
1153. MACALINO, Alredo M.
1154. MACALINO, Ricardo

1155. MACALINTALA, Jose T.
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1157. MACARAEG, Irineo
1158. MACARAEG, Nestor
1159. MACARAIG, Aurelio S.
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1182. MADLANGBAYAN, Osias Q.
1183. MADRID, Ernesto L.
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1185 MAESTRE, Felicito C.
1186. MAGANAYE, Rencel B.
1187. MAGANO, Marcos L.
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1192. MAGCALENG, Alfredo C.
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1202. MAGNO, Oscar R.
1203. MAGNO, Romeo B.
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1210. MAGSINO, Rolando
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1212. MAGTIBAY, Macario
1213. MAGTIBAY, Victor V.
1214. MAHILUM, Geronimo Sr., L.
1215. MAISOG, Ceferino G.
1216. MAISOG, David A.
1217. MALABANAN, Romeo B.
1218. MALIPOL, Ricky
1219. MALONZO, Manuel
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1223. MANAGHAYA, Isagani
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1236. MANDAYAO, Vicente
1237. MANDIGMA, David A.
1238. MANEBO, Noel M.
1239. MANGAHAS, Leopoldo A.
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1241. MANIEGO, Noel M.
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1243. MANIGBAS, Adonis D.
1244. MANIGBAS, Bayani
1245. MANIGBAS, Benjamin
1246. MANIGO, Cornelio Jr.

1247. MANIGOS, Pablo Sr., R.
1248. MANIGOS, Paquito R.
1249. MANIMTIM, Rolando C.
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1251. MANINGAS, Teodolfo D.
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1253. MANONGSONG, Daniel
1254. MANSINARES, Leopoldo B.
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1262. MANUE, Diosdado
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1266. MANZANO, Eduardo N.
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1269. MARANA, Roberto C.
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1272. MARASIGAN, Basilio V.
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1287. MARIANO, Marlon L.
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1303. MASICAMPO, Diego R.
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1305. MATAVERDE, Aurelio M.
1306. MATI, Conrado L.
1307. MATIENZO, Amadeo
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1309. MATILLA, Renato
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1311. MATITO, Leonardo N.
1312. MATREO, Dante A.
1313. MEDEL, Virgilio
1314. MEDINA, Augusto C.
1315. MEDINA, Cipriano R.
1316. MEDINA, Florante L.
1317. MEDINA, Jaime L.
1318. MEDINA, Jesse L.
1319. MEDINA, Mario L.
1320. MEDINILLA, Marshal M.
1321. MEDIODIA, Francis M.
1322. MEDIODIA, Luciano
1323. MEDIOLA, Ely M.
1324. MELECIO, Lolito M.
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1328. MELLIANG, Alfredo
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1333. MENDIOLA, Francis
1334. MENDIOLA, Manalo B.
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1336. MENDOZA, Avelino Jr., I.
1337. MENDOZA, Benjamin L.
1338. MENDOZA, Claro M.

1339. MENDOZA, Jenrin
1340. MENDOZA, Jose C.
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1347. MENDOZA, Virgilio V.
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1352. MERCADO, Luis P.
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1360. MERCADO, Virgilio S.
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1362. MERIDA, Elias H.
1363. MERLAN, Montano C.
1364. METRILLO, Nemesio M.
1365. MICLAT, Eduardo R.
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1367. MILANES, Jose C.
1368. MILAY, Raymundo P.
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1370. MINIMO, Gaspar V.
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1373. MIRANDA, Alfredo P.
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1376. MIRANDA, Ruben H.
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1403. MUNOZ, Espiritu A.
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1422. NATIVIDAD, Samuel N.
1423. NAVARETTE, Fernando C.
1424. NAVARRO, Mariano D.
1425. NAVARRO, Pacifico Jr., D.
1426. NAZARENO, Florante A.
1427. NAZARENO, Resurreccion D.
1428. NAZARIO, Rizal B.
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1430. NEPOMUCENO, Alfredo

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1433. NG, Herbert G.
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1445. OCAMPO, Rodrigo E.
1446. OCCIANO, Antonio B.
1447. OCHOA, Lorenzito H.
1448. OCSON, Reynaldo P.
1449. OCTAVIANO, Francisco
1450. OCTAVIO, Carlito P.
1451. ODESA, Antonio L.
1452. ODESA, Benjamin
1453. OFICIAR, Gideon S.
1454. OLAES, Romulo W.
1455. OLARTE, Gregorio E.
1456. OLASCO, Angel M.
1457. OLEDAN, Luis
1458. OLIMBA, German V.
1459. OLIMBA, Zosimo V.
1460. OLINDO, Juan
1461. OLIVA, Marcial B.
1462. OLIVARES, Francisco M.
1463. OLIVIAGA, Noel T.
1464. ONG, Renato S.
1465. ONGKIKI, Leopoldo M.
1466. OPEZ, Vicente S.
1467. ORALLO, Benjamin V.
1468. ORBISTA, Pedro Jr.,
1469. ORDAS, Reynaldo N.
1470. ORDONEZ, Ricardo
1471. ORIAL, Romeo S.
1472. ORIGENES, Romeo L.
1473. ORINE, Cipriano T.
1474. ORLANES, Eufrocino B.
1475. ORTANEX, Danilo R.
1476. ORTEGA, Antonio V.
1477. OSIAS, Wilfredo
1478. OVERA, Abelardo F.
1479. OWAY, Luis A.
1480. PA-A, Virgilio P.
1481. PAALAN, David
1482. PACANZA, Federico C.
1483. PACHECO, Jesus N.
1484. PACHO, Ernie
1485. PACIFICO, Navarro Jr., D.
1486. PADILLA, Alfonso L.
1487. PADILLA, Jesus N.
1488. PADUA, Rufino C.
1489. PAEZ, Erlando P.
1490. PAGADUAN, Beneficto V.
1491. PAGLICAUAN, Mario M.
1492. PAGSANJAN, Danilo P.
1493. PAGSISIHAN, Numeriano
1494. PAGUIO, Carlito
1495. PAGUIO, Ricardo T.
1496. PAJARES, Antonio V.
1497. PAKINGGAN, Emilio C.
1498. PALABRICA, Leandro P.
1499. PALASIN, Sebastian D.
1500. PALIMA, Aniceto C.
1501. PALMA, Ricardo M.
1502. PALO, Quinciano
1503. PALOMA, Abelardo E.
1504. PALPAL-LATOC, Jose A.
1505. PAMATIAN, Jose C.
1506. PAN, Gonzalo
1507. PAN, Profirio C.
1508. PANCHO, Jose V.
1509. PANGAN, Buenveido
1510. PANGAN, Ernesto S.
1511. PANGAN, Javier M.
1512. PANGANIBAN, Francisco D.
1513. PANGAYAO, Felipe P.
1514. PANGGAT, Regidor M.
1515. PAPA, Angel A.
1516. PARALA, Gorgonio P.
1517. PARAS, Joel
1518. PAREN, Juanito
1519. PARUNGAO, Antonio D.
1520. PASAMBA, Waldemar S.
1521. PASCUA, Eduardo C.
1522. PASCUAL, Isagani M.

1523. PASCUAL, Edmundo V.
1524. PASIA, Francisco V.
1525. PASIMIO, Jose R.
1526. PASION, Jose V.
1527. PASIONA, Ireneo G.
1528. PASMIO, Edilberto Jr.,
1529. PATAG, Romeo I.
1530. PAYRA, Jose I.
1531. PAYRA, Luisito S.
1532. PEDRIGUERA, Fernando
1533. PELLAS, Chester
1534. PENA, Angelito M.
1535. PENA, Antero F.
1536. PENDRAS, Dionisio M.
1537. PENILLA, Carlos
1538. PEPITO, Lope T.
1539. PERALTA, Herminio
1540. PERALTA, Reynaldo M.
1541. PERAN, Rodrigo P.
1542. PEREA, Francisco L.
1543. PEREA, Juanito L.
1544. PEREA, Olimpio T.
1545. PEREGRINA, Leopoldo M.
1546. PERENO, Fernando
1547. PEREZ, Antoliano E.
1548. PEREZ, Antonio
1549. PEREZ, Arnel
1550. PEREZ, Carmelito L.
1551. PEREZ, Danilo M.
1552. PEREZ, Dionisio M.
1553. PEREZ, Eduardo M.
1554. PEREZ, Efren G.
1555. PEREZ, Jimmy
1556. PEREZ, Juan
1557. PEREZ, Leon E.
1558. PEREZ, Romeo E.
1559. PEREZ, Romulo M.
1560. PEREZ, William
1561. PERIGIL, Cenon P.
1562. PERINO, Fernando G.
1563. PESCO, Alberto T.
1564. PIELAGO, Eleodoro A.
1565. PILLAJERA, Tomas Jr., B.
1566. PINEDA, Delmar P.
1567. PINEDA, Salvador
1568. PINILI, Victorio E.
1569. PINPIN, Elizalde C.
1570. PINPIN, Francisco
1571. PINPIN, Modesto M.
1572. PINPIN, Wilfredo C.
1573. PINTO, Romeo A.
1574. PITAO, Mateo F.
1575. PLAMERAS, Rogelio C.
1576. PLANTA, Ariel I.
1577. PLATA, Paciencio M.
1578. POBLETE, Arturo
1579. POBLETE, Dominador N.
1580. POBLETE, Leonardo N.
1581. POBLETE, Seneco P.
1582. POLLOS, Jaime
1583. PONDALIS, Domingo B.
1584. PONIEG, Bernardo Q.
1585. PORTUGAL, Norberto D.
1586. PORTUGUEZ, Laureano C.
1587. PREILA, Dominador
1588. PRIMERO, Angelito G.
1589. PRIMO, Leonardo
1590. PRIVADO, Pederico R.
1591. PRUDENTE, Buenaventura
1592. PRUDENTE, Carmelito
1593. PUEYO, Dante
1594. PUEYO, Reynaldo Q.
1595. PULIDO, Rodolfo E.
1596. PUNAY, Cornelio F.
1597. PUNIO, Alejandro F.
1598. PUNIO, Gregorio F.
1599. PUNZALAN, Wilfredo D.
1600. PURISIMA, Rogelio P.
1601. QUEBRAL, Joselito C.
1602. QUIABO, Roberto C.
1603. QUIMAN, Federico T.
1604. QUINTO, Alfredo L.
1605. QUINTO, Juanito M.
1606. QUINTOS, Romeo
1607. QUIOBO, Rogelio C.
1608. QUITEVIS, Elpidio R.
1609. QUOBO, Roberto
1610. RABANO, Benjamin D.
1611. RABINO, Desiderio R.
1612. RACABO, Eduardo W.
1613. RAMELO, Joselito F.
1614. RAMIREZ, Eugenio P.

1615. RAMIREZ, Fernando
1616. RAMIREZ, Ildefonso R.
1617. RAMIREZ, Leo
1618. RAMIREZ, Lirio C.
1619. RAMIREZ, Lito C.
1620. RAMIREZ, Luis A.
1621. RAMIREZ, Ricardo G.
1622. RAMIREZ, Rodolfo
1623. RAMOS, Alberto M.
1624. RAMOS, Anselmo C.
1625. RAMOS, Emeterio P.
1626. RAMOS, Froilan M.
1627. RAMOS, Jose N.
1628. RAMOS, Leoncio
1629. RAMOS, Manolito V.
1630. RAMOS, Nomer M.
1631. RAMOS, Oscar B.
1632. RAMOS, Roque A.
1633. RAMOS, Tobias R.
1634. RANADA, Jose G.
1635. RANADA, Marcelo
1636. RANADA, Pepito C.
1637. RANGEL, Ponciano P.
1638. RAQUEDAN, Reynaldo T.
1639. RAVELAS, Federico
1640. RAVELAS, Larry
1641. RAVELAS, Lorenzo D.
1642. RAVELAS, Manuel F.
1643. RAVELAS, Rodrigo
1644. RAVELAS, Rogelio R.
1645. RAVELAS, Teodorico R.
1646. RAVELAS, Vicente F.
1647. RAYA, Romeo S.
1648. RAYMUNDO, Ricardo E.
1649. RAYMUNDO, Wilfredo D.
1650. REBONG, Albert E.
1651. RECOLASO, Ernesto E.
1652. RECOLIZADO, Bienvenido B.
1653. REDAZA, Alberto M.
1654. REGULTO, Quirico
1655. REJUSO, Arthur
1656. RELLAMA, Raul D.
1657. RELLAMA, Toribio M.
1658. RELLOSA, Jaime
1659. RELOVA, Casiano M.
1660. REMO, Iluminado S.
1661. REMOQUILLO, Eugenio A.
1662. REMOQUILLO, Rodolfo A.
1663. REMOTO, Fidel O.
1664. REMOTO, Jesus O.
1665. RENTOZA, Gerardo
1666. RESPALL, Lucien M.
1667. RESVALLES, Isias
1668. RETANAN, Gaudencio R.
1669. RETENER, Tomas B.
1670. REY, Redentor C.
1671. REYES, Abner M.
1672. REYES, Alberto L.
1673. REYES, Alfredo S.
1674. REYES, Alvin C.
1675. REYES, Amable S.
1676. REYES, Benedicto F.
1677. REYES, Cesar C.
1678. REYES, Ernesto F.
1679. REYES, Florencio
1680. REYES, Gregorio B.
1681. REYES, Jacinto Jr., M.
1682. REYES, Jose A.
1683. REYES, Jose C.
1684. REYES, Maximo
1685. REYES, Neptali M.
1686. REYES, Nestor E.
1687. REYES, Pablo
1688. REYES, Rigor Y.
1689. REYES, Rizalino R.
1690. REYES, Rogelio G.
1691. REYES, Rolando G.
1692. REYES, Romeo B.
1693. REYES, Romeo S.
1694. REYES, Romulo M.
1695. REYES, Sergio L.
1696. REYES, Sisenando P.
1697. REYES, Solomon B.
1698. REYES, Vicente G.
1699. REYNOSO, Eugenio F.
1700. REYNOSO, Lindsey F.
1701. RICAZA, Virgilio G.
1702. RICO, Antonio F.
1703. RICO, Ernesto F.
1704. RICO, Fernando M.
1705. RIETA, Emmanuel S.
1706. RIETA, Ricardo V.

1707. RIETA, Rodelio G.
1708. RIETA, Rodelio Jr., V.
1709. RIVADA, Carlos A.
1710. RIVERA, Benito Jr.,
1711. RIVERA, Benjamin M.
1712. RIVERA, Jose M.
1713. RIVERA, Nilo S.
1714. RIVERA, Rogelio C.
1715. RIZAL, Nazario B.
1716. ROBALE, Edgardo C.
1717. ROBILLOS, Bernardo J.
1718. ROBLES, Leo B.
1719. ROBLES, Pablo A.
1720. ROBLES, Ruben
1721. ROBLEZA, Jose C.
1722. ROBLEZA, Rodolfo
1723. ROBLEZA, Rodrigo C.
1724. ROBLEZA, Rustico C.
1725. ROCABO, Eduardo
1726. RODRIGUEZ, Antonio R.
1727. RODRIGUEZ, Bernardo R.
1728. RODRIGUEZ, Eligio T.
1729. RODRIGUEZ, Henry A.
1730. RODRIGUEZ, Reynaldo B.
1731. RODRIGUEZ, Romeo B.
1732. ROMALES, Edgardo H.
1733. ROMEO, Almonte
1734. ROMERO, Abad Arturo C.
1735. RONA, Salvador T.
1736. RONDILLA, Ernesto J.
1737. RONQUILLO, Elias
1738. RONQUILLO, Elise
1739. RONQUILLO, Luis V.
1740. RONQUILLO, Rodolfo C.
1741. RONQUILLO, Segundino L.
1742. RONQUILO, Reynoso P.
1743. ROQUE, Avelino M.
1744. ROQUE, Gerardo R.
1745. ROQUILLO, Quirino
1746. ROSALES, Alfredo E.
1747. ROSALES, Angel P.
1748. ROSALES, Armando E.
1749. ROSALES, Mario E.
1750. ROSALES, Pido
1751. ROSALES, Ramon M.
1752. ROSARIO, Virgilio L.
1753. ROVELOS, Bernardino
1754. RUBIO, Wilfredo
1755. SA-ANOY, Ramon A.
1756. SABATIN, Honorio P.
1757. SABELITA, Santiago L.
1758. SABINO, Menandro L.
1759. SACDALAN, Reynaldo P.
1760. SACRO, Romeo A.
1761. SADDI, Emilio S.
1762. SAGUI, Alexander T.
1763. SALAZAR, Edgardo
1764. SALGATAR, Pedro L.
1765. SALONGA, Edgardo
1766. SALONGA, Herminio P.
1767. SALTA, Avelino R.
1768. SALTA, Benjamin P.
1769. SALTA, Ernesto P.
1770. SALTA, Trinidad P.
1771. SALVADOR, Carlito R.
1772. SALVADOR, Domingo I.
1773. SALVADOR, Domingo Sr.
1774. SALVADOR, Ernesto I.
1775. SALVADOR, Melecio I.
1776. SALVADOR, Rogelio N.
1777. SALVADOR, Rolando I.
1778. SAMPARADA, Jose
1779. SAN JOSE, Nemesio S.
1780. SAN JOSE, Ricardo S.
1781. SAN JUAN, Edgardo I.
1782. SAN MATEO, Numeriano
1783. SAN PEDRO, Ernesto Z.
1784. SAN PEDRO, Rodolfo Z.
1785. SAN PEDRO, Rogelio Z.
1786. SANCHA, Adriano V.
1787. SANCHA, Geronimo M.
1788. SANCHEZ, Artemio B.
1789. SANCHEZ, Francisco F.
1790. SANCHEZ, Franklin G.
1791. SANCHEZ, Nicasio
1792. SANOHAN, Francisco F.
1793. SANOZA, Esteban B.
1794. SANSALIAN, Arturo A.
1795. SANSALIAN, Eduardo C.
1796. SANSALIAN, Lito
1797. SANSALIAN, Mario A.
1798. SANSALIAN, Rafael A.

1799. SANTA, Adriano
1800. SANTIAGO, Apolonio P.
1801. SANTIAGO, Celso G.
1802. SANTIAGO, Giovanni D.
1803. SANTIAGO, Joselito S.
1804. SANTIAGO, Rizalino T.
1805. SANTIAGO, Sergio
1806. SANTIAGO, Uldarico P.
1807. SANTOS, Arturo L.
1808. SANTOS, Dominador Jr., R.
1809. SANTOS, Edilberto G.
1810. SANTOS, Efren S.
1811. SANTOS, Gabriel S.
1812. SANTOS, Jose H.
1813. SANTOS, Juanito
1814. SANTOS, Luisito B.
1815. SANTOS, Nicanor
1816. SANTOS, Orlando S.
1817. SANTOS, Renato D.
1818. SANTOS, Wilfredo
1819. SAPUYOT, Miguel
1820. SARMIENTO, Ricardo M.
1821. SARMIENTO, Silvestre
1822. SATRE, Maximo Jr., L.
1823. SAYAS, Ricardo
1824. SENA, Jaime M.
1825. SENO, Quirino O.
1826. SERA, Roberto
1827. SERNA, Julian G.
1828. SERQUINA, Alex S.
1829. SERRA, Domnador
1830. SERRANO, Emiliano B.
1831. SERRANO, Ricardo
1832. SERVAN, Filomeno M.
1833. SIDRO, Romeo B.
1834. SIGUA, Fernando M.
1835. SILANG, Amado M.
1836. SILANG, Faustino D.
1837. SILVA, Aniceto G.
1838. SILVA, Edgardo M.
1839. SILVERIO, Arcadio Jr., C.
1840. SILVERIO, Rolando
1841. SIMBAJON, Arthur B.
1842. SOGUI, Alexander B.
1843. SOLANO, Domingo
1844. SOLANTE, Joselito C.
1845. SOLANTE, Paquito E.
1846. SOLETO, Norberto
1847. SOLIMAN, Erdy M.
1848. SOLIMAN, Francisco M.
1849. SOLIS, Carlito M.
1850. SOLIS, Conrado III G.
1851. SOLIS, Conrado Jr., A.
1852. SOLIS, Edgardo
1853. SOLIS, Ernesto M.
1854. SOLIS, Isagan M.
1855. SOMERA, Demetrio R.
1856. SORIANO, Nicanor V.
1857. SORIANO, Proceso M.
1858. SORONO, Hermogenes S.
1859. SORONO, Melquiades S.
1860. SOTTO, Eduardo L.
1861. STA. MARIA, Ernesto G.
1862. STELLA, Vicente D.
1863. STO. DOMINGO, Alberto
1864. SUAMEN, Rafael
1865. SUANSING, Rolando C.
1866. SUAZO, Antonio B.
1867. SULTAN, Rodolfo T.
1868. SUNGLAO, Mario
1869. SUPANG, Felimon R.
1870. TABADA, Jesus C.
1871. TABLAIN, Venancio
1872. TABLAN, Julio E.
1873. TABLAN, Pastor E.
1874. TABOSO, Amado M.
1875. TAFALLA, Adolfo D.
1876. TAGORDA, Anastacio Jr., J.
1877. TAGUINOD, Benjamin Jr.,
1878. TALATAC, Isaias
1879. TALATO, Gaudencio M.
1880. TALIBSAO, Maximino H.
1881. TALISAY, Navas
1882. TALUSIK, Felicisimo T.
1883. TALUTO, Gaudencio M.
1884. TAMAYO, Jaime C.
1885. TAMPELIX, Macario L.
1886. TAN, Joesus
1887. TANAG, Eleno C.
1888. TANAG, Leorino C.
1889. TANGUIA, Augusto B.
1890. TANGUINOO, Peter

1891. TAPIA, Tagumpay R.
1892. TAPIA, Vicente Jr., R.
1893. TARAYA, Aberto P.
1894. TARIMAN, Romeo T.
1895. TARUC, Fermin
1896. TARUC, Fermiso Jr.,
1897. TARUC, William
1898. TATING, Roberto T.
1899. TEBELIN, Teodulo O.
1900. TEMPLO, Henry
1901. TEMPLO, Levy S.
1902. TEMPLO, Teddy S.
1903. TEMPROSA, Menandro P.
1904. TEOSECO, Roman L.
1905. TESALONA, Bayani T.
1906. TIAMSIM, Ireneo
1907. TIAMZON, Rodolfo S.
1908. TIBUS, Nico V.
1909. TIBUS, Samson V.
1910. TIO, Norberto B.
1911. TIOSECO, Fidel L.
1912. TIPOSO, Leonilo
1913. TIU, Juan Jr., G.
1914. TOLENTINO, Amado S.
1915. TOLENTINO, Angel G.
1916. TOLENTINO, Arnel T.
1917. TOLENTINO, Bienvenido S.
1918. TOLENTINO, Domingo G.
1919. TOLENTINO, Mario M.
1920. TORRALBA, Felipe
1921. TORRALBA, Geronimo M.
1922. TORRES, Benedicto
1923. TORRES, Jovito V.
1924. TORRES, Maximiano Y.
1925. TORRES, Nemesio
1926. TORRES, Raymundo S.
1927. TRA, Rogelio S.
1928. TRAVISON, Rodolfo S.
1929. TRESVALLES, Isias V.
1930. TRIAS, Antonio
1931. TRIAS, Francisco G.
1932. TRIAS, Renato S.
1933. TRILLANES, Rene M.
1934. TUAZON, Gavin U.
1935. TUNGCOL, Benedicto
1936. UBALDO, Placido C.
1937. UMALI, Francisco A.
1938. UNIDA, Simplicido
1939. UNIDAD, Reynaldo R.
1940. UNTALAN, Wilfredo V.
1941. UNTALAN, Willie
1942. URSOLINO, Sergio A.
1943. VALDERAMA, Antonio T.
1944. VALDERAMA, Ramon T.
1945. VALDEZ, Rogelio R.
1946. VALENCIANO, Nilo G.
1947. VALERA, Aniceto A.
1948. VALERO, Maximo A.
1949. VALES, Augusto L.
1950. VALLADA, Aurelio S.
1951. VALLAR, Federico P.
1952. VALLARTA, Tomas Jr., L.
1953. VARGAS, Isaias V.
1954. VASQUEZ, Edgardo C.
1955. VEGA, Abraham
1956. VELASQUEZ, Benjamin
1957. VELASQUEZ, Constantino B.
1958. VELASQUEZ, Elpidio B.
1959. VELASQUEZ, Mario M.
1960. VERDADERO, Eugenio C.
1961. VERDAN, Oscar A.
1962. VERGARA, Alfredo S.
1963. VERGARA, Bienvenido
1964. VERGARA, Ignacio P.
1965. VERGARA, Legorio S.
1966. VERGARA, Pedro
1967. VERNAL, Victorio
1968. VERNES, Mariano N.
1969. VERZONILLA, Rufino V.
1970. VERZOSA, Ramon R.
1971. VIAR, Guillermo E.
1972. VIAR, Romeo E.
1973. VICMUNDO, Felicito P.
1974. VICTORIA, Delfin V.
1975. VICTORIA, Gilbert
1976. VICTORIA, Jubert D.
1977. VICTORIANO, Alfredo
1978. VICTORIANO, Augusto
1979. VICTORIANO, Hermane
1980. VIDALLON , Teofilo P.
1981. VIENES, Sabino N.
1982. VIERNES, Mariano N.

1983. VILAROMAN, Rafael D.
1984. VILLA, Jesus J.
1985. VILLABLANCO, Joven
1986. VILLAFLORES, Edgardo G.
1987. VILLAFLORES, Francisco
1988. VILLAGERA, Ceferino
1989. VILLAHERMOSA, Alex
1990. VILLAHERMOSA, Domingo O.
1991. VILLALOBOS, Rolando C.
1992. VILLALUZ, Antonio
1993. VILLANUEVA, Carlito
1994. VILLANUEVA, Danilo A.
1995. VILLANUEVA, Danilo N.
1996. VILLANUEVA, Elito S.
1997. VILLANUEVA, Ernesto N.
1998. VILLANUEVA, Manuel N.
1999. VILLANUEVA, Rogelio R.
2000. VILLAR, Alfredo A.
2001. VILLAR, Nephtali D.
2002. VILLAR, Raul R.
2003. VILLARBA, Angel
2004. VILLAREAL, Jose V.
2005. VILLARINO, Felicisimo T.
2006. VILLARINO, Juanito P.
2007. VILLARINO, Leonardo
2008. VILLAROSA, Francisco M.
2009. VO, Herminio V.
2010. YANGLO, Alejandro M.
2011. YLAYA, Galileo C.
2012. YNGENTE, Vicente D.
2013. YULO, Buenaventura M.
2014. YUVIENGCO, Meynardo L.
2015. ZALAVARIA, Carlos R.
2016. ZAMORA, Primo B.
2017. ZARA, Francisco
2018. ZULUETA, Jose B.
2019. ZUNIGA, Oro C.

The Court cannot, however, award all the claims of these 2,019 petitioners. Let it be noted that the instant case is a continuation of the *Cadalin* case decided on December 5, 1994.[42] In that earlier case, we dismissed the *certiorari* petitions assailing the September 2, 1991 NLRC Resolution. By dismissing the said petitions, in effect, we upheld the following dispositions of the NLRC:

1. Dismissing the claims of the 94 complainants identified and listed in Annex "A" for having prescribed;

2. Ordering BRII and AIBC to pay solidarily the claims of the 149 complainants identified and listed in Annex "B";

3. Setting aside the awards given by the POEA to the 19 complainants classified and listed in Annex "C", who appear to have worked elsewhere than in Bahrain; and

4. Directing the Labor Arbiter to summon parties, conduct hearings and receive evidence, and thereafter submit a written report to the NLRC of the proceedings taken, regarding the claims of the complainants identified and listed in Annexes "D" and "E".[43]

[42] *Supra* note 5.

[43] *Supra* note 8.

With nothing standing in its way, the NLRC went on to implement the September 2, 1991 Resolution. Considering that the claims of the 94 complainants in Annex "A" were dismissed, and that those of the 19 complainants in Annex "C" were set aside, *what was left for the labor tribunal to implement were: (1) the payment of the claims of the 149 complainants identified and listed in Annex "B"; and (2) the summoning of parties, the conduct of hearings and the reception of evidence regarding the claims of 683 complainants identified and listed in Annex "D" and of the 69*[44] *complainants identified and listed in Annex "E" of the said 1991 Resolution, totaling 752.*

The number ballooned from the 149 Annex "B" claimants and the 752 Annexes "D" and "E" claimants, to 2,019 petitioners in this petition, primarily because, during the 1997 to 2001 proceedings, petitioners' counsel, through a *Submission and Manifestational Motion dated July 7, 2000*,[45] included additional claimants by alleging that they were similarly situated as the Annexes "B," "D" and "E" complainants. The Court observed that out of the 2,019 petitioners in this case, 1,077 are first-time claimants—they are not parties in the earlier *Cadalin* case and they only asserted their claims during the 1997-2001 proceedings. These 1,077 first-time claimants are as follows:

1. ABACAN, Gerardo M.
2. ABADE, Ricardo B.
3. ABANDO, Alex B.
4. ABANDO, Gregorio
5. ABANO, Jovenal A.
6. BANTE, Ariel B.
7. ABANTO, Nick
8. ABARCA, Felmon M.
9. ABILA, Fernando J.
10. ABOY, Ernesto M.
11. ABRL, Modesto M.
12. ABULON, Julian V.
13. ACAIN, Felipe C.
14. ACAN, Norberto G.
15. ACERO, Danny
16. ACHA, Rogelio B.
17. ACLAN, Efren
18. ACO, Rogelio A.
19. ACUNA, Manuel T.
20. ACUPAN, Benito
21. ACUPAN, Benjamin D.

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[45] *Id*. at 164-165.

22. ACUPAN, Juanito P.
23. ACUPAN, Maximiano A.
24. ACUPAN, Vicente A.
25. ADAJAR, Cesar L.
26. ADALIN, Gregorio
27. ADALLA, Gregorio
28. ADAWAG, Angel G.
29. ADAWAG, Carlito
30. ADAWAG, Cresenciano
31. ADAWAG, Noel P.
32. ADAWAG, Teodulfo
33. ADRAYAN, Alfredo B.
34. AGAPITO, Generoso M.
35. AGNE, Bernardo R.
36. AGNE, Rizalino R.
37. AGUADO, Aniceto A.
38. AGUBA, Restituto A.
39. AGUE, Florentino R.
40. AGUILA, Benjamin G.
41. AGUILA, Bernardo F.
42. AGUILA, Josue G.
43. AGUILA, Vicente G.
44. AGUILAR, Esperidion T.
45. AGUILAR, Francisco
46. AGUSTIN, Galicano D.
47. ALABAY, Agripino V.
48. ALABAY, Nestor M.
49. ALAGAD, Alfonso
50. ALAGAD, Bernardo F.
51. ALAGAD, Fernando
52. ALBINO, Septimo O.
53. ALBO, Alejandro R.
54. ALBURO, Orlando
55. ALCAIRA, Alexander R.
56. ALCALDE, Rolando A.
57. ALCANTARA, Jaime B.
58. ALCANTARA, Jesus M.
59. ALCANTARA, Mario C.
60. ALDEGUER, Federico Jr., T.
61. ALDEGUER, Jaime B.
62. ALDIANO, Ponciano C.
63. ALDOVER, Alfredo L.
64. ALEA, Diosdado A.
65. ALEGADA, Wilfredo
66. ALEJANDRE, Maximino R.
67. ALEJANDRE, Noel P.
68. ALEJANDRINO, Enrico I.
69. ALFECHE, Inocencio V.
70. ALFREDO, Teodolfo M.
71. ALHAMBRA, Cezar A.
72. ALINDAY, Tomas C.
73. ALMERO, Ernesto C.
74. ALMONTE, Romeo B.
75. ALMONTE, Virgilio B.
76. ALVAREZ, Alexander
77. ALVAREZ, Raul A.
78. ALVAREZ, Rolando S.
79. AMA, Pafico
80. AMBAL, Edmundo G.
81. AMBUNAN, Julian P.
82. AMPIL, Jose R.
83. AMUL, Sebastian B.
84. AMURAO, Crispulo Jr., C.
85. AM URAO, Crispulo Sr., T.
86. AMUTAN, Fernando L.
87. ANDAL, Danilo L.
88. ANDAMO, Carlos P.
89. ANDOY, Leopoldo R.
90. ANDRADA, Dan F.
91. ANDRADA, Simeon
92. ANDULAN, Reynaldo B.
93. ANG, Nestor V.
94. ANGELES, Geronimo H.
95. ANICETE, Beltranico S.
96. ANICETE, Romeo S.
97. ANIS, Bartolome B.
98. ANSALDO, Jose B.
99. APOLINARIO, Pepito
100. APUADO, Victorio C.
101. AQUINO, Abanes O.
102. AQUINO, Abner O.
103. AQUINO, Angel D.
104. AQUINO, Graciano M.
105. AQUINO, Jimmy B.
106. AQUINO, Ruben M.
107. ARACARIA, Alexander
108. ARANDELA, Percival L.
109. ARAYATA, Escolastico
110. ARCANGEL, Manuel DG.
111. AREVALO, Mario A.
112. ARGETE, Gavino M.
113. ARGUELLES, Alfredo

114. ARGUELLES, Angelito M.
115. ARGUELLES,Hermenigildo M.
116. ARONSE, Juanito P.
117. ARTITA, Rogelio S.
118. ASPER, Rodolfo M.
119. ASUNAN, Danilo R.
120. ASUNCION, Feliciano N.
121. ASUNCION, Rodolfo C.
122. ATIENZA, Carlito C.
123. ATIENZA, Jose R.
124. ATIENZA, Restituto A.
125. ATUD, Leonelito M.
126. AUSTRIA, Oscar M.
127. AVELLANA, Jose
128. AVUELTA, Ricardo Jr., P.
129. AXALAN, Loreto Jr.,
130. AXALAN, Marinao V.
131. AXALAN, Vicente R.
132. AZAGRA, Jaime A.
133. BABAEL, Sherlito S.
134. BABAGAY, Conrado T.
135. BABAGAY, Gerardo
136. BABASA, Wilhem S.
137. BACAMANTE, Virgilio A.
138. BACARAT, Paisal G.
139. BADUA, Emerito M.
140. BAES, Filoteo A.
141. BAGADIONG, Guillermo T.
142. BAGADIONG, Noel S.
143. BAGASIN, Lamilo A.
144. BALABALO, Luis
145. BALANTE, Geronimo
146. BALBICRAN, Gerardo R.
147. BALBIERAN, Anatalio B.
148. BALBIERAN, Maximo C.
149. BALBIERAN, Romeo B.
150. BALBIRAN, Fernando B.
151. BALCOBA, Federico B.
152. BALINAS, Pablo G.
153. BALINGIT, Rodolfo F.
154. BALIWAG, Cesario H.
155. BARASARI, Rizal
156. BARCENA, Fidel F.
157. BARIN, Rodolfo
158. BARLENA, Fidel F.
159. BARLENA, Florentino
160. BAROLA, Abdon V.
161. BARTIDO, Leonardo
162. BARTOLOME, Marcelo
163. BARZAGA, Vivencio T.
164. BASMAYOR, Artemio A.
165. BASTRO, Reynaldo U.
166. BATAIN, Romeo
167. BATICA, Ernesto Sr., S.
168. BATICA, Hobino O.
169. BATINGA, Elueterio P.
170. BAUAN, Victoriano A.
171. BAUTISTA, Ceferino O.
172. BAUTISTA, Emegdio P.
173. BAUTISTA, Irene P.
174. BAUTISTA, Mamerto S.
175. BAYA, Inoncencio
176. BAYACAL, Venancio Jr., V
177. BAYLON, Lolito F.
178. BELTRAN, Ebrulfo G.
179. BELTRAN, Largion G.
180. BENITEZ, Jovito N.
181. BERNAL, Victorio
182. BERSAMIN, Dindo L.
183. BERWITE, Renato P.
184. BICOL, Cesario M.
185. BICOL, Florentino L.
186. BIGADION, Noel S.
187. BISCOCHO, Eleuterio B.
188. BLANCO, Alberto B.
189. BLANCO, Virgilio
190. BLAS, Rogelio
191. BLAY, Nestor M.
192. BLAY, Rodrigo M.
193. BOADO, Elpidio A.
194. BOBADILLA, Cesar
195. BOBADILLA, Danilo A.
196. BOBADILLA, Laudico A.
197. BODADILLA, Cesar A.
198. BODADILLA, Danilo A.
199. BOLANTE, Geronimo E.
200. BOLANTE, Gil I.
201. BOLISAY, Carlito M.
202. BONDOC, Benito U.
203. BONGT, Domingo S.
204. BOQUIREN, Arnulfo Jr., M.
205. BORDILLA, Eresto J.

206. BORNALES, Ricardo C.
207. BRACAMANTE, VirgilioA.
208. BRAGAIS, Demetrio B.
209. BRAGANZA, Norberto E.
210. BRAVO, Tinioso S.
211. BRIONES, Tranquilino Y.
212. BROTONEL, Ceferino G.
213. BRUCE, Cesar B.
214. BUENAFE, Tomas V.
215. BUENAVENTURA,,Ruperto Jr.,E.
216. BUENTE, Tomas
217. BUGAY, Reynaldo D.
218. BULAMBAO, Buenaventura D.
219. BULANHAGUI, Ariel F.
220. BULATAO, Alfredo G.
221. BULLECER, Rodolfo R.
222. BUNAO, Isabelo M.
223. BUNGAY, Avenilo
224. BUNGAY, Jefferson Q.
225. BUSTAMANTE, Jose G.
226. CAALIM, Benito T.
227. CAALIM, Romeo T.
228. CABALLERO, Jacinto B.
229. CABIGAN, Rosendo Z.
230. CABILANGAN, Pablo G.
231. CABRERA, Jose D.
232. CABUHAT, Reynaldo T.
233. CAHIGAS, Nestor B.
234. CAILES, Dorito A.
235. CALADO, Fernando M.
236. CALCENA, Isagani
237. CALMA, Alejandro Jr., P.
238. CALMA, Fernando R.
239. CALMA, Jerry D.
240. CALMA, Miguel M.
241. CALURA, Joven C.
242. CALURA, Renato R.
243. CAMANAG, Sotero P.
244. CANDOR, Irmer L.
245. CANTOS, Geronimo M.
246. CANTOS, Primitivo
247. CAPACETE, Ramon Jr., G.
248. CAPARAS, Gaspar V.
249. CAPONPON, Ricardo
250. CARLOS, Narciso
251. CARTEL, Jose H.
252. CASA, Crisendo
253. CASADO, Emmanuelito P.
254. CASINO, Renato
255. CASTANARES, Dalmacio R.
256. CASTELO, Elias Jr., D.
257. CASTILLO, Arnel L.
288. CASTILLO, Emeterio L.
259. CASTILLO, Ferdinand L.
260. CASTILLO, Leonicio B.
261. CASTILLO, Lourdino M.
262. CASTILLO, Mario E.
263. CASTILLO, Nardito M.
264. CASTILLO, Natalio L.
265. CASTILLO, Nestor
266. CASTILLO, Vidal J.
267. CASTRO, Cesar M.
268. CASTRO, Crisaldo M.
269. CATAPANG, Conrado M.
270. CATAPANG, Ireneo
271. CATIBOG, Pepito M.
272. CATIBOG, Rodolfo
273. CATIPAN, Dominador D.
274. CATUD, Conrado A.
275. CAY, Prumencio F.
276. CAYANAN, Francisco D.
277. CENENA, Nestor
278. CENTURA, Gorgonio C.
279. CEREZO, Elmo A.
280. CERRO, Camilo C.
281. CETES, Henry
282. CHAN, Generoso M.
283. CHAVEZ, Cesar A.
284. CHUA, Cecilio H.
285. CIFRA, Hernan N.
286. CIFRA, Vicente C.
287. CLARETE, Vienvenido
288. CLAUD, Crizaldo D.
289. CLAVIO, Bienvenido M.
290. COCJIN, Jose Jr., B.
291. COMPLE, Damiano S.
292. CONCEPCION, Manuel Jr., C.
293. CONCEPCION, Virgilio C.
294. CONSTANTINO, Rolando A.
295. CONTEMPRATO, Lauro G.
296. CONTI, Bayani
297. CONTI, Edmundo C.

298. CONTI, Reynaldo C.
299. CORDERO, Mari F.
300. CORDOVA, Carlos Jr., V.
301. CORNISTA, Rino T.
302. CORNISTA, Romeo G.
303. CORONADO, Alfonso S.
304. CORTEJO, Joel O.
305. CORTEMPRATO, Cesar
306. CORTEZ, Edgardo D.
307. COSINO, Renato R.
308. COSINO, Sofronio B.
309. COSTALES, Felipe Sr., B.
310. CREDITO, Enrico R.
311. CRISOSTOMO, Igmedio Jr., G
312. CRUES, Teodulfo G.
313. CRUZ, Arturo I.
314. CRUZ, Augusto B.
315. CRUZ, Danilo M.
316. CRUZ, Ernesto
317. CRUZ, Hilario C.
318. CRUZ, Rodelio
319. CRUZ, Rodolfo B.
320. CUDAL, Raymundo
321. CUENCO, Edeltrudo F.
322. CUENCO, Edgar F.
323. CUESTINO, Victorino
324. CUEVAS, Abdon S.
325. CUEVAS, Manuel C.
326. CULLERA, Manuel M.
327. CUNANAN, Mario I.
328. CUSAP, Ernesto O.
329. CUSTODIO, Eduardo G.
330. DACASIN, Danilo B.
331. DACASIN, Fernando B.
332. DALUZ, Nicolas
333. DATAAN, Teodoro C.
334. DATAN, Jose C.
335. DATAY, Andres F.
336. DATINGUINOO, Desiderio A.
337. DAVID, Adolfo
338. DAYANDAYAN, Tomestocles
339. DAYANGHIRANG, Rufino T.
340. DAYRIT, Leonardo S.
341. DAYRIT, Victoriano C.
342. DE ADE, Bayani R.
343. DE CASTRO, Cristobal L.
344. DE CASTRO, Primitivo L.
345. DE CASTRO, Rene T.
346. DE CHAVEZ, Pedro
347. DE DIOS, Cesar J.
348. DE GUZMAN, Benedicto N.
349. DE GUZMAN, Donato
350. DE GUZMAN, Rolando F.
351. DE LEMON, Victorio SR.,R.
352. DE LEMOS, Victoria
353. DE LEON, Dominador A.
354. DE LEON, Enrique C.
355. DE LEON, Ernesto C.
356. DE RAMA, Falconery R.
357. DE RAMA, Federico J.
358. DE TORRES, Arnulfo
359. DE TORRES, Nemesio A.
360. DE VERA, Marciano D.
361. DE VERA, Marciano V.
362. DE VERA, Reynaldo M.
363. DE VILLA, Rodolfo C.
364. DEL MUNDO, Danilo L.
365. DEL MUNDO, Walfredo L.
366. DEL PILAR, Lorencio
367. DEL PRADO, Vicente P.
368. DEL RIO, Pastor
369. DEL ROSARIO, Alfredo
370. DEL ROSARIO, Cesar S.
371. DEL ROSARIO, Guerero
372. DEL ROSARIO, Vedasto
373. DELA CRUZ, Edgar R.
374. DELA CRUZ, Federico N.
375. DELA CRUZ, Juan R.
376. DELA CRUZ, Marcelino G.
377. DELA CRUZ, Rodelio
378. DELA CRUZ, Walfredo B.
379. DELA PENA, Doroteo
380. DELA VEGA, Abraham
381. DELBORO, Joselito T.
382. DELGADO, Rufino M.
383. DELLOSA, Joselito Fidel T.
384. DELOS REYES, Eusebio I.
385. DELOS REYES, Silverio Sr., V.
386. DELOS SANTOS, Emaldo D.
387. DELOS SANTOS, Serafin A.
388. DENIEGA, Juanito F.
389. DIAZ, Antonio R.

390. DIAZ, Ernesto E.
391. DIAZ, Renato B.
392. DIAZ, Telesforo M.
393. DIMAANO, Rodolfo M.
394. DIMAAPI, Romeo P.
395. DIMAPILIS, Leoncio I.
396. DIMATATAC, Jose A.
397. DIMATATAC, Romulo
398. DIMAULATAN, Vivencio C.
399. DIMAYUGA, Luis
400. DINGLASAN, Aniano M.
401. DISINGANIO, Domingo J.
402. DOMINGO, Rodolfo
403. DUAG, Elpidio I.
404. DUMAGUIN, Saturnino H.
405. DUMALI, Felipe
406. DURANA, Ceferino
407. EBRADA, Gilberto
408. ELIAS, Carlito
409. ELISAN, Ristituto
410. EMMAN, Johnny M.
411. ENCANTO, Jose T.
412. ENGALLA, Jaime M.
413. ENGON, Vicente
414. ENGUERO, Elmer F.
415. ENRIQUEZ, Rolando G.
416. ESCARILLA, Ramon Jr. T.
417. ESCARILLO, Wilfredo
418. ESCOTA, Gilberto B.
419. ESEO, Ernesto Sr., A.
420. ESPANOL, Miguel L.
421. ESPARAGO, Noel
422. ESPINA, Pascual F.
423. ESPINA, Robert
424. ESPINO, Arturo B.
425. ESPINO, Edgardo B.
426. ESPINO, Honorio E.
427. ESPINO, Horacio
428. ESPINO, Silverio D.
429. ESPINOSA, Policapio C.
430. ESPINOSA, Teodoro
431. ESPIRITU, Gregorio S.
432. ESPIRITU, Ildefonso R.
433. ESPIRITU, Leonardo Jr., A.
434. ESPIRITU, Rodolfo S.
435. ESTACIO, Bob L.
436. ESTACIO, Romeo P.
437. ESTANDARTE, Dioscoro
438. ESTRADA, Feliciano E.
439. ESTRELLA, Geronimo
440. ETCHON, Reynaldo D.
441. ETCHON, Reynaldo O.
442. EVANGELISTA, Antonio S.
443. EVANGELISTA, Donato
444. EVANGELISTA, Eduardo M.
445. EVANGELISTA, Rolando
446. FABABIER, Manuel M.
447. FACTORAN, Felicisimo D.
448. FAJARDO, Efren G.
449. FAJARDO, Pedro E.
450. FALLER, Reynaldo C.
451. FALTADO, Ruben
452. FARAON, Ciriaco
453. FEDERICO, Abundio B.
454. FERIA, Carino
455. FERNANDEZ, Agaton B.
456. FERNANDEZ, Jose Celedonio L.
457. FERNANDEZ, Serman O.
458. FERNANDO, Leonardo S.
459. FERNANDZ, Ely E.
460. FERRER, Cenon
461. FERRER, Leopoldo S.
462. FIRMA, Rizaldo F.
463. FLORES, Agapito C.
464. FLORESCA, Eligio B.
465. FRAGADA, Gregorio
466. FRAMIL, Rosauro R.
467. FRANCIA, Isabelito P.
468. FRANCISCO, Cornelio Y.
469. FRANCISCO, Edgardo J.
470. FRANCISCO, Framil
471. FRANCISCO, Mario B.
472. FRANE, Philbert M.
473. FRANZUELA, Ildefonso M.
474. FURTO, Reynaldo L.
475. FURTO, Wenfredo L.
476. GABAY, Castaniro
477. GALLARDO, Wilfredo A.
478. GALVEZ, Romeo A.
479. GAMMAD, Potenciano D.
480. GAMUTAN, Irobengito M.
481. GANAS, Hilario M.

482. GARCIA, Alfredo Jr.,
483. GARCIA, Angelito P.
484. GARCIA, Bernardino N.
485. GARCIA, Digno P.
486. GARCIA, Ermando M.
487. GARCIA, Esmeraldo N.
488. GARCIA, R.E.
489. GASCON, Rolando
490. GATCHALIAN, Ernesto E.
491. GATCHALIAN, Jose
492. GATULAYAO, Conrado
493. GAWAN, Jose A.
494. GAYA, Jose M.
495. GAYA, Leonardo T.
496. GELLID, Manol F.
497. GELLIDO, Ernesto D.
498. GEMOTO, Roberto
499. GENEROSO, Agapito
500. GERONIMO, Julio M.
501. GERONIMO, Roberto A.
502. GOMEZ, Patricio Jr., V.
503. GONZALES, Domingo A.
504. GONZALES, Eduardo B.
505. GONZALES, Jaime B.
506. GONZALES, Lamberto C.
507. GONZALES, Manuel S.
508. GONZALES, Norberto
509. GONZALES, Regino M.
510. GOPEZ, Armando S.
511. GOTANA, Edgardo Z.
512. GRAJERA, Florante E.
513. GRULLO, Jorge T.
514. GUANZON, Narciso D.
515. GUEVARA, Rosendo M.
516. GUINARES, Oscar L.
517. GUINTO, Isagani S.
518. GUITANG, Rodolfo C.
519. HALCON, Danilo
520. HERMOSO, Roberto
521. HERNANDEZ, Angelito
522. HERNANDEZ, Armando S.
523. HERNANDEZ, Julio A.
524. HERNANDEZ, Napoleon
525. HILADO, Manuel D.
526. HILADO, Mario D.
527. HILARIO, Winfredo P.
528. HINGALA, Felismo
529. HLARIO, Expedito
530. HOLGADO, Rodrigo C.
531. HUGGINS, Wilfredo M.
532. ILAGAN, Pedro
533. ILAGAN, Teofilo M.
534. ILOG, Vicente M.
535. INALVES, Victor S.
536. INASIANG, Santiago
537. INSIGNE, Conrado A.
538. ISIDORO, Rodolfo D.
539. JACLA, Floriano V.
540. JACOB, Victor M.
541. JANACO, Alejandro M.
542. JARDINIANO, Rolando V.
543. JARO, Ferdinand
544. JARO, Romeo M.
545. JAUDALSO, Roberto E.
546. JAVIER, Antonio C.
547. JAVIER, Conrado N.
548. JAVIER, Ernesto
549. JIMENA, Angelico Jr., B.
550. JOCACA, Pedro
551. JOCO, Rustico P.
552. JOLOYA, Claro
553. JONAS, Abelardo E.
554. JOSEF, Petronillo L.
555. JOYA, Rodolfo E.
556. JUCAR, Cesar G.
557. JUSTO, Renato E.
558. KAMATOY, Arnaldo P.
559. LABAYO, Leonardo
560. LABING, Arcadio T.
561. LABRADOR, Floro A.
562. LABRAMONTE, Jose R.
563. LAGAC, Felipe R.
564. LAGANAPAN, Sandy P.
565. LAJOM, Eliseo T.
566. LAKIAN, Arsenio F.
567. LANDICHO, Constancio R.
568. LATOJA, Domingo D.
569. LATOJA, Juanito D.
570. LAURE, Antonio S.
571. LAYON, Edgar
572. LEANO, Felix
573. LEOOR, Meinardo M.

574. LEYESA, Teodoro M.
575. LEYNES, Luisito
576. LICAROS, Luzvimindo F.
577. LINSANGAN, Rosanno S.
578. LISING, Arcadio T.
579. LISING, Esmeraldo S.
580. LLANERA, Rodrigo G.
581. LOGAN, Arnel I.
582. LOGRONIO, Claro A.
583. LOGRONIO, Clemente A.
584. LOGRONIO, Cornelio A.
585. LOGUC, Felipe R.
586. LOGUINACIO, Edwin C.
587. LONTOK, Rogelio L.
588. LOPENA, David C.
589. LOPENA, Nicanor C.
590. LOPEZ, Lamberto
591. LOPEZ, Larry
592. LOPEZ, Nicanor D.
593. LOPEZ, Rodrigo M.
594. LOQUINARIO, Edwin C.
595. LOZA, Crisostomo
596. LUAGE, Henry A.
597. LUALHATI, Ramon C.
598. LUBIAN, Rubinato A.
599. LUCEA, Ronito E.
600. LUKBAN, Narciso H.
601. LUMANGLAS, Armando G.
602. LUMANGLAS, Eleodoro A.
603. LUNA, Vicente
604. LUSUNG, Onofre M.
605. MAAMO, Bernardino C.
606. MAAMO, Manuel J.
607. MAAMO, Victoriano
608. MAAMO, Victorio
609. MACABEBE, Leonides R.
610. MACALALAD, Victor B.
611. MACALDO, Victor C.
612. ACALINTALA, Jose T.
613. MACARAEG, Irineo
614. MACARAEG, Nestor
615. MACARAIG, Aurelio S.
616. MACARAIG, Bienvenido
617. MACARAIG, Efren C.
618. MACARAIG, Nestor C.
619. MACATANGAY, Basilio M.
620. MACATANGAY,Buenaventura A.
621. MACATANGAY, Juan H.
622. MACATANGAY, Napoleon A.
623. MACATANGAY, Nicolas A.
624. MACATANGAY, Remegio
625. MACATANGAY, Ricardo M.
626. MACATANGAY, Romeo
627. MACATANGAY, Sofronio M.
628. MAESTRE, Felicito C.
629. MAGANAYE, Rencel B.
630. MAGANO, Marcos L.
631. MAGAT, Abeardo S.
632. MAGNAYE, Ernesto L.
633. MAGNAYE, Ranerio M.
634. MAGNAYE, Renato M.
635. MAGNAYE, Venancio L.
636. MAGNAYE, Victorino R.
637. MAGNO, Boyet
638. MAGNO, Camilo B.
639. MAGNO, Danilo B.
640. MAGNO, Oscar R.
641. MAGNO, Romeo B.
642. MAGPANTAY, Francisco V.
643. MAGSINO, Rolando
644. MAGTIBAY, Macario
645. MAISOG, Ceferino G.
646. MAISOG, David A.
647. MALABANAN, Romeo B.
648. MALIPOL, Ricky
649. MALONZO, Marcelo G.
650. MANAGHAYA, Isagani
651. MANALAC, Remegio S.
652. MANALILI, Rogelio
653. MANALO, Danilo M.
654. MANALO, Jose M.
655. MANANGHAYA, Isagani S.
656. MANANGUIT, Romulo L.
657. MANAS, Cesar A.
658. MANDAYAO, Vicente
659. MANDIGMA, David A.
660. MANEBO, Noel M.
661. MANIEGO, Noel M.
662. MANIEGO, Vidal A.
663. MANIGBAS, Benjamin
664. MANIGOS, Pablo Sr., R.
665. MANIGOS, Paquito R.

666. MANINGAS, Fermin
667. MANINGAS, Teodolfo D.
668. MANIVAL, Enrico S.
669. MANSINARES, Leopoldo B.
670. MANUAL, Demetrio P.
671. MANUAL, Domingo C.
672. MANUAL, Enrique
673. MANUAL, Marcelo K.
674. MANUAL, Marciano C.
675. MANUBA, Angelito T.
676. MANUBAG, Lito C.
677. MANUEL, Marcelo
678. MARANIAG, Normandy
679. MARASIGAN, Basilio V.
680. MARASIGAN, Delfin M.
681. MARASIGAN, Hilario M.
682. MARASIGAN, Rodolfo P.
683. MARCELO, Mario L.
684. MARCELO, Serafin M.
685. MARCIADA, Rolando
686. MARIANO, Armando T.
687. MARIANO, Federico S.
688. MARIANO, Marlon L.
689. MARIANO, Narciso T.
690. MARIANO, Navarro D.
691. MARPURI, Rodolfo C.
692. MARQUEZ, Bayani A.
693. MARQUEZ, Carlos A.
694. MARQUEZ, Celso M.
695. MARQUEZ, Romeo
696. MARSIGAN, Wenceslao
697. MARTINEZ, Reynaldo S.
698. MARTINEZ, Rodolfo C.
699. MATA, Paolo M.
700. MATI, Conrado L.
701. MATIENZO, Amadeo
702. MATIENZO, Salvador R.
703. MATITO, Leonardo N.
704. MEDINA, Augusto C.
705. MEDINA, Cipriano R.
706. MEDINA, Florante L.
707. MEDINA, Jaime L.
708. MEDINA, Jesse L.
709. MEDINA, Mario L.
710. MEDINILLA, Marshal M.
711. MEDIODIA, Francis M.
712. MEDIOLA, Ely M.
713. MELENDEZ, Napoleon O.
714. MELLIANG, Alfredo
715. MENDOZA, Benjamin L.
716. MENDOZA, Jenrin
717. MENDOZA, Jose C.
718. MENDOZA, Manolito D.
719. MENDOZA, Miguel C.
720. MENDOZA, Ramiro A.
721. MENDOZA, Romeo T.
722. MENDOZA, Teofilo R.
723. MENDOZA, Virgilio V.
724. MENOR, Cresente S.
725. MERCADO, Conrado Jr., C.
726. MERCADO, Francisco
727. MERCADO, Oscar S.
728. MERCADO, Patricio H.
729. MERCADO, Primitivo H.
730. MERCADO, Reynaldo E.
731. MERCADO, Ricardo B.
732. MERCADO, Romeo
733. MERCADO, Valdemor C.
734. MERCADO, Virgilio S.
735. MERIDA, Elias H.
736. MICLAT, Eduardo R.
737. MILANES, Joejie N.
738. MINIMO, Elueterio V.
739. MINIMO, Hernando G.
740. MIRALES, Arnaldo I.
741. MIRANDA, Alfredo P.
742. MIRANDA, Ruben H.
743. MOGOL, Noel M.
744. MOLINA, Rogelio D.
745. MONTECINES, Juanito O.
746. MONZON, Celso N.
747. MONZON, Cosme B.
748. MORADA, Rodrigo
749. MORAL, Nestor K.
750. MORATILLO, Victorino O.
751. MORENO, Alfredo
752. MORTEL, Delfin M.
753. MOSUELA, Carlito C.
754. MUNDO, Jessie
755. MUNDO, Rufino Jr.,
756. MUNOZ, Jose P.
757. NAJERA, Angel C.

758. NAPIZA, Juanito N.
759. NAPIZA, Lamberto R.
760. NAPIZA, Salvador
761. NAPIZA, Wilfredo L.
762. NAPOLAN, Ernesto C.
763. NARCISO, Benjamin B.
764. NARCISO, Carlos G.
765. NARCISO, Meliton B.
766. NARCISO, Narciso L.
767. NATALIA, Edwin B.
768. NATIVIDAD, Samuel N.
769. NAVARRO, Mariano D.
770. NEPOMUCENO, Isidro M.
771. NER, Valente Jr., T.
772. NOFUENTE, Mabini M.
773. NOGUERA, Rodolfo M.
774. OBANA, Marcial L.
775. OBIAS, Romeo M.
776. OCHOA, Lorenzito H.
777. OCTAVIANO, Francisco
778. OCTAVIO, Carlito P.
779. ODESA, Antonio L.
780. OFICIAR, Gideon S.
781. OLAES, Romulo W.
782. OLARTE, Gregorio E.
783. OLEDAN, Luis
784. OLIMBA, German V.
785. OLIVIAGA, Noel T.
786. ONGKIKI, Leopoldo M.
787. OPEZ, Vicente S.
788. ORDAS, Reynaldo N.
789. ORINE, Cipriano T.
790. ORTEGA, Antonio V.
791. OVERA, Abelardo F.
792. PACANZA, Federico C.
793. PACHO, Ernie
794. PACIFICO, Navarro Jr., D.
795. PADILLA, Jesus N.
796. PADUA, Rufino C.
797. PAEZ, Erlando P.
798. PAGADUAN, Beneficto V.
799. PAGLICAUAN, Mario M.
800. PAGUIO, Carlito
801. PAJARES, Antonio V.
802. PALASIN, Sebastian D.
803. PALIMA, Aniceto C.
804. PALMA, Ricardo M.
805. PALOMA, Abelardo E.
806. PALPAL-LATOC, Jose A.
807. PANGAN, Javier M.
808. PANGANIBAN, Francisco D.
809. PANGAYAO, Felipe P.
810. PANGGAT, Regidor M.
811. PARAS, Joel
812. PARUNGAO, Antonio D.
813. PASAMBA, Waldemar S.
814. PASCUA, Eduardo C.
815. PASCUAL Isagani M.
816. PASCUAL, Edmundo V.
817. PASIONA, Ireneo G.
818. PAYRA, Jose I.
819. PAYRA, Luisito S.
820. PEDRIGUERA, Fernando
821. PELLAS, Chester
822. PENA, Antero F.
823. PENILLA, Carlos
824. PEPITO, Lope T.
825. PERAN, Rodrigo P.
826. PEREA, Francisco L.
827. PEREA, Juanito L.
828. PEREA, Olimpio T.
829. PEREGRINA, Leopoldo M.
830. PERENO, Fernando
831. PEREZ, Arnel
832. PEREZ, Carmelito L.
833. PEREZ, Danilo M.
834. PEREZ, Dionisio M.
835. PEREZ, Efren G.
836. PEREZ, Jimmy
837. PERIGIL, Cenon P.
838. PESCO, Alberto T.
839. PIELAGO, Eleodoro A.
840. PILLAJERA, Tomas Jr., B.
841. PINILI, Victorio E.
842. PINTO, Romeo A.
843. PITAO, Mateo F.
844. PLAMERAS, Rogelio C.
845. PLANTA, Ariel I.
846. PLATA, Paciencio M.
847. PONIEG, Bernardo Q.
848. PORTUGAL, Norberto D.
849. PORTUGUEZ, Laureano C.

850. PRIMERO, Angelito G.
851. PRIMO, Leonardo
852. PRIVADO, Pederico R.
853. PUNAY, Cornelio F.
854. PUNIO, Gregorio F.
855. PUNZALAN, Wilfredo D.
856. PURISIMA, Rogelio P.
857. QUEBRAL, Joselito C
858. QUIABO, Roberto C.
859. QUINTO, Juanito M.
860. QUITEVIS, Elpidio R.
861. QUOBO, Roberto
862. RABANO, Benjamin D.
863. RABINO, Desiderio R.
864. RAMELO, Joselito F.
865. RAMIREZ, Ildefonso R.
866. RAMIREZ, Lirio C.
867. RAMIREZ, Luis A.
868. RAMOS, Emeterio P.
869. RAMOS, Jose N.
870. RAMOS, Leoncio
871. RAMOS, Manolito V.
872. RAMOS, Nomer M.
873. RAMOS, Oscar B.
874. RAMOS, Roque A.
875. RANADA, Jose G.
876. RANADA, Pepito C.
877. RANGEL, Ponciano P.
878. RAVELAS, Federico
879. RAVELAS, Larry
880. RAVELAS, Lorenzo D.
881. RAVELAS, Rodrigo
882. RAVELAS, Rogelio R.
883. RAVELAS, Teodorico R.
884. RAYA, Romeo S.
885. RAYMUNDO, Ricardo E.
886. REBONG, Albert E.
887. RECOLIZADO, Bienvenido B.
888. REGULTO, Quirico
889. RELLAMA, Raul D.
890. RELOVA, Casiano M.
891. REMO, Iluminado S.
892. REMOQUILLO, Rodolfo A.
893. REMOTO, Jesus O.
894. RESVALLES, Isias
895. REYES, Abner M.
896. REYES, Alberto L.
897. REYES, Cesar C.
898. REYES, Ernesto F.
899. REYES, Florencio
900. REYES, Jacinto Jr., M.
901. REYES, Maximo
902. REYES, Neptali M.
903. REYES, Nestor E.
904. REYES, Pablo
905. REYES, Rigor Y.
906. REYES, Rogelio G.
907. REYES, Romeo B.
908. REYES, Romeo S.
909. REYES, Sisenando P.
910. REYES, Vicente G.
911. REYNOSO, Eugenio F.
912. REYNOSO, Lindsey F.
913. RICO, Antonio F.
914. RIVADA, Carlos A.
915. RIVERA, Benjamin M.
916. RIVERA, Jose M.
917. RIVERA, Nilo S.
918. RIVERA, Rogelio C.
919. RIZAL, Nazario B.
920. ROBALE, Edgardo C.
921. ROBLEZA, Rustico C.
922. RODRIGUEZ, Henry A.
923. RODRIGUEZ, Reynaldo B.
924. RODRIGUEZ, Romeo B.
925. ROMERO, Abad Arturo C.
926. RONA, Salvador T.
927. RONDILLA, Ernesto J.
928. ROQUE, Gerardo R.
929. ROSALES, Alfredo E.
930. ROSALES, Armando E.
931. ROSALES, Mario E.
932. ROSALES, Pido
933. ROVELOS, Bernardino
934. RUBIO, Wilfredo
935. SA-ANOY, Ramon A.
936. SABATIN, Honorio P.
937. SABELITA, Santiago L.
938. SACDALAN, Reynaldo P.
939. SACRO, Romeo A.
940. SADDI, Emilio S.
941. SAGUI, Alexander T.

942. SALAZAR, Edgardo
943. SALONGA, Herminio P.
944. SALTA, Avelino R.
945. SALTA, Benjamin P.
946. SALTA, Ernesto P.
947. SALTA, Trinidad P.
948. SALVADOR, Domingo I.
949. SALVADOR, Domingo Sr.
950. SALVADOR, Ernesto I.
951. SALVADOR, Melecio I.
952. SALVADOR, Rogelio N.
953. SALVADOR, Rolando I.
954. SAN JOSE, Nemesio S.
955. SAN JUAN, Edgardo I.
956. SAN PEDRO, Rodolfo Z.
957. SAN PEDRO, Rogelio Z.
958. SANCHEZ, Franklin G.
959. SANOZA, Esteban B.
960. SANSALIAN, Arturo A.
961. SANSALIAN, Eduardo C.
962. SANSALIAN, Lito
963. SANSALIAN, Mario A.
964. SANSALIAN, Rafael A.
965. SANTA, Adriano
966. SANTIAGO, Celso G.
967. SANTIAGO, Giovanni D.
968. SANTIAGO, Rizalino T.
969. SANTIAGO, Uldarico P.
970. SANTOS, Arturo L.
971. SANTOS, Dominador Jr., R.
972. SANTOS, Jose H.
973. SANTOS, Luisito B.
974. SANTOS, Nicanor
975. SANTOS, Orlando S.
976. SANTOS, Wilfredo
977. SARMIENTO, Ricardo M.
978. SATRE, Maximo Jr., L.
979. SAYAS, Ricardo
980. SENA, Jaime M.
981. SENO, Quirino O.
982. SERA, Roberto
983. SERNA, Julian G.
984. SERRANO, Emiliano B.
985. SERRANO, Ricardo
986. SERVAN, Filomeno M.
987. SIGUA, Fernando M.
988. SILVERIO, Arcadio Jr., C.
989. SOGUI, Alexander B.
990. SOLETO, Norberto
991. SOLIMAN, Erdy M.
992. SOLIMAN, Francisco M.
993. SOMERA, Demetrio R.
994. SORIANO, Proceso M.
995. SORONO, Hermogenes S.
996. SORONO, Melquiades S.
997. SUAMEN, Rafael
998. SUANSING, Rolando C.
999. SUAZO, Antonio B.
1000. SUNGLAO, Mario
1001. TABADA, Jesus C.
1002. TABLAIN, Venancio
1003. TABLAN, Julio E.
1004. TABLAN, Pastor E.
1005. TABOSO, Amado M.
1006. TAFALLA, Adolfo D.
1007. TAGORDA, Anastacio Jr., J.
1008. TAGUINOD, Benjamin Jr.,
1009. TALATO, Gaudencio M.
1010. TALISAY, Navas
1011. TALUTO, Gaudencio M.
1012. TAMAYO, Jaime C.
1013. TAMPELIX, Macario L.
1014. TAN, Joesus
1015. TANAG, Eleno C.
1016. TANAG, Leorino C.
1017. TAPIA, Tagumpay R.
1018. TAPIA, Vicente Jr., R.
1019. TARAYA, Aberto P.
1020. TARIMAN, Romeo T.
1021. TARUC, Fermiso Jr.,
1022. TATING, Roberto T.
1023. TEBELIN, Teodulo O.
1024. TEMPLO, Teddy S.
1025. TEOSECO, Roman L.
1026. TESALONA, Bayani T.
1027. TIAMSIM, Ireneo
1028. TIBUS, Nico V.
1029. TIBUS, Samson V.
1030. TIO, Norberto B.
1031. TIOSECO, Fidel L.
1032. TIU, Juan Jr., G.
1033. TOLENTINO, Angel G.

1034. TOLENTINO, Domingo G.
1035. TORRALBA, Geronimo M.
1036. TORRES, Nemesio
1037. TORRES, Raymundo S.
1038. TRA, Rogelio S.
1039. TRAVISON, Rodolfo S.
1040. TRESVALLES, Isias V.
1041. TRIAS, Antonio
1042. TRIAS, Renato S.
1043. TRILLANES, Rene M.
1044. UBALDO, Placido C.
1045. UNIDAD, Reynaldo R.
1046. UNTALAN, Willie
1047. VALERA, Aniceto A.
1048. VALERO, Maximo A.
1049. VALES, Augusto L.
1050. VALLADA, Aurelio S.
1051. VALLAR, Federico P.
1052. VALLARTA, Tomas Jr., L.
1053. VARGAS, Isaias V.
1054. VEGA, Abraham
1055. VELASQUEZ, Benjamin
1056. VELASQUEZ, Constantino B.
1057. VELASQUEZ, Mario M.
1058. VERDADERO, Eugenio C.
1059. VERDAN, Oscar A.
1060. VERNAL, Victorio
1061. VERZONILLA, Rufino V.
1062. VIAR, Guillermo E.
1063. VIAR, Romeo E.
1064. VICTORIA, Jubert D.
1065. VIERNES, Mariano N.
1066. VILLANUEVA, Carlito
1067. VILLAR, Alfredo A.
1068. VILLAR, Raul R.
1069. VILLARINO, Leonardo
1070. VILLAROSA, Francisco M.
1071. VO, Herminio V.
1072. YANGLO, Alejandro M.
1073. YLAYA, Galileo C.
1074. YULO, Buenaventura M.
1075. YUVIENGCO, Meynardo L.
1076. ZALAVARIA, Carlos R.
1077. ZULUETA, Jose B.

The Court also observes that 57 of the petitioners are claimants identified and listed in Annex "A" of the September 2, 1991 NLRC Resolution, namely:

1. ABANES, Martin M.
2. ABANTO, Gregorio M.
3. ACUPAN, Emmanuel
4. AGUDO, Guillermo R.
5. ALEJANDRE, Alejandro
6. ALEJANDRE, Hilarion F.
7. ALEJANDRINO, Anselmo V.
8. AMBAL, Hermogenes R.
9. AMUTAN, Moises
10. ANDAYA, Joaquin S.
11. ARIZA, Dionisio R.
12. ATIENZA, Justo
13. BUENVIAJE, Manuel
14. BUENVIAJE, Vicento
15. CAGANAP, Julio R.
16. CAGATAN, Doroteo G.
17. CALAUAGAN, Patronicio L.
18. CELIS, Augusto
19. CENTENO, Emmanuel C.
20. COLMENAR, Baltazar R.
21. DALANON, Vicente D.
22. DATILES, Miguel A.
23. DOLOIRAS, Marcelino D.
24. DUMAGUN, Perseverando H.
25. ESPIRITU, Manuel S.
26. ESPIRITU, Rodrigo C.
27. ESQUIVEL, Arturo S.
28. FADRIQUELA, Sesenio
29. GALANG, Balbino C.
30. GUINHAWA, Narciso C.
31. LEBITA, Ricardo
32. LEONOR, Julio P.
33. LOBETA, Rolando R.
34. MAALIHAN, Pelagio D.
35. MACALALAD, Nicasio T.
36. MADRID, Ernesto L.
37. MANIGBAS, Adonis D.
38. MARCELO, Domingo G.

39. MERLAN, Montano C.
40. MORADA, Cosme B.
41. NATI, Conrado
42. OBANDO, Luis G.
43. OLIVA, Marcial B.
44. PAPA, Angel A.
45. PASIMIO, Jose R.
46. POBLETE, Dominador N.
47. QUIOBO, Rogelio C
48. RAMOS, Froilan M.
49. REMOTO, Fidel O.
50. RONQUILLO, Segundino L.
51. SANOHAN, Francisco F.
52. SARMIENTO, Silvestre
53. TOLENTINO, Amado S.
54. TUNGCOL, Benedicto
55. VERGARA, Ignacio P.
56. VERNES, Mariano N.
57. VILLANUEVA, Ernesto N.

Further, 12 of the petitioners are claimants identified and listed in Annex "C" of the September 2, 1991 NLRC Resolution, *viz.*:

1. CALAUAG, Ricardo C.
2. CRUETA, Antonio B.
3. CRUSIS, Manolito R.
4. ENGAY, Vicente
5. GARCIA, Ernesto L.
6. GUTIERREZ, Jose M.
7. LAGMAY, Wilfredo
8. MACALALAD, Andres T.
9. MANIGO, Cornelio Jr.,
10. MENDIOLA, Simplicio G.
11. ROMALES, Edgardo H.
12. ZAMORA, Primo B.

To reiterate, the Court cannot acquiesce to the plea of these petitioners totaling 1,146 because: (1) the 1,077 first-time claimants are not parties in the earlier *Cadalin* case, thus, they could not have been subjects of the implementation of the September 2, 1991 NLRC Resolution; (2) the claims of the 57 complainants listed in Annex "A" of the said resolution were already dismissed in our earlier decision due to prescription; and (3) those of the 19 complainants in Annex "C" were likewise set aside in the earlier decision, because the claimants therein were found not entitled to the claims.

Granting *arguendo* that these 1,146 petitioners are similarly situated as the claimants listed in Annexes "B", "D" and "E" of the September 2, 1991 NLRC Resolution, which were the subjects of the 1997-2001 implementation proceedings, still we

cannot grant their purported claims because they belatedly asserted their claims only in the implementation proceedings via a *Submission and Manifestational Motion* dated July 7, 2000.[46] We stress that Article 291 of the Labor Code, as amended, provides that "[a]ll money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred."

In the earlier *Cadalin* case, we discussed at length the issue of prescription. Our disquisition therein should already have discouraged the additional claimants from pursuing their stale and baseless claims. Observably, however, petitioners' counsels, in circumvention of our rulings, resurrected the prescribed claims by labeling petitioners as similarly situated as those claimants listed in Annexes "B", "D" and "E" of the September 2, 1991 NLRC Resolution.

Even if we disregard the rule on prescription, still we cannot allow these alleged similarly situated claimants to recover because, as found by the NLRC, **they were not able to present substantial evidence in support of their claims**.[47] Suffice it to state at this point that the appellate court cannot substitute its own judgment or discretion for that of the labor tribunal in determining what evidence is entitled to belief.[48] We are, thus, bound to lend credence to the following findings of the NLRC:

> Except for claims of the 149 claimants listed in Annex "B" of the September 2, 1991 resolution, claims of the other complainants were dismissed in the same resolution either for "lack of substantial evidence in support therefor," or for their being "beyond the competence of this Commission to pass upon." Such ruling is supposed to constitute *Res Judicata* (sic) here. But what the 1,297 additional complainants did is to try to re-establish their claims here through mere manifestations dated July 7, 2000 and August 30, 2001. Unfortunately for them, in

[46] *Id.* at 164-165.

[47] *Id.* at 100.

[48] *Domasig v. National Labor Relations Commission*, G.R. No. 118101, September 16, 1996, 261 SCRA 779, 785.

her report dated November 7, 2001, Arbiter Lilia Savar explained that despite the opportunity given, these so called unauthorized claimants still failed to establish their claim (sic). Explained Arbiter Savari:

> Despite the advise (sic) to file whatever evidence they may have to prove their claims, Atty. Del Mundo failed to attach in his Compliance and Manifestation even a single document of his clients showing employment with Brown & Root in the state of Bahrain. Thus, we are forced to scrutinize the thick and dusty pages of the bundles of folders in a case to make our own findings. Since the documents filed with the POEA and forwarded to the NLRC were passed upon and their evidentiary weight already decided in the NLRC Resolution dated September 2, 1991, We (sic) just confine ourselves to the other evidence which the complainants have adduced. Further considering that the case has long been remanded to the NLRC and that hearings were conducted before the several Labor Arbiters to whom the case was successively assigned, not only ample but all opportunity was given to the complainants to present their evidence in support of their claims. Since Atty. Del Mundo has not submitted proofs of their clients' claim (sic) as directed, we have nothing to deduce except that there is none to present: the reason why their case was dismissed by the POEA and NLRC.

Clearly, We (sic) gravely erred when, despite our being handicapped by the same "lack of substantial evidence", and despite their being beyond Our (sic) competence to pass judgment on, we granted 1,297 claimants the now disputed awards in Our (sic) December 3, 2002 decision. [49]

We have likewise observed that, during the prolonged period that this case has been pending, most of the petitioners—the first-time claimants, the Annexes "A" and "C" claimants, and including the Annexes "B", "D" and "E" claimants—already settled their claims with the private respondents. After counter-checking the claimants' names with the list in the dismissal orders issued pursuant to the compromise agreements, the NLRC found and *petitioners' counsels even manifested*[50] that **only**

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[49] *Rollo* (G.R. No. 18923), pp. 403-404. (Underscoring ours.)

[50] CA *rollo*, Vol. I, pp. 164-165.

19 complainants had not settled their claims and had, instead, opted to continue with the litigation.[51]

In an attempt to lend substance to the instant petition, the petitioners whose claims have already been settled now want this Court to nullify the said compromise agreements. Unfortunately, we cannot accommodate them, except for the 149 Annex "B" complainants, because the records reveal that these compromise agreements were entered into voluntarily by the claimants with the assistance of counsel, approved subsequently by the court and the labor tribunal, and settled for a reasonable and acceptable consideration. We note at this point that the (1) first-time claimants, (2) those listed in Annex "A" whose claims were dismissed, and (3) those listed in Annex "C" whose claims were set aside, are not entitled to receive anything from private respondents. Yet, by virtue of the compromise agreements executed, they were able to gain a hefty sum. The execution of these agreements, therefore, was not only in accord with Article 227 of the Labor Code, as amended,[52] but was likewise in consonance with the guidelines we set in *Periquet v. National Labor Relations Commission*[53] for valid quitclaims and waivers.

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[51] *Id.* at 115.

[52] The said article of the Labor Code, as amended, provides:

ART. 277. COMPROMISE AGREEMENTS

Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional offices of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any courts shall not assume jurisdiction over issues involved therein except in case of noncompliance thereof or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation or coercion.

[53] In this *Periquet* case, G.R. No. 91298, June 22, 1990, 186 SCRA 724, we laid the doctrinal policy that:

Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later on be disowned simply because of a change of mind. It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or

In a compromise agreement putting an end to a lawsuit, each of the parties is motivated by the hope of gaining, balanced by the danger of losing.[54] Absent any palpable inequity in its terms, and there appears no such inequity obtaining in this case, the same must be recognized as a valid and binding transaction.[55]

Further, it is noteworthy that most, if not all, of the claimants have already received payment under the compromise agreements. They cannot therefore belatedly reject or repudiate their acts of accepting the monetary consideration under these agreements to the prejudice of the private respondents.[56]

Accordingly, in the NLRC proceedings conducted from 1997 to 2001, the legitimate parties are limited to the following: (1) the 149 claimants identified and listed in Annex "B" of the September 2, 1991 NLRC Resolution; and (2) the 752 claimants listed in Annexes "D" and "E" of the September 2, 1991 Resolution:[57]

Annex "B"
[The 149 claimants who should be paid their claims totaling US$288,636.70.]

1. ABAN, Jose M.
2. ABARQUEZ, Emigdion N.
3. ACUPAN, Antonio
4. ACUPAN, Romeo
5. ALEJANDRE, Benjamin
6. ALIGADA, Wilfredo D.
7. AMISTAD, Martin, Jr.
8. AMUL, Rolando B.

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the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction. But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking. x x x. (*Id.* at 730-731).

[54] *Galicia v. National Labor Relations Commission*, G.R. No. 119649, July 28, 1997, 276 SCRA 381, 386.

[55] *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 846-847 (2003).

[56] *Cornista-Domingo v. National Labor Relations Commission*, G.R. No. 156761, October 17, 2006, 504 SCRA 659, 674.

[57] *Rollo* (G.R. No. 104776), pp. 134-141.

9. ANANDING, Amorsolo
10. ANGLO, Antonio I.
11. ARLITA, Vicente
12. AYO, Herbert
13. BALATAZO, Silverio
14. BALOBO, Alfredo
15. BANAAG, Falconeri
16. BARBOSA, Ramon
17. BARCENA, Felix
18. BAS, Fernando
19. BATACLAN, Mario
20. BATICA, Roberto S.
21. BELEN, Enrico P.
22. BICOL, Aristeo M.
23. BICOL, Larry C.
24. BISCOCHO, Petronillo M.
25. BOBIER, Felix M.
26. BOBONGO, Dionisio O.
27. BRACAMANTE, Bayani S.
28. BUSTILLO, Pablito G.
29. CABEZAS, Guillermo
30. CADALIN, Bienvenido
31. CAGATAN, Rodolfo
32. CAILAO, Amante
33. CANDOR, Irineo P.
34. CASTILLO, Jose
35. CASTILLO, Manuel
36. CASTROJERES, Remar
37. CAYAS, Reynaldo
38. CECILIO, Romeo O.
39. CREUS, Teodulo
40. DAYRIT, Bayani
41. DAYRIT, Ricardo
42. DELA CRUZ, Ernesto T.
43. DE GUZMAN, Francisco
44. DE RAMA, Onofre
45. DE VERA, Ignacio
46. DIZON, Modesto
47. DIZON, Reynaldo S.
48. DOMINGUEZ, Antonio S.
49. EBRADA, Gilbert
50. EBRADA, Ricardo
51. EJERCITO, Antonio Jr.,
52. ERIDAO, Eduarte C.
53. ESCATOTO, Eladio
54. ESGUERRA, John
55. ESPIRITU, Eduardo
56. ESPIRITU, Ernesto
57. ESPIRITU, Rodolfo
58. ESTEVA, Nestor M.
59. ESTRADA, Benjamin
60. EVANGELISTA, Valerio
61. FRANCISCO, Olegario
62. GABAWAN, Jesus
63. GARCIA, Rolando
64. GUDA, Angel
65. HERNANDEZ, Pacito
66. HILARIO, Antonio
67. JACOB, Henry L.
68. JARDINIANO, Honesto
69. JOCSON, Antonio
70. LACSAMANA, Gerardo
71. LIRIO, Efren U.
72. LONTOC, Loreto
73. LORENZO, Israel
74. LORINO, Alejandro
75. MABALAY, Jose
76. MARANAN, Hermie
77. MARCIAL, Leovigildo
78. MARTINEZ, Noel
79. MATREO, Dante
80. MELENDEZ, Luciano
81. MELO, Renato
82. MENDIODIA, Francis
83. MILANES, Jose C.
84. MILAY, Raymundo
85. MIRANDA, Cresenciano
86. MOLINA, Ildefonso C.
87. MONDEJAR, Armando B.
88. NAZARENO, Resurreccion D.
89. OLINDO, Juan
90. OLIVARES, Francisco R.
91. ORBISTA, Pedro, Jr.
92. ORDONEZ, Ricardo
93. PANCHO, Ernie
94. PANCHO, Jose
95. PARALA, Gorgonio P.
96. PINPIN, Modesto
97. PAREA, Juanito
98. PATAG, Romeo I.
99. PINPIN, Francisco
100. POBLETE, Leonardo

101. POLLOS, Jaime
102. PONDALIS, Domingo
103. RAMIREZ, Eugenio
104. RESPALL, Lucien
105. RETANAN, Gaudencio, Jr.
106. RETENER, Tomas B.
107. REYES, Alvin C.
108. REYES, Rizalino
109. REYES, Solomon B.
110. RICAZA, Virgilio G.
111. RIETA, Rodelio Jr.
112. RIVERA, Benito Jr.,
113. ROBILLOS, Bernardo J.
114. ROBLES, Pablo A.
115. ROBLEZA, Jose
116. RONQUILLO, Quirino
117. ROQUE, Avelino M.
118. SABINO, Menandro L.
119. SALGATAR, Pedro
120. SALONGA, Edgardo
121. SAN MATEO, Numeriano
122. SANTOS, Felizardo Jr. delos
123. SANTOS, Gabriel
124. SANTOS, Juanito
125. SOLANTE, Paquito
126. SOLIS, Conrado Jr., A.
127. SULTAN, Rodolfo
128. TALATAC, Isaias
129. TARUC, William
130. TEMPROSA, Menandro
131. TOLENTINO, Bienvenido S.
132. TORRES, Benedicto
133. TORRES, Maximiano
134. TRIAS, Francisco G.
135. URSOLINO, Sergio A.
136. VALDEZ, Rogelio
137. VERGARA, Legorio
138. VICTORIA, Delfin
139. VICTORIA, Gilbert
140. VICTORIANO, Hermane
141. VILLAFLORES, Francisco
142. VILLAHERMOSA, Domingo
143. VILLALOBOS, Rolando
144. VILLALUZ, Antonio
145. VILLANUEVA, Danilo
146. VILLANUEVA, Rogelio
147. VILLARBA, Angel
148. VILLARINO, Juanito
149. ZARA, Francisco

ANNEX "D"

List of complainants without proof of employment and whose claims have been dismissed by the POEA:

1. Aalagos, Rogelio
2. Abad, Nicanor B.
3. Abanes, Andres
4. Abanes, Reynaldo
5. Abante, Eduardo
6. Abarro, Jose
7. Abarro, Josefino
8. Abelanio, Celso S.
9. Abella, Herminio
10. Abestano, Miguel
11. Abubo, Rodrigo G.
12. Abustan, Jose B.
13. Aceres, Dante
14. Acojido, Reynaldo S.
15. Acta, Leowilin
16. Acueza, Eugenio C.
17. Acupan, Eduardo
18. Acupan, Reynaldo
19. Acupan, Solano
20. Adana, Manuel P.
21. Agne, Florentino R.
22. Agudo, Quiterio R.
23. Aguinaldo, Manuel P.
24. Aguirre, Dante
25. Aguirre, Herminio
26. Alberto, Gonzalo Jr.
27. Alcantara, Conrado
28. Alcantara, Lamberto Q.
29. Alcantara, Marianito J.
30. Aldover, Bencio
31. Alejandrino, Eulalio V.
32. Alejandro, Benjamin
33. Alejandro, Eduardo L.
34. Alejandro, Maximino

35. Almenar, Alberto
36. Alonzo, Arnaldo
37. Aloria, Amado
38. Alvarez, Camilo
39. Alvarez, Manuel C.
40. Ambrocio, Benjamin R.
41. Amores, Carlos
42. Ancheta, Bernard P.
43. Ancheta, Teotimo O.
44. Ani, Joefrey
45. Antillon, Elino P.
46. Antipono, Armandro B.
47. Antonio, Larry T.
48. Apilado, Antonio
49. Apilado, Arturo P.
50. Apolinario, Francisco
51. Aquino, Bartolome M.
52. Aquino, Isidro
53. Aquino, Pastor
54. Aquino, Rosendo M.
55. Arangorin, Roberto
56. Aratea, Benjamin O.
57. Araullo, Arturo V.
58. Araullo, Prudencio
59. Arcaira, Alexander
60. Arciaga, Francisco
61. Arevalo, Jose
62. Arevalo, Juanto
63. Arevalo, Ramon
64. Arevalo, Rodolfo
65. Arguelles, Eulalio
66. Arica, Wilfredo P.
67. Asedillo, Jose M.
68. Asuncion, Antonio
69. Asuncion, Artemio M.
70. Asuncion, Edgardo
71. Asuncion, Rexy M.
72. Aurelio, Vicente
73. Austria, Angel
74. Averilla, Ricardo Jr. P.
75. Avila, Virgilio
76. Axalan, Bartolome
77. Babilonia, Alfredo
78. Bacal, Felimon
79. Bacani, Jose L.
81. Balbieran, Vicente
82. Balitbit, Rodolfo
83. Balobo, Teodoro Y.
84. Barba, Danilo O.
85. Barro, Bernardo
86. Basilan, Juan A.
87. Batitis, Ceferino
88. Bauan, Vivencio C.
89. Bautista, Gaudencio S.
90. Bautista, Leonardo
91. Bautista, Jose D.
92. Bautista, Rostico
93. Bautista, Ruperto B.
94. Bautista, Teodoro S.
95. Bautista, Virgilio
96. Baya, Jesus R.
97. Bayacal, Winiefredo
98 .Bebit, Winiefredo
99. Belir, Ben G.
100. Beltran, Eric B.
101. Benales, Emiliano Jr.
102. Benitez, Raul
103. Bensan, Perfecto
104. Bergonio, Ireneo
105. Bermudes, Isabelo
106. Bermudes, Rolando I.
107. Beron, Danilo
108. Bersamin, Benjamin
109. Bicol, Angelito
110. Bicol, Anselmo
111. Bicol, Celestino Jr.
112. Bicol, Francisco
113. Bicol, Rogelio
114. Bicol, Romulo L.
115. Billiones, Rogelio
116. Bito, Teofilo N.
117. Blanco, Fernando
118. Bondoc, Augusto
119. Bondoc, Domingo
120. Booc, Pepe S.
121. Borja, James R.
122. Braceros, Wilfredo
123. Brecino, Angeles C.
124. Briones, Eureclydon G.
125. Bruge, Amado
126. Budillo, Pablito

127. Buenaventura, Archimedes
128. Buenaventura, Basilio
129. Buenconsejo, Guillermo
130. Bustamante, Alexander
131. Butiong, Virgilio Jr.
132. Caballa, Honesto P.
133. Caballero, Delfin
134. Cabanigan, Benedicto
135. Cabatay, Moises
136. Cabrera, Hermaneli
137. Cagatan, Pedro
138. Cagayat, Joven C.
139. Calagos, Rogelio L.
140. Caldejon, Reynaldo V.
141. Calderon, Oscar C.
142. Calleja, Nestor D.
143. Calma, Renato R.
144. Camacho, Nelson T.
145. Camacho, Santos T.
146. Camana, Roberto
147. Camanag, Florante C.
148. Canda, Edgardo M.
149. Cantos, Severino
150. Caponpon, Epifanio A.
151. Carillo, Elias Jr. D.
152. Carreon, Armando
153. Castaneda, Menandro M.
154. Castillo, Benigno A.
155. Castillo, Cornelio L.
156. Castillo, Joseph B.
157. Castillo, Anselmo
158. Castillo, Joaquin
159. Castillo, Pablo L.
160. Castillo, Romeo P.
161. Catibog, Sesinando
162. Castro, Danilo
163. Castro, Prudencio A.
164. Castro, Ramo Jr.
165. Castro, Romeo A. De
166. Catli, Jaime B.
167. Ceferino, Durana D.
168. Celis, Rodolfo B.
169. Cerezo, Herminigildo
170. Celestino, Victoriano
171. Chan, Benjamin
172. Chua, Antonio C.
173. Ciabal, Vivencio B.
174. Clarete, Rodrigo
175. Coloma, Augusto
176. Concepcion, Turiano
177. Constantino, Teresito
178. Corales, Armando
179. Corcuera, Renato C.
180. Coronado, Apolinar
181. Coronel, Abelardo
182. Coronel, Felix Jr.
183. Corpuz, Leonardo
184. Corrales, Jesus M.
185. Cortemprato, Caesar
186. Corvera, Francisco O.
187. Costales, Francisco Sr.
188. Credito, Celedonio
189. Creus, Alberto A.
190. Cruz, Anacleto V.
191. Cruz, Domingo Dela
192. Cruz, Emiliano Jr. Dela
193. Cruz, Panchito
194. Cruz, Reynaldo B. Dela
195. Cruz, Roberto P.
196. Cruz, Teodoro S.
197. Cruz, Zosimo Dela
198. Cuaresma, Dionisio A.
199. Cuizon, Felimon
200. Dagondon, Fermin
201. Daguinsin, Richard
202. Datay, Crisanto A.
203. Datinguinoo, Nicasio
204. Datoon, Jose
205. David, Eduardo
206. David, Enrico T.
207. David, Fabio
208. David, Victoriano S.
209. Dayacap, Edgardo N.
210. Delloso, Joselito T.
211. De Guzman, Celerino
212. De Guzman, Romulo
213. De Jesus, Liberato
214. De Leon, Jose
215. De Leon, Pedro G.
216. De Lumban, Joselito L.
217. De Luna, Napoleon S.
218. De Rama, Ricardo

219. Del Rosario, Generoso
220. Dela Cruz, Alberto
221. Dela Cruz, Jose
222. Delos Reyes, Leonardo
223. Diata, Ernesto F.
224. Diaz, Eduardo A.
225. Diaz, Felix
226. Diaz, Melchor
227. Diaz, Nicanor S.
228. Diga, Gerardo C.
229. Dimatulac, Clemente
230. Dionisio, Rolando
231. Dismaya, Philipp G.
232. Doctolero, Benjamin
233. Domingo, Alberto Sto.
234. Doza, Benjamin E.
235. Dupa, Benjamin
236. Duran, Danilo C.
237. Duran, Gregorio D.
238. Eduarte, Renato A.
239. Eisma, Godofredo E.
240. Ello, Ardon B.
241. Ello, Ubed B.
242. Enano, Josefino
243. Encarnacion, Reynaldo
244. Enguancho, Edgardo
245. Equipano, Elias
246. Escarmosa, Felizardo
247. Escarmosa, Miguel
248. Escobar, Armando
249. Escuyos, Romeo T.
250. Espiritu, Angelito
251. Espiritu, Eduardo S.
252. Espitu, Reynaldo
253. Espiritu, Rolando
254. Espregante, Julian
255. Estanislao, Igmidio
256. Esteban, Ernesto M.
257. Estron, Melanio R.
258. Esteva, Ernesto M.
259. Estuar, Conrado
260. Estuye, Clyde
261. Fajardo, Eliseo
262. Falqueza, Porfirio
263. Faustino, Wilfredo P.
264. Fernandez, Emilio E.
265. Ferrer, Artemio
266. Figuracion, Misael M.
267. Flores, Armando F.
268. Flores, Benjamin
269. Flores, Edgardo C.
270. Francisco, Buenaventura
271. Francisco, Manuel S.
272. Francisco, Rolando
273. Francisco, Valeriano
274. Gabawan, Rodolfo
275. Gahutan, Esmeraldo
276. Galang, Cesar C.
277. Galoso, Santiago N.
278. Gamboa, Gabriel
279. Gandamon, Bernardo
280. Ganzon, Juan
281. Garcia, Andres Jr.
282. Garcia, Armando M.
283. Garcia, Eugenio
284. Garcia, Marcelo L.
285. Garcia, Patricio Jr. L.
286. Garcia, Ponciano G.
287. Garcia, Ponciano Jr.
288. Garcia, Rafael P.
289. Garcia, Roberto S.
290. Garofil, Osias G.
291. Garon, Raymundo C.
292. Gatela, Rolando G.
293. Gayeta, Avelino
294. Geron, Raymundo
295. Gonzales, Placido
296. Gonzales, Ruperto H.
297. Guanio, Rogelio D.
298. Guerrero, Martin Jr. V.
299. Guno, Alexis
300. Guno, Ricardo L.
301. Gupit, Francisco
302. Gutierrez, Dennis J.
303. Gutierrez, Ignacio B.
304. Guzman, Angelito Jr. De
305. Habana, Cesar H.
306. Hernandez, Raul G.
307. Hernandez, Reynaldo
308. Hilado, Joveniano D.
309. Hilapo, Justo
310. Hinahon, Rostito

311. Hingada, Felicisimo
312. Hipolito, Eduardo
313. Ignacio, Raul L.
314. Ilagan, Manuel L.
315. Ilagan, Renato L.
316. Insiong, Conrado A.
317. Isla, Graciano G.
318. Jacob, Arnel L.
319. Japitenga, Oscar J.
320. Hicban, Cirilo
321. Honrades, Maximiano
322. Ignacio, Generoso
323. Ilagan, Felipe
324. Jacob, Expedito N.
325. Jasmin, Mario
326. Javier, Beinvenido
327. Javier, Romeo M.
328. Jesus, Primo De
329. Jesus, Reynaldo De
330. Jimenez, Carlos A.
331. Jimenez, Danilo E.
332. Joaquin, Pedro C.
333. Jocson, Felipe W.
334. Jocson, Felino M.
335. Jocson, Pedro N.
336. Jocson, Valentino S.
337. Joloya, Pedro B.
338. Jose, Esteban Jr. P.
339. Jose, Raul
340. Jose, Ricardo San
341. Kabigting, Gertrudo
342. Kolimlim, Eduardo Sr. S.
343. Labay, Lauro J.
344. Labella, Emmanuel C.
345. Lacerona, Edgardo B.
346. Lacson, Jose B.
347. Ladines, Mario J.
348. Lagac, Rufino
349. Laganapan, Rodrigo
350. Lamadrid, Efren M.
351. Latanan, Gaudencio
352. Latayan, Virgilio
353. Latoja, Emiliano
354. Laurel, Wenceslao
355. Laxamana, Alfredo
356. Lazaro, Deniel R.
357. Leano, Antonio C.
358. Legaspi, Arturo S.
359. Lemos, Benito Jr. De
360. Leon, Pedro G. De
361. Liloc, Manolito C.
362. Limuaco, Gerardo
363. Lising, Ernesto S.
364. Lising, Renato
365. Lising, Wilfredo S.
366. Lontoc, Crispulo
367. Lopera, Pedro M.
368. Lopera, Rogelio
369. Lopez, Carlito M.
370. Lopez, Clody
371. Lopez, Garlito
372. Lopez, George F.
373. Lopez, Virgilio M.
374. Loreja, Bernardito G.
375. Lorico, Domingo B.
376. Loyola, Domingo
377. Luage, Dante
378. Lualhati, Antonio M.
379. Lualhati, Emmanuel Jr.
380. Lualhati, Leonides C.
381. Lualhati, Sebastian
382. Lubat, Francisco
383. Lucero, Armando
384. Lumban, Joselito L. De
385. Luna, Thomas Vicente O.
386. Macalalad, Noli
387. Macalino, Alfredo
388. Macalino, Ricardo
389. Macaraig, Arturo V.
390. Macaraig, Benito V.
391. Macaraig, Ernesto V.
392. Macaraig, Rodolfo V.
393. Macatangay, Benjamin
394. Macatangay, Hermogenes
395. Macatangay, Rodel
396. Macatangay, Romulo
397. Madlangbayan, Osias Q.
398. Madrid, Nicolas P.
399. Magat, Edilberto G.
400. Magbanua, Efren C.
401. Magbuhat, Benjamin
402. Magcaleng, Alfredo C.

403. Magnaye, Antonio
404. Magpantay, Alfonso
405. Magpantay, Ricardo C.
406. Magpantay, Simeon M.
407. Magsino, Armando M.
408. Magsino, Macario S.
409. Magtibay, Antonio
410. Magtibay, Victor V.
411. Mahilum, Geronimo
412. Malonzo, Manuel
413. Mamadis, Ricardo
414. Mana, Rodolfo
415. Manalili, Bernardo A.
416. Manalili, Manuel
417. Manalo, Angelo
418. Manalo, Aquiles L.
419. Mangahas, Leopoldo
420. Manigbas, Bayani
421. Manimtim, Rolando C.
422. Manongsong, Daniel
423. Manuel, Ernesto F.
424. Manzano, Eduardo
425. Mapa, Ricardo N.
426. Mapile, Ramon
427. Marana, Roberto C.
428. Marasigan, Nemesio
429. Marasigan, Wenceslao
430. Marcelo, Leonardo
431. Mariano, Henry F.
432. Maridable, Joel
433. Marino, Santos E.
434. Marquez, Narciso A.
435. Marinez, Ricardo
436. Masicampo, Diego
437. Mataverde, Aurelio
438. Matilla, Renato
439. Matilla, Victoriano
440. Medel, Virgillo
441. Melecio, Lolito M.
442. Melendez, Benigno
443. Memije, Rener J.
444. Memije, Reynaldo F.
445. Memije, Rodel
446. Mendoza, Avelino Jr.
447. Mendoza, Claro
448. Mendoza, Timoteo
449. Mercado, Gregorio
450. Merced, Ernani Dela
451. Mercena, Ricardo
452. Metrillo, Nemecio
453. Mimije, Rodel
454. Minimo, Gaspar
455. Miranda, Benjamin
456. Misa, Felixberto D.
457. Modesto, Claudio Jr. A.
458. Mondido, Oscar
459. Monton, Generoso
460. Morada, Renato
461. Morada, Ricardo
462. Morada, Rodolfo
463. Morales, Rolando M.
464. Moreno, Federico M.
465. Mortel, Victorino Jr. A.
466. Munoz, Espiritu A.
467. Munoz, Ignacio
468. Munoz, Ildefonso
469. Munoz, Rogelio
470. Napalan, Ernesto
471. Narciso, Marcelo A.
472. Natalia, Reynaldo
473. Navarette, Fernando C.
474. Navarro, Pacifico D.
475. Nazareno, Florante
476. Nazario, Rizal B.
477. Negrite, Josue
478. Nepomuceno, Alfredo
479. Ng, Herbert G.
480. Nicolas, Florencio
481. Ninon, Ernesto C.
482. Nuqui, Avelino
483. Oba, Nemesio D.
484. Ocampo, Danilo
485. Ocampo, Edgardo
486. Ocampo, Rodrigo E.
487. Occiano, Antonio B.
488. Ocson, Reynaldo P.
489. Odesa, Benjamin
490. Olaso, Angel
491. Oligario, Francisco
492. Olimbo, Zosimo
493. Orallo, Benjamin V.
494. Orial, Romeo S.

495. Origines, Romeo
496. Ortanez, Danilo R.
497. Osias, Wilfredo
498. Pa-a, Virgilio
499. Paalan, David
500. Pacheco, Jesus N.
501. Padilla, Alfonso L.
502. Pagsanjan, Danilo
503. Pagsisihan, Numeriano
504. Paguio, Ricardo T.
505. Pakingan, Emilio
506. Palabrica, Leandro
507. Palo, Quinciano
508. Pamatian, Jose
509. Pan, Gonzalo
510. Pan, Porfirio
511. Pangan, Bienvenido
512. Pangan, Ernesto
513. Pasia, Francisco V.
514. Pasimio, Edilberto Jr.
515. Pasion, Jose V.
516. Pena, Angelito M.
517. Pendras, Dionisio
518. Peralta, Herminio
519. Peralta, Reynaldo M.
520. Perez, Antonio
521. Perez, Antoliano E.
522. Perez, Juan
523. Perez, Leon
524. Perez, Romeo E.
525. Perez, Romulo
526. Perez, William
527. Perino, Fernando G.
528. Pilar, Florentino Del
529. Pineda, Delmar F.
530. Pineda, Salvador
531. Pinpin, Elizalde
532. Pinpin, Wilfredo
533. Poblete, Arturo
534. Priela, Dominador R.
535. Prudente, Buenaventura
536. Prudente, Carmelito
537. Pueyo, Dante
538. Pueyo, Reynaldo Q.
539. Pulido, Rodolfo O.
540. Punio, Alejandro
541. Quiman, Federico
542. Quinto, Alfredo L.
543. Quintos, Romeo
544. Racabo, Eduardo W.
545. Rama, Ricardo C. De
546. Rama, Ricardo L. De
547. Rama, Rolando De
548. Ramirez, Fernando A.
549. Ramires, Lito D.
550. Ramirez, Ricardo G.
551. Ramirez, Rodolfo V.
552. Ramos, Alberto
553. Ramos, Anselmo C.
554. Ramos, Tobias
555. Raymundo, Willarfredo
556. Raquedan, Reynaldo
557. Ravelas, Manuel F.
558. Raymundo, Wilfredo D.
559. Recolaso, Ernesto E.
560. Redaza, Alberto
561. Rejuso, Arthur
562. Rellama, Toribio M.
563. Rellosa, Jaime
564. Remoquillo, Eugenio A.
565. Rentoza, Gerardo
566. Rey, Redentor C.
567. Reyes, Alfredo S.
568. Reyes, Amable S.
569. Reyes, Benedicto R.
570. Reyes, Gregorio B.
571. Reyes, Jose A.
572. Reyes, Jose C.
573. Reyes, Romulo M.
574. Reyes, Sergio
575. Rico, Ernesto F.
576. Rico, Fernando M.
577. Rieta, Emmanuel
578. Rieta, Ricardo
579. Robles, Leo B.
580. Robles, Ruben
581. Robleza, Rodolfo
582. Robleza, Rodrigo
583. Rocabo, Eduardo
584. Rodriguez, Antonio R.
585. Rodriguez, Bernardo
586. Rodriguez, Eligio

587. Romeo, Almonte
588. Ronquillo, Elias
589. Ronquillo, Elise
590. Ronquillo, Luis Val B.
591. Ronquillo, Reynoso P.
592. Ronquillo, Rodolfo
593. Rosales, Angel
594. Rosales, Ramon
595. Rosario, Alberto Del
596. Rosario, Generoso Del
597. Rosario, Teodorico Del
598. Rosario, Virgilio L.
599. Salvador, Carlito
600. Samparada, Jose
601. San Pedro, Ernesto
602. Sancha, Adriano V.
603. Sancha, Geronimo M.
604. Sanchez, Artemio B.
605. Sanchez, Nicasio
606. Santiago, Apolonio P.
607. Santiago, Joselito S.
608. Santiago, Sergio
609. Santos, Edilberto C.
610. Santos, Efren S.
611. Santos, Renato D.
612. Sapuyot, Miguel
613. Serquina, Alex S.
614. Serra, Dominador P.
615. Sidro, Romeo
616. Silang, Amado M.
617. Silang, Faustino D.
618. Silos, Rodolfo B. De
619. Silva, Aniceto G.
620. Silva, Edgardo M.
621. Silverio, Rolando C.
622. Simbahon, Arthur B.
623. Solano, Domingo
624. Solante, Joselito C.
625. Solis, Carlito
626. Solis, Conrado III
627. Solis, Edgardo
628. Solis, Ernesto
629. Solis, Isagani M.
630. Sotto, Eduardo L.
631. Sta. Maria, Ernesto G.
632. Stella, Vicente G.
633. Supang, Felimon
634. Tanguinoo, Peter
635. Talibsao, Maximino
636. Talusik, Felicisimo P.
637. Taruc, Fermin Jr.
638. Templo, Henry
639. Templo, Levy S.
640. Tiamson, Rodolfo S.
641. Tiposo, Leonilo
642. Tolentino, Arnel
643. Tolentino, Mario M.
644. Torralba, Felipe
645. Torres, Jovito V.
646. Torres, Leonardo De
647. Tuazon, Gavino U.
648. Tunguia, Augusto B.
649. Umali, Francisco
650. Unida, Simplicio
651. Untalan, Wilfredo V.
652. Valderama, Antonio
653. Valderama, Ramon
654. Valencianoo, Nilo
655. Vasquez, Edgardo C.
656. Velasquez, Elpidio
657. Vera, Nesto De
658. Vera, Wilfredo De
659. Vergara, Bienvenido
660. Vergara, Alfredo
661. Verzosa, Ramon R.
662. Vicmundo, Felicito P.
663. Victoriano, Alfredo
664. Vidallo, Teofilo P.
665. Viernez, Sabino N.
666. Villan, Jesus J.
667. Villablanco, Joven
668. Villaflores, Edgardo G.
669. Villagera, Ceferino
670. Villahermosa, Alex
671. Villanueva, Danilo A.
672. Villanueva, Elito
673. Villanueva, Leonardo M.
674. Villanueva, Manuel R.
675. Villar, Nepthali
676. Villareal, Jose V.
677. Villarino, Felicisimo
678. Villaroman, Rafael

679. Villena, Carlos
680. Vivo, Ferdinand
681. Yabut, Roberto
682. Yngente, Vicente
683. Zuniga, Oro C.

ANNEX "E"

Complainants/awardees whose claims are not supported by any documentary evidence –

1. Abanes, Rodrigo
2. Alvarez, Apolinario
3. Alvarez, Pablo C.
4. Andres, Simeon
5. Austria, Calixto
6. Austria, Salvador
7. Bagting, Vicente G.
8. Balbin, Rodolfo
9. Barrientors, Benjamin
10. Beltran, Diego
11. Bicol Felicisimo
12. Briones, Romeo
13. Buenaflor, Marianito
14. Campano, Pacifico – S. A.
15. Camposagrado, Alejandro
16. Calamba, Felipe
17. Coronel, Felix, Jr.
18. De Guzman, Roman
19. Dela Cruz, Daniel
20. Del Mundo, Pedro
21. Dinglasan, Manuel A.
22. Esguerra, Democrito
23. Espino, Carlito
24. Espinosa, Graciano
25. Esporas, Manuel
26. Fabricante, Primo
27. Ferrer, Ernesto
28. Firme, Daniel
29. Flores, Edelberto
30. Gabay, Constancio
31. Gabay, Teodorico
32. Garcia, Bernardo M.
33. Garcia, Pedro
34. Gregorio, Jose
35. Ilagan, Pablito
36. Jaro, Abraham V.
37. Jaro, Cezar
38. Jervoso, Juanito
39. Larkin, Wilfredo, Jr.
40. Leonor, Arturo V.
41. Lopera, Felipe
42. Lopez, Vicente
43. Lualhati, Juan
44. Macaraig, Romeo
45. Macatangay, Mario
46. Macatangay, Damaso
47. Manalo, Felimon H.
48. Maniaul, Enrico S.
49. Manuel, Diosdado
50. Manuel, Melchor
51. Martinez, Joel
52. Mediodia, Luciano
53. Mendiola, Manalo
54. Mercado, Luis
55. Ong, Renato S.
56. Orlanes, Eufrocino B.
57. Oway, Luis
58. Perez, Eduardo M.
59. Poblete, Seneco
60. Ramirez, Leo
61. Ranada, Marcelo G.
62. Ravelas, Vicente F.
63. Reyes, Rolando
64. Riete, Rodelio Sr.
65. Robles, Leo
66. Sanchez, Francisco
67. Soriano, Nicanor V.
68. Vergara, Pedro
69. Victoriano, Augusto

In the earlier *Cadalin* case, we directed the NLRC to receive further evidence as regards the claims of the Annexes "D" and "E" claimants (numbering **752**). We have, however, observed that during the proceedings conducted from 1997 to 2001, these claimants, the same as the first-time claimants, did not introduce any evidence to substantiate their claims. As found by the NLRC, "*[e]xcept for claims of the 149 claimants listed in Annex "B" of the September 2, 1991 resolution, claims of the other complainants were dismissed in the same resolution either for "lack of substantial evidence in support therefor," or for their being "beyond the competence of this Commission to pass upon. x x x Despite the advise (sic) to file whatever evidence they may have to prove their claims, Atty. Del Mundo failed to attach in his Compliance and Manifestation even a single document of his clients showing employment with Brown & Root in the state of Bahrain. x x x Since Atty. Del Mundo has not submitted proofs of their clients' claim (sic) as directed, we have nothing to deduce except that there is none to present x x x.*" [58] Not being backed by any proof, the claims of these Annexes "D" and "E" claimants should be dismissed.

Moreover, as abovementioned, these Annexes "D" and "E" claimants, except for **19**, already settled their claims. Thus, the NLRC found, and we affirm:

> Again, only nineteen (19) complainants listed in Annexes "D" and "E" of our September 2, 1991 Resolution have not executed quitclaims in this case. Sixteen (16) of them, represented by Atty. Del Mundo, are as follows:
>
> 1. Amado Aloria
> 2. Wilfredo Arica
> 3. Rodolfo B. Celis
> 4. Felix J. Coronel
> 5. Generoso Del Rosario
> 6. Pedro G. De Leon
> 7. Armando Lucero

[58] *Rollo* (G.R. No. 168923), pp. 403-404.

8. Alfredo Macalino
9. Eduardo W. Racabo
10. Ruben Robles
11. Rodolfo Robleza
12. Dominador Seria
13. Vicente Bagting
14. Felix Coronel
15. Carlito Espino
16. Rolico Macaraig

while three (3) of them, represented by Atty. De Castro are:

1. Arturo V. Macarig
2. Leo B. Robles
3. Felix M. Diaz [59]

Thus, following our ruling in *Periquet*,[60] and considering the fact that almost all of these 752 claimants *with unsubstantiated claims* received sums voluntarily by virtue of the compromise agreement, the Court cannot nullify the waivers and quitclaims executed by them.

As to the remaining 19 claimants who did not settle their claims, the Court affirms the following findings of the NLRC:

In her November 7, 2001 report to the Commission, Arbiter Savari stressed:

> It bears to stress at this point that out of the several claims lodged by the complainants, only the claim (sic) for the benefits under the Amiri Decree No. 23 was granted. All the other claims were exhaustively tackled one by one by the Commission, First Division in its Resolution dated September 2, 1991 and after delving thru the microscopic details of their employment and the evidence they presented, all said claims were denied and dismissed.
>
> Hence, as the issue over the other claims is already settled and put to rest to limit the claims of the remaining complainants under Annexes "D" and "E" to their entitlements under the Amiri

[59] *Id.* at 405-406.

[60] *Supra* note 53.

Decree No. 23 of Bahrain. The foremost consideration hinges on whether complainants have rendered services to Brown & Root in the State of Bahrain upon and during the effectivity of the Amiri Decree No. 23.

An exhaustive examination and verification of the evidence presented by the complainants reveals that the following complainants were employed by Brown & Root International Corp. in the State of Bahrain during the effectivity of the Amiri Decree:

1. Dominador P. Serra
2. Felix M. Diaz
3. Leo B. Robles
4. Arturo V. Macaraig

Since the NLRC Resolution dated September 2, 1991 awarded the complainants in Annex "B" with benefit provided for under the said decree, the herein remaining complainants, who were (sic) similarly situated, are likewise entitled to the same benefits granted to the Complainants in Annex "B" computed and tabulated as follows:

1. Dominador P. Serra
2. Felix M. Diaz
3. Leo B. Robles
4. Arturo V. Macaraig

Since this Decision is an outgrowth of the appeal, the additional claimants, numerous in numbers, who were not complainants in the original POEA Case, are not parties to this case and cannot be treated as complainants as far as this case is concerned.

Thus, except for Dominador P. Serra, Felix M. Diaz, Leo B. Robles and Arturo V. Macaraig, who deserve the awards (sic) given to those listed in Annex "B" of Our (sic) September 2, 1991 resolution, the claims of the fifteen (15) other complainants are deemed unsubstantiated, hence, their meriting an Order from Us (sic) that said claims be dismissed. Considering, however, that BRII settled amicably the claims of all the other complainants listed in Annexes "D" and "E", and in fact, paid them U.S.$500.00 each, equity demands that the aforesaid fifteen (15) other claimants be awarded U.S.$500.00 each. [61]

[61] *Id.* at 406-408.

The Court will not, however, extend a similar treatment to the Annex "B" claimants who executed waivers, quitclaims and/or compromise agreements in consideration of amounts much lower than what they were entitled to receive under the earlier *Cadalin* case. As mandated in our earlier decision, the total valid claims of the Annex "B" claimants is US$288,636.70.[62] Settling their claims with only US$500.00, a sum grossly disproportionate to their individual claims—some of whom are entitled to more than US$8,000.00, is clearly unjustified. Thus, as to the 149 Annex "B" claimants who entered into compromise agreements for a consideration below the true amounts due them, the Court declares as null and void their respective waivers and quitclaims. But the amounts which each of them have already received shall be deducted from their claims as itemized in Annex "B" of the September 2, 1991 NLRC Resolution.

At this point, the Court declares and orders that all sums still due to the 149 Annex "B" claimants, and the remaining 19 Annexes "D" and "E" claimants who did not settle their claims, should be paid directly to them and not to their counsels or representatives.

Considering that this case has dragged on for several years, we deem it equitable to impose legal interest of 6% on the still unpaid sums computed from the finality of the earlier *Cadalin* case promulgated on December 5, 1994, up to the finality of our decision herein. We further impose legal interest of 12% from the finality of this decision up to actual payment.

As a last point, we emphasize that this case dragged on for more than two decades, not because of the complexity of the issues involved, but primarily due to the spiteful practice of petitioners' counsel in giving false hopes to their clients despite the utter barrenness of their claims. Worse, the said counsel, particularly Atty. Gerardo A. del Mundo, misled the court and the labor tribunal by bombarding them with thousands of claimants, millions of pesos worth of claims and blown-up media attention to disguise the bankruptcy of the case. We remind Atty. del

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[62] Records, Vol. 1, Annex B of the September 2, 1991 NLRC Resolution.

Mundo and all lawyers of the need for fidelity to the principles embodied in the Lawyer's Oath and in the Code of Professional Responsibility. A lawyer owes candor, fairness and good faith to the Court and to his clients, and he shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing, the Court. [63]

IN THE LIGHT OF THE FOREGOING DISQUISITIONS, the appeal is *DENIED*. The May 31, 2004 Decision and the July 14, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 77272 are *AFFIRMED WITH THE FOLLOWING MODIFICATIONS:*

1. The compromise agreements, waivers and quitclaims executed by the 149 Annex "B" claimants, insofar as they grant them sums lower than what they were entitled to receive pursuant to the September 2, 1991 NLRC Resolution, are *ANNULLED* and *SET ASIDE*. However, the amounts, which each of the 149 Annex "B" claimants have already received, shall be deducted from their claims as itemized in Annex "B" of the September 2, 1991 NLRC Resolution.

2. The amounts still due to the Annex "B" claimants and the remaining 19 Annexes "C" and "D" claimants shall be paid directly to the claimants.

3. These sums still due shall earn legal interest of 6% per annum computed from the finality of the earlier *Cadalin* case promulgated on December 5, 1994, up to the finality of our decision herein, and interest of 12% per annum from the finality of this decision until actual payment.

SO ORDERED.

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

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[63] Code of Professional Responsibility, Canons 10, 13 and 15.

THIRD DIVISION

[G.R. No. 170596. November 28, 2008]

NGO SIN SING and TICIA DY NGO, *petitioners, vs.* **LI SENG GIAP & SONS, INC., and CONTECH CONSTRUCTION TECHNOLOGY DEVELOPMENT CORPORATION,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE SUPREME COURT DOES NOT NORMALLY REVIEW THE FACTUAL FINDINGS OF THE COURTS BELOW EXCEPT WHEN THE FINDINGS OF THE COURT OF APPEALS DIFFER FROM THOSE OF THE TRIAL COURT. — In petitions for review, the Court does not normally review the factual findings of the courts below, but when the findings of the CA differ from those of the trial court, the Court will not hesitate to scrutinize the evidence on record. As between these two courts, it cannot be denied that the trial court is in a better position to ascertain the facts of the case considering its peculiar opportunity to be in direct contact with the witnesses and the evidence presented. As such, this Court is inclined to uphold the findings of the trial court in this case which we find to be more conformable to the evidence on record.

2. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; CONTRIBUTORY NEGLIGENCE, DEFINED; REDUCTION OF AWARD OF DAMAGES WARRANTED WHERE THE INJURED PARTY CONTRIBUTED TO THE HARM HE HAS SUFFERED. — 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 to which he is required to conform for his own protection. In this case, considering that respondent's negligence must have necessarily contributed to the sagging of the LSG Building, a reduction of the award is warranted. We, therefore, agree with the trial court that respondent should likewise share in the cost of the restructuring of its building. This is more in keeping with justice and equity.

3. ID.; ID.; ID.; REQUISITES; PRESENT IN CASE AT BAR. — The requisites of quasi-delict are the following: (a) There must be an act or omission; (b) Such act or omission causes damage to another; (c) Such act or omission is caused by fault or negligence; and (d) There is no pre-existing contractual relation between the parties. These requisites are attendant in the instant case. The tortious act was the excavation done without observing the proper safeguards. Although the trial court stated that petitioner as land owner had every right to excavate on his own land, such right is not absolute as to deprive the adjacent owner sufficient lateral support pursuant to Article 684, New Civil Code, which states that: No proprietor shall make such excavation upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support.

4. ID.; ID.; ID.; THE RESPONSIBILITY OF TWO OR MORE PERSONS WHO ARE LIABLE FOR THE QUASI-DELICT IS SOLIDARY; RATIONALE. — For the damage caused to the respondent, petitioners and Contech are jointly liable as they are joint tort-feasors. Conformably with Article 2194, the responsibility of two or more persons who are liable for the quasi-delict is solidary. In *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation,* the Court had the occasion to explain: [O]bligations arising from tort are, by their nature, always solidary. We have assiduously maintained this legal principle as early as 1912 in *Worcester v. Ocampo,* in which we held: x x x The difficulty in the contention of the appellants is that they fail to recognize that the basis of the present action is tort. They fail to recognize the universal doctrine that each joint tort feasor is not only individually liable for the tort in which he participates, but is also jointly liable with his tort feasors. x x x It may be stated as a general rule that joint tort feasors are all the persons who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. They are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. x x x Joint tort feasors are jointly and severally liable for the tort which they commit. The persons injured may sue all of them or any number less than all. Each is liable for the whole damages caused by all, and all together

are jointly liable for the whole damage. It is no defense for one sued alone, that the others who participated in the wrongful act are not joined with him as defendants; nor is it any excuse for him that his participation in the tort was insignificant as compared to that of the others. x x x

5. ID.; ID.; ID.; THE SUPREME COURT IS NOT PRECLUDED FROM RENDERING JUDGMENT THAT DETERMINES THE LIABILITIES OF THE JOINT TORT-FEASORS. — In *Citytrust Banking Corporation v. Court of Appeals,* the Court stated that a judgment may determine the ultimate rights of the parties on the same side as between themselves, such that questions of primary and secondary liability between joint tort-feasors may be determined. Such judgment does not make the "co-defendants" adversaries. It permits only the determination of questions of primary and secondary liability between joint tort-feasors. In *Weiner v. Mager & Throne, Inc., et al.,* it was held that – In order to avoid a multiplicity of suits, and to place it in the power of the defendant to get a determination of an entire controversy in a single action, statutory provision is made whereby, if the rights of the defendants as between themselves are determinable in an action, the whole matter may be disposed of in the judgment of such action, instead of leaving the defendants to litigate independently after the judgment has been entered in the main action. From the foregoing, it is clear that this Court is not precluded from rendering a judgment that determines the liabilities of the "co-defendants" (petitioners and Contech) in this case. Rather than invite the definite prospect of the petitioners filing or instituting an action later on seeking reimbursement from the party primarily liable, which in this case is Contech, it would be more in keeping with the principles of expediency and the policy against multiplicity of suits to make a direct adjudication in this regard. Considering that there was no proffered evidence of negligence on the part of the petitioners, the inescapable conclusion is that Contech is ultimately liable and should answer for the cost of the damage.

6. ID.; ID.; ID.; THE RESPONDENT CONSTRUCTION COMPANY IS ULTIMATELY LIABLE AND SHOULD ANSWER FOR THE COST OF THE DAMAGE; REASON.— Indeed, the facts show that Contech's negligence was the proximate cause of the damage. Construction is a field requiring technical expertise.

The petitioners, as ordinary laymen, would understandably have no knowledge at all about the technical aspect of constructing a building. This was precisely the reason why they contracted the services of a reputable construction firm to undertake the project. Petitioners had every right to rely on the warranties and representations of their contractor. We note that Contech has remained silent, as if accepting its fate of liability in this case. The trial court observed that Contech did not present evidence to controvert the parties' assertions or prove their allegations in the answer, despite an order to do so. From the trial court's decision, both the petitioner and respondent filed their respective appeals while Contech no longer challenged said decision. Thus, the decision holding it liable has become final and executory.

7. ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF SHALL BE DELETED ABSENT ANY BASIS TO JUSTIFY THE SAME.— As to the award for attorney's fees in the CA decision, the same should be deleted, as the appellate court did not provide any basis whatsoever to justify the award.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.

Santiago and Santiago Law Offices for Li Seng Giap & Sons, Inc.

Jose R. Enriquez for Contech Construction Technology Dev't. Corp.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) dated May 11, 2005 and the resolution denying the motion for reconsideration thereof in CA-G.R. CV No. 65553.

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[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Rebecca de Guia-Salvador and Santiago Javier Ranada, concurring; *rollo,* pp. 35-43.

The facts are as follows:

Petitioner spouses Ngo Sin Sing and Ticia Dy Ngo owned a lot at 745 Caballero St., Binondo. In 1978, they decided to construct a 5-storey concrete building thereon, the NSS Building, and for this project, they contracted the services of Contech Construction Technology Development Corporation (Contech) as their General Contractor. Adjacent to their lot is a semi-concrete building known as the Li Seng Giap Building (LSG Building), owned by Li Seng Giap & Sons, Inc. (respondent). During the construction of the NSS Building, the respondent, through its general manager, John T. Lee, received complaints from their tenants about defects in the building. There were cracks appearing on the floors, the steel door was bent, and concrete slabs of the walls were falling apart.[2] An inspection of the premises revealed that the excavation made by Contech on petitioners' land was close to the common boundary, exposing the foundation of the LSG Building. As a gesture of goodwill to their neighbors, the petitioners assured the respondent that repairs would be undertaken by their contractor. In December 1979, Contech announced that it had completed repairs on the LSG Building. Notwithstanding this assurance, more defects in the LSG Building appeared, *i.e.*, tilted floors, cracks in the columns and beams, distorted window frames. Apparently, the LSG Building was continuously sagging and the respondent felt that it was no longer safe to occupy the building.

In 1981, the respondent was constrained to consult engineers, E.S. de Castro Ph.D. and Associates, through Control Builders Corporation, to investigate the cause of the damages in the LSG Building and to determine its present structural integrity. It was immediately noticed that the LSG Building underwent differential settlement.[3] Based on their ocular inspection on the building measurement of the actual differential settlement, structural analysis of the building and determination of the sub-surface soil conditions, the consultants concluded that the

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[2] TSN, February 8, 1985, p. 6.

[3] CA Decision, p. 2, *rollo*, p. 36.

structural failure of the LSG Building resulted from the differential settlement caused by the excavation during the construction of the NSS Building. Since the building had undergone large differential settlements beyond safe tolerable limits, the consultants recommended the complete demolition of the LSG Building. The demolition and reconstruction of the building was estimated to cost the respondents about ₱8,021,687.00.[4] The respondents demanded that the petitioners rebuild the LSG Building or pay the cost of the same, which the petitioners refused.

Thus, a complaint for sum of money was filed against Ngo Sin Sing, Ticia Dy Ngo and Contech Construction Technology Development Corporation with the Regional Trial Court of Manila, docketed as Civil Case No. 83-19367, praying that the petitioners and Contech be ordered to, jointly and severally, pay the following sums:

1) ₱8,021,687.00, representing the actual cost of demolition and reconstruction of the LSG Building;

2) ₱154,800.00 which plaintiff contracted to pay the E.S. de Castro, Ph.D. and Associates, and Control Builders Corporation to determine the extent of the damages and the structural integrity of the LSG Building;

3) ₱543,672.00, representing the income that the plaintiff will lose from the rentals during the reconstruction of the building;

4) ₱10,000.00 as attorney's fees. [5]

In their Answer,[6] spouses Ngo Sin Sing and Ticia Dy Ngo moved to dismiss the complaint alleging that: (1) the respondent's building had been structurally unstable and deficient since incipiency, having been constructed in 1966 without the

[4] Complaint, p. 5; records, p. 5.

[5] *Rollo*, pp. 52-53.

[6] Records, pp. 10-13.

appropriate provision to vouchsafe its structural integrity including differential settlements during its economic life; and (2) the structural defects and failure were traceable not necessarily due to soil erosion but to a number of external forces constantly working upon the building including earthquakes and improper maintenance. Petitioners filed a cross-claim against Contech averring that pursuant to their construction contract, all claims of third parties should be answered by said corporation.[7]

For its part, Contech alleged that the excavation did not reach the common boundary and was eight (8) inches, more or less, away from the common boundary. Adequate and necessary precautions were undertaken which included the putting of wood sheet piles along the boundaries to prevent soil erosion and all phases of work were done according to the approved plan. Assuming it was liable on the cross-claim, such liability was deemed waived or abandoned for failure of Ngo Sin Sing to notify Contech of such claim.[8]

After due hearing, the trial court ruled that the defendants were negligent. It found that the excavation made on defendant's lot was near the common boundary, and that soil erosion would not have taken place if wood sheet piles were properly put in place along the common boundary. However, the trial court also stated that the plaintiff was likewise not without fault. The trial court noted that the LSG Building was originally a 2-storey building and the plaintiff added two more floors without providing the necessary foundation and reinforcement causing the building to sag. The trial court held that it was but fair for the plaintiff to assume its share of the faults and defects of its property in this case.

Thus, the trial court rendered judgment as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants Ngo Sin Sing, Ticia Dy Ngo and [Contech] Construction Technology Development Corp. jointly and severally,

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[7] *Rollo*, pp. 101-102.

[8] Records, pp. 14-16.

liable to pay plaintiff Li Seng Giap & Sons, Inc. the sum of ₱4,010,843.50. The claim for other damages cannot be awarded for lack of sufficient basis. Defendant Contech Technology & Development Corp. shall reimburse defendants Spouses Ngo Sin Sing & Ticia Dy Ngo for whatever amount the latter will pay to plaintiff. The counterclaims of defendants are DISMISSED.[9]

Dissatisfied with the trial court's ruling, Li Seng Giap & Sons, Inc. and the spouses Ngo Sin Sing and Ticia Dy Ngo filed their respective appeals. Contech no longer appealed.

The respondent disagreed with the trial court's finding that it was guilty of contributory negligence and that it must share in the cost of the reconstruction of the LSG Building. It claimed that the LSG Building never exhibited any sign of structural distress from the time it was completely constructed in 1968, despite the fact that Manila was rocked by several earthquakes, the most violent of which was in 1969. The defects were experienced only when excavation and construction of the NSS Building started. Respondent reiterated its prayer in the complaint.

The petitioners, on the other hand, averred that there was no basis for holding them jointly and severally liable with Contech for the payment of the amount of damages to the respondent. The trial court correctly pointed out that as owner of the property, it was their right to construct on their land and have it excavated. More importantly, they had a contract with Contech wherein it was provided that all claims of third persons would be answered by the company.

On May 11, 2005, the CA affirmed the trial court's decision with modification. The appellate court ruled that the respondent had a proven cause of action against the petitioners; that respondent's right to property was invaded or disturbed when excavation was done without sufficient lateral or subjacent support. As such, the petitioners' liability as project owner should be shared with the contractor, applying the provisions of Article 2194 of the Civil Code which states that "the

[9] *Rollo,* p. 110.

responsibility of two or more persons for a quasi-delict is solidary."[10] The CA refuted the findings of the trial court imputing contributory negligence to the respondents Li Seng Giap & Sons, Inc., and ruled that the spouses Ngo Sin Sing and Ticia Dy Ngo together with Contech, were solidarily liable for the whole amount. Thus:

> IN VIEW OF THE FOREGOING, the decision appealed from is MODIFIED in that the defendants shall jointly and severally pay the plaintiff the sum of ₱8,021,687.[00] with interest at 6 percent per annum from the date of the filing of the complaint until paid, plus ten percent of the principal award as attorney's fees and costs. The rest of the decision is AFFIRMED.

Aggrieved, the spouses Ngo Sin Sing and Ticia Dy Ngo now come to this Court raising the following assignment of errors:

I.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION AND RESOLUTION WHICH IGNORED AND DISREGARDED CLEAR EVIDENCE ON RECORD THAT RESPONDENT LSG'S OWN NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE DAMAGE TO ITS BUILDING, OR AT LEAST, AMOUNTED TO CONTRIBUTORY NEGLIGENCE WARRANTING REDUCTION OF THE AWARD.

II.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION AND RESOLUTION WHEN DESPITE THE FACT THAT NO ACT OR OMISSION CONSTITUTING NEGLIGENCE HAD BEEN SUCCESSFULLY IMPUTED AGAINST PETITIONERS, IT HELD PETITIONERS JOINTLY AND SEVERALLY LIABLE WITH RESPONDENT CONTECH FOR RECONSTRUCTION COSTS.

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[10] *Id.* at 42.

III.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RENDERING THE ASSAILED DECISION AND RESOLUTION WHEN, WITHOUT ANY LEGAL AND FACTUAL BASIS, IT ORDERED PETITIONER TO PAY RESPONDENT LSG ATTORNEY'S FEES IN THE AMOUNT OF TEN (10%) [PERCENT] OF THE PRINCIPAL AMOUNT.[11]

We resolve to grant the petition.

In petitions for review, the Court does not normally review the factual findings of the courts below, but when the findings of the CA differ from those of the trial court, the Court will not hesitate to scrutinize the evidence on record. As between these two courts, it cannot be denied that the trial court is in a better position to ascertain the facts of the case considering its peculiar opportunity to be in direct contact with the witnesses and the evidence presented. As such, this Court is inclined to uphold the findings of the trial court in this case which we find to be more conformable to the evidence on record.

The records reveal that the LSG Building was constructed as early as 1956. Originally, the building permit dated June 27, 1956[12] was for the construction of a 3-storey building. Apparently, this was amended when another building permit was issued on August 20, 1956,[13] for the construction of a 2-storey building only. The City Engineer testified that the Certificate of Occupancy was issued for the August 20, 1956 permit which was for the 2-storey building.[14] In 1966, the building was burned. Thereafter, it was rebuilt with two floors added to the original 2-storey building. The CA stressed that, according to John T. Lee, Manager of LSG Building, the present building was an entirely new edifice and not one built on the ashes of the old.[15] However, on cross-examination, John T. Lee admitted that:

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[11] *Id.* at 18-19.

[12] Exhibit "2", records, p. 577.

[13] Exhibit "1", *id.* at 576, with notation "Amendment".

[14] *Rollo*, p. 105.

[15] CA Decision, p. 6; *id.* at 40.

WITNESS:

May I recall sometime in 1940, the property was purchased with an existing building apartment wooden in 1940. Sometime in 1956, the wooden apartment was destroyed by fire. So in 1956, a permit was requested and granted to construct a three storey reinforce concrete building. Now on the later part of 1956 it was amended. The permit was amended. It was changed to a two storey concrete building. It is called semi-concrete. So the building was finished in 1957. Then in 1966 that semi-concrete building was burned. So we requested for a building permit to reconstruct and include a 3rd and 4th storey building.

COURT:

Q So the 3rd and 4th storey will be built on the skeleton?

A According to my brother that is exactly the …

Q Skeleton on the ground floor and second floor and what was added was the 3rd and 4th floor? Storey?

A Yes, sir.

Q And it was finished when?

A It was finished in 1968.

Q And it was semi-concrete?

A No reinforce concrete in 1968.

Q So the 3rd and 4th storey was added to the shell of the ground and 2nd floor which was burned?

A Yes, your honor.[16]

Whether or not the building is a new edifice or built on the old ashes is really of no moment. Verily, the foundation of the LSG Building which was good to support only two floors remained the same and could not support the weight of the present 4-storey building. Edgardo Soriano, Civil Engineer from the Office of the City Engineers Manila, testified that there was a great possibility that the settlement may be progressive,[17]

[16] TSN, July 9, 1985, pp. 8-9.

[17] TSN, August 25, 1991, p. 35.

and that the damages may be due to the defect in the foundation and not due to the excavation.[18] More intriguing is the statement in the report of E.S de Castro which reads:

> In terms of purely engineering considerations, it would be best to demolish the existing building and then rebuild using present data as design guides. Economic feasibility is, of course, beyond the scope of this study.
>
> If the owners wish to salvage whatever they can of the present building, it is suggested that the 3rd and 4th floors be removed and retain use of the ground and second floors only. To leave the building in its present condition would be unsafe.[19]

This only goes to show that the additional two floors put up on the LSG Building could have overburdened the foundation's load-bearing capacity and contributed to the sagging of the building. The possibility of settlement due to weak foundation cannot, therefore, be discounted. As the trial court correctly ruled: "adding more floors without touching or reinforcing the building's bottom line or foundation are already manifestive of some negligence or ignorance on the part of said building owner. x x x Had plaintiff stuck to his original building 2-storey with its kind of foundation, the excavation by its adjacent neighbor would not matter much or affect the building in question at the outset."[20]

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 to which he is required to conform for his own protection.[21] In this case, considering that respondent's negligence must have necessarily contributed to the sagging of the LSG Building, a reduction of the award is warranted. We, therefore, agree with the trial court that respondent should likewise share in the cost of the restructuring

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[18] TSN, August 10, 1995, p. 46.

[19] Exhibit "P", p. 9. (Underlining ours.)

[20] *Rollo,* p. 108.

[21] *Valenzuela v. Court of Appeals,* 323 Phil. 374, 388 (1996).

of its building. This is more in keeping with justice and equity. As the trial court ratiocinated:

> After going over the records of the case, the Court believes and so holds that plaintiff is equally negligent in not providing the necessary foundation and reinforcement to accommodate/support the additional floors and this finding is supported by plaintiff's evidence more particularly the declaration of John Lee that the 3rd and 4th floors were built on the skeleton of the ground and 2nd floor which was burned (tsn pp. 8-9, July 9, 1985). To be adding additional floors to the original 2-storey of plaintiff's building and depending merely on the skeleton of the ground and second floors for its third and fourth floors without touching or reinforcing that building's bottom line or foundation are already manifestive of some negligence or ignorance on the part of said building owner (plaintiff). To put all the blame and responsibility for the defects, cracks and tilting or sagging of the building in question on the shoulders of the defendants is not proper. Plaintiff must realize his share of the faults and defects of his property in the situation.[22]
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> xxx xxx xxx
>
> In view of this and considering that the plaintiff's building is still occupied by tenants and has not been condemned nor condemnation proceedings accordingly instituted, the Court believes that demands of substantial justice are satisfied by allocating the damages on 50-50 ratio. Thus, 50% of the damages sustained by the building is to be borne by the plaintiff and the other 50% by the defendants jointly and severally upon reconstruction of the former's building. The amount of ₱154,000.00 for the services rendered by Contech (sic) Builders should be shouldered by the plaintiff alone. Defendant Contech shall reimburse defendants Spouses Ngo Sin Sing and Ticia Dy Ngo for whatever amount the latter will pay to the plaintiff.[23]

The lower courts also found that there was insufficient lateral or subjacent support provided on the adjoining lot when excavation was done on petitioners' land. While there were wood sheet piles placed along the sides of the excavation, they were not properly braced to prevent a failure wedge.[24] Such failure can

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[22] *Rollo*, p. 108.

[23] *Id.* at 110.

[24] TSN, August 9, 1991.

only be accounted to the contractor, which is no other than Contech. In the Proposal[25] submitted to the petitioners, Contech committed to undertake the construction of the NSS Building, providing labor and equipment for the project. Work included excavation for foundation, formworks, steel works, *etc*. Construction would be completed after 365 days. It was also provided that the petitioners were "released and relieved of any and all liabilities and responsibilities for any injury to the workers and laborers employed in the work contracted for, as well as for third-party liabilities."[26] As it turned out in the course of the construction of the NSS Building, Contech failed to observe the proper procedure prior to excavation. We quote the trial court:

> Clearly, defendant Contech failed to observe his procedure of providing lateral and subjacent support prior to excavation. Under the doctrine of "supervening negligence" which states that where both parties are negligent but the negligence of one is appreciably later in time than of the other, or when it is impossible to determine whose fault or negligence should be attributed to the incident, the one who had the last clear opportunity to avoid the impending harm and failed to do so is chargeable with the consequences thereof. Stated differently, the rule would also mean that an antecedent negligence of a person does not preclude the recovery of damages for the supervening negligence of or bar a defense against the liability sought by another, if the latter, who had the last fair chance, could have avoided the impending harm by the exercise of due diligence.
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> In the case at bench, the negligence of Contech caused the damages sustained by the building, which did not discharge its duty of excavating eight (8) inches away from the boundary line from the lot of plaintiff with insufficient lateral and subjacent support.[27]

Article 2176 of the New Civil Code provides:

> Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation

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[25] Records, pp. 671-672.

[26] *Id.* at 672.

[27] *Rollo,* pp. 107-108.

between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

The requisites of quasi-delict are the following:

(a) There must be an act or omission;

(b) Such act or omission causes damage to another;

(c) Such act or omission is caused by fault or negligence; and

(d) There is no pre-existing contractual relation between the parties.[28]

These requisites are attendant in the instant case. The tortious act was the excavation done without observing the proper safeguards. Although the trial court stated that petitioner as land owner had every right to excavate on his own land, such right is not absolute as to deprive the adjacent owner sufficient lateral support pursuant to Article 684, New Civil Code, which states that:

No proprietor shall make such excavation upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support.

For the damage caused to the respondent, petitioners and Contech are jointly liable as they are joint tort-feasors. Conformably with Article 2194, the responsibility of two or more persons who are liable for the quasi-delict is solidary.[29] In *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation,*[30] the Court had the occasion to explain:

[O]bligations arising from tort are, by their nature, always solidary. We have assiduously maintained this legal principle as early as 1912 in *Worcester v. Ocampo,* in which we held:

> x x x The difficulty in the contention of the appellants is that they fail to recognize that the basis of the present action

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[28] *Chan, Jr. v. Iglesia ni Cristo, Inc.,* G.R. No. 160283, October 14, 2005, 473 SCRA 177, 186-187.

[29] *Id.* at 186.

[30] G.R. No. 155173, November 23, 2004, 443 SCRA 522.

is tort. They fail to recognize the universal doctrine that each joint tort feasor is not only individually liable for the tort in which he participates, but is also jointly liable with his tort feasors. x x x

It may be stated as a general rule that joint tort feasors are all the persons who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. They are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. x x x

Joint tort feasors are jointly and severally liable for the tort which they commit. The persons injured may sue all of them or any number less than all. Each is liable for the whole damages caused by all, and all together are jointly liable for the whole damage. It is no defense for one sued alone, that the others who participated in the wrongful act are not joined with him as defendants; nor is it any excuse for him that his participation in the tort was insignificant as compared to that of the others. x x x

Joint tort feasors are not liable *pro rata*. The damages can not be apportioned among them, except among themselves. They cannot insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the whole amount. x x x

A payment in full for the damage done, by one of the joint tort feasors, of course satisfies any claim which might exist against the others. There can be but satisfaction. The release of one of the joint tort feasors by agreement generally operates to discharge all. x x x

Of course, the court during trial may find that some of the alleged tort feasors are liable and that others are not liable. The courts may release some for lack of evidence while condemning others of the alleged tort feasors. And this is true even though they are charged jointly and severally.[31]

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[31] *Id.* at 544-545. (Underlining ours.)

Prescinding from the above, there is basis to re-examine the court's disposition in this case as to the liability of the petitioner in the light of the judgment rendered (1) holding the petitioner and Contech jointly and severally liable, and (2) giving the right to the petitioner to be reimbursed for whatever amount it shall pay the respondent.[32]

In *Citytrust Banking Corporation v. Court of Appeals*,[33] the Court stated that a judgment may determine the ultimate rights of the parties on the same side as between themselves, such that questions of primary and secondary liability between joint tort-feasors may be determined. Such judgment does not make the "co-defendants" adversaries. It permits only the determination of questions of primary and secondary liability between joint tort-feasors.[34]

In *Weiner v. Mager & Throne, Inc., et al.*,[35] it was held that –

> In order to avoid a multiplicity of suits, and to place it in the power of the defendant to get a determination of an entire controversy in a single action, statutory provision is made whereby, if the rights of the defendants as between themselves are determinable in an action, the whole matter may be disposed of in the judgment of such action, instead of leaving the defendants to litigate independently after the judgment has been entered in the main action.

From the foregoing, it is clear that this Court is not precluded from rendering a judgment that determines the liabilities of the "co-defendants" (petitioners and Contech) in this case. Rather than invite the definite prospect of the petitioners filing or instituting an action later on seeking reimbursement from the party primarily liable, which in this case is Contech, it would be more in keeping with the principles of expediency and the policy against multiplicity

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[32] *Citytrust Banking Corporation v. Court of Appeals*, G.R. No. 92592, April 30, 1991, 196 SCRA 553.

[33] *Id.* at 561.

[34] 49 C.J.S. Judgments §42.

[35] 167 Misc. 338, 3 N.Y.S. 2d 918.

of suits to make a direct adjudication in this regard. Considering that there was no proffered evidence of negligence on the part of the petitioners, the inescapable conclusion is that Contech is ultimately liable and should answer for the cost of the damage.

Indeed, the facts show that Contech's negligence was the proximate cause of the damage. Construction is a field requiring technical expertise. The petitioners, as ordinary laymen, would understandably have no knowledge at all about the technical aspect of constructing a building. This was precisely the reason why they contracted the services of a reputable construction firm to undertake the project. Petitioners had every right to rely on the warranties and representations of their contractor.

We note that Contech has remained silent, as if accepting its fate of liability in this case. The trial court observed that Contech did not present evidence to controvert the parties' assertions or prove their allegations in the answer, despite an order to do so.[36] From the trial court's decision, both the petitioner and respondent filed their respective appeals while Contech no longer challenged said decision. Thus, the decision holding it liable has become final and executory.

Moreover, the trial court pointed out that Contech fell short of its responsibility as contractor in this valuable project. It failed to insure its work against possible risks. We quote:

> Defendant Contech as the contractor should have been prudent enough as to have sought and acquired a Contractor All Risk (CAR) insurance policy and/or Erection All Risk (EAR) insurance policy in the course of such a construction that it had contracted with co-defendant Spouses. Had CAR & EAR insurance policies been availed of before any excavation was undertaken the plaintiff could have run after the insurance companies that could have covered those risks. Contractors of building should have taken the roles of the wise and prudent father to their customers or clients as they are specialists in themselves as their field of know-how in technology would always be demanded and extracted of them by all their patrons.[37]

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[36] *Rollo,* p. 106.

[37] *Id.* at 109.

As to the award for attorney's fees in the CA decision, the same should be deleted, as the appellate court did not provide any basis whatsoever to justify the award.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals is *SET ASIDE*. The decision of the Regional Trial Court is *REINSTATED* with the modification that Contech Construction Technology Development Corporation, alone, is *ORDERED* to pay respondent Li Seng Giap & Sons, Inc., the sum of ₱4,010,843.50.

SO ORDERED.

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

EN BANC

[G.R. No. 171164. November 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NASARIO CASTEL,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROSECUTION FOR RAPE; GUIDING PRINCIPLES. — In order for an accused to be convicted of rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, and (3) by force and without consent. In reviewing rape cases, the Court is guided by four well-established principles, namely: (1) an accusation for rape can be made with facility; (2) it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (3) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (4) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength

from the weakness of the evidence for the defense. Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of complainant's testimony.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF MUST BE RESPECTED; EXCEPTION; NOT PRESENT IN CASE AT BAR. — ***Findings of facts and assessment of credibility of witnesses are matters best left to the trial court.*** What militates against the claim of appellant is the time-honored rule that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court. The trial court has the unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and to detect if they were lying. After a careful review of the records, We find nothing that would impel Us to reverse the trial court's calibration of AAA's credibility. As the trial court observed, although there were times when she took a little time to answer, this was more due to shyness and hesitation to be so brutally frank than the trepidation of a prevaricator.

3. ID.; ID.; ID.; IF THE RAPE VICTIM'S STORY WAS ONLY CONTRIVED, SHE WOULD NOT HAVE BEEN SO COMPOSED AND CONSISTENT THROUGH OUT HER TESTIMONY IN THE FACE OF INTENSE AND LENGTHY INTERROGATION. — Indeed, AAA testified in a categorical, straightforward, and consistent manner even in the face of a tedious and grueling cross-examination. Her testimony, bearing badges of truth, is sufficient to establish appellant's guilt beyond reasonable doubt for the crimes charged. AAA's testimony gives no impression whatsoever that her testimony is a mere fabrication. If her story had only been contrived, she would

not have been so composed and consistent throughout her testimony in the face of intense and lengthy interrogation.

4. ID.; ID.; ACCUSED'S DENIAL AND ALIBI, IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF HIM AS PERPETRATOR OF THE CRIME. — *Positive identification prevails over self-serving denial/alibi*. Appellant's denial cannot prevail over AAA's positive identification of him as the one who repeatedly raped her. Positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellant whose testimony is not substantiated by clear and convincing evidence. Such denial and alibi are negative and self-serving evidence undeserving of any weight in law.

5. ID.; ID.; CREDIBILITY OF WITNESSES; IT IS HIGHLY IMPROBABLE THAT THE VICTIM WOULD ACCUSE HER OWN FATHER OF SO SERIOUS A CRIME AS RAPE IF IT WERE NOT THE TRUTH. — Appellant's argument that he was being framed by BBB and CCC because of family conflicts is a flimsy excuse. It is highly improbable that AAA would accuse appellant, her own father at that, of so serious a crime as rape, if it were not the truth. In any case, revenge or feud has never swayed this Court from giving full credence to the testimony of a complainant for rape, especially a minor, who remained steadfast in her testimony that she was raped.

6. CRIMINAL LAW; RAPE; MAY BE COMMITTED EVEN WHEN THE RAPIST AND THE VICTIM ARE NOT ALONE. — *Lust is no respecter of time and place*. That AAA was raped several times in the presence of her two (2) younger brothers DDD and EEE, while the latter were sleeping, is not improbable. Lust is no respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. Fact is, rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.

7. ID.; ID.; ELEMENT OF FORCE AND INTIMIDATION; IN THE INCESTUOUS RAPE OF A MINOR, ACTUAL FORCE OR INTIMIDATION NEED NOT BE EMPLOYED WHERE THE OVERPOWERING MORAL INFLUENCE OF THE FATHER WOULD SUFFICE; RATIONALE. — It is a hornbook doctrine that in the incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of the father would suffice. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. One should bear in mind that in incestuous rape, the minor victim is at a great disadvantage. The assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim. The reason for this rule was explained in *People v. Chua*, through now Mr. Chief Justice Reynato S. Puno, in this manner: In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do. The instant case is no exception. Appellant took advantage of his overpowering moral and physical ascendancy to unleash his lechery upon his daughter.

8. ID.; REPUBLIC ACT NO. 8353; RAPE MAY BE PROSECUTED *DE OFICIO;* COMPLAINT FILED BY THE OFFENDED PARTY IS NO LONGER NECESSARY FOR THE PROSECUTION OF RAPE. —[A]ppellant claims that the CA erred in not dismissing

the case on the ground that BBB had no authority to assist AAA in filing the charges against him, because FFF is still alive. He buttresses his stance by citing Article 344 of the Revised Penal Code which provides: xxx. It is patent that this provision was enacted out of consideration for the offended woman and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial. In the instant case, BBB, the grandmother, assisted AAA in the filing of the complaints for multiple rape. More than that, AAA could not have relied on her mother FFF to assist her in filing the charges against appellant. FFF was not concerned at all with what had befallen her daughter. BBB testified that she called up FFF after learning of the revelation of AAA to one of the local doctors who treated her that she was raped by appellant, but FFF did not bother to come to her house. FFF's lack of concern for her own daughter was all the more confirmed when she testified for the defense during trial. Be that as it may, AAA could actually have been assisted by anybody. R.A. No. 8353 re-classified the crime of rape as a crime against persons from its former classification as a crime against chastity. In effect, rape may now be prosecuted *de oficio*. The complaint filed by the offended party is no longer necessary for its prosecution.

9. ID.; QUALIFYING CIRCUMSTANCES OF RELATIONSHIP AND MINORITY; PROVEN IN CASE AT BAR. — We agree with the CA that the applicable law in Criminal Case Nos. 1543-M-98, 1541-M-98, 1545-M-98, 1544-M-98, and 1546-M-98 is Article 335 of the Revised Penal Code, as amended by R.A. No. 7659. On the other hand, Criminal Case No. 1542-M-98 is governed by Article 266-A and 266-B of the Revised Penal Code, as amended by R.A. No. 8353. R.A. No. 7659 and R.A. No. 8353 are similar in the sense that both laws impose the death penalty when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. In *People v. Pruna*, the Court *en banc*, speaking through Mr. Chief Justice Davide, Jr., stated that in appreciating age, either as an element of the crime or as a qualifying circumstance, "[t]he best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party." In the case at bar, the

qualifying circumstance of minority was duly proven by the prosecution by adducing in evidence the Certification from the Office of the Municipal Civil Registrar of Malolos. It states there that AAA's date of birth is November 7, 1981. This confirms what was stated in the Informations that AAA was only sixteen (16) years old in 1997 when she was repeatedly raped by appellant. The same Certification states that the "Name of Father" is Nasario Castel. This constitutes an independent and indubitable proof of the qualifying circumstance of relationship, *i.e.*, that appellant is the father of AAA.

10. ID.; ID.; IMPOSABLE PENALTY. — Luckily for appellant, the death penalty can no longer be imposed on him. R.A. No. 9346 has repealed R.A. No. 8177, R.A. No. 7659 and all other laws, executive orders and decrees insofar as they impose the death penalty. Pursuant to R.A. No. 9346, *reclusion perpetua*, without eligibility for parole, is the imposable penalty on appellant for each count of rape. Article 63 of the Revised Penal Code says that in all cases in which the law prescribes a single indivisible penalty (like *reclusion perpetua*), it shall be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

11. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— In a catena of cases, the Court has held that a victim of incestuous rape is entitled to civil indemnity of ₱75,000.00 for each count. The award of civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon a conviction and is different from the award of moral and exemplary damages. Moral damages in the amount of ₱75,000.00 for each count of rape, without the need of pleading or proving their basis, are also in order. The requirement of proof of mental and physical suffering is dispensed with. This is in recognition of the fact that the victim's injury, which is inherently concomitant with and necessarily results from the odious crime of rape, warrants *per se* the award of moral damages. This is not the first time that a child has been snatched from the cradle of innocence by some beast to sate his deviant sexual appetite. To curb this disturbing trend, appellant should, likewise, be made to pay exemplary damages, which, in line with prevailing jurisprudence, is pegged at ₱25,000.00, for each count of rape.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Romeo S. Gonzales for accused-appellant.

D E C I S I O N

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

THIS is a tale of a child snatched from the cradle of innocence by the bestiality of her own father.

From the Decision[1] of the Court of Appeals (CA) affirming with modification that of the Regional Trial Court (RTC) in Malolos, Bulacan,[2] appellant Nasario Castel has taken this appeal from his conviction for six (6) counts of rape committed against his then sixteen-year old daughter AAA.[3]

The Case

On February 10, 1998, appellant Nasario Castel was indicted for seven (7) counts of rape, defined and penalized under Articles 266-B and 335 of the Revised Penal Code, as amended by Republic Act (R.A.) Nos. 7659 and 8353, allegedly committed as follows:

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[1] *Rollo,* pp. 3-55. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Renato C. Dacudao and Lucas P. Bersamin, concurring.

[2] CA *rollo,* pp. 47-54. Penned by Judge Basilio R. Gabo, Jr.

[3] The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well those of their immediate family or household members, shall not be disclosed. (*People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426, citing Sec. 40, Rule on Violence Against Women and their Children; Sec. 63, Rule XI, Rules and Regulations Implementing Republic Act No. 9262, Otherwise Known as the "Anti-Violence Against Women and their Children Act of 2004.")

1. In Criminal Case No. 1541-M-98:[4]

The undersigned Asst. Provincial Prosecutor on the complaint of the offended party [AAA] assisted by her grandmother, [BBB] accuses Nasario Castel of the crime of rape, penalized under the provision of Art. 335 of the Revised Penal Code, committed as follows:

That in or about the month of April, 1997, in the Municipality of Malolos, province of Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, threats and intimidation, have carnal knowledge of his daughter [AAA], a minor sixteen (16) years of age, against her will and without her consent.

Contrary to law. (Underscoring Supplied)

2. In Criminal Case No. 1542-M-98:[5]

The undersigned Asst. Provincial Prosecutor on the complaint of the offended party [AAA] assisted by her grandmother, [BBB] accuses Nasario Castel of the crime of rape, penalized under the provision of Art. 226-B of the Revised Penal Code, committed as follows:

That in or about the month of November, 1997, in the Municipality of Malolos, province of Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, threats and intimidation, have carnal knowledge of his daughter [AAA], a minor sixteen (16) years of age, against her will and without her consent.

Contrary to law. (Underscoring supplied)

3. In Criminal Case No. 1543-M-98: [6]

The undersigned Asst. Provincial Prosecutor on the complaint of the offended party [AAA] assisted by her grandmother, [BBB] accuses Nasario Castel of the crime of rape, penalized under the provision of Art. 335 of the Revised Penal Code, committed as follows:

That in or about the month of February, 1997, in the Municipality of Malolos, province of Bulacan, and within the jurisdiction of this

[4] Records, p. 2.

[5] *Id.* at 8.

[6] *Id.* at 10.

Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, threats and intimidation, have carnal knowledge of his daughter [AAA], a minor sixteen (16) years of age, against her will and without her consent.

Contrary to law. (Underscoring supplied)

4. In Criminal Case No. 1544-M-98:[7]

The undersigned Asst. Provincial Prosecutor on the complaint of the offended party [AAA] assisted by her grandmother, [BBB] accuses Nasario Castel of the crime of rape, penalized under the provision of Art. 335 of the Revised Penal Code, committed as follows:

That in or about the month of August, 1997, in the Municipality of Malolos, province of Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, threats and intimidation, have carnal knowledge of his daughter [AAA], a minor sixteen (16) years of age, against her will and without her consent.

Contrary to law. (Underscoring Supplied)

5. In Criminal Case No. 1545-M-98:[8]

The undersigned Asst. Provincial Prosecutor on the complaint of the offended party [AAA] assisted by her grandmother, [BBB] accuses Nasario Castel of the crime of rape, penalized under the provision of Art. 335 of the Revised Penal Code, committed as follows:

That in or about the month of June, 1997, in the Municipality of Malolos, province of Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, threats and intimidation, have carnal knowledge of his daughter [AAA], a minor sixteen (16) years of age, against her will and without her consent.

Contrary to law. (Underscoring supplied)

6. In Criminal Case No. 1546-M-98:[9]

The undersigned Asst. Provincial Prosecutor on the complaint of the offended party [AAA] assisted by her grandmother, [BBB]

[7] *Id.* at 12.

[8] *Id.* at 14.

[9] *Id.* at 16.

accuses Nasario Castel of the crime of rape, penalized under the provision of Art. 335 of the Revised Penal Code, committed as follows:

That in or about the month of September, 1997, in the Municipality of Malolos, province of Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, threats and intimidation, have carnal knowledge of his daughter [AAA], a minor sixteen (16) years of age, against her will and without her consent.

Contrary to law. (Underscoring supplied)

7. In Criminal Case 1547-M-98:[10]

The undersigned Asst. Provincial Prosecutor on the complaint of the offended party [AAA] assisted by her grandmother, [BBB] accuses Nasario Castel of the crime of rape, penalized under the provision of Art. 266-B of the Revised Penal Code, committed as follows:

That in or about the 20th day of December, 1997, in the Municipality of Malolos, province of Bulacan, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously by means of force, threats and intimidation, have carnal knowledge of his daughter [AAA], a minor sixteen (16) years of age, against her will and without her consent.

Contrary to law. (Underscoring supplied)

Upon arraignment on October 14, 1998, appellant, assisted by his counsel *de oficio,* Atty. Alfredo Alto, pleaded not guilty to the charges.[11]

On November 4, 1998, a joint pre-trial was conducted.[12] Thereafter, joint trial on the merits ensued.

The Facts

Evidence for the prosecution

The prosecution evidence revolves around the combined testimonies of private complainant AAA, examining physician

[10] *Id.* at 18.

[11] *Id.* at 21-23.

[12] *Id.* at 25-26.

Dr. Manuel Aves, AAA's aunt CCC, her grandmother BBB, arresting officer Police Officer 3 (PO3) Leonardo Magsakay, and Dr. Jose Soriano, who treated AAA at the National Center for Mental Health (NCMH).

AAA testified that she is one of the seven (7) children[13] of appellant and FFF. The couple occupied one room of their house somewhere in Malolos, Bulacan, together with DDD and EEE, aged two (2) and four (4) years old, respectively,[14] while AAA and her other siblings occupied another. FFF had to leave at 2:00 a.m. every day to catch a bus for Pasay City where she sells fish. AAA would transfer to her parents' room an hour earlier to look after her younger siblings. Appellant, on the other hand, would escort FFF to the bus terminal.[15]

The succeeding turn of events would change AAA's life forever.

In the early dawn of December 19, 1996,[16] appellant escorted FFF to the bus terminal as usual. He returned after an hour,[17] proceeded to where AAA was sleeping, mounted her, undressed her, then inserted his penis in her vagina.[18] AAA's ordeal lasted for ten (10) minutes.[19] Appellant, perhaps exhausted, slept beside his daughter.

AAA felt pain while being raped.[20] She was not able to do anything because appellant threatened to kill her.[21] All that she could do was cry. Due to her incessant crying, appellant

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[13] TSN, January 5, 1999, p. 8.

[14] *Id.* at 12.

[15] *Id.* at 8.

[16] *Id.* at 6.

[17] *Id.* at 9.

[18] *Id*.

[19] *Id.* at 11.

[20] *Id.* at 13.

[21] *Id.* at 10.

slapped her several times.[22] Although her siblings noticed her puffy eyes, she did not tell them what happened to her.[23] Neither did she tell her mother FFF about it because she was so scared of her father.[24]

Criminal Case No. 1543-M-98

The second rape occurred in February 1997. Appellant accompanied FFF to the bus terminal. AAA was then sleeping in the room of her parents but when she woke up, appellant was already on top of her. He undressed her, kissed her, and inserted his penis in her vagina. AAA attempted to shout, but appellant covered her mouth with his hands and slapped her. Appellant ravished her for about five (5) minutes, then he slept. One of her sisters noticed that she was crying but she did not reveal to her what happened.[25]

Criminal Case No. 1541-M-98

Sometime in April 1997, AAA was again raped by appellant. It also happened at dawn and in the same bedroom where she was previously defiled. Appellant undressed her and inserted his penis in her vagina for about five (5) minutes.[26]

Criminal Case No. 1545-M-98

AAA was raped a fourth time at dawn in June 1997. Appellant undressed her, kissed her, slapped her face, and inserted his penis in her vagina for about five (5) minutes. She felt that her father destroyed her womanhood ("*sinira ang pagkababae ko*"), but chose not to reveal the rape to anyone. She prayed that she would not get pregnant.[27]

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[22] *Id*.

[23] *Id.* at 11.

[24] *Id*.

[25] *Id.* at 16-19. AAA was then 16 years of age. Per Birth Certificate, she was born on November 7, 1981.

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

[27] *Id.* at 25-26.

Criminal Case No. 1544-M-98

The fifth rape occurred in August 1997. Appellant undressed her, kissed her, mounted her, and inserted his penis in her vagina for about five (5) minutes. When he was finished, he left her as she cried. One of her sisters asked her why she was crying but she made the excuse that her head was just aching. Again, she did not tell her mother FFF about what happened.[28]

Criminal Case No. 1546-M-98

AAA was raped a sixth time by her father sometime in September 1997. It occurred in the same room and in the same bed. He undressed her, kissed her, and slapped her face. He then inserted his penis inside her vagina for five (5) minutes. He left her after satisfying his lust.[29]

Criminal Case No. 1542-M-98

Appellant raped AAA a seventh time in November 1997. As usual, appellant undressed her, slapped her, went on top of her, and inserted his penis inside her vagina for about five (5) minutes. She felt that her father treated her like a pig ("*binaboy niya ako*"). She felt afraid of getting pregnant by her own father.[30]

AAA revealed that despite the series of rapes, she did not get pregnant because appellant would let her drink some medicine on the pretext of giving her "vitamins." The medicines were given to her two (2) to five (5) days after being ravished.[31]

Criminal Case No. 1547-M-98

It was likewise alleged that appellant defiled AAA on December 20, 1997. However, the prosecution failed to elicit information from AAA as to how the rape on this date was allegedly perpetrated.

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

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

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

[31] *Id.* at 23-25.

Subsequent events

AAA could no longer stomach the harrowing experience that she suffered at the hands of her own father. On February 2, 1998, she went to her aunt CCC to whom she narrated what had happened for the past months.[32] She chose to reveal her ordeal to her aunt and not to her mother because she was afraid of what her father might do.[33] AAA and CCC went to their *barangay* captain, who in turn brought them to the police station.

Only the rapes committed in February, April, June, August, September, November and on December 20, 1997 became the subject of criminal complaints. The first incident that happened on December 19, 1996 was not reported. It, however, surfaced during AAA's testimony before the court.

AAA was examined by Dr. Manuel Aves on February 8, 1998, upon the request of the Chief of Police of Malolos.

Dr. Aves, the medico-legal officer of the Bulacan Provincial Crime Laboratory Office, prepared a Medico-Legal Report[34] of AAA's examination. He stated there that AAA suffered multiple healed lacerations in her hymen at 6:00, 9:00 and 12:00 o'clock positions.

During his testimony, Dr. Aves explained that AAA probably sustained her lacerations around seven (7) to ten (10) days prior to the examination. However, he did not rule out the possibility that these lacerations were sustained as early as 1996.[35]

CCC, who is FFF's sister,[36] testified that AAA went to her house on the morning of February 2, 1998.[37] She found this unusual because she was not close to AAA. After eating her breakfast,

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[32] *Id.* at 32.

[33] *Id*.

[34] Exhibit "I".

[35] TSN, November 27, 1998, pp. 1-21.

[36] TSN, January 29, 1999, p. 3.

[37] *Id.* at 12.

AAA went to her room and started crying. When asked what was wrong, AAA told her that her body and vagina were aching. After further prodding, AAA revealed that she was raped by her father.[38]

BBB, AAA's maternal grandmother,[39] testified that sometime in February 1998, AAA got sick. She was quiet and would often stare blankly ("*walang kibo at tulala*").[40] AAA was brought to a quack doctor in whom she confided her ordeal.[41] AAA was likewise referred to a doctor in Manila, but no examination was made.[42]

PO3 Leonardo Magsakay of the Malolos Philippine National Police (PNP) testified that he was one of the police officers who arrested appellant and who brought the latter to the police headquarters for questioning.[43] He saw AAA in a state of shock but he could not conclude whether she was, indeed, raped or not.[44]

Dr. Jose Soriano, for his part, recounted that he examined AAA for the first time on October 2, 1998[45] at the NCMH. She was highly irritable, unstable and argumentative. She manifested on and off symptoms of mood disorder classified as Bipolar I, a syndrome characterized by elevated, expansive or irritable mood for at least a week or less.[46]

Dr. Soriano explained that the probable reason why a patient would manifest such syndrome is a highly traumatic event

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[38] *Id.* at 4.

[39] TSN, February 26, 1999, p. 4.

[40] *Id.* at 5.

[41] *Id*.

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

[43] TSN, May 4, 1999, p. 5.

[44] *Id.* at 12.

[45] TSN, May 14, 1999, p. 10.

[46] *Id.* at 7.

that could no longer be accepted or tolerated.[47] When AAA was already cooperative, he asked her what she went through. She replied that she was raped by her father.[48]

Evidence for the defense

The defense, upon the other hand, presented as witnesses AAA's two (2) sisters, GGG and HHH; her mother, FFF; and appellant Nasario Castel himself.

GGG testified that sometime in the second week of February 1998, she was summoned by her cousins to the house of their aunt CCC. When she arrived there, she heard three (3) of her aunts asking AAA about their father. AAA just replied "yes, yes" to the questions of her aunts. AAA was later brought to the hospital.[49]

GGG also claimed that she is very close to AAA. They would divulge their secrets to one another, including even their resentment towards their parents.[50] AAA never revealed to her that their father made advances to her. In fact, according to GGG, appellant was very good to them.[51] He treated them equally.[52]

HHH, on the other hand, claimed that from 1996 up to June 1997, she noticed that AAA had sleepless nights and kept walking around. She heard that AAA was under the spell of dwarves ("*nadudwende*").[53] On March 15, 1997, AAA was treated by a local quack doctor. The doctor asked BBB, CCC, and FFF to exit the house. During treatment, HHH heard AAA shout for help. FFF knocked at the door and asked the doctor to

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[47] *Id.* at 8.

[48] *Id.* at 9.

[49] TSN, July 9, 1999, pp. 10-12.

[50] *Id.* at 8.

[51] *Id.* at 12.

[52] *Id.* at 13.

[53] TSN, August 17, 1999, pp. 5-6.

leave. AAA did not get well despite the treatment. She appeared to be in a state of shock.[54]

Like her sister GGG, HHH also vouched for their father's good character. Their father would always give AAA pieces of advice ("*pinangangaralan*"), but AAA would instead get angry with him.[55]

FFF testified that her daughter AAA got sick in January 1997. This lasted till March of that year. AAA had difficulty menstruating, had sleepless nights and was constantly walking around for about one (1) week. AAA would tell her that she wanted to leave their house and that someone was calling her name. AAA also revealed to her that she was "*naduwende*."[56]

AAA was brought to a lady quack doctor. When this did not prove effective, BBB summoned another medicine man who treated AAA the whole day of March 15, 1997.[57] He brought AAA inside the room and asked them to leave and close the door.[58] FFF heard AAA scream on both occasions.[59] She did not ask the doctor why AAA screamed while being treated because she trusted him.[60]

That evening, AAA was not her usual self so they brought her again to the same doctor. After the treatment, FFF noticed that AAA got well because she was already menstruating.[61] FFF remembered that the said doctor asked her once to lift her shirt. He said that there was air in her breasts. He fondled her

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[54] *Id.* at 7.

[55] *Id.* at 7-8.

[56] TSN, August 24, 1999, p. 7.

[57] *Id.* at 8.

[58] *Id.* at 9.

[59] *Id.* at 9-10.

[60] *Id.* at 21.

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

breasts and told her that he would suck the air out of them. FFF refused.

FFF revealed that she and her sister CCC are at odds because she sold a parcel of land inherited from their mother, without her knowledge and consent.[62]

Appellant, for his part, denied the charges of rape levelled against him by AAA. He claimed that AAA collapsed in their house on January 3, 1997. Her sickness lasted from January 3, 1997 until mid-April, 1997. She had sleepless nights and she kept on walking around. She was calling names that nobody recognized, like the name "Jolina."

Because of her condition, AAA was treated by no less than ten (10) local doctors. According to one of them, AAA was "*napapaliguan ang kanyang* menstruation *kaya nagkakahangin ang ulo*."

Before AAA got sick, she was a loving, caring, and obedient child. He would ask her to do all the household chores because his wife FFF was always out working.

Appellant claimed that his mother-in-law BBB was constantly angry with him. She thought of him as a bad father. He accused his sister-in-law CCC of orchestrating the filing of court cases against him. She and FFF had a rift over a parcel of land.[63]

RTC and CA Dispositions

On September 20, 2000, the RTC in a joint decision convicted appellant in six (6) out of the seven (7) Informations for rape. The *fallo* reads:

WHEREFORE, this Court finds the accused GUILTY beyond reasonable doubt of five (5) counts of rape under Article 335 of the Revised Penal Code in Criminal Cases Nos. 1541-M-98, 1543-M-98, 1544-M-98, 1545-M-98 and hereby sentences him to suffer the penalty of *Reclusion Perpetua*.

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[62] *Id.* at 11.

[63] TSN, August 31, 1999, pp. 3-41.

In Criminal Case No. 1542-M-98, this Court finds the accused GUILTY of Incestuous Rape under Article 266-A and B of the Revised Penal Code considering that the crime was committed after October 22, 1997, the effectivity date of Republic Act No. 8353 and hereby sentences him to suffer the supreme penalty of DEATH.

In Crim. Case No. 1547-M-98 as pointed out above, the accused, for lack of evidence is hereby ACQUITTED of the offense charged.

Further, the accused is hereby ordered to pay the victim the amount of Five Hundred Thousand Pesos (₱500,000.00) as civil liability and moral damages.

SO ORDERED.[64]

The records of the case were elevated to this Court for automatic review in view of the death penalty imposed on appellant. However, pursuant to *People v. Mateo*,[65] the Court resolved, on August 24, 2004, to transfer the case to the CA for appropriate action and disposition.[66]

On October 25, 2005, the CA affirmed with modification the RTC ruling. The dispositive portion of its decision states:

WHEREFORE**,** premises considered, the Joint Decision dated 01 September 2000, promulgated on 20 September 2000, of the Regional Trial Court of Malolos, Bulacan, Branch 11 convicting accused-appellant **Nasario Castel** of six (6) counts of rape in *Crim. Cases Nos. 1541-M-98, 1542-M-98, 1543-M-98, 1545-M-98* and *1546-M-98* are **AFFIRMED** with the following **MODIFICATIONS**:

1. In *Crim. Cases Nos. 1541-M-98, 1543-M-98, 1544-M-98, 1545-M-98,* and *1546-M-98,* accused-appellant **Nasario Castel** is convicted of five (5) counts of **qualified rape** and hereby sentenced to suffer the capital penalty of **DEATH** for **each** count and accused-appellant is ordered to pay the victim [AAA], the amounts of Php75,000.00 as civil indemnity, another Php75,000.00 as moral damages, and Php25,000.00 as exemplary damages, for **each** count of qualified rape; and

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[64] *Rollo,* pp. 51-52.

[65] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[66] *Rollo,* p. 2.

2. In *Crim. Case No. 1542-M-98*, accused-appellant **Nasario Castel** is convicted of **qualified rape** and the capital penalty of **DEATH** imposed by the trial court is **AFFIRMED** and accused-appellant is ordered to pay the victim [AAA], the amounts of Php75,000.00 as civil indemnity, another Php75,000.00 as moral damages, and Php25,000.00 as exemplary damages.

In accordance with Sec. 13(a), Rule 124 of the Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases (A.M. No. 00-5-03-SC, effective 15 October 2004), this case is **CERTIFIED** to the Supreme Court for review.

Let the entire record of this case be elevated to the Supreme Court.

SO ORDERED.[67] (Emphasis in the original)

After the records were elevated to this Court, the parties were required on February 21, 2006 to submit their respective supplemental briefs, if they so desired, within thirty (30) days from notice.[68]

Appellant filed his supplemental brief[69] through his new counsel. The Office of the Solicitor General, on behalf of the plaintiff-appellee People, opted to dispense with the filing of a supplemental brief.

Issues

Appellant ascribes the following errors to the trial court:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT NASARIO CASTEL GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE AND IN SENTENCING HIM TO THE PENALTY OF DEATH.

II.

THE TRIAL COURT GRAVELY LIKEWISE ERRED IN NOT DISREGARDING THE TESTIMONY OF [AAA] WHICH IS TAINTED WITH MALICE AND FALSEHOODS.[70] (Underscoring supplied)

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[67] *Id.* at 51-52.

[68] *Id.* at 56.

[69] *Id.* at 77-86.

[70] CA *rollo*, p. 90.

Our Ruling

The appeal must fail.

In order for an accused to be convicted of rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, and (3) by force and without consent.[71]

In reviewing rape cases, the Court is guided by four well-established principles, namely: (1) an accusation for rape can be made with facility; (2) it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (3) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of complainant must be scrutinized with extreme caution; and (4) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[72]

Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of complainant's testimony.[73]

Facts on record uphold conviction. The records show that appellant started raping AAA on December 19, 1996. For unknown reasons, however, appellant was not charged for the rape on this date. AAA's testimony on the first rape, nonetheless, provided the springboard for the prosecution in painting a complete picture of the other rapes committed by appellant against her. Thus, AAA narrated that appellant violated her again

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[71] *People v. De la Cuesta,* 430 Phil. 742, 751 (2002), citing Revised Penal Code, Art. 226-B, as amended; *People v. Lasola,* G.R. No. 123152, November 17, 1999, 318 SCRA 241; *People v. Silvano,* G.R. No. 127356, June 29, 1999, 309 SCRA 362.

[72] *Id.*, citing *People v. Painitan,* G.R. No. 137665, January 16, 2001, 349 SCRA 266; *People v. Dy,* 425 Phil. 608, 637 (2002); *People v. Salazar,* G.R. No. 122479, December 4, 2000, 346 SCRA 735.

[73] *People v. Medina, Sr.,* 452 Phil. 308, 336 (2003), citing *People v. Turco,* G.R. No. 126148, May 5, 1999, 306 SCRA 710.

sometime on (1) February 1997, (2) April 1997, (3) June 1997, (4) August 1997, (5) September 1997, and (6) November 1997. These succeeding rapes occurred under similar circumstances as the first rape, except that they would normally last for five (5) minutes. As vividly recounted by AAA:

Re: Criminal Case No. 1543-M-98

Q Sometime in **February 1997**, do you remember of any incident that took place?

x x x x x x x x x

Witness:
A: Yes, Ma'am.

Fiscal: (to the witness)
Q And what was that unusual incident?
A I was again raped by my father, Ma'am.

Q And where did this take place?
A The same place, Ma'am.

Q Are you saying to the same bedroom on the same house?
A Yes, Ma'am.

Q How did that take place?
A He accompanied my mother to the Bus Terminal and when he returned back he did it again to me[.] I was sleeping then when I awaken he was already on top of me, Ma'am.

Q And what happened when you realize (*sic*) that your father was on top of you?
A He undressed me, he kissed me and then he raped me, Ma'am.

Q When you said he raped you[,] how did he do that?
A He inserted his penis to my vagina and when I attempted to shout, he stop (*sic*) me by slapping my face, Ma'am.

Q And you said that that when you wanted to shout he try (*sic*) to slap you, how did he do that?
A He covered my mouth with his hands, Ma'am.

Q What else did you do x x x.

Court:
What did you do or what did he do?

Fiscal:
Q What else did you do aside from trying to shout?
A We (*sic*) tried to push him with his hands, Ma'am.

Q What happened?
A He slapped my face and he held my two (2) arms, Ma'am.

Q For how long did your father inserted (*sic*) his penis inside to your vagina in February 1997?
A Five (5) minutes, Ma'am.

Q After five minutes what happened?
A He stopped doing that to me and then he slap (*sic*) [me] and I remained crying, Ma'am.

Q You said you remained crying, where were you when you were crying?
A In the bedroom, Ma'am.

Q Was there anybody who notice (*sic*) to (*sic*) your crying?
A My sister noticed and asked why I was crying and I told her nothing, Ma'am.

Q Did you report this incident on February 1997 to anybody else after that, right after that?
A None, Ma'am.

Q Why?
A Because my father was threatening me (*sic*) to kill me if I will tell to anybody and I don't want to die, Ma'am.[74] (Emphasis supplied)

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[74] TSN, January 5, 1999, pp. 16-19.

Re: Criminal Case No. 1541-M-98

Q Sometime in **April 1997,** do you remember of any unusual incident that take (*sic*) place?
A There was, Ma'am.

Q And what was that unusual incident that tooked (*sic*) place in April 1997?
A I was also raped by my father, Ma'am.

Q How many times in April 1997?
A Only once, Ma'am.

Q And how were you raped by your father?
A He undressed me and he inserted his penis inside my vagina, Ma'am.

Court:
Q Where?
A In the same place, Your Honor.

Fiscal: (to the witness)
Q And what time of the day was it?
A Also at dawn, Ma'am.

Q Do you remember how long was (*sic*) your father inserted (*sic*) his penis inside your vagina in April?
A Five (5) minutes, Ma'am.

Q And after five (5) minutes, what happened?
A No more, Ma'am.

Q And what was your reaction to what your father did to you?
A I was afraid, he threatened me and I cried, Ma'am.

Q And where did you cry?
A In the other room, Ma'am.[75] (Emphasis supplied)

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

Re: Criminal Case No. 1545-M-98

Q Do you remember of any incident that took place in **June 1997**?
A Yes, Ma'am.

Q What was that unusual incident?
A Raped also, Ma'am.

Q How was it done by your father?
A He undressed me, he kissed me, and he slapped my face, he also inserted his penis inside my vagina, Ma'am.

Q For how long did your father inserted (*sic*) his penis inside your vagina?
A Five minutes, Ma'am.

Q And what was your reaction to this, if any?
A I felt that he destroyed me ("*sinira ang pagkababae ko*"), Ma'am.

Q Have you reported this incident to anybody at any time?
A No, one, Ma'am.[76] (Emphasis supplied)

Re: Criminal Case No. 1544-M-98

Q Sometime in **August of 1997,** do you remember of any unusual incident that took place?
A There was, Ma'am.

Q And what was that?
A Raped also, Ma'am.

Q How was it done by your father?
A He undressed me, he kissed me, he just put himself on top of me and he inserted his penis inside my vagina, Ma'am.

Q And for how long was your father inserted his penis inside your vagina?
A Five (5) minutes, Ma'am.

[76] *Id.* at 25-26.

Q And after that five (5) minutes what took place, what happened?
A No more and he left me and I was crying and when my sister asked me I told her that my head was aching, Ma'am.

Q Did you report this incident of August 1997 to your mother?
A No, Ma'am.[77] (Emphasis supplied)

Re: Criminal Case No. 1546-M-98

Q Sometime in **September 1995** (*sic*), do you remember of any unusual incident that took place?
A Yes, Ma'am.

Q What was that?
A Raped also, Ma'am.

Q And how was it done, you said you were raped?
A My father undressed me, he kissed me, he slapped my face and put his penis inside my vagina, Ma'am.

Q In what part of your x x x Where was this performed by your father?
A In the bedroom, Ma'am.

Q The same place?
A Yes, Ma'am.

Q He inserted his penis inside your vagina, for how long?
A Five (5) minutes, Ma'am.

Q And after five (5) minutes, what happened next?
A He left me because he had already done what he wanted to me, Ma'am.[78] (Emphasis supplied)

Re: Criminal Case No. 1542-M-98

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

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

Q Sometime in **November 1997**, do you remember of any unusual incident that took place?
A Yes, there was, Ma'am.

Q And what was that?
A Raped also, Ma'am.

Q Who raped you?
A My father, Ma'am.

Q And how did he raped (*sic*) you?
A He undressed me, he slap (*sic*) my face and he put himself on top of me and he inserted his penis inside my vagina, Ma'am.

Q For how long?
A Five minutes, Ma'am.

Q And what was your reaction if any?
A I was afraid and I felt "*binaboy niya ako*," Ma'am.

Q And what else did you do if any aside from getting afraid when you felt that "*binaboy*" of you father?
A I just prayed, Ma'am.

Q Prayed for what?
A I prayed to the Lord that I would not get pregnant like what I heard that if you will be rape (*sic*), Ma'am.[79] (Emphasis supplied)

Lust is no respecter of time and place. That AAA was raped several times in the presence of her two (2) younger brothers DDD and EEE, while the latter were sleeping, is not improbable.

Lust is no respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants or

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

even when the rapist and the victim are not alone. Fact is, rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.[80]

We now come to the defenses hoisted by appellant in his attempt at exculpation.

First, appellant avers that the testimony of AAA lacks the elements of truthfulness and does not inspire belief. Her narration regarding her alleged ordeal sounds too perfect. They are uniform with no variations at all.

We agree with the CA observation that the fact that appellant committed the rapes on AAA at dawn in the same manner and under the same circumstances bespeak his evil intention to consummate his crime in the most disingenuous manner. Appellant lost no time in ravishing AAA to satisfy his libido in the wee hours of the morning after bringing his wife FFF to the bus station. He knew too well that his other children would still be fast asleep at that time and, thus, he would be able to commit his nefarious acts with impunity.

Findings of facts and assessment of credibility of witnesses are matters best left to the trial court. What militates against the claim of appellant is the time-honored rule that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court. The trial court has the unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which

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[80] *People v. Evina*, 453 Phil. 25, 41 (2003), citing *People v. Perez*, G.R. No. 122764, September 24, 1998, 296 SCRA 17.

are useful aids for an accurate determination of a witness' honesty and sincerity.[81]

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and to detect if they were lying.[82]

After a careful review of the records, We find nothing that would impel Us to reverse the trial court's calibration of AAA's credibility. As the trial court observed, although there were times when she took a little time to answer, this was more due to shyness and hesitation to be so brutally frank than the trepidation of a prevaricator.

Indeed, AAA testified in a categorical, straightforward, and consistent manner even in the face of a tedious and grueling cross-examination. Her testimony, bearing badges of truth, is sufficient to establish appellant's guilt beyond reasonable doubt for the crimes charged.[83] AAA's testimony gives no impression whatsoever that her testimony is a mere fabrication. If her story had only been contrived, she would not have been so composed and consistent throughout her testimony in the face of intense and lengthy interrogation.[84]

Positive identification prevails over self-serving denial/ alibi. Appellant's denial cannot prevail over AAA's positive identification of him as the one who repeatedly raped her. Positive identification of the accused, when categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellant

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[81] *People v. Dy, supra* note 72, citing *People v. Abacia,* G.R. Nos. 135552-53, June 21, 2001, 359 SCRA 342.

[82] *Id.*, citing *People v. Belga*, G.R. No. 129769, January 19, 2001, 349 SCRA 678.

[83] *People v. Lima,* G.R. No. 128289, April 23, 2002, 381 SCRA 471.

[84] *People v. Perez, supra* note 80, citing *People v. Ramos*, G.R. No. 64656, November 18, 1988, 167 SCRA 476.

whose testimony is not substantiated by clear and convincing evidence. Such denial and alibi are negative and self-serving evidence undeserving of any weight in law.[85]

This Court cannot agree with the theory raised by the defense that AAA implicated appellant because she was under the spell of dwarves. Such claim, besides being in the realm of the paranormal, is not supported by evidence.

On the contrary, what is extant in the records is the testimony of Dr. Jose Soriano of the NCMH on his treatment of AAA. He testified that when he first treated AAA on October 2, 1998,[86] she manifested on and off symptoms of mood disorder classified as Bipolar I, a syndrome characterized by elevated, expansive or irritable mood for at least a week or less.[87] According to Dr. Soriano, this is caused by a highly traumatic event that the patient could no longer accept or tolerate.[88] In a Medical Certificate [89] which contained his psychiatric evaluation of AAA, Dr. Soriano stated that AAA had been doing well as a third year high school student until sometime in January 1997. Dr. Soriano also testified that the behavior manifested by AAA could not have been due to suggestions from other people because there was consistency in her stories.[90]

It is worth noting that Dr. Soriano's medical finding on the date when AAA manifested symptoms of mood disorder *does not run counter* to AAA's account that appellant started raping her sometime in December 1996. As correctly pointed out by the CA, the only logical conclusion that can be drawn on AAA's mood disorder is that she found the series of rapes committed against her too traumatic and unbearable to the point that it affected her mental condition.

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[85] *People v. Abes,* 465 Phil. 165, 185 (2004), citing *People v. Bagsit,* G.R. No. 148877, August 19, 2003, 409 SCRA 350.

[86] TSN, May 14, 1999, p. 8

[87] *Id.* at 7.

[88] *Id.* at 8.

[89] Exhibit "M".

[90] TSN, May 14, 1999, p. 19.

Nor can We agree with appellant's theory that it was the male quack doctor who raped AAA because both of them were locked up in a room and AAA was heard screaming while being treated. On rebuttal, BBB testified that she and FFF were present when that particular doctor was treating AAA.[91] It was thus not probable that it was the doctor who raped her granddaughter.[92]

Appellant's argument that he was being framed by BBB and CCC because of family conflicts is a flimsy excuse. It is highly improbable that AAA would accuse appellant, her own father at that, of so serious a crime as rape, if it were not the truth. In any case, revenge or feud has never swayed this Court from giving full credence to the testimony of a complainant for rape, especially a minor, who remained steadfast in her testimony that she was raped.[93]

Second, appellant argues that if AAA was, indeed, raped, the prosecution failed to prove the presence of force or intimidation that accompanied the rapes. There is also no evidence showing that he had moral ascendancy over her.

Contrary to appellant's contention, the records show that he employed force and/or intimidation when he repeatedly raped his daughter.

AAA testified that when appellant raped her in February 1997, he slapped her and covered her mouth when she attempted to shout.[94] Appellant also threatened to kill her if she would tell anybody what happened.[95] The same threat was made when he raped her in April 1997.[96] He slapped her face while raping

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[91] TSN, December 14, 1999, p. 4.

[92] *Id*.

[93] *People v. Viajedor,* 449 Phil. 297, 316-317 (2003), citing *People v. Miclat, Jr.,* G.R. No. 137024, August 7, 2002, 386 SCRA 515; *People v. Batoon,* G.R. No. 134194, October 26, 1999, 317 SCRA 545, 554.

[94] TSN, January 5, 1999, p. 18.

[95] *Id.* at 19.

[96] *Id.* at 20.

her in June 1997.[97] He again slapped her while raping her in September 1997.[98] This he did again when he raped his daughter on November 1997.[99]

Be that as it may, appellant did not have to employ force or intimidation on AAA to be convicted of rape.

It is a hornbook doctrine that in the incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of the father would suffice. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[100] One should bear in mind that in incestuous rape, the minor victim is at a great disadvantage. The assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. As a consequence, proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim.[101] The reason for this rule was explained in *People v. Chua*,[102] through now Mr. Chief Justice Reynato S. Puno, in this manner:

> In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes

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[97] *Id.* at 25.

[98] *Id.* at 21.

[99] *Id.* at 22.

[100] *People v. Orillosa,* G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 699, citing *People v. Sagaral,* G.R. Nos. 112714-15, February 7, 1989, 267 SCRA 671; *People v. Cea,* G.R. Nos. 146462-63, January 14, 2004, 419 SCRA 326; *People v. Servano,* 454 Phil. 256 (2003); *People v. Escober,* G.R. Nos. 122980-81, November 6, 1997, 281 SCRA 498; *People v. Tan, Jr.,* G.R. Nos. 103134-40, November 20, 1996, 264 SCRA 425.

[101] *People v. Servano, supra.*

[102] G.R. No. 137841, October 1, 2001, 366 SCRA 283.

them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do.[103]

The instant case is no exception. Appellant took advantage of his overpowering moral and physical ascendancy to unleash his lechery upon his daughter.[104]

Third, appellant asseverates that the claim of AAA that she was raped once in almost every month is impossible, contrary to reason, ridiculous, and unbelievable. If lust is no respecter of time and place, he could have raped AAA every day of each month, or even thrice in the first month, maybe ten (10) times in the second month, twice in the third month, six (6) times in the fourth month, thirty (30) times in the fifth month, and so on and so forth. While menstruation for women comes once in a month, libido or lust for men subsists every second, minute, hour, and day. Appellant also draws Our attention to his weight and build compared to those of AAA. He posits that it would have been impossible for him to rape her a second time, since she could be dead after the first alleged raped.

The hypothetical and self-serving nature of the assertions of appellant destroys their viability. They beg for a conclusion without providing the premises which, whether from behavioral science or from settled jurisprudence, would support his claim of improbabilities. Only appellant can give the answer to his own assumptions. Sad to say, he did not present any during the trial. While We can hazard some rationalizations, We decline from doing so lest We also be guilty of speculation.[105]

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[103] *People v. Chua, id.* at 299-300.

[104] *People v. Orillosa, supra.*

[105] *People v. Perez, supra* note 80.

Fourth, appellant repeatedly points to the August 29, 2002 letter of AAA to then Mr. Justice (later Chief Justice) Hilario Davide, Jr. withdrawing her accusations against him. Our attention is also called to the letters dated March 14, 2008 purportedly written by AAA, GGG, and FFF. All the letters declare, *inter alia*, that appellant is innocent; that AAA was not really raped; that her accusations were mere fabrications due to the prodding of her aunt CCC who had a land dispute with FFF; and that AAA had a mental illness and/or was afflicted with a paranormal condition at that time. Appellant also submitted the November 2, 2006 Medical Abstract issued by the Bureau of Corrections, New Bilibid Prison Hospital, Muntinlupa City, stating that appellant is suffering from numerous illnesses, namely: (a) Diabetes Mellitus, Type 2, uncontrolled; (b) Hypertension; (c) Diabetic Nephropathy; (d) Dyslipidemia; and (e) Hyperuricemia, plus the Certification dated March 14, 2008 issued by the RTC in Malolos, Bulacan, stating that appellant has no pending criminal case except Criminal Case Nos. 1541-M-98 to 1547-M-98.

There is no concrete proof that AAA, GGG, and FFF, indeed, wrote the said letters. And if it were the case, whether or not they wrote them freely and voluntarily. More than that, the purported letters were never introduced as evidence before the trial court. They are hearsay. They are not even under oath.[106] To admit the letters would not only violate the rules of evidence, but the elementary rules of due process of law and fair play.

Admitting the letters would also set a dangerous precedent. There would be no end to litigation. All that a losing party would do is to obtain the necessary desistance from the winning party after trial has ended and raise it on appeal. Of course, We do not foreclose the possibility that there may be instances when such would be meritorious. That, however, is not the case here.

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[106] RULES OF COURT, Sec. 34. *Offer of evidence*. – The court shall consider no evidence which has not been offered. The purpose for which the evidence is offered must be specified.

It is possible that AAA, GGG, and FFF may, indeed, have written the letters but, to Our mind, the motive was more out of pity for appellant. It is not an unnatural behavior for rape victims to be angry at first with their ravisher, but feel pity after, more so in the instant case where the culprit is the victim's own father. It should not also be forgotten that GGG and FFF testified for the defense during the trial. Thus, their motive becomes suspect.

In other words, the letters cannot prevail over the evidence presented during the trial, especially the testimonies of AAA, Dr. Aves, and Dr. Soriano, who withstood rigorous cross-examination from the defense panel.

The medical abstract and certification also deserve scant consideration. They are irrelevant and immaterial as far as the claim of innocence of appellant is concerned. We also note that appellant secured the medical abstract in order "[t]o support his petition for Executive Clemency." That is an implied admission of guilt.

Fifth, appellant claims that the CA erred in not dismissing the case on the ground that BBB had no authority to assist AAA in filing the charges against him, because FFF is still alive. He buttresses his stance by citing Article 344 of the Revised Penal Code which provides:

> Art. 344. *Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness*. – x x x
>
> The offenses of seduction, abduction, rape, or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. (Underscoring supplied)

It is patent that this provision was enacted out of consideration for the offended woman and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial.[107] In the instant case, BBB, the grandmother, assisted

[107] *Samilin v. Court of First Instance,* 57 Phil. 298 (1932).

AAA in the filing of the complaints for multiple rape.[108] More than that, AAA could not have relied on her mother FFF to assist her in filing the charges against appellant. FFF was not concerned at all with what had befallen her daughter. BBB testified that she called up FFF after learning of the revelation of AAA to one of the local doctors who treated her that she was raped by appellant, but FFF did not bother to come to her house.[109] FFF's lack of concern for her own daughter was all the more confirmed when she testified for the defense during trial.

Be that as it may, AAA could actually have been assisted by anybody. R.A. No. 8353[110] re-classified the crime of rape as a crime against persons from its former classification as a crime against chastity. In effect, rape may now be prosecuted *de oficio*. The complaint filed by the offended party is no longer necessary for its prosecution.

Governing law and proper penalty

We agree with the CA that the applicable law in Criminal Case Nos. 1543-M-98,[111] 1541-M-98,[112] 1545-M-98,[113] 1544-M-98,[114] and 1546-M-98[115] is Article 335 of the Revised Penal Code, as amended by R.A. No. 7659.[116] On the other hand,

[108] *Rollo,* pp. 2, 8, 10, 12, 14, 16 & 18.

[109] TSN, February 26, 1999, p. 15.

[110] Otherwise known as "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act. No. 3815, as Amended, Otherwise Known as the Revised Penal Code." This law took effect on October 22, 1997. See *People v. Pateño,* G.R. No. 145349, July 29, 2003, 407 SCRA 381.

[111] Rape committed sometime in February 1997.

[112] Rape committed sometime in April 1997.

[113] Rape committed sometime in June 1997.

[114] Rape committed sometime in August 1997.

[115] Rape committed sometime in September 1997.

[116] Otherwise known as "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes." This law took effect on December 31, 1993. See *People v. Pangilinan,* G.R. No. 171020, March 14, 2007, 518 SCRA 358; *People v. Unarce,* G.R. No. 120549, May 6, 1997, 272 SCRA 321.

Criminal Case No. 1542-M-98[117] is governed by Article 266-A and 266-B of the Revised Penal Code, as amended by R.A. No. 8353.[118]

R.A. No. 7659 and R.A. No. 8353 are similar in the sense that both laws impose the death penalty when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In *People v. Pruna*,[119] the Court *en banc*, speaking through Mr. Chief Justice Davide, Jr., stated that in appreciating age, either as an element of the crime or as a qualifying circumstance, "[t]he best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party." In the case at bar, the qualifying circumstance of minority was duly proven by the prosecution by adducing in evidence the Certification[120] from the Office of the Municipal Civil Registrar of Malolos. It states there that AAA's date of birth is November 7, 1981.[121] This confirms what was stated in the Informations that AAA was only sixteen (16) years old in 1997 when she was repeatedly raped by appellant. The same Certification states that the "Name of Father" is Nasario Castel.[122] This constitutes an independent and indubitable proof of the qualifying circumstance of relationship, *i.e.*, that appellant is the father of AAA.

Luckily for appellant, the death penalty can no longer be imposed on him. R.A. No. 9346[123] has repealed R.A.

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[117] Rape committed sometime in November 1997.

[118] See note 109.

[119] G.R. No. 138471, October 10, 2002, 390 SCRA 577, 603.

[120] Exhibit "O".

[121] Exhibit "O-1".

[122] Exhibit "O-2".

[123] "An Act Prohibiting the Imposition of Death Penalty in the Philippines." This law took effect on June 30, 2006. See *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 741.

No. 8177,[124] R.A. No. 7659 and all other laws, executive orders and decrees insofar as they impose the death penalty.

Pursuant to R.A. No. 9346, *reclusion perpetua*,[125] without eligibility for parole,[126] is the imposable penalty on appellant for each count of rape. Article 63 of the Revised Penal Code says that in all cases in which the law prescribes a single indivisible penalty (like *reclusion perpetua*), it shall be applied regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

On damages

In a catena of cases, the Court has held that a victim of incestuous rape is entitled to civil indemnity of ₱75,000.00[127] for each count. The award of civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon

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[124] Otherwise known as the "Act Designating Death by Lethal Injection." Published in the Manila Times on March 23, 1996. See *Echegaray v. Secretary of Justice,* G.R. No. 132601, October 12, 1998, 297 SCRA 754, 765.

[125] Republic Act No. 9346, Sec. 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection, is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees insofar as they impose the death penalty, are hereby repealed or amended accordingly.

Sec. 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.

[126] *Id.,* Sec. 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. (Emphasis supplied.)

[127] *People v. Escultor,* G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651, 668; *People v. Umbaña,* G.R. Nos. 146862-64, April 30, 2003, 402 SCRA 415, 439; *People v. Sagarino, Jr.,* G.R. Nos. 135356-58, September 4, 2001, 364 SCRA 438; *People v. Gonzales,* G.R. No. 133859, August 24, 2000, 338 SCRA 678.

a conviction[128] and is different from the award of moral and exemplary damages.[129]

Moral damages in the amount of ₱75,000.00 for each count of rape, without the need of pleading or proving their basis,[130] are also in order. The requirement of proof of mental and physical suffering is dispensed with. This is in recognition of the fact that the victim's injury, which is inherently concomitant with and necessarily results from the odious crime of rape, warrants *per se* the award of moral damages.[131]

This is not the first time that a child has been snatched from the cradle of innocence by some beast to sate his deviant sexual appetite. To curb this disturbing trend, appellant should, likewise, be made to pay exemplary damages, which, in line with prevailing jurisprudence, is pegged at ₱25,000.00, for each count of rape.[132]

One last word.

We commend the public prosecutor in this case but caution him at the same time to be more circumspect in the performance of his job as the counsel for the State. It has not escaped Our attention that no Information was filed for the rape on December 19, 1996. More, although an Information charged appellant with rape committed on December 20, 1997, the prosecutor failed to adduce from AAA the circumstances surrounding the perpetration of the alleged rape on this date.

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[128] *People v. Glodo,* G.R. No. 136085, July 7, 2004, 433 SCRA 535, 549.

[129] *People v. Mostrales,* G.R. No. 125937, August 28, 1998, 294 SCRA 701; *People v. Prades,* G.R. No. 127569, July 30, 1998, 293 SCRA 411.

[130] *People v. Alfaro,* 458 Phil. 942, 963 (2003), citing *People v. Soriano,* G.R. Nos. 142779-95, August 29, 2002, 388 SCRA 140; *People v. Sambrano,* G.R. No. 143708, February 24, 2003, 398 SCRA 106.

[131] *People v. Perez, supra* note 80; *People v. Bernaldez,* G.R. No. 109780, August 17, 1998, 294 SCRA 317, citing *People v. Victor,* G.R. No. 127903, July 9, 1998, 292 SCRA 186.

[132] *People v. Mallones,* 469 Phil. 301, 333 (2004).

WHEREFORE, the Decision of the Court of Appeals finding accused-appellant Nasario Castel guilty beyond reasonable doubt of *six (6) counts of qualified rape* is *AFFIRMED* with the *MODIFICATION* that the penalty of death for each count is reduced to *reclusion perpetua*, without eligibility for parole.

Accused-appellant is also *ORDERED TO PAY* AAA (who will be identified through the Informations filed with the trial court in this case) the following amounts:

Civil Indemnity:	₱75,000.00 x 6	=	₱450,000.00
Moral Damages:	₱75,000.00 x 6	=	₱450,000.00
Exemplary Damages:	₱25,000.00 x 6	=	₱150,000.00
			==========
	TOTAL:		₱1,050,000.00

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, and *Velasco, Jr., JJ.*, concur.

Nachura, J., no part. Filed pleading as Solicitor General.

Leonardo-de Castro, J.,* on official leave.

Brion, J., on leave.

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* No part. Justice Leonardo-De Castro is on official leave per Special Order No. 539 dated November 14, 2008.

THIRD DIVISION

[G.R. No. 171961. November 28, 2008]

FERDINAND A. DELA CRUZ and RENATO A. DELA CRUZ, *petitioners, vs.* **AMELIA G. QUIAZON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; PARTIES; REAL-PARTY-IN-INTEREST; THE ORIGINAL PARTY DOES NOT LOSE HIS PERSONALITY AS A REAL-PARTY-IN-INTEREST MERELY BECAUSE OF THE TRANSFER OF INTEREST TO ANOTHER *PENDENTE LITE*.— At the outset, we sustain respondent's personality to file the petition for relief from judgment. A petition for relief from judgment is a remedy available to *a party* who, through fraud, accident, mistake or excusable negligence, was prevented from taking an appeal from a judgment or final order therein. The personality to file a petition for relief from judgment, therefore, resides in a person who is a party to the principal case. This legal standing is not lost by the mere transfer of the disputed property *pendente lite*. The original party does not lose his personality as a real party-in-interest merely because of the transfer of interest to another *pendente lite*.

2. ID.; CIVIL PROCEDURE; RELIEF FROM JUDGMENT; WHEN ALLOWED.— A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this remedy. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence. In this case, respondent's failure to avail herself of a motion for reconsideration or an appeal to the CA was due to her inexcusable negligence. Negligence to

be excusable must be one which ordinary diligence and prudence could not have guarded against. We note that a copy of the July 7, 1999 DARAB Decision was in fact served on the respondent herself at her residence, based on her narration that when she arrived from the U.S.A., her helper handed to her the envelope containing the DARAB Decision. By her own account, she arrived on September 10, 1999. She cannot, therefore, feign ignorance of the said decision and blame the death of her counsel for such ignorance.

3. ID.; ID.; ID.; PARTIES ARE NOT EXPECTED TO SIMPLY SIT BACK AND AWAIT THE OUTCOME OF THEIR CASE. — Besides, the case had been pending before the DARAB for almost five years. To recall, she filed, through counsel, her notice of appeal on July 11, 1994 and her Appeal Memorandum on November 29, 1994. Her former counsel died barely a month later (December 21, 1994). Had respondent bothered to check the status of the case, she would have discovered her counsel's demise. Parties are not expected to simply sit back and await the outcome of their case. They should be assiduous in keeping track of the status of any litigation to which they are a party. By allowing almost five years to lapse without monitoring the status of her appeal, respondent exhibited a total lack of vigilance tantamount to inexcusable negligence.

4. CIVIL LAW; LAND REGISTRATION; THE ISSUANCE OF CERTIFICATE OF LAND TRANSFER DOES NOT VEST FULL OWNERSHIP IN THE HOLDER. — However, contrary to petitioners' posture, the issuance of a CLT does not vest full ownership in the holder. The issuance of the CLT does not sever the tenancy relationship between the landowner and the tenant-farmer. A certificate of land transfer merely evinces that the grantee thereof is qualified to avail himself of the statutory mechanism for the acquisition of ownership of the land tilled by him as provided under P.D. No. 27. It is not a muniment of title that vests in the farmer/grantee absolute ownership of his tillage. It is only after compliance with the conditions which entitle a farmer/grantee to an emancipation patent that he acquires the vested right of absolute ownership in the landholding—a right which then would have become fixed and established, and no longer open to doubt or controversy. For this reason, the landowner retains an interest over the property that gives him the right to file the necessary action to evict

the tenant from the landholding should there be an abandonment despite the fact that land acquired under P.D. No. 27 will not revert to the landowner.

5. ID.; ID.; ABANDONMENT OF LANDHOLDING; REQUISITES.— Nonetheless, we agree with petitioners that they have not abandoned the subject landholding, as in fact they have continuously cultivated the property. Abandonment requires (a) a clear and absolute intention to renounce a right or claim or to desert a right or property; and (b) an external act by which that intention is expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned. The immigration of the original farmer-beneficiary to the U.S.A. did not necessarily result in the abandonment of the landholding, considering that one of his sons, petitioner Renato dela Cruz, continued cultivating the land. Personal cultivation, as required by law, includes cultivation of the land by the tenant (lessee) himself or with the aid of the immediate farm household, which refers to the members of the family of the tenant and other persons who are dependent upon him for support and who usually help him in the [agricultural] activities.

6. ID.; ID.; CANCELLATION OF CERTIFICATE OF LAND TRANSFER AS A CONSEQUENCE OF THE LANDOWNER'S EXERCISE OF HIS RIGHT OF RETENTION IS WITHIN THE JURISDICTION OF THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM. — Without doubt, the landowner's right of retention may be exercised over tenanted land despite the issuance of a CLT to farmer-beneficiaries. However, the cancellation of a CLT over the subject landholding as a necessary consequence of the landowner's exercise of his right of retention is within the jurisdiction of the DAR Secretary, not the DARAB, as it does not involve an agrarian dispute.

7. ID.; ID.; ISSUANCE, RECALL OR CANCELLATION OF CERTIFICATES OF LAND TRANSFER FALLS WITHIN THE ADMINISTRATIVE JURISDICTION OF THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM. — Under Section 1(g), Rule II of the then DARAB Rules of Procedure, matters involving strictly the administrative implementation of agrarian laws shall be the exclusive prerogative of and cognizable by the Secretary of the DAR. Although Section 1(f) of the said

Rules provides that the DARAB shall have jurisdiction over cases involving the issuance of a CLT and the administrative correction thereof, it should be understood that for the DARAB to exercise jurisdiction in such cases, there must be an agrarian dispute between the landowner and the tenant. In *Tenants of the Estate of Dr. Jose Sison v. Court of Appeals*, the Court sustained the authority or jurisdiction of the DAR Secretary to cancel the CLT issued to tenant-beneficiaries after the landowners' right to retain the subject landholding was upheld. The Court ruled that the issuance, recall or cancellation of certificates of land transfer falls within the Secretary's administrative jurisdiction as implementor of P.D. No. 27.

8. REMEDIAL LAW; JUDGMENTS; A COLLATERAL ATTACK AGAINST A JUDGMENT IS GENERALLY NOT ALLOWED, UNLESS THE JUDGMENT IS VOID UPON ITS FACE OR ITS NULLITY IS APPARENT BY VIRTUE OF ITS OWN RECITALS. — To conclude, respondent's remedy is to raise before the DAR Secretary the matter of cancellation of petitioner's CLT as an incident of the order granting the landowners' application for retention over the said landholding. In the same forum, petitioners can raise the issue of the validity of the DAR order granting the application for retention based on their claim of denial of due process, or in a separate action specifically filed to assail the validity of the judgment. A collateral attack against a judgment is generally not allowed, unless the judgment is void upon its face or its nullity is apparent by virtue of its own recitals.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Gerrero and Paras for petitioners.

D E C I S I O N

NACHURA, *J.*:

Petitioners, Ferdinand and Renato dela Cruz, seek the review of the Court of Appeals Decision[1] dated January 19, 2006 and

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Fernanda Lampas-Peralta and Sesinando E. Villon concurring; *rollo*, pp. 37-50.

Resolution dated March 21, 2006. The assailed decision affirmed the Department of Agrarian Reform Adjudication Board (DARAB) Resolution canceling the Certificate of Land Transfer (CLT) in the name of petitioners' father, Feliciano dela Cruz, and directing petitioners to vacate the property.

The case arose from the following antecedents:

Estela Dizon-Garcia, mother of respondent Amelia G. Quiazon, was the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. 107576, situated in Sto. Domingo II, Capas, Tarlac. The property was brought under the coverage of Operation Land Transfer pursuant to Presidential Decree (P.D.) No. 27.[2] On June 8, 1981, Feliciano dela Cruz, a tenant-farmer, was issued CLT No. 0-036207[3] over a 3.7200-hectare portion of the said property.

On March 9, 1992, the heirs of Estela Dizon-Garcia executed a Deed of Extrajudicial Admission and Partition with Waiver adjudicating among themselves all the properties left by both of their parents, except for the subject property, which was adjudicated solely in favor of respondent.

On May 15, 1993, respondent filed a Complaint with the Provincial Adjudication Board of the Department of Agrarian Reform (DAR) against petitioner Ferdinand dela Cruz, alleging that in 1991, he entered into a leasehold contract with respondent, by virtue of which he bound himself to deliver 28 cavans of palay as rental. Since 1991, petitioner Ferdinand dela Cruz allegedly failed to deliver the stipulated rental because he had already abandoned the landholding. For this reason, respondent prayed for his ejectment from the property and the termination of their tenancy relationship.[4]

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[2] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instrument and Mechanism Therefor.

[3] *Rollo,* p. 60.

[4] CA *rollo,* p. 50.

In his Answer, petitioner Ferdinand dela Cruz, through petitioner Renato dela Cruz, alleged that the execution of the leasehold contract was erroneous considering that a CLT had already been issued in favor of his father. He contended that by virtue of the CLT, they became the owners of the landholding, without any obligation to pay rentals to respondent but only to pay amortizations to the Land Bank of the Philippines. He claimed that they paid the rentals until 1992, which rentals should now be considered as advance payments for the land.[5]

Later, respondent amended the complaint to implead Feliciano and Renato dela Cruz.[6] The amended complaint alleged that petitioners Ferdinand and Feliciano dela Cruz were already immigrants to the United States of America (U.S.A.) and that petitioner Renato dela Cruz, the actual tiller of the land, was a usurper because his possession of the land was without the consent of the landowner. Respondent argued that by migrating to the U.S.A., Feliciano was deemed to have abandoned the landholding, for which reason his CLT should now be canceled.

In turn, petitioners amended their Answer. They averred that their father was just temporarily out of the country and that petitioner Renato's possession and cultivation of the land did not need the consent of the landowner because it was done in aid of their father's cultivation of the land.[7]

On November 8, 1993, petitioners began paying amortizations to the Land Bank of the Philippines.[8]

On December 21, 1993, Provincial Adjudicator Romeo B. Bello dismissed the complaint based on his finding that the landholding had not been abandoned by Feliciano considering that petitioner Renato dela Cruz, a member of Feliciano's immediate family, was in actual and physical possession thereof.[9]

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[5] *Id.* at 53-55.

[6] *Rollo,* pp. 108-110.

[7] *Id.* at 109.

[8] *Id.* at 61.

[9] *Id.* at 156-162.

Respondent filed a Motion for Reconsideration. In an Order[10] dated June 8, 1994, the Provincial Adjudicator denied respondent's motion for reconsideration for lack of merit and directed the Municipal Agrarian Reform Office of Capas, Tarlac, to determine whether the amortizations had been fully paid and, if so, to issue an Emancipation Patent.

On July 11, 1994, respondent filed a Notice of Appeal from said decision.[11] During the pendency of the appeal, respondent executed, on October 6, 1994, a Deed of Conveyance and Waiver of her rights over the subject property in favor of her siblings.[12] She then filed her Appeal Memorandum on November 29, 1994.[13] The appeal was docketed as DARAB Case No. 3335.

Unknown to petitioners, respondent and her siblings, as heirs of Estela Dizon-Garcia, had filed an Application for Retention before the DAR Regional Office for Region III, as early as June 1, 1994.[14] The application was granted on February 8, 1996. The dispositive portion of the Regional Director's Order reads:

WHEREFORE, all premises considered, Order is hereby issued, as follows:

1. GRANTING the application for retention of the Heirs of Estela Dizon-Garcia over a landholding covered by TCT No. 107576, with a total area of 12.5431, located at Sto. Domingo, Capas, Tarlac, to be divided among the heirs as follows:

Rosita Garcia	- 3.9641 has.
Buena Garcia	- 2.5796 has.
Bella Garcia	- 3.0000 has.
Estellita Garcia	- 3.0000 has.

[10] *Id.* at 167-168.

[11] CA *rollo,* p. 186.

[12] *Rollo,* p. 180.

[13] *Id.* at 15.

[14] *Id.* at 180.

2. ORDERING the herein landowners-applicant to maintain in peaceful possession the tenants of the subject landholding, namely: Renato dela Cruz, Carlos Aquino and Francisco Manayang as leaseholders; and

3. DIRECTING the herein landowners-applicant to cause the segregation of the retained area at their own expense and to submit report to this Office within thirty (30) days from receipt hereof.

SO ORDERED.[15]

In a letter[16] dated April 15, 1996, the heirs of Feliciano dela Cruz prayed for the setting aside of the said order. DAR Secretary Ernesto D. Garilao treated the letter as an appeal but, nevertheless, denied the same in an Order[17] dated May 13, 1997.

On July 7, 1999, the DARAB finally dismissed respondent's appeal (DARAB Case No. 3335) from the decision of the Provincial Adjudicator.[18] This decision became final and executory.[19]

On October 19, 1999, respondent filed a Petition for Relief from Judgment,[20] claiming that she just arrived from the U.S.A. on September 10, 1999 and it was only then that she found out about the July 7, 1999 DARAB Decision. She purportedly tried to contact her counsel only to discover that he died on December 21, 1994. Respondent insisted that petitioners had already abandoned the landholding and failed to pay the lease and amortization payments therefor, thus, the cancellation of their CLT was justified. She argued that the CLT was rendered moot by the DAR's grant of their application for retention of their property which included the subject landholding.

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[15] *Id.* at 174.

[16] *Id.* at 175-177.

[17] *Id.* at 178-182.

[18] *Id.* at 187.

[19] *Id.* at 191.

[20] *Id.* at 195-200.

In its Resolution dated February 7, 2001, the DARAB granted the petition for relief from judgment. The DARAB set aside its July 7, 1999 Decision primarily based on the DAR Order granting the application for retention, as well as its finding that Ferdinand and Feliciano dela Cruz abandoned the subject landholding when they went to the U.S.A. The dispositive portion of the Resolution reads:

> WHEREFORE, all of the above premises considered, and in the interest of agrarian justice, the decision of this Board dated July 7, 1999 is hereby SET ASIDE, and a new one is entered:
>
> 1. Declaring the dissolution of the tenancy relationship between the parties-litigants;
>
> 2. Declaring the cancellation of the CLT issued in the name of defendant Feliciano dela Cruz, the land subject thereof being part of the retention area of petitioner per order dated February 8, 1996; and
>
> 3. Ordering the respondents or any person acting in their behalf to vacate the subject land in favor of the petitioner.
>
> SO ORDERED.[21]

On August 7, 2002, the DARAB denied petitioners' motion for reconsideration. On November 27, 2003, the DARAB likewise denied petitioners' *Ex-Parte* Manifestation with Motion and Comments and Manifestation.[22]

Petitioners thereafter filed a petition for review with the Court of Appeals (CA). Pending the resolution of the appeal, Feliciano dela Cruz passed away.

On January 19, 2006, the CA denied the petition. On March 21, 2006, the CA also denied petitioners' motion for reconsideration. Consequently, petitioners filed this petition for review on *certiorari* based on the following grounds:

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[21] *Id.* at 214-215.

[22] *Id.* at 94.

A.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE DARAB IN DSCA NO. 0151, WHICH GAVE DUE COURSE TO THE PETITION FOR RELIEF FROM JUDGMENT.

B.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE DARAB IN DSCA NO. 0151 WHEREBY IT WAS RULED THAT PETITIONERS HAD THE OBLIGATION TO PAY LEASE RENTALS AND WERE GUILTY OF ABANDONMENT.

C.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE DARAB IN DSCA NO. 0151 WHEREBY IT WAS RULED THAT RESPONDENT HAD THE RIGHT TO RETAIN THE SUBJECT PROPERTY BY VIRTUE OF THE DECISION IN THE DAR RETENTION CASE.[23]

Petitioners argue that there was no basis for the grant of the petition for relief from judgment because it was respondent's own neglect, and not her counsel's demise, that caused the loss of her right to appeal. They claim that as early as June 5, 1995, respondent personally knew of the death of her lawyer and she could have employed a new counsel by then. To elaborate, petitioners narrate that, in another case pending before the Regional Trial Court (RTC) of Capas, Tarlac in which respondent is plaintiff, she was ordered to replace her former counsel and a new counsel, in fact, entered his appearance therein on June 5, 1995.[24] And even assuming that respondent learned about the July 7, 1999 DARAB Decision only on September 10, 1999, she could have filed her appeal with the CA within 15 days from the said date.

Secondly, petitioners contend that respondent had no legal standing to file the petition for relief from judgment because

[23] *Id.* at 363.

[24] *Id.* at 234.

she no longer had any interest in the subject property since respondent already waived her rights over the same in favor of her siblings.

In addition, petitioners posit that with the issuance of the CLT in favor of their father, their tenancy relationship with respondent ceased, and ownership over the subject property was effectively transferred to them. In any case, they deny that they have abandoned the landholding as it is still being cultivated by petitioner Renato dela Cruz, son of the farmer-beneficiary. Assuming that they have abandoned the property, the right of action to oust them from the property lies with the Republic of the Philippines to whom the property will revert.

Finally, petitioners assert that the DAR Decision in the retention case is null and void for lack of due process; hence, the DARAB erred in relying on the said decision. They complain that they were not impleaded as parties in the said case, nor were they given notice of its filing. Petitioners likewise point out that the retention right of the heirs, who merely succeeded to the rights of their mother, the landowner, should be limited to five hectares only.

The petition is meritorious.

At the outset, we sustain respondent's personality to file the petition for relief from judgment. A petition for relief from judgment is a remedy available to *a party* who, through fraud, accident, mistake or excusable negligence, was prevented from taking an appeal from a judgment or final order therein. The personality to file a petition for relief from judgment, therefore, resides in a person who is a party to the principal case. This legal standing is not lost by the mere transfer of the disputed property *pendente lite*. The original party does not lose his personality as a real party-in-interest merely because of the transfer of interest to another *pendente lite*.[25]

[25] *Marcopper Mining Corporation v. Solidbank Corporation,* G.R. No. 134049, June 17, 2004, 432 SCRA 360, 382.

Nonetheless, even as we acknowledge the legal personality of respondent, we hold that the DARAB, as sustained by the CA, erred in granting the petition for relief from judgment.

A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this remedy. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence.[26]

In this case, respondent's failure to avail herself of a motion for reconsideration or an appeal to the CA was due to her inexcusable negligence. Negligence to be excusable must be one which ordinary diligence and prudence could not have guarded against.[27] We note that a copy of the July 7, 1999 DARAB Decision was in fact served on the respondent herself at her residence, based on her narration that when she arrived from the U.S.A., her helper handed to her the envelope containing the DARAB Decision.[28] By her own account, she arrived on September 10, 1999. She cannot, therefore, feign ignorance of the said decision and blame the death of her counsel for such ignorance.

Moreover, we cannot disregard the fact that respondent was able to engage the services of a new counsel to represent her in another case pending before the RTC as early as June 5, 1995, in compliance with the court's directive for her to hire a substitute for her deceased counsel. Given this, respondent

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[26] *Tuason v. Court of Appeals*, 326 Phil. 169, 178-179 (1996).

[27] *Azucena v. Foreign Manpower Services,* G.R. No. 147955, October 25, 2004, 441 SCRA 346, 355.

[28] *Rollo,* p. 203.

cannot claim lack of knowledge of the death of her former counsel, and use it as an excuse for her failure to file a motion for reconsideration or an appeal from the said DARAB Decision.

Besides, the case had been pending before the DARAB for almost five years. To recall, she filed, through counsel, her notice of appeal on July 11, 1994 and her Appeal Memorandum on November 29, 1994. Her former counsel died barely a month later (December 21, 1994). Had respondent bothered to check the status of the case, she would have discovered her counsel's demise. Parties are not expected to simply sit back and await the outcome of their case. They should be assiduous in keeping track of the status of any litigation to which they are a party. By allowing almost five years to lapse without monitoring the status of her appeal, respondent exhibited a total lack of vigilance tantamount to inexcusable negligence.

Not only did the DARAB err in granting the petition for relief from judgment, it also erred in canceling the petitioners' CLT and ordering them to vacate the property based on a finding that petitioners had abandoned the landholding.

However, contrary to petitioners' posture, the issuance of a CLT does not vest full ownership in the holder.[29] The issuance of the CLT does not sever the tenancy relationship between the landowner and the tenant-farmer. A certificate of land transfer merely evinces that the grantee thereof is qualified to avail himself of the statutory mechanism for the acquisition of ownership of the land tilled by him as provided under P.D. No. 27. It is not a muniment of title that vests in the farmer/grantee absolute ownership of his tillage.[30] It is only after compliance with the conditions which entitle a farmer/grantee to an emancipation patent that he acquires the vested right of absolute ownership in the landholding—a right which then would have

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[29] *Planters Development Bank v. Garcia*, G.R. No. 147081, December 9, 2005, 477 SCRA 185, 199; *Vinzons-Magana v. Estrella*, G.R. No. 60269, September 13, 1991, 201 SCRA 536, 540.

[30] *Martillano v. Court of Appeals*, G.R. No. 148277, June 29, 2004, 433 SCRA 195, 203-204.

become fixed and established, and no longer open to doubt or controversy.[31]

For this reason, the landowner retains an interest over the property that gives him the right to file the necessary action to evict the tenant from the landholding should there be an abandonment despite the fact that land acquired under P.D. No. 27 will not revert to the landowner.[32]

Nonetheless, we agree with petitioners that they have not abandoned the subject landholding, as in fact they have continuously cultivated the property. Abandonment requires (a) a clear and absolute intention to renounce a right or claim or to desert a right or property; and (b) an external act by which that intention is expressed or carried into effect. The intention to abandon implies a departure, with the avowed intent of never returning, resuming or claiming the right and the interest that have been abandoned.[33] The immigration of the original farmer-beneficiary to the U.S.A. did not necessarily result in the abandonment of the landholding, considering that one of his sons, petitioner Renato dela Cruz, continued cultivating the land. Personal cultivation, as required by law, includes cultivation of the land by the tenant (lessee) himself or with the aid of the immediate farm household, which refers to the members of the family of the tenant and other persons who are dependent upon him for support and who usually help him in the [agricultural] activities.[34]

Without doubt, the landowner's right of retention may be exercised over tenanted land despite the issuance of a CLT to farmer-beneficiaries.[35] However, the cancellation of a CLT

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[31] *Pagtalunan v. Tamayo,* G.R. No. 54281, March 19, 1990, 183 SCRA 252, 259.

[32] See *Estolas v. Mabalot,* 431 Phil. 462, 469 (2002).

[33] *Corpuz v. Grospe,* 388 Phil. 1100, 1111 (2000).

[34] *Verde v. Macapagal,* G.R. No. 151342, June 23, 2005, 461 SCRA 97, 106-107; *Romero v. Tan,* 468 Phil. 224, 238 (2004); *Palele v. Court of Appeals,* 414 Phil. 417, 429 (2001).

[35] *Daez v. Court of Appeals,* 382 Phil. 742, 754 (2000).

over the subject landholding as a necessary consequence of the landowner's exercise of his right of retention is within the jurisdiction of the DAR Secretary, not the DARAB, as it does not involve an agrarian dispute.[36]

Under Section 1(g), Rule II of the then DARAB Rules of Procedure,[37] matters involving strictly the administrative implementation of agrarian laws shall be the exclusive prerogative of and cognizable by the Secretary of the DAR. Although Section 1(f) of the said Rules provides that the DARAB shall have jurisdiction over cases involving the issuance of a CLT and the administrative correction thereof, it should be understood that for the DARAB to exercise jurisdiction in such cases, there must be an agrarian dispute between the landowner and the tenant.[38]

In *Tenants of the Estate of Dr. Jose Sison v. Court of Appeals*,[39] the Court sustained the authority or jurisdiction of the DAR Secretary to cancel the CLT issued to tenant-beneficiaries after the landowners' right to retain the subject landholding was upheld. The Court ruled that the issuance, recall or cancellation of certificates of land transfer falls within the

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[36] Section 3(d) of Republic Act No. 6657 defines "agrarian dispute," thus:

(d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, stewardship or, otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

[37] Repealed and/or modified by the 2003 DARAB Rules of Procedure and DAR Administrative Order No. 06-00.

[38] See *Heirs of Julian dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*, G.R. No. 162890, November 22, 2005, 475 SCRA 743, 756.

[39] G.R. No. 93045, June 29, 1992, 210 SCRA 545.

Secretary's administrative jurisdiction as implementor of P.D. No. 27.

To conclude, respondent's remedy is to raise before the DAR Secretary the matter of cancellation of petitioner's CLT as an incident of the order granting the landowners' application for retention over the said landholding. In the same forum, petitioners can raise the issue of the validity of the DAR order granting the application for retention based on their claim of denial of due process, or in a separate action specifically filed to assail the validity of the judgment. A collateral attack against a judgment is generally not allowed, unless the judgment is void upon its face or its nullity is apparent by virtue of its own recitals.[40]

But as a reminder to respondent, this tack can achieve only the cancellation of petitioner's CLT. Under Sec. 6 of R.A. No. 6657, if the area retained 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. Petitioners may not be ejected from the subject landholding even if their CLT is canceled, unless they choose to be beneficiaries of another agricultural land.

WHEREFORE, premises considered, the petition is *GRANTED*. The January 19, 2006 Decision and March 21, 2006 Resolution of the Court of Appeals are *REVERSED* and *SET ASIDE*. Consequently, the February 7, 2001 DARAB Decision granting the petition for relief from judgment is *SET ASIDE* and the July 7, 1999 DARAB Decision is *REINSTATED*.

SO ORDERED.

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

[40] *Arcelona v. Court of Appeals,* 345 Phil. 250, 264 (1997).

SECOND DIVISION

[G.R. No. 172428. November 28, 2008]

HERMAN C. CRYSTAL, LAMBERTO C. CRYSTAL, ANN GEORGIA C. SOLANTE, and DORIS C. MAGLASANG, as Heirs of Deceased SPOUSES RAYMUNDO I. CRYSTAL and DESAMPARADOS C. CRYSTAL, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; THE CREDITOR IS NOT BOUND TO ACCEPT PAYMENT OR PERFORMANCE BY A THIRD PERSON WHO HAS NO INTEREST IN THE FULFILLMENT OF THE OBLIGATION UNLESS THERE IS A STIPULATION TO THE CONTRARY. — Petitioners rely on IBAA's offer to purchase the mortgaged lot from them and to directly pay BPI out of the proceeds thereof to settle the loan. BPI's refusal to agree to such payment scheme cannot extinguish the spouses' loan obligation. In the first place, IBAA is not privy to the loan agreement or the promissory note between the spouses and BPI. Contracts, after all, take effect only between the parties, their successors in interest, heirs and assigns. Besides, under Art. 1236 of the Civil Code, the creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. We see no stipulation in the promissory note which states that a third person may fulfill the spouses' obligation. Thus, it is clear that the spouses alone bear responsibility for the same.

2. ID.; ID.; OBLIGATION; WHEN SOLIDARY. — A solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. A liability is solidary "only when the obligation expressly so states, when the law so provides or when the

nature of the obligation so requires." Thus, when the obligor undertakes to be "jointly and severally" liable, it means that the obligation is solidary, such as in this case. By stating "I/ we promise to pay, jointly and severally, to the BANK OF THE PHILIPPINE ISLANDS," the spouses agreed to be sought out and be demanded payment from, by BPI. BPI did demand payment from them, but they failed to comply with their obligation, prompting BPI's valid resort to the foreclosure of the chattel mortgage and the real estate mortgages.

3. ID.; ID.; IF SOLIDARY LIABILITY WAS INSTITUTED TO GUARANTEE A PRINCIPAL OBLIGATION, THE LAW DEEMS THE CONTRACT TO BE ONE OF SURETYSHIP; LIABILITY OF THE SURETY WITH THE PRINCIPAL IS DIRECT. — More importantly, the promissory note, wherein the spouses undertook to be solidarily liable for the principal loan, partakes the nature of a suretyship and therefore is an additional security for the loan. Thus we held in one case that if solidary liability was instituted to "guarantee" a principal obligation, the law deems the contract to be one of suretyship. And while a contract of a surety is in essence secondary only to a valid principal obligation, the surety's liability to the creditor or promisee of the principal is said to be direct, primary, and absolute; in other words, the surety is directly and equally bound with the principal. The surety therefore becomes liable for the debt or duty of another even if he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.

4. ID.; DAMAGES; MORAL DAMAGES; WHEN RECOVERABLE.— Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. Such damages, to be recoverable, must be the proximate result of a wrongful act or omission the factual basis for which is satisfactorily established by the aggrieved party. There being no wrongful or unjust act on the part of BPI in demanding payment from them and in seeking the foreclosure of the chattel and real estate mortgages, there is no lawful basis for award of damages in favor of the spouses.

5. ID.; ID.; ID.; A JURIDICAL PERSON IS GENERALLY NOT ENTITLED TO MORAL DAMAGES; GRANT OF MORAL DAMAGES TO A CORPORATION, WHEN ALLOWED. — Neither is BPI entitled to moral damages. A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. The Court of Appeals found BPI as "being famous and having gained its familiarity and respect not only in the Philippines but also in the whole world because of its good will and good reputation must protect and defend the same against any unwarranted suit such as the case at bench." In holding that BPI is entitled to moral damages, the Court of Appeals relied on the case of *People v. Manero,* wherein the Court ruled that "[i]t is only when a juridical person has a good reputation that is debased, resulting in social humiliation, that moral damages may be awarded." We do not agree with the Court of Appeals. A statement similar to that made by the Court in *Manero* can be found in the case of *Mambulao Lumber Co. v. PNB, et al.*, thus: x x x Obviously, an artificial person like herein appellant corporation cannot experience physical sufferings, mental anguish, fright, serious anxiety, wounded feelings, moral shock or social humiliation which are basis of moral damages. **A corporation may have good reputation which, if besmirched may also be a ground for the award of moral damages. x x x.** Nevertheless, in the more recent cases of *ABS-CBN Corp. v. Court of Appeals, et al.*, and *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM*), the Court held that the statements in *Manero* and *Mambulao* were mere *obiter dicta*, implying that the award of moral damages to corporations is not a hard and fast rule. Indeed, while the Court may allow the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for ***actual injury*** suffered and not to impose a penalty on the wrongdoer.

6. ID.; ID.; ID.; INSTITUTION OF A CLEARLY UNFOUNDED CIVIL SUIT NOT A GROUND FOR AN AWARD THEREOF; RATIONALE. — The spouses' complaint against BPI proved to be unfounded, but it does not automatically entitle BPI to moral damages. Although the institution of a clearly unfounded civil suit can at times be a legal justification for an award of attorney's fees, such filing, however, has almost invariably been held not to be a ground for an award of moral damages. The rationale for the rule is that the law could not have meant to impose a penalty on the right to litigate. Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff. BPI may have been inconvenienced by the suit, but we do not see how it could have possibly suffered besmirched reputation on account of the single suit alone. Hence, the award of moral damages should be deleted.

7. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; WHEN MAY BE AWARDED. — The awards of exemplary damages and attorney's fees, however, are proper. Exemplary damages, on the other hand, are imposed by way of example or correction for the public good, when the party to a contract acts in a wanton, fraudulent, oppressive or malevolent manner, while attorney's fees are allowed when exemplary damages are awarded and when the party to a suit is compelled to incur expenses to protect his interest. The spouses instituted their complaint against BPI notwithstanding the fact that they were the ones who failed to pay their obligations. Consequently, BPI was forced to litigate and defend its interest. For these reasons, BPI is entitled to the awards of exemplary damages and attorney's fees.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.

Bathan Reyes Abadiano & Associates Law Firm for respondent.

D E C I S I O N

TINGA, *J.*:

Before us is a Petition for Review[1] of the Decision[2] and Resolution[3] of the Court of Appeals dated 24 October 2005 and 31 March 2006, respectively, in CA G.R. CV No. 72886, which affirmed the 8 June 2001 decision of the Regional Trial Court, Branch 5, of Cebu City.[4]

The facts, as culled from the records, follow.

On 28 March 1978, spouses Raymundo and Desamparados Crystal obtained a ₱300,000.00 loan in behalf of the Cebu Contractors Consortium Co. (CCCC) from the Bank of the Philippine Islands-Butuan branch (BPI-Butuan). The loan was secured by a chattel mortgage on heavy equipment and machinery of CCCC. On the same date, the spouses executed in favor of BPI-Butuan a Continuing Suretyship[5] where they bound themselves as surety of CCCC in the aggregate principal sum of not exceeding ₱300,000.00. Thereafter, or on 29 March 1979, Raymundo Crystal executed a promissory note[6] for the amount of ₱300,000.00, also in favor of BPI-Butuan.

Sometime in August 1979, CCCC renewed a previous loan, this time from BPI, Cebu City branch (BPI-Cebu City). The renewal was evidenced by a promissory note[7] dated 13 August 1979, signed by the spouses in their personal capacities and as managing partners of CCCC. The promissory note states that

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[1] *Rollo,* pp. 4-21.

[2] *Id.* at 23-31. Penned by Associate Justice Vicente L. Yap. with Associate Justices Arsenio J. Magpale and Apolinario D. Bruselas, Jr. concurring.

[3] *Id.* at 48-49.

[4] CA *rollo,* pp. 41-48. Penned by Judge Ireneo Lee Gako, Jr.

[5] Records, pp. 26-29.

[6] Defendant's Folder of Exhibits, Exhibit 50.

[7] Records, p. 25.

the spouses are jointly and severally liable with CCCC. It appears that before the original loan could be granted, BPI-Cebu City required CCCC to put up a security. However, CCCC had no real property to offer as security for the loan; hence, the spouses executed a real estate mortgage[8] over their own real property on 22 September 1977.[9] On 3 October 1977, they executed another real estate mortgage over the same lot in favor of BPI-Cebu City, to secure an additional loan of ₱20,000.00 of CCCC.[10]

CCCC failed to pay its loans to both BPI-Butuan and BPI-Cebu City when they became due. CCCC, as well as the spouses, failed to pay their obligations despite demands. Thus, BPI resorted to the foreclosure of the chattel mortgage and the real estate mortgage. The foreclosure sale on the chattel mortgage was initially stalled with the issuance of a restraining order against BPI. [11] However, following BPI's compliance with the necessary requisites of extrajudicial foreclosure, the foreclosure sale on the chattel mortgage was consummated on 28 February 1988, with the proceeds amounting to ₱240,000.00 applied to the loan from BPI-Butuan which had then reached ₱707,393.90.[12] Meanwhile, on 7 July 1981, Insular Bank of Asia and America (IBAA), through its Vice-President for Legal and Corporate Affairs, offered to buy the lot subject of the two (2) real estate mortgages and to pay directly the spouses' indebtedness in exchange for the release of the mortgages. BPI rejected IBAA's offer to pay.[13]

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[8] Records, p. 10.

[9] A parcel of land identified as Lot 6098-B-2 covered by TCT NO. T-16118.

[10] Records, p. 11.

[11] In Civil Case No. 31972, the CFI of Rizal Branch CLIII issued a restraining order.

[12] *Supra* note 2.

[13] Plaintiff's Folder of Exhibits. The offer was contained in a letter dated 7 July 1981. It reads:

BPI filed a complaint for sum of money against CCCC and the spouses before the Regional Trial Court of Butuan City (RTC Butuan), seeking to recover the deficiency of the loan of CCCC and the spouses with BPI-Butuan. The trial court ruled in favor of BPI. Pursuant to the decision, BPI instituted extrajudicial foreclosure of the spouses' mortgaged property.[14]

On 10 April 1985, the spouses filed an action for *Injunction With Damages, With A Prayer For A Restraining Order and/or Writ of Preliminary Injunction*.[15] The spouses claimed that the foreclosure of the real estate mortgages is illegal because BPI should have exhausted CCCC's properties first, stressing that they are mere guarantors of the renewed loans. They also prayed that they be awarded moral and exemplary damages, attorney's fees, litigation expenses and cost of suit. Subsequently, the spouses filed an amended complaint,[16] additionally alleging that CCCC had opened and maintained a foreign currency savings account (FCSA-197) with BPI, Makati branch (BPI-Makati), and that said FCSA was used as security for a ₱450,000.00 loan also extended by BPI-Makati. The ₱450,000.00 loan was allegedly paid, and thereafter the spouses demanded the return of the FCSA passbook. BPI rejected the demand; thus, the spouses were unable to withdraw from the said account to pay for their other obligations to BPI.

Gentlemen:

We are buying that parcel of land covered by Transfer Certificate of Title No. T-16118 at present securing a loan of Cebu Contractors Consortium with you.

Please lend us the Certificate of Title so that the same can be transferred to us. Your lien will, of course, continue to be annotated upon said title even when it has already been transferred to us.

As soon as we procure the Certificate of Title in our name, we will pay directly to you the amount needed to wipe off the indebtedness of Cebu Contractors Consortium, in exchange for your release of the mortgage.

[14] Exhibits 27, 28 and 29, Defendant's Folder of Exhibits.

[15] Records, pp. 1-9.

[16] *Id.* at 43-53.

The trial court dismissed the spouses' complaint and ordered them to pay moral and exemplary damages and attorney's fees to BPI.[17] It ruled that since the spouses agreed to bind themselves jointly and severally, they are solidarily liable for the loans; hence, BPI can validly foreclose the two real estate mortgages. Moreover, being guarantors-mortgagors, the spouses are not entitled to the benefit of exhaustion. Anent the FCSA, the trial court found that CCCC originally had FCDU SA No. 197 with BPI, Dewey Boulevard branch, which was transferred to BPI-Makati as FCDU SA 76/0035, at the request of Desamparados Crystal. FCDU SA 76/0035 was thus closed, but Desamparados Crystal failed to surrender the passbook because it was lost. The transferred FCSA in BPI-Makati was the one used as security for CCCC's ₱450,000.00 loan from BPI-Makati. CCCC was no longer allowed to withdraw from FCDU SA No. 197 because it was already closed.

The spouses appealed the decision of the trial court to the Court of Appeals, but their appeal was dismissed.[18] The spouses moved for the reconsideration of the decision, but the Court of Appeals also denied their motion for reconsideration.[19] Hence, the present petition.

Before the Court, petitioners who are the heirs of the spouses argue that the failure of the spouses to pay the BPI-Cebu City loan of ₱120,000.00 was due to BPI's illegal refusal to accept payment for the loan unless the ₱300,000.00 loan from BPI-Butuan would also be paid. Consequently, in view of BPI's unjust refusal to accept payment of the BPI-Cebu City loan, the loan obligation of the spouses was extinguished, petitioners contend.

The contention has no merit. Petitioners rely on IBAA's offer to purchase the mortgaged lot from them and to directly pay BPI out of the proceeds thereof to settle the loan.[20] BPI's

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[17] RTC records, pp. 353-362.

[18] *Rollo*, pp. 23-31.

[19] *Id.* at 48-49.

[20] Exhibit "P", Plaintiff's Folder of Exhibits.

refusal to agree to such payment scheme cannot extinguish the spouses' loan obligation. In the first place, IBAA is not privy to the loan agreement or the promissory note between the spouses and BPI. Contracts, after all, take effect only between the parties, their successors in interest, heirs and assigns.[21] Besides, under Art. 1236 of the Civil Code, the creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. We see no stipulation in the promissory note which states that a third person may fulfill the spouses' obligation. Thus, it is clear that the spouses alone bear responsibility for the same.

In any event, the promissory note is the controlling repository of the obligation of the spouses. Under the promissory note, the spouses defined the parameters of their obligation as follows:

> On or before June 29, 1980 on demand, for value received, I/we promise to pay, jointly and severally, to the BANK OF THE PHILIPPINE ISLANDS, at its office in the city of Cebu Philippines, the sum of ONE HUNDRED TWENTY THOUSAND PESOS (₱120,0000.00), Philippine Currency, subject to periodic installments on the principal as follows: ₱30,000.00 quarterly amortization starting September 28, 1979. x x x [22]

A solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors.[23] A liability is solidary "only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires."[24] Thus, when the obligor undertakes to be "jointly and severally" liable, it means that the obligation is solidary,[25] such as in this case. By stating

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[21] CIVIL CODE, Art. 1311.

[22] RTC records, p. 25.

[23] *PH Credit Corp. v. Court of Appeals*, 421 Phil. 821, 832 (2001).

[24] *Inciong, Jr. v. CA*, 327 Phil. 364, 373 (1996).

[25] *International Finance Corporation v. Imperial Textile Mills, Inc.*, 15 November 2005, 475 SCRA 149.

"I/we promise to pay, jointly and severally, to the BANK OF THE PHILIPPINE ISLANDS," the spouses agreed to be sought out and be demanded payment from, by BPI. BPI did demand payment from them, but they failed to comply with their obligation, prompting BPI's valid resort to the foreclosure of the chattel mortgage and the real estate mortgages.

More importantly, the promissory note, wherein the spouses undertook to be solidarily liable for the principal loan, partakes the nature of a suretyship and therefore is an additional security for the loan. Thus we held in one case that if solidary liability was instituted to "guarantee" a principal obligation, the law deems the contract to be one of suretyship.[26] And while a contract of a surety is in essence secondary only to a valid principal obligation, the surety's liability to the creditor or promisee of the principal is said to be direct, primary, and absolute; in other words, the surety is directly and equally bound with the principal. The surety therefore becomes liable for the debt or duty of another even if he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.[27]

Petitioners contend that the Court of Appeals erred in not granting their counterclaims, considering that they suffered moral damages in view of the unjust refusal of BPI to accept the payment scheme proposed by IBAA and the allegedly unjust and illegal foreclosure of the real estate mortgages on their property.[28] Conversely, they argue that the Court of Appeals erred in awarding moral damages to BPI, which is a corporation, as well as exemplary damages, attorney's fees and expenses of litigation.[29]

We do not agree. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright,

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[26] *Id.* at 159.

[27] *Garcia, Jr. v. Court of Appeals*, G.R. No. 80201, 20 November 1990, 191 SCRA 493, 496.

[28] *Rollo*, p. 16.

[29] *Id*.

serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. [30] Such damages, to be recoverable, must be the proximate result of a wrongful act or omission the factual basis for which is satisfactorily established by the aggrieved party.[31] There being no wrongful or unjust act on the part of BPI in demanding payment from them and in seeking the foreclosure of the chattel and real estate mortgages, there is no lawful basis for award of damages in favor of the spouses.

Neither is BPI entitled to moral damages. A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock.[32] The Court of Appeals found BPI as "being famous and having gained its familiarity and respect not only in the Philippines but also in the whole world because of its good will and good reputation must protect and defend the same against any unwarranted suit such as the case at bench."[33] In holding that BPI is entitled to moral damages, the Court of Appeals relied on the case of *People v. Manero*,[34] wherein the Court ruled that "[i]t is only when a juridical person has a good reputation that is debased, resulting in social humiliation, that moral damages may be awarded."[35]

We do not agree with the Court of Appeals. A statement similar to that made by the Court in *Manero* can be found in the case of *Mambulao Lumber Co. v. PNB, et al.*,[36] thus:

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[30] *Samson, Jr. v. Bank of the Philippine Islands*, 453 Phil. 577, 583 (2003).

[31] *Expertravel and Tours, Inc. v. Court of Appeals*, 368 Phil. 444, 448 (1999).

[32] *People v. Manero, Jr.*, G.R. Nos. 86883-85, 29 January 1993, 218 SCRA 85, 96-97.

[33] *Rollo*, p. 30.

[34] G.R. Nos. 86883-85, 29 January 1993, 218 SCRA 85.

[35] *Id.* at 97.

[36] 130 Phil. 366 (1968).

x x x Obviously, an artificial person like herein appellant corporation cannot experience physical sufferings, mental anguish, fright, serious anxiety, wounded feelings, moral shock or social humiliation which are basis of moral damages. **A corporation may have good reputation which, if besmirched may also be a ground for the award of moral damages**. x x x (Emphasis supplied)

Nevertheless, in the more recent cases of *ABS-CBN Corp. v. Court of Appeals, et al.*,[37] and *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM)*,[38] the Court held that the statements in *Manero* and *Mambulao* were mere *obiter dicta*, implying that the award of moral damages to corporations is not a hard and fast rule. Indeed, while the Court may allow the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for ***actual injury*** suffered and not to impose a penalty on the wrongdoer.[39]

The spouses' complaint against BPI proved to be unfounded, but it does not automatically entitle BPI to moral damages. Although the institution of a clearly unfounded civil suit can at times be a legal justification for an award of attorney's fees, such filing, however, has almost invariably been held not to be a ground for an award of moral damages. The rationale for the rule is that the law could not have meant to impose a penalty on the right to litigate. Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff.[40] BPI may have been inconvenienced

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[37] *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499 (1999).

[38] G.R. No. 141994, 17 January 2005, 448 SCRA 413.

[39] *Development Bank of The Philippines v. Court of Appeals*, 451 Phil. 563, 587 (2003).

[40] *Expertravel and Tours, Inc. v. Court of Appeals*, 368 Phil. 444, 449-450 (1999).

by the suit, but we do not see how it could have possibly suffered besmirched reputation on account of the single suit alone. Hence, the award of moral damages should be deleted.

The awards of exemplary damages and attorney's fees, however, are proper. Exemplary damages, on the other hand, are imposed by way of example or correction for the public good, when the party to a contract acts in a wanton, fraudulent, oppressive or malevolent manner, while attorney's fees are allowed when exemplary damages are awarded and when the party to a suit is compelled to incur expenses to protect his interest.[41] The spouses instituted their complaint against BPI notwithstanding the fact that they were the ones who failed to pay their obligations. Consequently, BPI was forced to litigate and defend its interest. For these reasons, BPI is entitled to the awards of exemplary damages and attorney's fees.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals dated 24 October 2005 and 31 March 2006, respectively, are hereby *AFFIRMED*, with the MODIFICATION that the award of moral damages to Bank of the Philippine Islands is *DELETED*.

Costs against the petitioners.

SO ORDERED.

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

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[41] *Spouses Paguyo v. Astorga,* G.R. No. 130982, 16 September 2005, 470 SCRA 33, 35.

SECOND DIVISION

[G.R. No. 172584. November 28, 2008]

EDMUNDO Y. TORRES, JR. and MANUEL C. CASTELLANO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, and SAN MIGUEL CORPORATION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REINSTATEMENT; AWARD THEREOF IS SELF-EXECUTORY; RULING IN PIONEER CASE (G.R. NO. 118651, OCTOBER 16, 1997), APPLIED TO CASE AT BAR.— The Court made a complete turn-around in the *Pioneer* case and declared that henceforth, an award or order of reinstatement shall be considered self-executory, such that, after receipt of the decision or resolution ordering the employee's reinstatement, the employer has the right to choose whether to re-admit the employee to work under the same terms and conditions prevailing prior to his dismissal or to reinstate the employee in the payroll. It is clear from the foregoing that at the time the August 21, 1992 NLRC decision was promulgated, the rule commonly adhered to was for a writ of execution to be issued, either *motu proprio* or on motion of an interested party, before the employer may be compelled to admit the employee back to work or to reinstate him in the payroll, on pain of being liable for the employee's salaries. However, at the time the Court's Decision in *San Miguel Corporation v. NLRC* was promulgated on July 23, 1998, the *Pioneer* case was already the prevailing rule on the matter and should have been read into the case. Thus, upon its receipt of our July 23, 1998 Decision affirming the NLRC decision, SMC should have immediately opted either to re-admit petitioners or merely reinstate them in the payroll.

2. ID.; ID.; ID.; REINSTATEMENT OF THE PETITIONERS IN CASE AT BAR IS NO LONGER FEASIBLE. — Be that as it may, the retirement age of 60 years already attained by petitioners as early as 1989 for Edmundo Torres, Jr. and 1990 for Manuel Castellano had set in motion the provisions of SMC's Retirement Plan which, we acknowledge, is a valid management prerogative. Ultimately,

therefore, the Court of Appeals was correct in ruling that the reinstatement of petitioners is no longer feasible. SMC should accordingly take formal steps, in accordance with its Retirement Plan, to effect petitioners' retirement.

3. ID.; ID.; ID.; THE EMPLOYEE IS NOT REQUIRED TO RETURN THE SALARY WHICH HE RECEIVED DURING THE APPEAL PERIOD EVEN IF THE REINSTATEMENT ORDER WAS SUBSEQUENTLY REVERSED WITH FINALITY.— Even so, petitioners should not be compelled to return the salaries and benefits already received by them on account of the order for reinstatement adjudged by the NLRC and affirmed by the Court. In *Air Philippines Corporation v. Zamora*, we held that if an employee was reinstated during the appeal period but such reinstatement was reversed with finality, the employee is not required to reimburse whatever salary he received from the employer. Justice and equity require that we apply the same doctrine to this case.

APPEARANCES OF COUNSEL

Alfonso B. Manayon for petitioners.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

TINGA, *J.*:

Petitioners assail the Decision[1] of the Court of Appeals in CA-G.R. SP No. 77489 dated July 5, 2005, which affirmed the Decision[2] and Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000593-2000, and its Resolution[4] dated April 11, 2006, denying reconsideration.

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[1] *Rollo*, pp. 41-52; Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Sesinando E. Villon and Enrico A. Lanzanas.

[2] Dated September 12, 2001.

[3] Dated March 20, 2003.

[4] *Rollo*, pp. 53-54.

The undisputed facts are narrated by the Court of Appeals as follows:

The petitioners Edmundo Y. Torres and Manuel C. Castellano are former Regional Sales Manager and District Sales Supervisor, respectively, of private respondent San Miguel Corporation (SMC), Bacolod Beer Region, Sum-ag, Bacolod City.

The petitioners were among the many employees of the private respondent who retired from employment effective on April 15, 1984 pursuant to private respondent SMC's Retirement Plan. Believing that they were constructively forced to retire from employment and that their separation from employment was illegal, on March 14, 1984, the petitioners, along with other separated employees, filed a complaint for illegal dismissal against SMC with the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. VI, Bacolod City. The case was docketed as RAB-VI Case No. 0372-84. It was assigned to then Labor Arbiter Oscar S. Uy for the proper disposition thereof. Proceedings were conducted by the said labor arbiter.

After the petitioners and private respondent SMC had presented their evidence and position papers, the case was considered as submitted for decision.

On September 16, 1988, Labor Arbiter Oscar S. Uy rendered a Decision in RAB-VI Case No. 0372-84 dismissing all the claims of the petitioners against the respondent SMC, ratiocinating as follows:

x x x x x x x x x

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING all the claims of the complainants' against the respondent for lack of merit.
>
> SO ORDERED.

On October 21, 1988, petitioners (complainants in RAB-VI-Case No. 0372-84) appealed from the aforesaid Decision to public respondent NLRC, Fourth Division in Cebu City which, on August 21, 1992, handed down a Decision reversing in part that of the Labor Arbiter, disposing as follows:

> WHEREFORE, in view of the foregoing, the appealed Decision is hereby SET ASIDE, and another one entered declaring the complainants Gabriel Z. Abad, George A. Teddy, Jr. and Manuel

J. Chua to have been validly retired. Respondent San Miguel Corporation is hereby ordered to immediately reinstate complainants Manuel C. Castellano and Edmundo Y. Torres, Jr. to their former or equivalent positions without loss of seniority rights and to pay complainants Manuel C. Castellano the amount of ₱73,905.84 and Edmundo Y. Torres, Jr. the amount ₱108,915.00 representing their back salaries for three (3) years after deducting the sum of ₱47,954.16 and ₱75,255.00 they received as retirement pay.

SO ORDERED.

Not satisfied with the above-quoted Decision of the NLRC, private respondent SMC filed a Motion for Reconsideration, but the same was denied by the NLRC in its Resolution dated October 19, 1992. Consequently, it appealed from the same through a petition for *certiorari* to the Supreme Court which, on July 23, 1998, rendered a Decision affirming *in toto* that of the NLRC. The dispositive portion of the Supreme Court Decision reads as follows:

WHEREFORE, for lack of merit, the petition is hereby DISMISSED and the assailed Decision of the NLRC dated August 21, 1992 is affirmed in its entirety. No pronouncement as to cost.

SO ORDERED.

Subsequently, the aforesaid Decision of the Supreme Court became final and executory on March 22, 1999, as evidenced by the Entry of Judgment issued by it. So, on August 11, 1999, the petitioners filed a Motion for Execution of the Decision in their favor at the Regional Arbitration Branch VI, Bacolod City.

As a consequence, private respondent SMC partially complied with the Decision by paying the monetary awards in favor of the petitioners Torres and Castellano in the amounts of ₱108,915.00 and ₱73,905.84, respectively, representing their back salaries for three (3) years after deducting the sums of ₱75,255.00 and ₱47,954.16 that they received, respectively, from SMC as Retirement Pay.

Then, the petitioners, in an effort to cause the amendment of the 1992 NLRC Decision, filed a Motion for Computation and Satisfaction of Back Salaries, praying for the issuance of an Order directing the private respondent SMC to pay them the sums of ₱9,218,205.00 and ₱5,268,455.50 respectively, representing purportedly their back salaries

and other benefits from September 9, 1992 up to November 1999 with the corresponding prayer for the issuance of a Writ of Execution for the satisfaction thereof, invoking the Supreme Court ruling in *Pioner Texturizing Corporation v. NLRC, G.R. No. 118651, October 16, 1997,* granting full back wages to illegally dismissed employees.

On November 23, 1999, the private respondent SMC filed its Opposition to petitioners' Motion for Computation and Satisfaction of Back Salaries by arguing, among others, that the petitioners' claim has no legal basis considering that, in the final and executory Decision of public respondent NLRC, dated August 21, 1992, which was already affirmed by the Supreme Court, petitioner Castellano was merely awarded the amount of ₱73,905.84, while petitioner Torres, Jr. was awarded the mount (sic) of ₱108,915.00, representing their back salaries for three (3) years after deducting the sums of ₱47,954.16 and ₱75,255.00 respectively, that they received as retirement pay from SMC.

Surprisingly, on December 27, 1999, the Executive Labor Arbiter Oscar S. Uy, thinking that he had the corresponding authority, issued an Order granting the petitioners' Motion for Computation of Back Salaries, the dispositive portion of which reads:

> PREMISES CONSIDERED, respondent San Miguel Corporation thru its authorized agent/s and/or personnel is hereby ordered to pay complainants EDMUNDO Y. TORRES, JR. and MANUEL CASTELLANO the sum of ₱9,218,205.00 and ₱5,268,455.00 respectively within ten (10) days from receipt of this Order.
>
> SO ORDERED.

Aggrieved, private respondent SMC appealed from the aforesaid Order of the Executive Labor Arbiter to the public respondent NLRC, Fourth Division in Cebu City.

But again, on February 2, 2000, the petitioners filed another Motion to direct the private respondent SMC to comply strictly with the 1992 NLRC Decision relative to their reinstatement with the Executive Labor Arbiter granted in his Order dated March 15, 2000. The dispositive portion of the said Order reads as follows:

> PREMISES CONSIDERED, the respondent corporation is hereby ordered to pay Edmundo Y. Torres, Jr. and Manuel C. Castellano effective January 2000 their monthly basic salary

of ₱60,000.00 and ₱45,000.00 respectively, within ten (10) days after receipt hereof.

SO ORDERED.

Private respondent SMC again timely appealed from the aforecited Order to the public respondent NLRC.

On May 18, 2000, the petitioners filed with the Executive Labor Arbiter Oscar S. Uy a Motion for Execution to enforce or satisfy the latter's Order dated March 15, 2000 which the latter granted in his Order dated June 16, 2000, pursuant to which a Writ of Execution was issued at even date.

On September 12, 2001, public respondent NLRC promulgated a Decision in two appealed cases filed with it by the private respondent SMC relative to the 1999 and March 15, 2000. The dispositive portion of the said Decision reads as follows:

WHEREFORE, the questioned Orders are SET ASIDE and a new one entered declaring that complainants are NOT entitled to backwages.

SO ORDERED.

Aggrieved thereby, on October 29, 2001, the petitioners filed a Motion for Reconsideration of the said Decision. On March 20, 2003, public respondent NLRC promulgated a Resolution denying the petitioners' Motion for Reconsideration.

Not satisfied with the foregoing Decision and Resolution promulgated by the respondent NLRC, the petitioners are assailing them for having been purportedly promulgated by the said respondent with grave abuse of discretion.[5]

The Court of Appeals upheld the decision and resolution of the NLRC. According to the appellate court, although the NLRC ordered the immediate reinstatement of petitioners in its August 21, 1992 decision, the order was not self-executory because the rule decreeing an order for reinstatement immediately executory was only enunciated by the Court in its decision in *Pioneer Texturizing Corp. v. NLRC*[6] dated October 16, 1997.

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[5] *Id.* at 42-46.

[6] G.R. No. 118651, October 16, 1997, 280 SCRA 806.

Petitioners should have moved for the issuance of a writ of execution of the NLRC decision. However, petitioners only moved for the execution of the NLRC decision on August 11, 1999.

The appellate court further ruled that San Miguel Corporation's (SMC's) retirement plan, under which it has the prerogative to retire its employees after 20 years of service or upon reaching the age of 60, binds petitioners. Accordingly, petitioners may no longer be reinstated having already reached retirement age.

The appellate court denied reconsideration.

Unsurprisingly, petitioners filed the instant Petition for Review on *Certiorari*[7] dated June 1, 2006, arguing that the *Pioneer* case has a curative effect such that upon SMC's receipt of the August 21, 1992 NLRC decision on September 9, 1992, it should have informed petitioners whether it would re-admit them to work under the same terms and conditions prevailing prior to their dismissal or reinstate them in its payroll. SMC's failure to so inform them allegedly entitled them to back salaries from September 9, 1992 until they are effectively reinstated to their previous employment without loss of seniority rights. Petitioners thus came up with the amounts of ₱9,218,205.00 and ₱5,268,455.00 representing their back salaries from September 9, 1992 up to November 8, 1999 when they were reinstated in SMC's payroll.

Petitioners further aver that they have not been actually or effectively retired by SMC and are still entitled to reinstatement pursuant to the August 21, 1992 NLRC decision.

SMC, in its Comment[8] dated September 1, 2006, argues that petitioners are effectually seeking the amendment of the Court's final Decision in *San Miguel Corporation v. NLRC*[9] which effectively limited their backwages to three (3) years pursuant to the then prevailing law and jurisprudence. It insists that

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[7] *Rollo*, pp. 11-40.

[8] *Id.* at 201-217.

[9] G.R. No. 107693, July 23, 1998, 292 SCRA 13.

Republic Act No. 6715 (R.A. No. 6715), which declared the reinstatement of illegally dismissed employees to be immediately executory, has no retroactive effect and cannot benefit petitioners who were dismissed on March 14, 1984, three years before R.A. No. 6715 took effect on March 21, 1989.

The company also asserts that its retirement plan was acknowledged by this Court as a valid management prerogative. Petitioners allegedly misled the Court by their assertion that the retirement plan does not apply to them as supervisory and sales employees. What the Court clarified as applicable only to rank and file employees was the reduction of the length of service from 20 years to 15 years.

Petitioners' Reply[10] dated September 8, 2006 is a reiteration of their arguments.

Art. 223 of the Labor Code, as amended by R.A. No. 6715, provides:

> Art. 223. *Appeal*.—Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:
>
> xxx xxx xxx
>
> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.
>
> xxx xxx xxx

In its assailed decision, the Court of Appeals ruled that at the time petitioners were dismissed in 1984, R.A. No. 6715

[10] *Id.* at 219-221.

had not yet been enacted. Further, the Court's ruling in *Maranaw Hotel Resort Corp. v. NLRC,*[11] holding that in the absence of an order for the issuance of a writ of execution on the reinstatement aspect, the employer is under no legal obligation to admit its illegally dismissed employee back to work, was declared by the appellate court as still controlling.

The review of jurisprudence outlined in the *Pioneer* case easily bears out the appellate court's decision. In *Inciong v. NLRC,*[12] the Court declared that in the absence of a provision giving it retroactive effect, the amendment introduced in the aforequoted provision cannot be applied to the decision of the labor arbiter rendered three (3) months before R.A. No. 6715 had become a law. It was under this jurisprudential setting that the August 21, 1992 decision of the NLRC ordering the reinstatement of petitioners was promulgated.

In the line of cases[13] following *Inciong,* the Court consistently held that immediate reinstatement is mandated and is not stayed by the fact that the employer has appealed or posted a cash or surety bond pending appeal. However, in the *Maranaw* case, the Court declared that although the reinstatement aspect of the (labor arbiter's) decision is immediately executory, it does not follow that it is self-executory. There must be a writ of execution which may be issued *motu proprio* or on motion of an interested party.

The Court made a complete turn-around in the *Pioneer* case and declared that henceforth, an award or order of reinstatement shall be considered self-executory, such that, after receipt of the decision or resolution ordering the employee's reinstatement, the employer has the right to choose whether to re-admit the

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[11] G.R. No. 110027, November 16, 1994, 238 SCRA 190.

[12] G.R. No. 88943, May 21, 1990, 185 SCRA 651, 655.

[13] *Callanta v. NLRC,* G.R. No. 105083, August 20, 1993, 225 SCRA 526; *Zamboanga City Water District v. Buat,* G.R. No. 104389, May 27, 1994, 232 SCRA 587; *Medina v. Consolidated Broadcasting System-DZWX,* G.R. Nos. 99054-56, May 28, 1993, 222 SCRA 707 all cited in *Pioneer Texturing Corp. v. NLRC,* G.R. No. 118651, October 16, 1997, 280 SCRA 806.

employee to work under the same terms and conditions prevailing prior to his dismissal or to reinstate the employee in the payroll.

It is clear from the foregoing that at the time the August 21, 1992 NLRC decision was promulgated, the rule commonly adhered to was for a writ of execution to be issued, either *motu proprio* or on motion of an interested party, before the employer may be compelled to admit the employee back to work or to reinstate him in the payroll, on pain of being liable for the employee's salaries. However, at the time the Court's Decision in *San Miguel Corporation v. NLRC* was promulgated on July 23, 1998, the *Pioneer* case was already the prevailing rule on the matter and should have been read into the case. Thus, upon its receipt of our July 23, 1998 Decision affirming the NLRC decision, SMC should have immediately opted either to re-admit petitioners or merely reinstate them in the payroll.

Be that as it may, the retirement age of 60 years already attained by petitioners as early as 1989 for Edmundo Torres, Jr. and 1990 for Manuel Castellano had set in motion the provisions of SMC's Retirement Plan which, we acknowledge, is a valid management prerogative. Ultimately, therefore, the Court of Appeals was correct in ruling that the reinstatement of petitioners is no longer feasible. SMC should accordingly take formal steps, in accordance with its Retirement Plan, to effect petitioners' retirement.

Even so, petitioners should not be compelled to return the salaries and benefits already received by them on account of the order for reinstatement adjudged by the NLRC and affirmed by the Court. In *Air Philippines Corporation v. Zamora*,[14] we held that if an employee was reinstated during the appeal period but such reinstatement was reversed with finality, the employee is not required to reimburse whatever salary he received from the employer. Justice and equity require that we apply the same doctrine to this case.

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[14] G.R. No. 148247, August 7, 2006, 498 SCRA 59, citing *Roquero v. Philippine Airlines*, 449 Phil. 437.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 77489 dated July 5, 2005 and its Resolution dated April 11, 2006 are *AFFIRMED* with the *MODIFICATION* that petitioners are not required to refund the amounts received by them from respondent San Miguel Corporation on account of the reinstatement order of the National Labor Relations Commission as affirmed by the Court in its Decision dated July 23, 1998. No pronouncement as to costs.

SO ORDERED.

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

Velasco, Jr., concurs in the result.

THIRD DIVISION

[G.R. No. 176276. November 28, 2008]

PHILIPPINE HEALTH INSURANCE CORPORATION, *petitioner, vs.* **THE COURT OF APPEALS and CHINESE GENERAL HOSPITAL AND MEDICAL CENTER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; FINAL AND EXECUTORY; WHEN THE DISPOSITIVE PART CONTAINS A CLERICAL ERROR OR AN AMBIGUITY ARISING FROM AN INADVERTENT OMISSION, SUCH ERROR OR AMBIGUITY MAY BE CLARIFIED BY REFERENCE TO THE BODY OF THE DECISION ITSELF. — The established doctrine is that when the dispositive portion of a judgment, which has become final and executory, contains a clerical error or an ambiguity arising from an inadvertent omission, such error or ambiguity may be clarified by reference to the body of the decision itself. In *Insular*

Life Assurance Company, Ltd. v. Toyota Bel Air, the Court held: Indeed, to grasp and delve into the true intent and meaning of the decision, no specific portion thereof should be resorted to – the decision must be considered in its entirety. The Court may resort to the pleadings of the parties, its findings of facts and conclusions of law as expressed in the body of the decision to clarify any ambiguities caused by any inadvertent omission or mistake in the dispositive portion. The CA, therefore, rightly resorted to the body of the Court Decision in G.R. No. 163123.

2. ID.; ID.; ID.; THE SUPREME COURT ALLOWS THE JUDGMENT TO BE CLARIFIED BY SUPPLYING A WORD WHICH HAD BEEN INADVERTENTLY OMITTED AND WHICH, WHEN SUPPLIED, IN EFFECT CHANGED THE LITERAL IMPORT OF THE ORIGINAL PHRASEOLOGY. — In *Locsin, et al. v. Paredes*, this Court allowed a judgment which had become final and executory to be clarified by supplying a word which had been inadvertently omitted and which, when supplied, in effect changed the literal import of the original phraseology: [I]t clearly appears from the allegations of the complaint, the promissory note reproduced therein and made a part thereof, the prayer and the conclusions of fact and of law contained in the decision of the respondent judge, that the obligation contracted by the petitioners is joint and several and that the parties as well as the trial judge so understood it. Under the juridical rule that the judgment should be in accordance with the allegations, the evidence and the conclusions of fact and law, the dispositive part of the judgment under consideration should have ordered that the debt be paid severally, and in omitting the word or adverb "severally" inadvertently, said judgment became ambiguous. This ambiguity may be clarified at any time after the decision is rendered and even after it had become final (34 Corpus Juris, 235, 326). The respondent judge did not, therefore, exceed his jurisdiction in clarifying the dispositive part of the judgment by supplying the omission. Accordingly, the modification of the Resolution granting the writ of execution to include the 1998-1999 claims cannot be considered as amendment or alteration of this Court's Decision in G.R. No. 163123.

3. ID.; ID.; ID.; DELAYING TACTICS EMPLOYED BY THE LOSING PARTY TO PREVENT THE ORDERLY EXECUTION OF A JUDGMENT FRUSTRATE ALL THE EFFORTS, TIME AND EXPENDITURE OF THE COURTS. — Execution of a judgment

is the fruit and end of the suit, and is the life of the law. To frustrate it for several years by means of deception and dilatory schemes on the part of the losing litigants is to frustrate all the efforts, time and expenditure of the courts. The Court's Decision in this case became final and executory as early as 2005. After years of continuous wrangling during the execution stage, it is unfortunate that the judgment still awaits full implementation. Delaying tactics employed by the losing litigant have prevented orderly execution. It is in the interest of justice that we write finis to this litigation.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A CLEAR SHOWING OF CAPRICE AND ARBITRARINESS IN THE EXERCISE OF DISCRETION IS IMPERATIVE; GRAVE ABUSE OF DISCRETION, EXPLAINED. — Similarly, the condition that CGHMC must submit documents to support its claims is nowhere to be found in the decision of the CA and also in the final and executory decision of this Court. If that were the intention of the CA and of this Court, as contended by Philhealth, it would have said so in black and white. The deletion of such condition from the dispositive portion of the CA Resolution can hardly be considered grave abuse of discretion. The term *grave abuse of discretion*, in its juridical sense, connotes capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and hostility. The word *capricious*, usually used in tandem with the term *arbitrary*, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative. In this case, Philhealth utterly failed to demonstrate caprice or arbitrariness on the part of the CA.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Medialdea Ata Bello & Guevarra for private respondent.

D E C I S I O N

NACHURA, *J.*:

The Philippine Health Insurance Corporation (Philhealth) filed this Petition for *Certiorari* seeking to nullify the October 13, 2006[1] and November 26, 2006[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 59294.

The antecedents.

Respondent Chinese General Hospital and Medical Center (CGHMC) had been an accredited health care provider under the Philippine Medical Care Commission (Medicare). CGHMC filed Medicare claims with the Social Security System (SSS) for the medical services it rendered from 1989-1992 amounting to ₱8,102,782.10.

On February 14, 1995, Republic Act No. 7875, otherwise known as *An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for That Purpose*, was enacted; thus, all pending applications for Medicare claims, including those of CGHMC, were transferred to petitioner Philhealth. Instead of giving due course to CGHMC's claim amounting to ₱8,102,782.10, Philhealth only paid ₱1,365,556.32 for the 1989-1992 claim.

CGHMC again filed claims for medical services with the Claims Review Unit of Philhealth, this time covering the period 1998-1999, amounting to ₱7,554,342.93, but they were denied on January 14, 2000, for they were filed beyond the sixty (60)-day period allowed by the implementing rules and regulations. Philhealth denied CGHMC's claims with finality on June 6, 2000.

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Rosmari D. Carandang and Monina Arevalo Zenarosa, concurring; *rollo*, 24-27.

[2] *Id.* at 30-31.

CGHMC forthwith filed a petition for review with the CA, docketed as CA-G.R. SP No. 59294. On March 29, 2004, the CA granted the petition and ordered Philhealth to pay the claims in the amount of ₱14,291,568.71. The decretal portion of the CA decision reads:

> FOR THE FOREGOING DISQUISITIONS, the petition is **GRANTED**, the Philippine Health Insurance Corporation is hereby ordered to give to [respondent's], Chinese General Hospital and Medical Center, claims for the period from 1989 to 1992, and from 1998 to 1999, amounting to FOURTEEN MILLION TWO HUNDRED NINETY-ONE THOUSAND FIVE HUNDRED SIXTY-EIGHT PESOS and 71/100 PESOS (₱14,291,568.71). No pronouncement as to costs.
>
> SO ORDERED.[3]

The above decision was affirmed by this Court on April 15, 2005 in G.R. No. 163123. Philhealth moved for reconsideration of the Decision, but this Court denied the same on July 11, 2005.

To satisfy the judgment, CGHMC filed a Motion for Execution of the decision with the CA, which was granted in its July 12, 2006 Resolution, *viz.*:

> WHEREFORE, the motion for execution is hereby **GRANTED**. [Philhealth] is hereby ordered to pay [CGHMC's] claims for the period from 1989 to 1992, and from 1998-1999, amounting to FOURTEEN MILLION TWO HUNDRED NINETY-ONE THOUSAND FIVE HUNDRED SIXTY-EIGHT PESOS and 71/100 (₱14,291,568.71), upon the latter's submission of the pertinent documents necessary for the processing of the payments.
>
> SO ORDERED.[4]

CGHMC moved for partial reconsideration of the CA Resolution arguing that this Court's Decision in G.R. No. 163123 did not impose any condition for entitlement to payment from Philhealth.

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[3] *Rollo,* p. 46.

[4] *Id.* at 95.

On October 13, 2006, the CA granted CGHMC's motion for partial reconsideration, *viz.*:

> ACCORDINGLY, the decretal portion of our Resolution dated July 12, 2006 is hereby MODIFIED to read as follows:
>
> > WHEREFORE, the motion for execution is hereby GRANTED. [Philhealth] is hereby ordered to pay [CGHMC's] claim for the period from 1989 to 1992, and from 1998-1999, amounting to FOURTEEN MILLION TWO HUNDRED NINETY-ONE THOUSAND FIVE HUNDRED SIXTY-EIGHT PESOS and 71/100 (₱14,291,568.71).
> >
> > SO ORDERED.
>
> SO ORDERED.[5]

Petitioner moved for the reconsideration of the CA Resolution, but the same was denied on November 27, 2006.

Hence, this petition for *certiorari*.

Philhealth vehemently ascribes legal error and grave abuse to the CA for ordering payment of claims for 1998-1999 or the determined amount of ₱14,291,568.71. It stresses that the dispositive portion of this Court's Decision in G.R. No. 163123 did not order the payment of claims from 1998-1999. By issuing the assailed Resolutions, the CA, in effect, modified a final and executory judgment. Petitioner submits that under the doctrine of finality of judgment, as pronounced by this Court in several cases, a final and executory decision can no longer be amended or corrected. Hence, it was a grave error of law on the part of the appellate court to sustain CGHMC's posture.

The petition lacks merit.

Admittedly, the dispositive portion of this Court's Decision in G.R. No. 163123 omitted the claims for 1998-1999. The decretal portion of the Decision reads:

> WHEREFORE, the assailed decision of the Court of Appeals is hereby **AFFIRMED**. Petitioner is hereby ordered to pay respondent's

[5] *Id.* at 26.

claims representing services rendered to its members from 1989 to 1992.

No costs.

SO ORDERED.[6]

The omission to explicitly order the payment of services rendered from 1998-1999 in the dispositive portion of this Court's Decision does not perforce mean that the services rendered by CGHMC from 1998-1999 would not be paid.

We note that among the claims which Philhealth must settle with CGHMC are those that cover the period 1989-1992 and 1998-1999 with an aggregate amount of ₱14,291,568.78. In fact, the CA decision in CA-G.R. SP No. 59294, which was affirmed by this Court in G.R. No. 163123, clearly states that Philhealth is liable to pay CGHMC's claims from 1989–1992 and 1998-1999 amounting to ₱14,291,568.78.

As aptly found by the CA in its Resolution dated July 12, 2006:

> The exclusion or deletion of the period "from 1998-1999" in the dispositive portion is obviously a typographical error. This is evidenced by the fact that when the Supreme Court quoted the *fallo* or dispositive portion of the Court of Appeals in the beginning of the decision, it already omitted "and from 1998-1999." Besides, we see no logic or reason why the claims for the period from 1998-1999 should be deleted or excluded.
>
> Undeniably, thus, the Supreme Court's decision covers both the period 1989-1992 and from 1998-1999.[7]

The established doctrine is that when the dispositive portion of a judgment, which has become final and executory, contains a clerical error or an ambiguity arising from an inadvertent omission, such error or ambiguity may be clarified by reference to the body of the decision itself.[8]

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[6] *Id.* at 66-67.

[7] *Id.* at 94-95.

[8] *Castelo v. Court of Appeals,* 314 Phil. 1 (1995).

In *Insular Life Assurance Company, Ltd. v. Toyota Bel Air*,[9] the Court held:

> Indeed, to grasp and delve into the true intent and meaning of the decision, no specific portion thereof should be resorted to – the decision must be considered in its entirety. The Court may resort to the pleadings of the parties, its findings of facts and conclusions of law as expressed in the body of the decision to clarify any ambiguities caused by any inadvertent omission or mistake in the dispositive portion.

The CA, therefore, rightly resorted to the body of the Court Decision in G.R. No. 163123.

In *Locsin, et al. v. Paredes*,[10] this Court allowed a judgment which had become final and executory to be clarified by supplying a word which had been inadvertently omitted and which, when supplied, in effect changed the literal import of the original phraseology:

> [I]t clearly appears from the allegations of the complaint, the promissory note reproduced therein and made a part thereof, the prayer and the conclusions of fact and of law contained in the decision of the respondent judge, that the obligation contracted by the petitioners is joint and several and that the parties as well as the trial judge so understood it. Under the juridical rule that the judgment should be in accordance with the allegations, the evidence and the conclusions of fact and law, the dispositive part of the judgment under consideration should have ordered that the debt be paid severally, and in omitting the word or adverb "severally" inadvertently, said judgment became ambiguous. This ambiguity may be clarified at any time after the decision is rendered and even after it had become final (34 Corpus Juris, 235, 326). The respondent judge did not, therefore, exceed his jurisdiction in clarifying the dispositive part of the judgment by supplying the omission.[11]

Accordingly, the modification of the Resolution granting the writ of execution to include the 1998-1999 claims cannot be considered as amendment or alteration of this Court's Decision in G.R. No. 163123.

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[9] G.R. No. 137884, March 28, 2008, 550 SCRA 70, 86.

[10] 63 Phil. 87 (1963).

[11] *Supra*.

Similarly, the condition that CGHMC must submit documents to support its claims is nowhere to be found in the decision of the CA and also in the final and executory decision of this Court. If that were the intention of the CA and of this Court, as contended by Philhealth, it would have said so in black and white. The deletion of such condition from the dispositive portion of the CA Resolution can hardly be considered grave abuse of discretion.

The term *grave abuse of discretion*, in its juridical sense, connotes capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and hostility. The word *capricious*, usually used in tandem with the term *arbitrary*, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of *certiorari*, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative.[12] In this case, Philhealth utterly failed to demonstrate caprice or arbitrariness on the part of the CA.

Execution of a judgment is the fruit and end of the suit, and is the life of the law. To frustrate it for several years by means of deception and dilatory schemes on the part of the losing litigants is to frustrate all the efforts, time and expenditure of the courts.[13] The Court's Decision in this case became final and executory as early as 2005. After years of continuous wrangling during the execution stage, it is unfortunate that the judgment still awaits full implementation. Delaying tactics employed by the losing litigant have prevented orderly execution. It is in the interest of justice that we write finis to this litigation.[14]

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[12] *Torres v. Abundo*, G.R. No. 174263, January 24, 2007, 512 SCRA 556.

[13] *Ramnani v. Court of Appeals*, G.R. Nos. 85494, 85496 & 195071, July 10, 2001, 360 SCRA 645.

[14] *Ramnani v. Court of Appeals*, 413 Phil. 194, 199 (2001).

WHEREFORE, the petition is *DISMISSED*. The assailed Resolutions of the Court of Appeals in CA-G.R. SP. No. 59294 are *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 177353. November 28, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PANCHO ENTRIALGO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; IMPOSABLE PENALTY; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — We affirm appellant's guilt and the penalties and civil liabilities imposed on him. With regard to Criminal Case No. 16095, in view of Section 2 of RA 9346, appellant is sentenced to *reclusion perpetua* without eligibility for parole. Conformably with present jurisprudence, he is also ordered to pay the heirs of Benjamin ₱75,000 as civil indemnity *ex delicto*. He is further ordered to pay ₱50,000 as moral damages, as these are warranted under the circumstances. In cases of violent death, moral damages are awarded even in the absence of proof because an untimely death invariably brings about emotional pain and anguish on the part of the victim's family.

2. ID.; HOMICIDE; IMPOSABLE PENALTY; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — With regard to Criminal Case No. 16096, appellant is sentenced to suffer indeterminate imprisonment from a minimum of 12 years of *prision mayor* in its maximum period to a maximum of 20 years of *reclusion temporal* in its maximum period. Moreover, to conform with recent jurisprudence, appellant is ordered to pay the heirs of Avelina ₱50,000 as moral damages.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CORONA, *J.*:

On August 14, 2000, appellant Pancho Entrialgo was charged with two counts of murder[1] in the Regional Trial Court (RTC) of Puerto Princesa City, Branch 49[2] under the following information:

Criminal Case No. 16095

That on or about the 30th day of July, 2000 at about 8:20 in the evening of [Brgy.] Sta Cruz, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, [appellant] with intent to kill with treachery, evident premeditation, grave abuse of superior strength and taking advantage of nighttime and while armed with a bolo, did then and there willfully, unlawfully and feloniously assault, attack and hack therewith one Benjamin Tabang, hitting him and inflicting upon him mortal wounds at the different parts of his body, which were the direct and immediate cause of his death shortly thereafter.

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[1] PENAL CODE, Art. 248 states:

Article 248. *Murder.* – Any person who, not falling with the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with aid of armed men, or employing means to weaken defense, or of means or persons to insure or afford impunity;

x x x x x x x x x

5. With evident premeditation;

x x x x x x x x x

[2] Docketed as Criminal Case Nos. 16095 and 16096 respectively.

CONTRARY TO LAW.

Criminal Case No. 16096

That on or about the 30th day of July, 2000 at about 8:20 in the evening of [Brgy.] Sta Cruz, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, [appellant] with intent to kill with treachery, evident premeditation, grave abuse of superior strength and taking advantage of nighttime and while armed with a bolo, did then and there willfully, unlawfully and feloniously assault, attack and hack therewith one Avelina M. Tabang, hitting [her] and inflicting upon [her] mortal wounds at the different parts of [her] body, which were the direct and immediate cause of his death shortly thereafter.

CONTRARY TO LAW.

Upon arraignment, the appellant pleaded not guilty.

In the absence of an eyewitness, the prosecution presented the theory that appellant had the motive to kill the victims as he in fact killed the spouses Benjamin and Avelina Tabang.

Appellant's brother-in-law, Rolly Panaligan, was the prosecution's principal witness. Rolly testified that he and appellant were both *tanods* of Barangay Sta. Cruz in Puerto Princesa City. However, appellant was dismissed by their *barangay* chairman, victim Benjamin Tabang, sometime before July 30, 2000. As a result thereof, appellant harbored ill-feelings towards Benjamin.

On the evening of July 30, 2000, Rolly met the Tabangs on his way to the *sari-sari* store. Soon thereafter, appellant (armed with a bolo) saw him and inquired about Benjamin's whereabouts. He told appellant that Benjamin was on his way to report for duty as *barangay* captain. Appellant then divulged his plan to kill Benjamin. Rolly discouraged appellant but appellant did not respond.

Later that evening, appellant went to Rolly's house and confessed that he had killed Benjamin and his wife, Avelina.

The next morning, Rolly heard about the Tabangs' death. Out of remorse, he surrendered to police authorities and executed a statement regarding the incident.

Rolly's wife (appellant's sister), Mary Ann Panaligan, corroborated the testimony of the principal witness. Mary Ann testified that appellant went to see her husband on the evening of July 30, 2000 and the two spoke in a dimly lit area. She brought an improvised light to the area but appellant told her not to light it so she went home.

Dr. Carla Vigonte was presented as an expert witness. According to Dr. Vigonte, Benjamin suffered four hacking wounds while Avelina bore three hacking wounds and two lacerated wounds. Both victims died due to multiple hacking wounds.

Appellant denied the allegations against him. According to him, he slept at around 7 p.m. on July 30, 2000 after a long day at work. He did not present any evidence to corroborate his testimony.

Weighing the testimonies of the prosecution's witnesses *vis-à-vis* appellant's uncorroborated denial, the RTC ruled that denials cannot prevail over the positive declarations of the prosecution's witnesses. Thus, it concluded that appellant killed the Tabangs but found that the qualifying circumstance of evident premeditation[3] was present only with respect to Benjamin.[4]

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[3] *People v. Biso*, 448 Phil.591, 602 (2003) and *People v. Tigle*, 465 Phil. 368, 383. (2004). In order that evident premeditation may be appreciated as a qualifying circumstance, the following must be proven by the prosecution:

(a) the time when the offender determined to commit the crime;

(b) an act manifestly indicating that the offender clung to his determination and

(c) a sufficient interval of time between the determination and execution of the crime to allow him to reflect upon the consequences of his act.

It must be established by clear and convincing evidence that the accused persistently and continuously clung to this resolution despite the lapse of sufficient time to clear their minds and overcome their determination to commit the same.

[4] It appears that the prosecution did not submit any evidence to show that appellant intentionally committed the crimes in the evening. The RTC, on the other hand, did not explain why it considered nighttime as an aggravating circumstance.

In a decision dated August 2, 2004, the RTC found appellant guilty of murder and homicide[5] for the deaths of Benjamin and Avelina, respectively.[6] Thus:

Therefore, upon a consideration of the foregoing facts and circumstances, the Court:

1. Finds [appellant] guilty beyond reasonable doubt of the crime of **Murder** in **Criminal Case No. 16095**, and taking into consideration the presence of aggravating circumstance of nighttime, there being no mitigating circumstance, is meted the penalty of **death** and is ordered to pay by way of civil indemnity the heirs of the victim in the amount of **seventy-five thousand pesos** (**₱75,000**).

2. Finds [appellant] guilty beyond reasonable doubt of the crime of **Homicide** in **Criminal Case No. 16096**, taking into consideration the presence of the aggravating circumstance of nighttime, there being no mitigating circumstance of, is meted the penalty of **imprisonment for seventeen** (**17**) **years**, **four** (**4**) **months and one day to twenty years** and is directed to pay the heirs of the victim by way of civil indemnity the amount of **fifty thousand pesos** (**₱50,000**).

The City Warden of Puerto Princesa City is hereby directed to immediately bring and commit [appellant] to the National Penetentiary in Muntinlupa City.

SO ORDERED.

The Court of Appeals (CA), on intermediate appellate review,[7] affirmed the findings and the ruling of the RTC *in toto*.[8]

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[5] PENAL CODE, Art. 249 states:

Article 249. *Homicide.*—Any person who, not falling within the provisions of Article 246, shall kill another **without the attendance of any of the circumstances enumerated in the next preceding article**, shall be deemed guilty of homicide and be punished by *reclusion temporal.* (emphasis supplied)

[6] Decision penned by Judge Panfilo S. Salva. CA *rollo*, pp. 25-31.

[7] Docketed as CA-G.R. CR HC No. 00391.

[8] Decision penned by Associate Justice Portio Aliño-Hormachuelos and concurred in by Associate Justices Amelita G. Tolentino and Santiago Javier Ranada of the Fourth Division of the Court of Appeals. *Rollo,* pp. 2-16.

We affirm appellant's guilt and the penalties and civil liabilities imposed on him.

With regard to Criminal Case No. 16095, in view of Section 2 of RA 9346,[9] appellant is sentenced to *reclusion perpetua* without eligibility for parole. Conformably with present jurisprudence, he is also ordered to pay the heirs of Benjamin ₱75,000 as civil indemnity *ex delicto*.[10] He is further ordered to pay ₱50,000 as moral damages, as these are warranted under the circumstances. In cases of violent death, moral damages are awarded even in the absence of proof because an untimely death invariably brings about emotional pain and anguish on the part of the victim's family.[11]

With regard to Criminal Case No. 16096, appellant is sentenced to suffer indeterminate imprisonment from a minimum of 12 years of *prision mayor* in its maximum period to a maximum of 20 years of *reclusion temporal* in its maximum period.[12] Moreover, to conform with recent jurisprudence, appellant is ordered to pay the heirs of Avelina ₱50,000 as moral damages.[13]

WHEREFORE, the June 30, 2006 decision of the Court of Appeals in CA-G.R. CR HC No. 00391 is hereby *AFFIRMED*.

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[9] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[10] *People v. Tubongbanua,* G.R. No. 171271, 31 August 2006, 500 SCRA 727, 743.

[11] *People v. Mallari,* 452 Phil. 210 (2003).

[12] Under the Indeterminate Sentence Law, the maximum penalty should be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code. In the presence of an aggravating circumstance, the penalty should be imposed in its maximum period, in this case, the maximum of *reclusion temporal* (*i.e.*, 17 years, four months and one day to 20 years). The minimum term of the indeterminate penalty should be taken from the minimum period of the penalty next lower in degree (*i.e., prision mayor* in its maximum period, from 10 years and one day to 12 years.). The maximum term, on the other hand, should be taken from the maximum *of reclusion temporal*.

[13] *People v. Romero,* 447 Phil. 506, 516 (2003).

Appellant Pancho Entrialgo is found guilty of murder as defined in Article 248(5) of the Revised Penal Code in Criminal Case No. 16095 and is sentenced to *reclusion perpetua* without eligibility for parole. He is further ordered to pay the heirs of the victim Benjamin Tabang ₱75,000 as civil indemnity *ex delicto* and ₱50,000 as moral damages.

He is likewise found guilty of homicide as defined in Article 249 of the Revised Penal Code in Criminal Case No. 16096 and is sentenced to a minimum of 12 years of *prision mayor* in its maximum period to a maximum of 20 years of *reclusion temporal* in its maximum period. He is further ordered to pay the heirs of the victim Avelina M. Tabang ₱50,000 as civil indemnity *ex delicto* and ₱50,000 as moral damages.

Costs against appellant.

SO ORDERED.

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

Leonardo-de Castro, J., on official leave.

Brion, JJ., on leave.

EN BANC

[G.R. No. 179413. November 28, 2008]

PRISCILA R. JUSTIMBASTE, *petitioner, vs.* **COMMISSION ON ELECTIONS and RUSTICO B. BALDERIAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; OMNIBUS ELECTION CODE; CANCELLATION OF CERTIFICATE OF CANDIDACY; GROUND; MATERIAL MISREPRESENTATION, EXPLAINED. — Section 74 of the Omnibus Election Code (OEC) provides that the **contents of the certificate of candidacy must be true to the best of the candidate's knowledge** xxx. If the certificate contains a **material** representation which is false, Section 78 provides the procedure to challenge the same xxx. **Material** misrepresentation as a ground to deny due course or cancel a certificate of candidacy refers to the falsity of a statement required to be entered therein, as enumerated in above-quoted Section 74 of the Omnibus Election Code. Concurrent with materiality is a **deliberate intention to deceive** the electorate as to one's qualifications. Thus *Salcedo II v. Commission on Elections* reiterates: As stated in law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertained to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy. x x x Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refers to the **qualifications** for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave – to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake. x x x Aside from the

requirement of materiality, a false representation under Section 78 must consist of a "**deliberate** attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. x x x

2. ID.; CONSTITUTIONAL LAW; CITIZENSHIP; AN ILLEGITIMATE CHILD FOLLOWS THE CITIZENSHIP OF HIS MOTHER WHO IS A FILIPINO. — In private respondent's Certificate of Live Birth, the entry on the date, as well as the place of marriage of private respondents' parents, reads "no data available." In his brother's Certificate of Live Birth, the entry on the same desired information is left blank. In light of these, absent any proof that private respondent's parents Peter Siao and Zosima Balderian contracted marriage, private respondent is presumed to be illegitimate, hence, he follows the citizenship of his mother who is a Filipino. As will be reflected shortly, private respondent was, in a certified true copy of a decision dated August 26, 1976 rendered by then Juvenile and Domestic Relations Court (JDRC) of Leyte and Southern Leyte, therein noted, as gathered by the said court from the evidence presented, to be an illegitimate child.

3. ID.; ELECTIONS; OMNIBUS ELECTION CODE; CANCELLATION OF CERTIFICATE OF CANDIDACY; THE USE OF A NAME OTHER THAN THAT STATED IN THE CERTIFICATE OF BIRTH IS NOT A MATERIAL MISREPRESENTATION. — AT ALL EVENTS, the use of a name other than that stated in the certificate of birth is not a material misrepresentation, as "material misrepresentation" under the earlier-quoted Section 78 of the Omnibus Election Code refers to "qualifications for elective office." It need not be emphasized that there is no showing that there was an intent to deceive the electorate as to private respondent's identity, nor that by using his Filipino name the voting public was thereby deceived.

4. ID.; ID.; ID.; ID.; PETITION FOR DISQUALIFICATION BASED ON MATERIAL MISREPRESENTATION IN THE CERTIFICATE OF CANDIDACY IS NOT THE SAME AS AN ELECTION PROTEST. — Section 5 *vis-á-vis* Section 7 of Republic Act 6646 provides that the procedure in cases involving nuisance candidates shall apply to petitions for

> cancellation of certificate of candidacy. x x x Petitioner is reminded that a petition for disqualification based on material misrepresentation in the certificate of candidacy is different from an election protest. The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.
The Solicitor General for public respondent.
Tarcelo A. Sabarre, Jr. for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On challenge *via Certiorari* and Prohibition is the Commission on Elections (COMELEC) *en banc* Resolution of August 21, 2007[1] affirming the May 28, 2007[2] Resolution of its Second Division dismissing the petition for disqualification filed by Priscila R. Justimbaste (petitioner) against Rustico B. Balderian (private respondent).

Gathered from the records of the case are the following antecedent facts:

On April 3, 2007, petitioner filed with the Office of the Leyte Provincial Election Supervisor a petition to disqualify private respondent as a candidate for mayor of Tabontabon, Leyte during the May 14, 2007 elections. In the main, petitioner alleged:

> 2.3. That the Respondent committed **falsification** and **misinterpretation** in his application for candidacy for mayor as follows;
>
> a. That while Respondent stated in the application [that] his name is Rustico Besa Balderian, his real name is CHU TECK

[1] *Rollo*, pp. 115-117.

[2] *Id.* at 105-109.

SIAO as shown in the Certificate of Birth issued by the National Statistic Office, copy of which is hereto attached as "Annex B". (sic)

b. That the Respondent had been using as his middle name BESA, while his brother Bienvenido is using the middle name SIAO, as shown by "Annexes C and D", a copy of which [is] hereto attached, thereby confusing the public as to his identity.

c. That the Respondent is **reportedly** a U.S. citizen **or** Permanent resident of the United States and has not **reportedly** relinquished his allegiance or residence to that foreign country, thus disqualified from filing his application for Candidacy for mayor. (Emphasis and underscoring supplied)[3]

Private respondent denied petitioner's allegations, he asserting that he is a Filipino citizen.

In her Position Paper filed before the COMELEC, petitioner attached a record of private respondent's travels from 1998 to 2006, as certified by the Bureau of Immigration;[4] a photocopy of private respondent's Philippine Passport [5] issued on November 6, 2002 by the Philippine Consulate in Los Angeles which shows his nationality as a Filipino; a Certification from the National Statistics Office dated April 4, 2007 for one Rustico S. Balderian[6] and another for one Rustico B. Balderian;[7] a Certification from the Office of the Civil Registrar of Tabontabon dated March 30, 2007 as to the fact of birth of one Chu Teck Siao to Peter Siao and Zosima Balderian;[8] and a Certification from the Office of the Clerk of Court of the Regional Trial Court, Tacloban City that the records of the Petition for Change of Name of private respondent "is *(sic)* not available in the records of this office."[9]

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[3] *Id.* at 5-6.
[4] *Id.* at 48-52.
[5] *Id.* at 53.
[6] *Id.* at 74.
[7] *Id.* at 75.
[8] *Id.* at 76.
[9] *Id.* at 77.

In the meantime, private respondent won and was proclaimed as mayor of Tabontabon.

By Resolution of May 28, 2007, the Second Division of the COMELEC denied the petition for disqualification, disposing as follows:

> WHEREFORE, premises considered the instant petition for disqualification is denied and the respondent Rustico B. Balderian is considered **a Filipino, having elected to be** and is thus qualified to run as Mayor of the Municipality of Tabontabon, Leyte. (Emphasis and underscoring supplied)

As reflected early on, petitioner's Motion for Reconsideration of the COMELEC Second Division Resolution was denied by the *banc*, hence, the present petition.

The issue in the main is whether private respondent committed **material** misrepresentation and falsification in his certificate of candidacy.

Section 74 of the Omnibus Election Code (OEC) provides that the contents of the certificate of candidacy must be **true to the best of the candidate's knowledge**, thus:

> SEC. 74. ***Contents of certificate of candidacy.*** — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation assumed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and **that the facts stated in the certificate of candidacy are true to the best of his knowledge**. (Emphasis and underscoring supplied)

If the certificate contains a **material** representation which is false, Section 78 provides the procedure to challenge the same, thus:

> SEC. 78. ***Petition to deny due course to or cancel a certificate of candidacy***. – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any **material** representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing not later than fifteen days before the election. (Emphasis and underscoring supplied)

Material misrepresentation as a ground to deny due course or cancel a certificate of candidacy refers to the falsity of a statement required to be entered therein, as enumerated in above-quoted Section 74 of the Omnibus Election Code. Concurrent with materiality is a **deliberate intention to deceive** the electorate as to one's qualifications. Thus *Salcedo II v. Commission on Elections*[10] reiterates:

> As stated in law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertained to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate – the right to run for the elective post for which he filed the certificate of candidacy.[11]
>
> xxx xxx xxx
>
> Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refers to the **qualifications** for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave – to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of election laws. It could not have been the intention of

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[10] 371 Phil. 377 (1999).

[11] *Id.* at 386.

the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.[12]

xxx xxx xxx

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "**deliberate attempt** to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. x x x.[13] (Emphasis and underscoring supplied)

The pertinent provision of Republic Act No. 7160 or the Local Government Code (LGC) governing qualifications for **elective municipal officials**[14] reads:

SEC. 39. ***Qualifications.*** – (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city or province or in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any local language or dialect.

(b) Candidates for the position of governor, vice-governor or member of the sangguniang panlalawigan or mayor, vice mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty three (23) years of age on election day."

x x x (Emphasis in the original; underscoring supplied)

Petitioner asserts that private respondent committed material misrepresentation when he stated in his certificate of candidacy that he is a Filipino citizen and that his name is Rustico Besa Balderian, instead of Chu Teck Siao. Further, petitioner asserts that the immigration records of private respondent who frequently

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[12] *Id.* at 389.

[13] *Id.* at 390.

[14] *Vide* OMNIBUS ELECTION CODE, Sec. 65. *Qualifications of elective local officials*. – The qualifications for elective provincial, city, municipal and *baranggay* officials shall be those provided for in the Local Government Code.

went to the United States from 1998 up to 2006 reflected the acronyms "BB" and "RP" which petitioner takes to STAND FOR "*Balikbayan*" and "Re-entry Permit," thus showing that private respondent either harbors dual citizenship or is a permanent resident of a foreign country in contravention of Section 40 of the LGC:

> Sec. 40. ***Disqualifications***. – The following persons are disqualified from running for any elective local position:
>
> (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
> (b) Those removed from office as a result of an administrative case;
> (c) Those convicted of final judgment for violating the oath of allegiance to the Republic;
> **(d) Those with dual citizenship;**
> (e) Fugitives from justice in criminal or non-political cases here or abroad;
> **(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code**; and
> (g) The insane or feeble-minded. (Emphasis in the original and supplied)

Upon the other hand, private respondent insists on his Filipino citizenship.

Republic Act 6768[15] provides that a *balikbayan* is

1. A Filipino citizen who has been continuously out of the Philippines for a period of at least one year;
2. A Filipino overseas worker; or
3. A former Filipino citizen and his or her family, who had been naturalized in a foreign country and comes or returns to the Philippines.

[15] Entitled AN ACT INSTITUTING A BALIKBAYAN PROGRAM.

Re-entry permits are, under the Philippine Immigration Act, issued to lawful resident aliens who depart temporarily from the Philippines.[16]

The record of the case yields no concrete proof to show that private respondent, who holds a Philippine passport, falls under the third category of a *balikbayan* (former Filipino citizen).

As noted by public respondent:

> [T]he Commission (Second Division) dismissed the instant petition since the same was based on mere conjectures and surmises. Petitioner never presented clear and convincing evidence that respondent is indeed an American citizen and a permanent resident of the United States of America. (Emphasis and underscoring supplied)

As in petitioner's petition before the COMELEC, as alleged above, she, in her present Petition, is uncertain of private respondent's citizenship or resident status, *viz:*

> c. That the Respondent is **reportedly a US citizen *or* Permanent resident of the United States** and has not **reportedly** relinquished his allegiance or residence to that foreign country, thus disqualified from filing his application for Candidacy for mayor. (Emphasis, italics, and underscoring supplied)[17]

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[16] Sec 22. Any lawful resident alien about to depart temporarily from the Philippines who desires a re-entry permit may apply to the Commissioner of Immigration for such permit. If the Commissioner finds that the applicant has been lawfully admitted into the Philippines for permanent residence, he shall issue the permit which shall be valid for a period not exceeding one year except that upon application for extension and good cause therefore being shown by the applicant, it may be extended by the Commissioner for additional periods not exceeding one year each. The Commissioner shall prescribe the form of permit. Applications for the issuance or extension of permits shall be made under oath and in such form and manner, as the Commissioner shall by regulations prescribe.

The permit, upon approval of the Commissioner of Immigration, may be made good for several trips within the period of one year: Provided, however, That the holder thereof shall be required to pay the fee required under Section forty-two (a)(3) of the Act for every trip he makes. [Paragraph added pursuant to Republic Act No. 503, Sec. 8]

[17] Petition before this Court, *rollo,* p. 6.

Private respondent's notarized photocopy of his Philippine Passport[18] issued in 2002, the genuineness and authenticity of which is not disputed by petitioner, shows that he is a Filipino.

Petitioner insists, however, that private respondent is a Chinese national, following the nationality of his father, Peter Siao. There are, however, conflicting documentary records bearing on the citizenship of private respondent's father. Thus, in the Certificate of Live Birth of private respondent on file at the Local Civil Registrar of Tabontabon,[19] the father is registered as a Filipino. But in the Certificate of Live Birth of private respondent's older brother Bienvenido Balderian,[20] the father is registered as a Chinese.

In private respondent's Certificate of Live Birth, the entry on the date, as well as the place of marriage of private respondents' parents, reads "no data available." In his brother's Certificate of Live Birth, the entry on the same desired information is left blank. In light of these, absent any proof that private respondent's parents Peter Siao and Zosima Balderian[21] contracted marriage, private respondent is presumed to be illegitimate, hence, he follows the citizenship of his mother who is a Filipino.[22] As will be reflected shortly, private respondent was, in a certified true copy of a decision dated August 26, 1976 rendered by then Juvenile and Domestic Relations Court (JDRC) of Leyte and Southern Leyte, therein noted, as gathered by the said court from the evidence presented, to be an illegitimate child.

Petitioner goes on to bring attention to private respondent's filing of a petition for change of name from Chu Teck Siao to

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[18] *Id.* at 143.

[19] *Id.* at 76.

[20] *Id.* at 101.

[21] *Id.* at 85 – The verified petition for change of name filed by private respondent states that no marriage was contracted between his parents. The birth certificate of private respondent's brother bears no date of marriage of the parents.

[22] 464 Phil.151 (2004).

Rustico B. Balderian, which petition, petitioner alleges, is not reflected in the records of the National Statistics Office as shown by two Certifications from the said agency.

Responding, private respondent confirms that he indeed filed a verified petition for change of name in 1976, docketed as SP Proc. JP-0121, with the then JDRC of Leyte and Southern Leyte which rendered a decision in his favor in the same year. He adds that his previous counsel, Atty. Rufino Reyes, sought in 1986 to secure a certified true copy of the decision but no court records thereof could be found, hence, Branch 7 of the Regional Trial Court (RTC) of Palo, Leyte, "reconstituted the records" from the file copies of his counsel by Order of November 7, 1986.[23]

The Court notes that by Order of November 21, 1986, Branch 7 of the Palo RTC, after conducting a hearing, directed the issuance of a certified true copy of the judgment[24] rendered by the JDRC on August 26, 1976. The Order states:

"**When this case came on** [*sic*] **hearing this morning, Assistant Provincial Fiscal Teresita S. Lopez of Leyte who was then Clerk of Court of the JDRC of Leyte confirmed the genuineness of the file copy of the aforesaid judgment of Judge Zoila M. Redoña of the JDRC of Leyte in SP Proc. JP-0121.**

WHEREFORE, it is ordered that the clerk of this court issue a certified true copy of the aforesaid judgment in SP Proc. JP-0121 dated August 26, 1986 *(sic)* the dispositive parts of which reads –

> "Premises considered, the court hereby allows the petitioner *(sic)* for Change of Name. The petitioner henceforth shall carry the name of Rustico Balderian as prayed for."
>
> Let a copy of this decision be furnished the Civil Registrar of **McArthur,** Leyte, for him to make of record this judgment in his Civil Registry." (Emphasis and underscoring supplied)[25]

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[23] *Rollo,* p. 78.

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

[25] *Id.* at 91.

In the certified true copy of the judgment of the JDRC, the following were noted:

At the hearing petitioner presented the following exhibits: "B" – the order of the court setting the case for hearing and ordering its publication; ordering also that a copy be served upon the Office of the Sol. Gen. which was acknowledged having been received by said office on Nov. 11, 1975 as per return Registry Receipt of the court attached to page 7 of the record; "C" – the Affidavit of Publication of the Asst. Publisher of the "The Reporter" the newspaper of general circulation which the order was published, "D" – the issue of "The Reporter" dated November 12, 1975 and "D-1" – the page carried the order; "E" – issue of same newspaper dated November 19, 1975 and "E-1" – the column carrying the order; "F" – the issue of said newspaper dated November 26, 1975, and the "F-1", the column carrying the order; "G" – the certification of the Local Civil Registrar; G-1, the place of birth of petitioner; G-2, his date of birth,; G-3, the name of petitioner's father Peter Siao; G-4, and his mother's name Zosima Balderian and G-5, **the entry that petitioner is an illegitimate child**; which certification was issued on May 5, 1975 by said public official; "H" – petitioner's Baptismal Certificate; "H-1" – his date of birth; "H-2" – his place of birth; "H-3" – that his parents are Peter Siao and Zosima Balderian. Exhibit "I" –petitioner's diploma from the Manila Central University where he earned his degree of Optometry on April 6, 1975 and the name of Rustico Balderian; "J" – petitioner's official rating issued by the Commissioner of Professional Regulation Commission under the Board of Optometry issued January 13, 1976 under the name of Rustico B. Balderian; "K" – petitioner's registration License No. 3374 with the Professional Regulation Commission for the practice of Optometry; "L" – petitioner's Registration Card with the Manila Central University being enrolled in Pre-Medicine Course as of June 1976; Exhibit "M" – his registration card in the University of the East when he cross-enrolled in the College of Law for the second year 1976-1977; Exhibit "N" – Student Pilot's License No. 758109 issued by the CAA to fly fixed wings; Exhibit "O" – his Student Pilot's License No. 75SH224 issued by Civil Aeronautics Administration allowing him to fly a helicopter.

To the above school records which he earned under the name of Rustico Balderian, the name under which he was baptized and hereon known to all since he can remember, he never used the alien name of Chua Teck Siao by which he was registered. He has not been charged with any offense either criminally, civilly or administratively.

His intention in filing the petition is to avoid undergoing the same difficulty and ordeal when he takes the BAR examination and the Board examination in Medicine as he did when he took the Board Examination in Optometry. After the latter Board allowed him to take the examination upon the submission of an affidavit of two disinterested persons attesting to the fact that Chu Teck Siao and Rustico Balderian is one and the same person, he was advised to petition for Change of Name to avoid confusion.[26] (Emphasis and underscoring supplied)

That the records of the **Tabontabon** Civil Registry still show, by petitioner's allegation, that private respondent's name is Chu Teck Siao does not necessarily mean that there was no such petition for change of name and that the certified true copy of judgment thereon is spurious, especially given that, as highlighted in the above-quoted dispositive portion of the JDRC decision, it was the Civil Registrar of **McArthur**, not Tabontabon, which was ordered to be copy-furnished the decision and "to make of record [its] judgment in his Civil Registry."

AT ALL EVENTS, the use of a name other than that stated in the certificate of birth is not a material misrepresentation,[27] as "material misrepresentation" under the earlier-quoted Section 78 of the Omnibus Election Code refers to "qualifications for elective office." It need not be emphasized that there is no showing that there was an intent to deceive the electorate as to private respondent's identity, nor that by using his Filipino name the voting public was thereby deceived.

Petitioner's compilation of online articles/data on private respondent puts on view his profile as Rustico B. Balderian. Petitioner in fact has not claimed that the electorate did not know who they were voting for when they cast their ballots in favor of private respondent or that they were deceived into voting for someone else other than him. Given that private respondent and his family are members of the Colegio de Sta. Lourdes of Leyte Foundation, Inc. which operates a nursing

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[26] *Id.* at 79-81.

[27] *Supra* at *Salcedo II v. Commission on Elections.*

school in Tabontabon, it may safely be assumed that the electorate had been fully acquainted with him.

Petitioner finally assails the failure of public respondent to conduct hearings on her petition, citing *Dayo v. Commission on Elections*[28] which held that "an election protest may not be disposed of by summary judgment."[29]

Section 5 *vis-á-vis* Section 7 of Republic Act 6646[30] provides that the procedure in cases involving nuisance candidates shall apply to petitions for cancellation of certificate of candidacy.

SECTION 5. ***Procedure in Cases of Nuisance Candidates***. —

(a) A Verified petition to declare a duly registered candidate as a nuisance candidate under Section 69 of Batas Pambansa Blg. 881 shall be filed personally or through duly authorized representative with the Commission by any registered candidate for the same office within five (5) days from the last day for the filing of certificates of candidacy. Filing by mail not be allowed.

(b) Within three (3) days from the filing of the petition, the Commission shall issue summons to the respondent candidate together with a copy of the petition and its enclosures, if any.

(c) The respondent shall be given three (3) days from receipt of the summons within which to file his verified answer (not a motion to dismiss) to the petition, serving copy thereof upon the petitioner. Grounds for a motion to dismiss may be raised as a affirmative defenses.

(d) The Commission may designate any of its officials who are lawyers to hear the case and receive evidence. The proceeding shall be summary in nature. In lieu of oral testimonies, the parties may be required to submit position papers together with affidavits or counter-affidavits and other documentary evidence. The hearing officer shall immediately submit to the Commission his findings, reports, and recommendations within five (5) days from the completion of such

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[28] G.R. No. 94681, July 18, 1991, 199 SCRA 449.

[29] *Id.* at 452.

[30] AN ACT INTRODUCING ADDITIONAL REFORMS IN THE ELECTORAL SYSTEM AND FOR OTHER PURPOSES.

submission of evidence. The Commission shall render its decision within five (5) days from receipt thereof.

(e) The decision, order, or ruling of the Commission shall, after five (5) days from receipt of a copy thereof by the parties, be final and executory unless stayed by the Supreme Court.

(f) The Commission shall within twenty-four hours, through the fastest available means, disseminate its decision or the decision of the Supreme Court to the city or municipal election registrars, boards of election inspectors and the general public in the political subdivision concerned. (Underscoring supplied)

SECTION 7. ***Petition to Deny Due Course To or Cancel a Certificate of Candidacy.*** — The procedure hereinabove provided shall apply to petitions to deny due course to or cancel a certificate of candidacy as provided in Section 78 of Batas Pambansa Blg. 881. (Emphasis in the original, underscoring supplied)

Petitioner is reminded that a petition for disqualification based on material misrepresentation in the certificate of candidacy is different from an election protest. The purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate.[31]

In fine, petitioner has not shown that public respondent, in issuing the assailed Resolution, committed grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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[31] 387 Phil. 491, 511.

THIRD DIVISION

[G.R. No. 181901. November 28, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EMILIO MANCHU *alias* NONGNONG MANCHU and JOHN DOES,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION. — Direct evidence of the commission of a crime is not the only basis from which a court may draw its finding of guilt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction.

2. ID.; ID.; ID.; ID.; POSITIVE IDENTIFICATION; TYPES. — Positive identification may be provided not only by a witness actually identifying an accused as the one who perpetrated the crime but also by one who has seen the accused at the scene of the crime on or about the time of the alleged incident. As this Court explained in *Baleros, Jr. v. People*: Positive identification pertains essentially to *proof of identity* and not *per se* to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused as the offender as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually witnessed the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under condition[s] where concealment is highly probable.

If direct evidence is insisted under all circumstances, the prosecution of vicious felons who committed heinous crimes in secret or secluded places will be hard, if not well-nigh impossible, to prove. (Emphasis supplied)

3. ID.; ID.; ID.; ID.; WHEN THE CONDITIONS OF VISIBILITY ARE FAVORABLE, THE EYEWITNESS IDENTIFICATION OF ACCUSED AS THE MALEFACTOR AND THE SPECIFIC ACTS CONSTITUTING THE CRIME SHOULD BE GIVEN CREDENCE. —Enerito's testimony disproves the poor illumination claim of appellant. As aptly explained by the CA: He was able to identify accused-appellant because he is familiar with the latter's face, being the common-law husband of [his] sister and there was illumination coming from the flashlights which the three malefactors carried, kerosene lamp inside the hut and from the moon. Such luminosity, together with the familiarity of Enerito with appellant, was more than sufficient to enable him to identify the felon. When the conditions of visibility are favorable, as in this case, the eyewitness identification of appellant as the malefactor and the specific acts constituting the crime should be accepted. Likewise, it was not impossible for Enerito to have positively identified appellant because he was hiding in a place that was a mere five meters away from the crime scene. Appellant's attack on the positive identification by Enerito must, therefore, fail.

4. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO DESERVE A HIGH DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL. — It should be emphasized that the testimony of a single witness, if positive and credible, is sufficient to support a conviction even in the charge of murder. In this case, both the trial court and the appellate court found Enerito's testimony credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.

5. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME. — Appellant's lackluster

defenses of denial and alibi fail to cast doubt on the positive identification made by Enerito and the continuous chain of circumstances established by the prosecution. We have consistently held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime. They are facile to fabricate and difficult to disprove, and are thus generally rejected.

6. ID.; ID.; ALIBI; TO PROSPER, THE ACCUSED MUST PROVE NOT ONLY THAT HE WAS AT SOME OTHER PLACE AT THE TIME OF THE COMMISSION OF THE CRIME BUT ALSO IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE *LOCUS DELICTI* OR WITHIN ITS IMMEDIATE VICINITY. — For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Apart from testifying that he was fishing at Barobungdo from 5 o'clock in the afternoon until 4 o'clock in the morning the following day, appellant was unable to show that it was physically impossible for him to be at the scene of the crime.

7. ID.; ID.; CREDIBILITY OF WITNESSES; PERFECT CONGRUENCE IN THE TESTIMONIES OF THE WITNESSES REVEALS THAT THEY ARE REHEARSED WITNESSES. — Neither will the testimonies of Amador Calixto and Rolando Escala exculpate appellant from the charge against him. The testimonies of Calixto and Escala sounded so perfect that instead of inspiring belief, they become suspect. The perfect congruence in their testimonies reveals that they are rehearsed witnesses. A witness whose testimony is so perfect in all aspects, without a flaw and remembering even the minutest details which jibe beautifully with one another, lays himself or herself open to the suspicion of having been coached or having memorized statements earlier rehearsed. Further, being close friends of the appellant, their credibility is highly suspect.

8. ID.; ID.; ID.; AN AFFIRMATIVE TESTIMONY IS FAR STRONGER THAN A NEGATIVE TESTIMONY ESPECIALLY WHEN IT COMES FROM THE MOUTH OF A CREDIBLE WITNESS. — Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other,

the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. Appellant's challenge of his conviction is starkly puerile.

9. CRIMINAL LAW; MURDER; IMPOSABLE PENALTY. — The prescribed penalty for murder under Article 248 of the Revised Penal Code (RPC) is *reclusion perpetua* to death, which are indivisible penalties that do not provide for a medium period. it is, therefore, error for the RTC and the CA to declare that *reclusion perpetua* is the medium period of the imposable penalty. Article 63 of the RPC provides that when the penalty is composed of two indivisible penalties, and there are no aggravating or mitigating circumstances, the lesser penalty shall be applied. Considering that there is no mitigating or aggravating circumstance in the present case, and treachery cannot be considered as an aggravating circumstance as it was already considered as a qualifying circumstance, the lesser penalty of *reclusion perpetua* should be imposed. Accordingly, the penalty imposed by the RTC is correct, although for the wrong reason.

10. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — In murder, the grant of civil indemnity which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefore. However, the RTC and the CA erred in awarding moral and exemplary damages in one lump sum since these are distinct from each other and, hence, should be determined separately. Moral damages are awarded where the claimant experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury as a result of the felonious act. The award of exemplary damages, on the other hand, is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

NACHURA, *J.*:

On appeal is the March 13, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00198 which affirmed the decision[2] rendered by Branch 23 of the Regional Trial Court of Allen, Northern Samar, finding appellant Emilio Manchu guilty beyond reasonable doubt of murder.

In an Information[3] dated October 1, 1998, Emilio Manchu (appellant) was charged with murder committed as follows:

> That on or about the 5th day of August, 1998 at about 10:00 o'clock in the evening, more or less, at Barangay Libertad, Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with deadly weapon locally known as "*sundang*", conspiring, confederating together and mutually helping one another, with intent to kill, evident premeditation and treachery, and without any justifiable cause, did, then and there, wilfully, feloniously, attack, assault and hack one Roque Cupido with said weapon, which the herein accused had provided themselves for the purpose thereby inflicting upon said Roque Cupido wounds on his body, which wounds caused the instantaneous death of the latter.
>
> With the aggravating circumstance that the crime was committed at night time.
>
> CONTRARY TO LAW.

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[1] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring; *rollo*, pp. 4-22.

[2] CA *rollo*, pp. 16-27.

[3] *Id.* at 7.

Manchu pleaded not guilty. Trial on the merits then ensued.

The prosecution's version of the facts, as summarized by the Office of the Solicitor General (OSG), follows:

Prosecution witness Enerito Cupido, Jr. testified that he has been a resident of Brgy. Enriqueta, Lavezares, Northern Samar for around 19 years. (TSN dated June 22, 1999, pp. 2-3). Victim Roque Cupido *y* Gregorio is his eldest brother (*Id*., p. 3). He and the victim live with their parents, brothers and sisters at their residence in Purok I of said Brgy. Enriqueta (*Id*., p. 4). He knows appellant who happens to be the husband of his sister Salvacion Cupido (*Id.*, p. 4). Appellant and his wife reside at Brgy. Aguada, Rosario, Northern Samar, which is around 3 kilometers away from Purok I (*Id*., p. 5). According to the witness, appellant was very lazy and it was their sister Salvacion who earned a living for the family (*Id*., p. 5). This angered the victim, thus, prompting him to fetch her sister and take her away from appellant while the latter was not at their home (*Id*., pp. 5-6). When the victim arrived at their home, the witness heard him saying, "I took Nene because life is hard for her" (*Id*., p. 7). Salvacion stayed with her mother and small child at Libertad Proper and sometimes at their family's farm also located at Libertad (*Id*., p. 6&9). When appellant tried to fetch his wife, the victim's mother refused and this angered appellant (*Id*., p. 8). On the night of August 5, 1998, at around 10:00 o' clock in the evening, Enerito, the victim and the appellant's 6-year-old child were at their family's farm located in Brgy. Libertad (*Id*., p. 10). While Enerito was near a banana plant located around 5 arms' length from their farm house and the victim was resting inside their farm house, 3 persons arrived and witness hid himself (*Id*., pp. 10-11). Enerito clearly identified appellant as he entered the house while the latter's two other companions waited outside since there was a kerosene lamp lighted inside the house, the moon was bright and appellant's companions beamed their flashlights towards appellant (*Id*., pp. 11-13 & 16-17/ TSN dated September 28, 1999, p. 14). While appellant was inside the farm house, Enerito heard a knocking sound and appellant's companions entered the house (*Id*., p. 12). Moments later, Enerito saw the trio go out of the house carrying with them the victim to a distance around 40 meters towards the back of the farm house (*Id*., pp. 12-13/TSN dated September 28, 1999, p. 15) Appellant did not harm his (appellant's) son who was sleeping inside the house (*Id*., p. 14). Enerito cried as he was not able to do anything since the trio were (sic) armed with bolos and thereafter informed his parents

(*Id*., p. 13, TSN dated September 28, 1999, p. 13). They sought the assistance of their barangay officials at around 2:00 o' clock in the morning and they were advised to wait for the following morning as the victim was already dead (*Id*., p. 16). The following morning they found the victim's body around 40 meters away from their farm house (*Id*., pp. 14-15).[4]

Dr. Ethel Simeon, the Municipal Health Officer of Lavezares, Northern Samar, autopsied Roque. She found the cause of death to be a hacking wound secondary to hemorrhage. According to Dr. Simeon, Roque sustained a single wound beginning at the left portion of the neck almost severing the same, leaving only a portion of the skin located at the right lateral neck to hold the victim's neck in place. Such injury, she added, had been caused by a "sharp heavy object, like a bolo."[5]

Appellant's defense consisted of denial and alibi. He averred that on August 5, 1998, he was fishing at Barobungdo from 5 o'clock in the afternoon until 4 o'clock in the morning the following day. His testimony was corroborated by his alleged companions Amador Calixto and Rolando Escala.

The trial court, however, disbelieved appellant's defense and rendered a judgment of conviction, *viz.*:

> WHEREFORE, viewed in the light of the foregoing, the Court finds accused Emilio Manchu *alias* Nongnong guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code. The aggravating circumstance of nighttime being absorbed in treachery, there is then no modifying circumstances for consideration. Accused Emilio Manchu *alias* Nongnong is sentenced to suffer an indivisible penalty of *Reclusion Perpetua* which is the medium period of penalty imposable. Likewise, accused Emilio Nongnong Manchu is ordered to pay the heirs of the victim the following:
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> 1. Fifty Thousand Pesos (₱50,000.00) as indemnification for the death of the victim;

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[4] *Id.* at 97-98.

[5] TSN, April 21, 1999, pp. 5-8.

2. Fifty Thousand Pesos (₱50,000.00) for moral and exemplary damages, but without subsidiary imprisonment in case of insolvency; and

3. To pay the Costs.

The recorded detention of Emilio Nongnong Manchu is deductible in full from the penalty imposed herein.

SO ORDERED.[6]

Initially, this case was brought to this Court for review, docketed as G.R. No. 152828.

In his brief, appellant assigned the following errors allegedly committed by the trial court:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED BASED ON CIRCUMSTANTIAL EVIDENCE.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE ABSENCE OF POSITIVE IDENTIFICATION.[7]

The Office of the Solicitor General (OSG) also filed its Brief,[8] asserting that appellant's guilt of murder was proved beyond reasonable doubt.[9]

However, on November 22, 2004, the Court ordered the transfer of this case to the Court of Appeals, consistent with the ruling in *People v. Mateo*.[10]

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[6] CA *rollo*, p. 27.

[7] *Id.* at 59.

[8] *Id.* at 59-76.

[9] *Id.* at 66.

[10] *Id.* at 126.

On March 13, 2007, the Court of Appeals (CA) promulgated the assailed Decision affirming appellant's conviction. The dispositive portion of the Decision reads:

> WHEREFORE**,** this appeal is DENIED and the guilty verdict handed down by the court *a quo* is **UPHELD** in its totality.
>
> SO ORDERED.[11]

Appellant is now before the Court reiterating his contention. Both the OSG and the Public Attorney's Office (PAO), counsel for the accused, replicated the arguments in their respective briefs filed during the pendency of this case for review and prior to its transfer to the CA.

Appellant insists that both the trial court and the CA erred in convicting him of the crime charged on the basis of circumstantial evidence. Essentially, he contends that the prosecution's evidence is entirely circumstantial and does not satisfy the quantum of proof necessary for conviction.

We disagree.

At the outset, we may well emphasize that direct evidence of the commission of a crime is not the only basis from which a court may draw its finding of guilt. Established facts that form a chain of circumstances can lead the mind intuitively or impel a conscious process of reasoning towards a conviction.[12] Section 4, Rule 133 of the Rules on Evidence recognizes that circumstantial evidence is adequate for conviction, as follows:

> SEC. 4. Circumstantial evidence when sufficient. — Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
> (b) The facts from which the inferences are derived are proven; and

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[11] *Id.* at 149.

[12] *Amora v. People*, G.R. No. 154466, January 28, 2008, 542 SCRA 485, 490.

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In rendering the guilty verdict, the RTC found the following circumstances as ample proof of appellant's guilt:

1. The principal motive of the killing of Roque Cupido as testified to by Enerito Cupido, Jr. – that his elder brother Roque Cupido was instrumental in separating his sister Salvacion from Emilio Nongnong Manchu as husband and wife. Because of this incident, Emilio Nongnong Manchu has every reason to begrudge or an axe to grind against Roque Cupido.

2. That at about 10:00 o'clock in the evening of August 5, 1998, Enerito Cupido, Jr., while he was in their farm in Barangay Libertad, Lavezares, Northern Samar, [saw that] three (3) persons entered their house where his brother was sleeping. Only one person entered inside (sic) the house, the other two persons were by the door.

3. Then Enerito Cupido, Jr, heard a knocking sound and he became apprehensive. He recognized the person who first entered their house as that (sic) of his brother-in-law. He was able to recognize Nongnong Manchu through the beam of the moon as it was a moonlight (sic) [night]; and further, the three persons were carrying flashlight at that time.

4. After the knocking sound, Enerito Cupido, Jr, further testified, the two (2) persons who were staying by the door, entered inside (sic) the house and carried the dead body of his brother Roque Cupido. He recognized the object carried by the three malefactors to be that of his brother Roque because he was the only one left in the house together with his nephew when he tethered his carabaos.

5. Enerito Cupido, Jr. further observed that the cadaver of his brother Roque Cupido, Jr. (sic) was carried by the three persons behind their house at the lower portion where there was a stream, or at a distance of about forty (40) meters away from their house.

6. Enerito Cupido, Jr. was not seen by the three (3) persons as he hide (sic) behind the banana plants after tethering his carabaos. He did not follow the three persons because he was afraid as the three persons were armed with bolos.

7. After the incident, Enerito Cupido, Jr. immediately went to Barangay Enriqueta to inform his parents regarding the incident. On

the following morning of August 6, 1998, he returned back to Barangay Libertad in company with policemen and *barangay* officials. They found the dead body of Roque Cupido in the bushes, about forty (40) meters away from their house.[13]

We are in full accord with the RTC and the CA that the circumstances enumerated above sufficiently point to appellant as the author of the crime. All these established circumstances, taken together, form an unbroken chain of events that point to the culpability of appellant and to no other conclusion except his guilt.

Enerito positively identified appellant as one of the authors of the crime. Positive identification may be provided not only by a witness actually identifying an accused as the one who perpetrated the crime but also by one who has seen the accused at the scene of the crime on or about the time of the alleged incident. As this Court explained in *Baleros, Jr. v. People*:[14]

> Positive identification pertains essentially to *proof of identity* and not *per se* to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused as the offender as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually witnessed the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as when, for instance, the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence. In the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under condition[s] where concealment is highly probable. If direct evidence is insisted under all circumstances, the prosecution of vicious felons who committed heinous crimes in secret or secluded places will be hard, if not well-nigh impossible, to prove. (Emphasis supplied)

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[13] CA *rollo*, pp. 24-25.

[14] G.R. No. 138033, February 22, 2006, 483 SCRA 10, 24-25.

Appellant attempts to cast doubt on the identification made by Enerito on the ground of inadequate lighting at the *locus criminis*. He contends that the poor illumination at the crime scene made positive identification impossible or, at best, unreliable; thus, the trial court should not have accepted the identification of the appellant as one of the malefactors.

The argument does not persuade.

Enerito's testimony disproves the poor illumination claim of appellant. As aptly explained by the CA:

> He was able to identify accused-appellant because he is familiar with the latter's face, being the common-law husband of [his] sister and there was illumination coming from the flashlights which the three malefactors carried, kerosene lamp inside the hut and from the moon.[15]

Such luminosity, together with the familiarity of Enerito with appellant, was more than sufficient to enable him to identify the felon. When the conditions of visibility are favorable, as in this case, the eyewitness identification of appellant as the malefactor and the specific acts constituting the crime should be accepted.[16] Likewise, it was not impossible for Enerito to have positively identified appellant because he was hiding in a place that was a mere five meters away from the crime scene. Appellant's attack on the positive identification by Enerito must, therefore, fail.

It should be emphasized that the testimony of a single witness, if positive and credible, is sufficient to support a conviction even in the charge of murder.[17]

In this case, both the trial court and the appellate court found Enerito's testimony credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing

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[15] CA *rollo*, p. 146.

[16] *People v. Perez*, 357 Phil. 17, 31 (1998).

[17] *People of the Philippines v. Ambrosio Goleas y Limuel, et al.*, G.R. No. 181467, August 6, 2008.

that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction. In fact, in many instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, which opportunity provides him the unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not.[18]

Appellant's lackluster defenses of denial and alibi fail to cast doubt on the positive identification made by Enerito and the continuous chain of circumstances established by the prosecution. We have consistently held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime. They are facile to fabricate and difficult to disprove, and are thus generally rejected.[19]

Besides, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[20] Apart from testifying that he was fishing at Barobungdo from 5 o'clock in the afternoon until 4 o'clock in the morning the following day, appellant was unable to show that it was physically impossible for him to be at the scene of the crime.

Neither will the testimonies of Amador Calixto and Rolando Escala exculpate appellant from the charge against him. The testimonies of Calixto and Escala sounded so perfect that instead

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[18] *Lascano v. People*, G.R. No. 166241, September 7, 2007, 532 SCRA 515, 523-524.

[19] *People v. Mapalo*, G.R. No. 172608, February 6, 2007, 514 SCRA 689, 708-709.

[20] *People v. Delim*, G.R. No. 175942, September 13, 2007, 533 SCRA 366, 379.

of inspiring belief, they become suspect. The perfect congruence in their testimonies reveals that they are rehearsed witnesses.

> A witness whose testimony is so perfect in all aspects, without a flaw and remembering even the minutest details which jibe beautifully with one another, lays himself or herself open to the suspicion of having been coached or having memorized statements earlier rehearsed.[21]

Further, being close friends of the appellant, their credibility is highly suspect.

Between the categorical statements of the prosecution witness, on one hand, and the bare denial of the appellant, on the other, the former must perforce prevail. An affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.[22] Appellant's challenge of his conviction is starkly puerile.

We shall now determine the propriety of the penalties imposed by the RTC on appellant.

Appellant was *sentenced to suffer an indivisible penalty of Reclusion Perpetua*, which according to the RTC, *is the medium period of the penalty imposable*.

The prescribed penalty for murder under Article 248 of the Revised Penal Code (RPC) is *reclusion perpetua* to death, which are indivisible penalties that do not provide for a medium period. It is, therefore, error for the RTC and the CA to declare that *reclusion perpetua* is the medium period of the imposable penalty.

Article 63 of the RPC provides that when the penalty is composed of two indivisible penalties, and there are no

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[21] *People v. De la Cruz*, 408 Phil. 838, 854 (2001).

[22] *People v. Togahan*, G.R. No. 174064, June 8, 2007, 524 SCRA 557, 574.

aggravating or mitigating circumstances, the lesser penalty shall be applied. Considering that there is no mitigating or aggravating circumstance in the present case, and treachery cannot be considered as an aggravating circumstance as it was already considered as a qualifying circumstance, the lesser penalty of *reclusion perpetua* should be imposed. Accordingly, the penalty imposed by the RTC is correct, although for the wrong reason.

And now on the award of damages. The RTC and the CA granted ₱50,000.00 as civil indemnity and ₱50,000.00 as moral and exemplary damages.

We are in accord with the grant of ₱50,000.00 as civil indemnity. In murder, the grant of civil indemnity which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime and proof of the accused's responsibility therefor.[23]

However, the RTC and the CA erred in awarding moral and exemplary damages in one lump sum since these are distinct from each other and, hence, should be determined separately. Moral damages are awarded where the claimant experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury as a result of the felonious act.[24] The award of exemplary damages, on the other hand, is warranted when the commission of the offense is attended by an aggravating circumstance, whether ordinary or qualifying.[25]

Accordingly, the heirs of Roque Cupido are entitled to moral damages in the amount of ₱50,000.00. Likewise, the presence of the qualifying circumstance of treachery in the killing of the deceased justifies the award of ₱25,000.00 as exemplary damages.

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[23] *People v. Goleas, supra* note 17.

[24] *People v. Astudillo*, 449 Phil. 778, 797 (2003).

[25] *People of the Philippines v. Esperidion Balais*, G.R No. 173242, September 17, 2008.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC-No. 00198 is *AFFIRMED* with *MODIFICATION*. Appellant Emilio Manchu is found *GUILTY* beyond reasonable doubt of murder as defined in Article 284 of the Revised Penal Code. There being no aggravating or mitigating circumstance in the commission of the crime, he is hereby sentenced to suffer the penalty of *reclusion perpetua*. The appellant is ordered to pay the heirs of Roque Cupido the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. P-06-2237. December 4, 2008]

PAG-ASA G. BELTRAN, *complainant, vs.* **ROMEO MONTEROSO, Sheriff, Regional Trial Court, Branch 34, Cabadbaran, Agusan del Norte,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SHERIFF; WHEN GUILTY OF GRAVE MISCONDUCT AND DISHONESTY; PRESENT IN CASE AT BAR. — When a writ is placed in the hands of a sheriff, it is his duty to proceed with reasonable celerity and promptness to execute it in accordance with its mandates. We agree with the findings of the OCA and the investigating judge that respondent is administratively liable for not complying with the basic rule on execution. He violated Section 9, Rule 141 (now Section 10, Rule 141, Revised Rules of Court) for not preparing an estimate of expenses approved by the MCTC. He failed to submit to the same court a timely

return of the proceedings, in violation of Section 14, Rule 39. He also failed to render an accounting of expenses, and inventory of properties levied upon. Lastly, he failed to completely enforce the writs. In *De Guzman, Jr. v. Mendoza*, *Adoma v. Garcheco*, and *Tan v. Dela Cruz*, the Court has declared that lapses in procedure coupled with unlawful exaction of unauthorized fees are equivalent to grave misconduct and dishonesty. The sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering an accounting constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice. x x x It is thus crystal clear that respondent persistently disregarded the basic rules on execution. The Court accordingly holds him administratively liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service.

2. ID.; ID.; ID.; ID.; PENALTY. — Grave misconduct and dishonesty are grave offenses each punishable by dismissal on first offense under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. Conduct prejudicial to the best interest of the service is likewise a grave offense which carries the penalty of suspension for six (6) months and one (1) day to one (1) year, and dismissal on the second offense. Hence, for respondent's successive commission of serious offenses, the appropriate penalty is dismissal from the service.

3. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY. — However, in several cases, the Court has mitigated the imposable penalty for special reasons. In *Almera v. B.F. Goodrich, Philippines, Inc.*, this Court stated that where a penalty less punitive would suffice, whatever missteps may have been committed ought not to be meted a consequence so severe. The law is concerned not only with the employee but his family as well. Unemployment brings untold hardship and sorrow to those dependent on the wage-earner. We have also considered length of service in the judiciary, acknowlegment of infractions, remorse and other family circumstances, among others, in determining the proper penalty. Thus, in this case, respondent is entitled to the following mitigating circumstances: (a) his more than twenty-three (23)

years of service in the government; (b) this is only his second offense; and (c) humanitarian reasons.

R E S O L U T I O N

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

In 2001, the Third Municipal Circuit Trial Court (MCTC), Kitcharao-Jabonga, Kitcharao, 10th Judicial Region, Agusan del Norte, decided Civil Case Nos. 150 & 153,[1] for sum of money, in favor of plaintiff Pag-asa G. Beltran. On October 22, 2003, the MCTC issued the writs of execution to satisfy the monetary awards to plaintiff totaling ₱148,932.89.

However, on February 1, 2006, Beltran filed with the Office of the Court Administrator (OCA) this complaint[2] for dereliction of duty and grave misconduct against Sheriff IV Romeo Monteroso. She alleged that respondent committed acts of dishonesty and unlawful collection of money. Complainant further averred that respondent did not implement the writs of execution, in consideration of the amount of ₱1,000.00 which he received from defendant Josephine Reyes.

In his Comment, respondent did not deny that he collected from complainant the total amount of ₱900.00 without any receipt in consideration of the service of the writs. He likewise claimed that defendants have no other properties to be levied upon.

During the investigation, it was established that respondent received the writs on October 22, 2003; that on November 27, 2004, the MCTC ordered respondent to submit a report of his proceedings; on July 13, 2005 respondent was directed by Atty. Custodio Compendio, Jr., Clerk of Court, Regional Trial Court (RTC), Branch 34, Cabadbaran, Agusan del Norte, to submit a partial report to the MCTC; that in December 2006, respondent was also reminded thrice by Ms. Armelita Aguillon, Clerk of Court

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[1] *Pag-asa Gomez Beltran v. Spouses Liwelyn and Leonie Fie,* and *Pag-asa Gomez Beltran v. Spouses Pedmar and Josephine Reyes*.

[2] *Rollo,* pp. 1-4.

of the MCTC about his report; that respondent submitted his report to the investigating judge only on August 28, 2007, when the investigation was already deemed terminated.

On October 4, 2007, Executive Judge Dax G. Xenos, RTC, Cabadbaran City, submitted to the OCA his undated report[3] finding respondent sheriff guilty of neglect of duty, misconduct, and unlawful collection of money. The investigating judge recommended that an appropriate penalty be imposed on him.

In its Evaluation Report and Recommendation[4] to the Court dated February 1, 2008, the OCA recommended that:

a) Respondent Romeo Monteroso, Sheriff IV, RTC, Branch 34, Cabadbaran, Agusan Del Norte, be found guilty of Simple Neglect of Duty for the delayed implementation of the writs of execution;

b) Respondent should likewise be found guilty of Abuse of Authority for violating Section 10, Rule 141, and Section 14, Rule 39 of the Revised Rules of Court, which require a sheriff to prepare an estimate of expenses for the enforcement of a writ of execution approved by the lower court and to submit to the same court a return/report of his proceedings, respectively;

c) For both Less Grave Offenses, respondent should be meted a penalty of fine equivalent to six (6) months salary with a stern warning that a repetition of similar infraction in the future shall be dealt with more severely.

There is no dispute that since respondent's receipt of the writs on October 22, 2003, only the following properties were levied on execution:

(1) One (1) dining set made of *gemilina* wood amounting to more or less ₱500.00; and

(2) One (1) VHS player and tape.

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[3] Pp. 1-8, attached to *rollo* (A.M. No. P-06-2237).

[4] Pp. 1-6, *id*.

We cannot accept respondent's excuse that defendants have no other properties to be levied upon. It is self-serving. Besides, he failed to update the lower court of the progress of the proceedings. When a writ is placed in the hands of a sheriff, it is his duty to proceed with reasonable celerity and promptness to execute it in accordance with its mandates.[5]

We agree with the findings of the OCA and the investigating judge that respondent is administratively liable for not complying with the basic rules on execution. He violated Section 9, Rule 141 (now Section 10, Rule 141, Revised Rules of Court) for not preparing an estimate of expenses approved by the MCTC. He failed to submit to the same court a timely return of the proceedings, in violation of Section 14, Rule 39. He also failed to render an accounting of expenses, and inventory of properties levied upon. Lastly, he failed to completely enforce the writs.

In *De Guzman, Jr. v. Mendoza*,[6] *Adoma v. Garcheco*,[7] and *Tan v. Dela* Cruz,[8] the Court has declared that lapses in procedure coupled with unlawful exaction of unauthorized fees are equivalent to grave misconduct and dishonesty. The sheriff's conduct of unilaterally demanding sums of money from a party-litigant purportedly to defray expenses of execution, without obtaining the approval of the trial court for such purported expense and without rendering an accounting constitutes dishonesty and extortion and falls short of the required standards of public service. Such conduct threatens the very existence of the system of administration of justice.[9]

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[5] *Casaje v. Gatbalite*, A.M. No. P-99-1353, May 9, 2000, 331 SCRA 508.

[6] A.M. No. P-03-1693, March 17, 2005, 453 SCRA 565, 572.

[7] A.M. No. P-5-1942, January 17, 2005, 448 SCRA 299.

[8] A.M. No. P-04-1892, September 30, 2004, 439 SCRA 555, 565.

[9] *Ong v. Meregildo*, A.M. No. P-93-935, July 5, 1994, 233 SCRA 632, cited in *Bercasio v. Benito*, 341 Phil. 404 (1997), citing RULES OF COURT, Rule 141, Sec. 9.

It should be noted that in A.M. No. P-08-2461,[10] this Court found the same respondent Sheriff Monteroso guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service for failure to implement the writs of execution. The Court imposed on him the penalty of six (6) months suspension without pay.

It is thus crystal clear that respondent persistently disregarded the basic rules on execution.[11] The Court accordingly holds him administratively liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service.

Grave misconduct and dishonesty are grave offenses each punishable by dismissal on first offense under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. Conduct prejudicial to the best interest of the service is likewise a grave offense which carries the penalty of suspension for six (6) months and one (1) day to one (1) year, and dismissal on the second offense. Hence, for respondent's successive commission of serious offenses, the appropriate penalty is dismissal from the service.

However, in several cases, the Court has mitigated the imposable penalty for special reasons.[12] In *Almera v. B.F. Goodrich, Philippines, Inc.*,[13] this Court stated that where a penalty less punitive would suffice, whatever missteps may have been committed ought not to be meted a consequence so severe. The law is concerned not only with the employee but his family as well. Unemployment brings untold hardship and sorrow to those dependent on the wage-earner. We have also considered length of service in the judiciary, acknowledgment

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[10] *Bonifacio M. Cebrian v. Romeo M. Monteroso, Sheriff IV, Regional Trial Court, Branch 34, Cabadbaran, Agusan del Norte,* April 23, 2008.

[11] *De Guzman, Jr. v. Mendoza, supra.*

[12] See *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003,* A.M. No. 00-06-SC, March 16, 2004, 425 SCRA 508.

[13] 157 Phil. 110 (1974).

of infractions, remorse and other family circumstances, among others, in determining the proper penalty.[14] Thus, in this case, respondent is entitled to the following mitigating circumstances: (a) his more than twenty-three (23) years of service in the government; (b) this is only his second offense; and (c) humanitarian reasons.

Respondent's infractions are not beyond rectification. He is, therefore, given one last chance to correct his ways.[15]

ACCORDINGLY, respondent Sheriff IV Romeo Monteroso is *SUSPENDED* from office without salary and other benefits for one (1) year, with a *STERN WARNING* that another transgression of a similar nature will merit dismissal from the service.[16]

SO ORDERED.

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

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[14] *Re: Administrative Cases for Dishonesty against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division,* A.M. No. 2001-7-SC and No. 2001-8-SC, July 22, 2005, 464 SCRA 1.

[15] *Sy v. Fineza,* A.M. No. RTJ-03-1808, October 15, 2003, 413 SCRA 374.

[16] *Dropping from the Rolls, Christopher Bernard N. Ibangga, RTC, Branch 132, Makati City,* A.M. No. 04-10-589-RTC, February 11, 2005, 451 SCRA 1; *Sy v. Fineza, supra*.

FIRST DIVISION

[G.R. No. 143365. December 4, 2008]

GENEROSO SALIGUMBA, ERNESTO SALIGUMBA, and HEIRS OF SPOUSES VALERIA SALIGUMBA AND ELISEO SALIGUMBA, SR., *petitioners, vs.* **MONICA PALANOG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; REVIVAL OF JUDGMENT; NATURE THEREOF, CLARIFIED. — An action for revival of judgment is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party. It is not intended to re-open any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first judgment. An action for revival of judgment is a new and independent action, different and distinct from either the recovery of property case or the reconstitution case, wherein the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered. Revival of judgment is premised on the assumption that the decision to be revived, either by motion or by independent action, is already final and executory.

2. ID.; ID.; PARTIES; DEATH OF A PARTY; DUTY OF THE COURT TO ORDER THE LEGAL REPRESENTATIVE OR HEIR OF THE DECEASED TO APPEAR FOR THE DECEASED ARISES ONLY "UPON PROPER NOTICE." — Civil Case No. 2570 is an action for quieting of title with damages which is an action involving real property. It is an action that survives pursuant to Section 1, Rule 87 as the claim is not extinguished by the death of a party. And when a party dies in an action that survives, Section 17 of Rule 3 of the Revised Rules of Court provides for the procedure. Under the express terms of Section 17, in case of death of a party, and upon proper notice, it is the duty of the court to order the legal representative or heir of the deceased to appear for the deceased. In the instant

case, it is true that the trial court, after receiving an *informal* notice of death by the mere notation in the envelopes, failed to order the appearance of the legal representative or heir of the deceased. There was no court order for deceased's legal representative or heir to appear, nor did any such legal representative ever appear in court to be substituted for the deceased. Neither did the respondent ever procure the appointment of such legal representative, nor did the heirs ever ask to be substituted. x x x Section 17 is explicit that the duty of the court to order the legal representative or heir to appear arises only "upon proper notice." The notation "Party-Deceased" on the unserved notices could not be the "proper notice" contemplated by the rule. As the trial court could not be expected to know or take judicial notice of the death of a party without the proper manifestation from counsel, the trial court was well within its jurisdiction to proceed as it did with the case. Moreover, there is no showing that the court's proceedings were tainted with irregularities. Likewise, the plaintiff or his attorney or representative could not be expected to know of the death of the defendant if the attorney for the deceased defendant did not notify the plaintiff or his attorney of such death as required by the rules. The judge cannot be blamed for sending copies of the orders and notices to defendants spouses in the absence of proof of death or manifestation to that effect from counsel.

3. ID.; ID.; ID.; DUTY OF COUNSEL TO INFORM THE COURT OF THE DEATH OF HIS CLIENT; EFFECT OF FAILURE, EXPLAINED. — It is the duty of counsel for the deceased to inform the court of the death of his client. The failure of counsel to comply with his duty under Section 16 to inform the court of the death of his client and the non-substitution of such party will not invalidate the proceedings and the judgment thereon if the action survives the death of such party. The decision rendered shall bind the party's succcessor-in-interest. The rules operate on the presumption that the attorney for the deceased party is in a better position than the attorney for the adverse party to know about the death of his client and to inform the court of the name and address of his legal representative.

4. ID.; ATTORNEYS; WITHDRAWAL AS COUNSEL; APPROVAL BY THE COURT IS REQUIRED. — An attorney must make an application to the court to withdraw as counsel, for the relation

does not terminate formally until there is a withdrawal of record; at least, so far as the opposite party is concerned, the relation otherwise continues until the end of the litigation. Unless properly relieved, the counsel is responsible for the conduct of the case. Until his withdrawal shall have been approved, the lawyer remains counsel of record who is expected by his client as well as by the court to do what the interests of his client require. He must still appear on the date of hearing for the attorney-client relation does not terminate formally until there is a withdrawal of record.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Porferio T. Taplac for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review of the Decision dated 24 May 2000 of the Regional Trial Court, Branch 5, Kalibo, Aklan (RTC-Branch 5) in Civil Case No. 5288 for Revival of Judgment. The case is an offshoot of the action for Quieting of Title with Damages in Civil Case No. 2570.

The Facts

Monica Palanog, assisted by her husband Avelino Palanog (spouses Palanogs), filed a complaint dated 28 February 1977 for Quieting of Title with Damages against defendants, spouses Valeria Saligumba and Eliseo Saligumba, Sr. (spouses Saligumbas), before the Regional Trial Court, Branch 3, Kalibo, Aklan (RTC-Branch 3). The case was docketed as Civil Case No. 2570. In the complaint, spouses Palanogs alleged that they have been in actual, open, adverse and continuous possession as owners for more than 50 years of a parcel of land located in Solido, Nabas, Aklan. The spouses Saligumbas allegedly prevented them from entering and residing on the subject premises

and had destroyed the barbed wires enclosing the land. Spouses Palanogs prayed that they be declared the true and rightful owners of the land in question.

When the case was called for pre-trial on 22 September 1977, Atty. Edilberto Miralles (Atty. Miralles), counsel for spouses Saligumbas, verbally moved for the appointment of a commissioner to delimit the land in question. Rizalino Go, Deputy Sheriff of Aklan, was appointed commissioner and was directed to submit his report and sketch within 30 days.[1] Present during the delimitation were spouses Palanogs, spouses Saligumbas, and Ernesto Saligumba, son of spouses Saligumbas.[2]

After submission of the Commissioner's Report, spouses Palanogs, upon motion, were granted 10 days to amend their complaint to conform with the items mentioned in the report.[3]

Thereafter, trial on the merits ensued. At the hearing on 1 June 1984, only the counsel for spouses Palanogs appeared. The trial court issued an order resetting the hearing to 15 August 1984 and likewise directed spouses Saligumbas to secure the services of another counsel who should be ready on that date.[4] The order sent to Eliseo Saligumba, Sr. was returned to the court unserved with the notation "Party–Deceased" while the order sent to defendant Valeria Saligumba was returned with the notation "Party in Manila."[5]

At the hearing on 15 August 1984, spouses Palanogs' direct examination was suspended and the continuation of the hearing was set on 25 October 1984. The trial court stated that Atty. Miralles, who had not withdrawn as counsel for spouses Saligumbas despite his appointment as Municipal Circuit Trial Court judge, would be held responsible for the case of spouses

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[1] Records of Civil Case No. 2570, p. 23.

[2] *Id.* at 31, Commissioner's Report.

[3] *Id.* at 55.

[4] *Id.* at 102.

[5] *Id.* at 104-105.

Saligumbas until he formally withdrew as counsel. The trial court reminded Atty. Miralles to secure the consent of spouses Saligumbas for his withdrawal.[6] A copy of this order was sent to Valeria Saligumba but the same was returned unserved with the notation "Party in Manila."[7]

The hearing set on 25 October 1984 was reset to 25 January 1985 and the trial court directed that a copy of this order be sent to Eliseo Saligumba, Jr. at COA, PNB, Manila.[8]

The presentation of evidence for spouses Palanogs resumed on 25 January 1985 despite the motion of Atty. Miralles for postponement on the ground that his client was sick. The exhibits were admitted and plaintiffs spouses Palanogs rested their case. Reception of evidence for the defendants spouses Saligumbas was scheduled on 3, 4, and 5 June 1985.[9]

On 3 June 1985, only spouses Palanogs and counsel appeared. Upon motion of the spouses Palanogs, spouses Saligumbas were deemed to have waived the presentation of their evidence.

On 3 August 1987, after a lapse of more than two years, the trial court considered the case submitted for decision.

On 7 August 1987, RTC-Branch 3 rendered a judgment in Civil Case No. 2570 declaring spouses Palanogs the lawful owners of the subject land and ordering spouses Saligumbas, their agents, representatives and all persons acting in privity with them to vacate the premises and restore possession to spouses Palanogs.

The trial court, in a separate Order dated 7 August 1987, directed that a copy of the court's decision be furnished plaintiff Monica Palanog and defendant Valeria Saligumba.

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[6] *Id.* at 108.

[7] *Id.* at 112.

[8] *Id.* at 115.

[9] *Id.* at 119-120.

Thereafter, a motion for the issuance of a writ of execution of the said decision was filed but the trial court, in its Order dated 8 May 1997, ruled that since more than five years had elapsed after the date of its finality, the decision could no longer be executed by mere motion.

Thus, on 9 May 1997, Monica Palanog (respondent), now a widow, filed a Complaint seeking to revive and enforce the Decision dated 7 August 1987 in Civil Case No. 2570 which she claimed has not been barred by the statute of limitations. She impleaded petitioners Generoso Saligumba and Ernesto Saligumba, the heirs and children of the spouses Saligumbas, as defendants. The case was docketed as Civil Case No. 5288 before the RTC-Branch 5.

Petitioner Generoso Saligumba, for himself and in representation of his brother Ernesto who was out of the country working as a seaman, engaged the services of the Public Attorney's Office, Kalibo, Aklan which filed a motion for time to allow them to file a responsive pleading. Petitioner Generoso Saligumba filed his Answer[10] alleging that: (1) respondent had no cause of action; (2) the spouses Saligumbas died while Civil Case No. 2570 was pending and no order of substitution was issued and hence, the trial was null and void; and (3) the court did not acquire jurisdiction over the heirs of the spouses Saligumbas and therefore, the judgment was not binding on them.

Meanwhile, on 19 December 1997, the trial court granted respondent's motion to implead additional defendants namely, Eliseo Saligumba, Jr. and Eduardo Saligumba, who are also the heirs and children of spouses Saligumbas.[11] They were, however, declared in default on 1 October 1999 for failure to file any responsive pleading.[12]

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[10] Records of Civil Case No. 5288, pp. 10-12.

[11] *Id.* at 25.

[12] *Id.* at 49.

The Trial Court's Ruling

On 24 May 2000, the RTC-Branch 5 rendered a decision in favor of respondent ordering the revival of judgment in Civil Case No. 2570. The trial court ruled that the non-substitution of the deceased spouses did not have any legal significance. The land subject of Civil Case No. 2570 was the exclusive property of defendant Valeria Saligumba who inherited the same from her deceased parents. The death of her husband, Eliseo Saligumba, Sr., did not change the complexion of the ownership of the property that would require his substitution. The spouses Saligumbas' children, who are the petitioners in this case, had no right to the property while Valeria Saligumba was still alive. The trial court further found that when defendant Valeria Saligumba died, her lawyer, Atty. Miralles, did not inform the court of the death of his client. The trial court thus ruled that the non-substitution of the deceased defendant was solely due to the negligence of counsel. Moreover, petitioner Ernesto Saligumba could not feign ignorance of Civil Case No. 2570 as he was present during the delimitation of the subject land. The trial court likewise held that the decision in Civil Case No. 2570 could not be the subject of a collateral attack. There must be a direct action for the annulment of the said decision.

Petitioners elevated the matter directly to this Court. Hence, the present petition.

The Court's Ruling

The instant case is an action for revival of judgment and the judgment sought to be revived in this case is the decision in the action for quieting of title with damages in Civil Case No. 2570. This is not one for annulment of judgment.

An action for revival of judgment is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party. It is not intended to re-open any issue affecting the merits of the judgment debtor's case nor the propriety or correctness of the first

judgment.[13] An action for revival of judgment is a new and independent action, different and distinct from either the recovery of property case or the reconstitution case, wherein the cause of action is the decision itself and not the merits of the action upon which the judgment sought to be enforced is rendered.[14] Revival of judgment is premised on the assumption that the decision to be revived, either by motion or by independent action, is already final and executory.[15]

The RTC-Branch 3 Decision dated 7 August 1987 in Civil Case No. 2570 had been rendered final and executory by the lapse of time with no motion for reconsideration nor appeal having been filed. While it may be true that the judgment in Civil Case No. 2570 may be revived and its execution may be had, the issue now before us is whether or not execution of judgment can be issued against petitioners who claim that they are not bound by the RTC-Branch 3 Decision dated 7 August 1987 in Civil Case No. 2570.

Petitioners contend that the RTC-Branch 3 Decision of 7 August 1987 in Civil Case No. 2570 is null and void since there was no proper substitution of the deceased spouses Saligumbas despite the trial court's knowledge that the deceased spouses Saligumbas were no longer represented by counsel. They argue that they were deprived of due process and justice was not duly served on them.

Petitioners argue that the trial court even acknowledged the fact of death of spouses Saligumbas but justified the validity of the decision rendered in that case despite lack of substitution because of the negligence or fault of their counsel. Petitioners

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[13] *Panotes v. City Townhouse Development Corporation*, G.R. No. 154739, 23 January 2007, 512 SCRA 269; *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court*, G.R. Nos. 66059-60, 4 December 1989, 179 SCRA 728; *Azotes v. Blanco*, 85 Phil. 90 (1949).

[14] *Juco v. Heirs of Toma Siy Chung Fu*, G.R. No. 150233, 16 February 2005, 451 SCRA 464; *Santana-Cruz v. Court of Appeals*, 414 Phil. 47 (2001).

[15] *Bañares II v. Balising*, 384 Phil. 567 (2000).

contend that the duty of counsel for the deceased spouses Saligumbas to inform the court of the death of his clients and to furnish the name and address of the executor, administrator, heir or legal representative of the decedent under Rule 3 presupposes adequate or active representation by counsel. However, the relation of attorney and client was already terminated by the appointment of counsel on record, Atty. Miralles, as Municipal Circuit Trial Court judge even before the deaths of the spouses Saligumbas were known. Petitioners invoke the Order of 1 June 1984 directing the spouses Saligumbas to secure the services of another lawyer to replace Atty. Miralles. The registered mail containing that order was returned to the trial court with the notation that Eliseo Saligumba, Sr. was "deceased." Petitioners thus question the decision in Civil Case No. 2570 as being void and of no legal effect because their parents were not duly represented by counsel of record. Petitioners further argue that they have never taken part in the proceedings in Civil Case No. 2570 nor did they voluntarily appear or participate in the case. It is unfair to bind them in a decision rendered against their deceased parents. Therefore, being a void judgment, it has no legal nor binding effect on petitioners.

Civil Case No. 2570 is an action for quieting of title with damages which is an action involving real property. It is an action that survives pursuant to Section 1, Rule 87[16] as the claim is not extinguished by the death of a party. And when a party dies in an action that survives, Section 17 of Rule 3

[16] Section 1, Rule 87 of the Revised Rules of Court provides:

SECTION 1. *Actions which may and which may not be brought against executor or administrator*. — No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him.

of the Revised Rules of Court[17] provides for the procedure, thus:

Section 17. *Death of Party*. — After a party dies and the claim is not thereby extinguished, the court shall order, **upon proper notice**, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs. (Emphasis supplied)

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[17] Spouses Eliseo Saligumba, Sr. and Valeria Saligumba died before the effectivity of the 1997 Rules on Civil Procedure. Section 17, Rule 3 of the Rules of Court was amended and is now Section 16, Rule 3 of the 1997 Rules on Civil Procedure which reads:

Section 16. *Death of a party; duty of counsel*. — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

Under the express terms of Section 17, in case of death of a party, and upon proper notice, it is the duty of the court to order the legal representative or heir of the deceased to appear for the deceased. In the instant case, it is true that the trial court, after receiving an *informal* notice of death by the mere notation in the envelopes, failed to order the appearance of the legal representative or heir of the deceased. There was no court order for deceased's legal representative or heir to appear, nor did any such legal representative ever appear in court to be substituted for the deceased. Neither did the respondent ever procure the appointment of such legal representative, nor did the heirs ever ask to be substituted.

It appears that Eliseo Saligumba, Sr. died on 18 February 1984 while Valeria Saligumba died on 2 February 1985. No motion for the substitution of the spouses was filed nor an order issued for the substitution of the deceased spouses Saligumbas in Civil Case No. 2570. Atty. Miralles and petitioner Eliseo Saligumba, Jr., despite notices sent to them to appear, never confirmed the death of Eliseo Saligumba, Sr. and Valeria Saligumba. The record is bereft of any evidence proving the death of the spouses, except the mere notations in the envelopes enclosing the trial court's orders which were returned unserved.

Section 17 is explicit that the duty of the court to order the legal representative or heir to appear arises only "upon proper notice." The notation "Party-Deceased" on the unserved notices could not be the "proper notice" contemplated by the rule. As the trial court could not be expected to know or take judicial notice of the death of a party without the proper manifestation from counsel, the trial court was well within its jurisdiction to proceed as it did with the case. Moreover, there is no showing that the court's proceedings were tainted with irregularities.[18]

Likewise, the plaintiff or his attorney or representative could not be expected to know of the death of the defendant if the attorney for the deceased defendant did not notify the plaintiff

[18] *Florendo, Jr. v. Coloma*, 214 Phil. 268 (1984).

or his attorney of such death as required by the rules.[19] The judge cannot be blamed for sending copies of the orders and notices to defendants spouses in the absence of proof of death or manifestation to that effect from counsel.[20]

Section 16, Rule 3 of the Revised Rules of Court likewise expressly provides:

> SEC. 16. *Duty of attorney upon death, incapacity or incompetency of party*. — Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

It is the duty of counsel for the deceased to inform the court of the death of his client. The failure of counsel to comply with his duty under Section 16 to inform the court of the death of his client and the non-substitution of such party will not invalidate the proceedings and the judgment thereon if the action survives the death of such party. The decision rendered shall bind the party's successor-in-interest.[21]

The rules operate on the presumption that the attorney for the deceased party is in a better position than the attorney for the adverse party to know about the death of his client and to inform the court of the name and address of his legal representative.[22]

Atty. Miralles continued to represent the deceased spouses even after the latter's demise. Acting on their behalf, Atty. Miralles even asked for postponement of the hearings and did not even confirm the death of his clients nor his appointment as Municipal Circuit Trial Court judge. These clearly negate

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[19] *Republic v. Bagtas*, No. L-17474, 25 October 1962, 6 SCRA 262.

[20] *Ang Kek Chen v. Judge Andrade*, 376 Phil. 136 (1999).

[21] *Benavidez v. Court of Appeals*, 372 Phil. 615 (1999).

[22] *Heirs of Maximo Regoso v. CA*, G.R. No. 91879, 6 July 1992, 211 SCRA 348.

petitioners' contention that Atty. Miralles ceased to be spouses Saligumbas' counsel.

Atty. Miralles still remained the counsel of the spouses Saligumbas despite the alleged appointment as judge. Records show that when Civil Case No. 2570 was called for trial on 25 October 1984, Atty. Miralles appeared and moved for a postponement. The 25 October 1984 Order reads:

O R D E R

Upon petition of Judge Miralles who is still the counsel on record of this case and who is held responsible for anything that will happen in this case, postpone the hearing of this case to JANUARY 25, 1985 AT 8:30 in the morning. x x x[23]

The trial court issued an Order dated 1 June 1984 directing the defendants to secure the services of another counsel. This order was sent to Eliseo Saligumba, Sr. by registered mail but the same was returned with the notation "Party-Deceased" while the notice to Valeria Saligumba was returned with the notation "Party in Manila."[24] Eliseo Saligumba, Sr. died on 18 February 1984. When Atty. Miralles appeared in court on 25 October 1984, he did not affirm nor inform the court of the death of his client. There was no formal substitution. The trial court issued an order resetting the hearing to 25 January 1985 and directed that a copy of the order be furnished petitioner Eliseo Saligumba, Jr. at COA, PNB, Manila by registered mail.[25] When the case was called on 25 January 1985, Atty. Miralles sought for another postponement on the ground that his client was sick and under medical treatment in Manila.[26] Again, there was no manifestation from counsel about the death of Eliseo Saligumba, Sr. The trial court issued an Order dated 25 January 1985 setting the reception of evidence for the defendants on 3, 4, and 5 June 1985. A

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[23] Records of Civil Case No. 2570, p. 115.

[24] *Id.* at 104-105.

[25] *Id.* at 115.

[26] *Id.* at 119.

copy of this order was sent to Eliseo Saligumba, Jr. by registered mail. Nonetheless, as the trial court in Civil Case No. 5288 declared, the non-substitution of Eliseo Saligumba, Sr. did not have any legal significance as the land subject of Civil Case No. 2570 was the exclusive property of Valeria Saligumba who inherited it from her deceased parents.

This notwithstanding, when Valeria Saligumba died on 2 February 1985, Atty. Miralles again did not inform the trial court of the death of Valeria Saligumba. There was no formal substitution nor submission of proof of death of Valeria Saligumba. Atty. Miralles was remiss in his duty under Section 16, Rule 3 of the Revised Rules of Court. The counsel of record is obligated to protect his client's interest until he is released from his professional relationship with his client. For its part, the court could recognize no other representation on behalf of the client except such counsel of record until a formal substitution of attorney is effected.[27]

An attorney must make an application to the court to withdraw as counsel, for the relation does not terminate formally until there is a withdrawal of record; at least, so far as the opposite party is concerned, the relation otherwise continues until the end of the litigation.[28] Unless properly relieved, the counsel is responsible for the conduct of the case.[29] Until his withdrawal shall have been approved, the lawyer remains counsel of record who is expected by his client as well as by the court to do what the interests of his client require. He must still appear on the date of hearing for the attorney-client relation does not terminate formally until there is a withdrawal of record.[30]

Petitioners should have questioned immediately the validity of the proceedings absent any formal substitution. Yet, despite the court's alleged lack of jurisdiction over the persons of petitioners,

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[27] *Wack Wack Golf and Country Club, Inc. v. Court of Appeals*, 106 Phil. 501 (1959).

[28] *Visitacion v. Manit*, 137 Phil. 348 (1969).

[29] *Tumbagahan v. Court of Appeals*, No. L-32684, 20 September 1988, 165 SCRA 485; *Cortez v. Court of Appeals*, 172 Phil. 400 (1978).

[30] *Orcino v. Gaspar*, 344 Phil. 792 (1997).

petitioners never bothered to challenge the same, and in fact allowed the proceedings to go on until the trial court rendered its decision. There was no motion for reconsideration, appeal or even an action to annul the judgment in Civil Case No. 2570. Petitioners themselves could not feign ignorance of the case since during the pendency of Civil Case No. 2570, petitioner Ernesto Saligumba, son of the deceased spouses, was among the persons present during the delimitation of the land in question before the Commissioner held on 5 November 1977.[31] Petitioner Eliseo Saligumba, Jr. was likewise furnished a copy of the trial court's orders and notices. It was only the Answer filed by petitioner Generoso Saligumba in Civil Case No. 5288 that confirmed the dates when the spouses Saligumbas died and named the latter's children. Consequently, Atty. Miralles was responsible for the conduct of the case since he had not been properly relieved as counsel of record. His acts bind his clients and the latter's successors-in-interest.

In the present case for revival of judgment, the other petitioners have not shown much interest in the case. Petitioners Eliseo Saligumba, Jr. and Eduardo Saligumba were declared in default for failure to file their answer. Petitioner Ernesto Saligumba was out of the country working as a seaman. Only petitioner Generoso Saligumba filed an Answer to the complaint. The petition filed in this Court was signed only by petitioner Generoso Saligumba as someone signed on behalf of petitioner Ernesto Saligumba without the latter's authority to do so.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 24 May 2000 of the Regional Trial Court, Branch 5, Kalibo, Aklan in Civil Case No. 5288. Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, and *Azcuna, JJ.*, concur.

Tinga, J.,[*] in the result.

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[31] Records of Civil Case No. 2570, p. 31.

[*] As replacement of Justice Teresita J. Leonardo-De Castro who is on official leave per Special Order No. 539.

THIRD DIVISION

[G.R. No. 162311. December 4, 2008]

LEVI STRAUSS (PHILS.), INC., *petitioner, vs.* **TONY LIM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT OF APPEALS MAY REVIEW THE RESOLUTION OF THE JUSTICE SECRETARY SOLELY ON THE GROUND OF GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION. — The Court has consistently ruled that the **filing with the CA of a petition for review under Rule 43** to question the Justice Secretary's resolution regarding the determination of probable cause **is an improper remedy**. Under the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations, the resolution of the investigating prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. If the appeal is dismissed, and after the subsequent motion for reconsideration is resolved, a party has no more appeal or other remedy available in the ordinary course of law. Thus, the Resolution of the Justice Secretary affirming, modifying or reversing the resolution of the Investigating Prosecutor is final. There being no more appeal or other remedy available in the ordinary course of law, the remedy of the aggrieved party is to file a petition for ***certiorari*** under Rule 65. Thus, while the CA may review the resolution of the Justice Secretary, it may do so only in a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, ***solely*** on the ground that the Secretary of Justice committed grave abuse of discretion amounting to excess or lack of jurisdiction.

2. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL REVIEW; COURTS ARE WITHOUT POWER TO DIRECTLY DECIDE MATTERS OVER WHICH FULL DISCRETIONARY AUTHORITY HAS BEEN DELEGATED TO THE LEGISLATIVE OR EXECUTIVE BRANCH OF THE GOVERNMENT; EXEMPLIFIED. — While the resolution of the Justice

Secretary may be reviewed by the Court, it is not empowered to substitute its judgment for that of the executive branch *when there is no grave abuse of discretion*. Courts are without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government. The determination of probable cause is one such matter because that authority has been given to the executive branch, through the DOJ. It bears stressing that the main function of a government prosecutor is to determine the existence of probable cause and to file the corresponding information should he find it to be so. Thus, the decision whether or not to dismiss the criminal complaint against respondent is necessarily dependent on the sound discretion of the investigating prosecutor and ultimately, that of the Secretary of Justice. The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. For grave abuse of discretion to prosper as a ground for *certiorari*, it must be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law.

3. ID.; LAW ON PUBLIC OFFICERS; PROSECUTOR; NATURE OF HIS OFFICE, EXPLAINED. — A prosecutor, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up its averments, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But this Court must recognize that a prosecutor should not be unduly compelled to work against his conviction. Although the power and prerogative of the prosecutor to determine whether or not the evidence at hand is sufficient to form a reasonable belief that a person committed an offense is not absolute but subject to judicial review, it would be embarrassing for him to be compelled to prosecute a case when he is in no position to do so, because in his opinion he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case. x x x The determination of probable cause is part of the discretion

granted to the investigating prosecutor and ultimately, the Secretary of Justice. Courts are not empowered to substitute their own judgment for that of the executive branch.

4. CRIMINAL LAW; UNFAIR COMPETITION; DEFINED. — Generally, unfair competition consists in employing deception or any other means contrary to good faith by which any person shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established goodwill, or committing any acts calculated to produce such result.

5. ID.; ID.; ELEMENTS. — The elements of unfair competition under Article 189 (1) of the Revised Penal Code are: (a) That the offender gives his goods the general appearance of the goods of another manufacturer or dealer; (b) That the general appearance is shown in the (1) goods themselves, or in the (2) wrapping of their packages, or in the (3) device or words therein, or in (4) any other feature of their appearance; (c) That the offender offers to sell or sells those goods or gives other persons a chance or opportunity to do the same with a like purpose; and (d) That there is actual intent to deceive the public or defraud a competitor. All these elements must be proven. In finding that probable cause for unfair competition does not exist, the investigating prosecutor and Secretaries Guingona and Cuevas arrived at the same conclusion that there is insufficient evidence to prove all the elements of the crime that would allow them to secure a conviction.

6. ID.; ID.; AS A RULE THE COURTS SHOULD TAKE INTO CONSIDERATION SEVERAL FACTORS WHICH WOULD AFFECT ITS CONCLUSION; SUSTAINED. — The rule laid down in *Emerald Garment* and *Del Monte* is consistent with *Asia Brewery, Inc. v. Court of Appeals*, where the Court held that in resolving cases of infringement and unfair competition, the courts should take into consideration ***several*** factors which would affect its conclusion, to wit: the age, training and education of the usual purchaser, the nature and cost of the article, whether the article is bought for immediate consumption and also the conditions under which it is usually purchased.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
Danilo A. Soriano for respondent.

D E C I S I O N

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

THE remedy of a party desiring to elevate to the appellate court an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65. A Rule 43 petition for review is a wrong mode of appeal.[1]

During preliminary investigation, the prosecutor is vested with authority and discretion to determine if there is sufficient evidence to justify the filing of an information. If he finds probable cause to indict the respondent for a criminal offense, it is his duty to file the corresponding information in court. However, it is equally his duty not to prosecute when after an investigation, the evidence adduced is not sufficient to establish a *prima facie*.[2]

Before the Court is a petition for review on *certiorari*[3] of the Decision[4] and Resolution[5] of the Court of Appeals (CA), affirming the resolutions of the Department of Justice (DOJ) finding that there is no probable cause to indict respondent Tony Lim, *a.k.a.* Antonio Guevarra, for unfair competition.

The Facts

Petitioner Levi Strauss (Phils.), Inc. is a duly-registered domestic corporation. It is a wholly-owned subsidiary of Levi Strauss & Co. (LS & Co.) a Delaware, USA company.

In 1972, LS & Co. granted petitioner a non-exclusive license to use its registered trademarks and trade

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[1] *Alcaraz v. Gonzalez*, G.R. No. 164715, September 20, 2006, 502 SCRA 518.

[2] *Monfort III v. Salvatierra*, G.R. No. 168301, March 5, 2007, 517 SCRA 447, 459-460.

[3] Under Rule 45 of the 1997 Rules of Civil Procedure.

[4] *Rollo*, pp. 95-103. Dated October 17, 2003. Penned by Associate Justice Eubulo G. Verzola, with Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam, concurring.

[5] *Id.* at 105-106. Dated February 20, 2004.

names[6] for the manufacture and sale of various garment products, primarily pants, jackets, and shirts, in the Philippines.[7] Presently, it is the only company that has authority to manufacture, distribute, and sell products bearing the LEVI'S trademarks or to use such trademarks in the Philippines. These trademarks are registered in over 130 countries, including the Philippines,[8] and were first used in commerce in the Philippines in 1946.[9]

Sometime in 1995, petitioner lodged a complaint[10] before the Inter-Agency Committee on Intellectual Property Rights, alleging that a certain establishment in Metro Manila was manufacturing garments using colorable imitations of the LEVI'S trademarks.[11] Thus, surveillance was conducted on the premises of respondent Tony Lim, doing business under the name Vogue Traders Clothing

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[6] LS & Co.'s registered trademarks and trade names in the Philippines are as follows:

1. "Levi's" issued on August 10, 1982, renewed on August 10, 2002.
2. "Levi Strauss & Co." issued on March 21, 1978.
3. "Arcuate Stitching Design" issued on October 8, 1973, renewed on October 8, 1993.
4. "Two Horse Design" issued on February 12, 1974, renewed on February 12, 1994.
5. "Two Horse Patch" issued on December 27, 1988.
6. "Two Horse Label with Patterned Arcuate Design" issued on October 9, 1985.
7. "Tab Design" issued on May 12, 1976, renewed on May 12, 1996.
8. "Composite Mark (Arcuate, Tab, Two Horse Patch)" issued on December 12, 1988.
9. "501" issued on March 3, 1989.
10. "Levi's Salmon Ticket & Design" issued on February 13, 1976, renewed on February 13, 1996.
11. "Levi's and Device" issued on May 22, 1981, renewed on May 22, 2001.

[7] *Rollo,* pp. 25-26.

[8] *Id.* at 29.

[9] *Id.* at 30.

[10] *Id.* at 307, 341. Dated November 22, 1995.

[11] *Id.* at 9.

Company.[12] The investigation revealed that respondent was engaged in the manufacture, sale, and distribution of products similar to those of petitioner and under the brand name "LIVE'S."[13]

On December 13, 1995, operatives of the Philippine National Police (PNP) Criminal Investigation Unit[14] served search warrants[15] on respondent's premises at 1042 and 1082 Carmen Planas Street, Tondo, Manila. As a result, several items[16] were seized from the premises.[17]

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[12] *Id.* at 31.

[13] CA *rollo*, pp. 71-72.

[14] Now the Criminal Investigation and Detection Group (CIDG).

[15] Search Warrant No. 95-757 dated December 12, 1995 in *People v. Tony Lim of Vogue Traders Clothing Company*, 1082 Carmen Planas Street, Tondo, Manila, and Search Warrant No. 95-758 dated December 12, 1995 in *People v. Tony Lim of Vogue Traders Clothing Company*, 1042 Carmen Planas Street, Tondo, Manila, both issued by Judge Antonio I. de Castro, Regional Trial Court of Manila, Branch 3.

[16] Pursuant to Search Warrant No. 95-757 implemented at 1082 Carmen Planas Street, Tondo Manila:

100 Sacks of Live's pants (20 pants/sack);
1 Box containing 500 sets of Live's buttons;
12 Sacks of Live's Hangtags (2,000/sack);
2 Sewing Machines; and
2 Riveter Machines.

Pursuant to Search Warrant No. 95-758 implemented at 1042 Carmen Planas Street, Tondo Manila:

151 pcs. of unfinished pants with arcuate design;
160 pcs. of finished Westside jeans with arcuate design;
725 pcs. of Live's Patches;
520 pcs. of Live's Buttons;
900 pcs. of Live's Rivets;
261 pcs. of back pocket with arcuate design;
1 Singer Sewing Machine with SN-U4884707342;
1 Singer Sewing Machine with SN-U86400783;
1 Juki Sewing Machine with SN-A555-59278;
1 Juki Sewing Machine with SN-A555-2-24344;
1 Juki Sewing Machine with SN-A227-03839;
1 Juki Sewing Machine with SN-D555-38961; and
1 Riveter.

[17] *Rollo*, pp. 222-223.

The PNP Criminal Investigation Command (PNP CIC) then filed a complaint[18] against respondent before the DOJ for unfair competition[19] under the old Article 189 of the Revised Penal Code, prior to its repeal by Section 239 of Republic Act (RA) No. 8293.[20] The PNP CIC claimed that a "confusing similarity" could be noted between petitioner's LEVI's jeans and respondent's LIVE'S denim jeans and pants.

In his counter-affidavit,[21] respondent alleged, among others, that (1) his products bearing the LIVE'S brand name are not fake LEVI'S garments; (2) "LIVE'S" is a registered trademark,[22] while the patch pocket design for "LIVE'S" pants has copyright registration,[23] thus conferring legal protection on his own intellectual property rights, which stand on equal footing as "LEVI'S"; (3) confusing similarity, the central issue in the trademark cancellation proceedings[24] lodged by petitioner, is a prejudicial question that complainant, the police, and the court that issued the search warrants cannot determine without denial of due process or encroachment on the jurisdiction of the agencies concerned; and (4) his goods are not clothed with an appearance which is likely to deceive the ordinary purchaser exercising ordinary care.[25]

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[18] Through a letter dated December 28, 1995.

[19] Entitled *PNP-CIS/Levi Strauss (Phils.), Inc. v. Tony Lim*, docketed as I.S. No. 95-799.

[20] The Intellectual Property Code of the Philippines. Effective January 1, 1998.

[21] *Rollo*, pp. 282-285.

[22] Under Certificate of Registration No. 53918 dated November 16, 1992 (Principal Register, Bureau of Patents, Trademarks and Technology Transfer) and SR 8868 dated November 3, 1992 (Supplemental Register, same office).

[23] Covered by Certificate of Copyright Registration No. I-3838 dated September 25, 1991 issued by the National Library.

[24] IPC Case Nos. 4216 and 4217, Bureau of Patents, Trademarks, and Technology Transfer; and Civil Case No. 96-76944, RTC Manila, Branch 50.

[25] *Rollo*, pp. 282-283.

In its reply-affidavit, petitioner maintained that there is likelihood of confusion between the competing products because: (1) a slavish imitation of petitioner's "arcuate" trademark has been stitched on the backpocket of "LIVE'S" jeans; (2) the appearance of the mark "105" on respondent's product is obviously a play on petitioner's "501" trademark; (3) the appearance of the word/phrase "LIVE'S" and "LIVE'S ORIGINAL JEANS" is confusingly similar to petitioner's "LEVI'S" trademark; (4) a red tab, made of fabric, attached at the left seam of the right backpocket of petitioner's standard five-pocket jeans, also appears at the same place on "LIVE'S" jeans; (5) the patch used on "LIVE'S" jeans (depicting three men on each side attempting to pull apart a pair of jeans) obviously thrives on petitioner's own patch showing two horses being whipped by two men in an attempt to tear apart a pair of jeans; and (6) "LEVI'S" jeans are packaged and sold with carton tickets, which are slavishly copied by respondent in his own carton ticket bearing the marks "LIVE'S," "105," the horse mark, and basic features of petitioner's ticket designs, such as two red arrows curving and pointing outward, the arcuate stitching pattern, and a rectangular portion with intricate border orientation.[26]

DOJ Rulings

On October 8, 1996, Prosecution Attorney Florencio D. Dela Cruz recommended the dismissal[27] of the complaint. The prosecutor agreed with respondent that his products are not clothed with an appearance which is likely to deceive the ordinary purchaser exercising ordinary care. The recommendation was approved by Assistant Chief State Prosecutor Lualhati R. Buenafe.

On appeal, then DOJ Secretary Teofisto Guingona affirmed the prosecutor's dismissal of the complaint on January 9, 1998.[28] Prescinding from the basic rule that to be found guilty of unfair competition, a person shall, by imitation or any unfair

[26] *Id.* at 294-295.

[27] *Id.* at 222-226.

[28] CA *rollo*, pp. 4-7. Resolution No. 052, Series of 1998.

device, induce the public to believe that his goods are those of another, Secretary Guingona stated:

> In the case at bar, complainant has not shown that anyone was actually deceived by respondent. Respondent's product, which bears the trademark LIVE's, has an entirely different spelling and meaning with the trademark owned by complainant which is LEVI's. Complainant's trademark comes from a Jewish name while that of respondent is merely an adjective word. Both, when read and pronounced, would resonate different sounds. While respondent's "LIVE's" trademark may appear similar, such could not have been intended by the respondent to deceive since he had the same registered with the appropriate government agencies. Granting *arguendo*, that respondent's trademark or products possessed similar characteristics with the trademark and products of complainant, on that score alone, without evidence or proof that such was a device of respondent to deceive the public to the damage of complainant no unfair competition is committed.[29]

On February 13, 1998, petitioner filed a motion for reconsideration of Secretary Guingona's resolution, alleging, among others, that only a likelihood of confusion is required to sustain a charge of unfair competition. It also submitted the results of a consumer survey[30] involving a comparison of petitioner's and respondent's products.

On June 5, 1998, Justice Secretary Silvestre Bello III, Guingona's successor, granted petitioner's motion and directed the filing of an information against respondent.[31]

> WHEREFORE, our resolution dated 9 January 1998 is hereby reversed and set aside. You are directed to file an information for unfair competition under Article 189 of the Revised Penal Code, as amended, against respondent Tony Lim. Report the action taken thereon within ten (10) days from receipt hereof.[32]

Secretary Bello reasoned that under Article 189 of the Revised Penal Code, as amended, exact similarity of the competing

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[29] *Id.* at 73-74.

[30] *Rollo,* pp. 375-404.

[31] *Id.* at 358-360.

[32] *Id.* at 450.

products is not required. However, Justice Guingona's resolution incorrectly dwelt on the specific differences in the details of the products.[33] Secretary Bello's own factual findings revealed:

> x x x [I]t is not difficult to discern that respondent gave his products the general appearance as that of the product of the complainant. This was established by the respondent's use of the complainant's arcuate backpocket design trademark; the 105 mark which apparently is a spin-off of the 501 mark of the complainant; the patch which was clearly patterned after that of the complainant's two horse patch design trademark; the red tab on the right backpocket; the wordings which were crafted to look similar with the Levis trademark of the complainant; and even the packaging. In appropriating himself the general appearance of the product of the complainant, the respondent clearly intended to deceive the buying public. Verily, any person who shall employ deception or any other means contrary to good faith by which he shall pass of the goods manufactured by him or in which he deals, or his business, or services for those of the one having established good will shall guilty of unfair competition.
>
> Respondent's registration of his trademark can not afford him any remedy. Unfair competition may still be prosecuted despite such registration.[34] (Citation omitted)

Respondent then filed his own motion for reconsideration of the Bello resolution. On May 7, 1999, new DOJ Secretary Serafin Cuevas granted respondent's motion and ordered the dismissal of the charges against him.[35]

CA Disposition

Dissatisfied with the DOJ rulings, petitioner sought recourse with the CA via a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. On October 17, 2003, the appellate court affirmed the dismissal of the unfair competition complaint.

> WHEREFORE, premises considered, the petition for review is DENIED and is accordingly DISMISSED for lack of merit.

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[33] *Id.* at 449.

[34] *Id.* at 450.

[35] CA *rollo,* pp. 8-12.

SO ORDERED.[36]

The CA pointed out that to determine the likelihood of confusion, mistake or deception, all relevant factors and circumstances should be taken into consideration, such as the circumstances under which the goods are sold, the class of purchasers, and the actual occurrence or absence of confusion.[37]

Thus, the existence of some similarities between LIVE'S jeans and LEVI'S garments would not *ipso facto* equate to fraudulent intent on the part of respondent. The CA noted that respondent used affirmative and precautionary distinguishing features in his products for differentiation. The appellate court considered the spelling and pronunciation of the marks; the difference in the designs of the back pockets; the dissimilarity between the carton tickets; and the pricing and sale of petitioner's products in upscale exclusive specialty shops. The CA also disregarded the theory of post-sale confusion propounded by petitioner, relying instead on the view that the probability of deception must be determined at the point of sale.[38]

Issues

Petitioner submits that the CA committed the following errors:

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT ACTUAL CONFUSION IS NECESSARY TO SUSTAIN A CHARGE OF UNFAIR COMPETITION, AND THAT THERE MUST BE DIRECT EVIDENCE OR PROOF OF INTENT TO DECEIVE THE PUBLIC.

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT'S LIVE'S JEANS DO NOT UNFAIRLY COMPETE WITH LEVI'S ® JEANS AND/OR THAT THERE IS NO POSSIBILITY THAT THE FORMER WILL BE CONFUSED FOR THE LATTER, CONSIDERING THAT RESPONDENT'S LIVE'S JEANS BLATANTLY

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[36] *Rollo*, p. 15.

[37] *Id.* at 13.

[38] *Id.* at 14-15.

COPY OR COLORABLY IMITATE NO LESS THAN SIX (6) TRADEMARKS OF LEVI'S JEANS.

III.

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE EVIDENCE ON RECORD, CONSISTING OF THE SCIENTIFICALLY CONDUCTED MARKET SURVEY AND THE AFFIDAVIT OF THE EXPERT WITNESS ON THE RESULTS THEREOF, WHICH SHOW THAT RESPONDENT'S LIVE'S JEANS ARE, IN FACT, BEING CONFUSED FOR LEVI'S JEANS.

IV.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE ISSUE OF CONFUSION SHOULD ONLY BE DETERMINED AT THE POINT OF SALE.

V.

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO DIRECT THE SECRETARY OF JUSTICE TO CAUSE THE FILING OF THE APPROPRIATE INFORMATION IN COURT AGAINST THE RESPONDENT.[39] (Underscoring supplied)

Our Ruling

In essence, petitioner asks this Court to determine if probable cause exists to charge respondent with the crime of unfair competition under Article 189(1) of the Revised Penal Code, prior to its repeal by Section 239 of RA No. 8293.

However, that is a factual issue[40] the resolution of which is improper in a Rule 45 petition.[41] The only legal issue left for the Court to determine is whether the issue of confusion should be determined only at the point of sale.

Nonetheless, there is sufficient reason for this Court to dismiss this petition merely by looking at the procedural avenue petitioner used to have the DOJ resolutions reviewed by the CA.

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[39] *Id.* at 47.

[40] *Asia Brewery, Inc. v. Court of Appeals*, G.R. No. 103543, July 5, 1993, 224 SCRA 437, 443.

[41] See *Cosmos Bottling Corporation v. National Labor Relations Commission*, G.R. No. 146397, July 1, 2003, 405 SCRA 258.

Petitioner filed with the CA a petition for review under Rule 43 of the 1997 Rules of Civil Procedure.[42] Rule 43 governs all appeals from [the Court of Tax Appeals and] quasi-judicial bodies to the CA. Its Section 1 provides:

> Section 1. *Scope*. – This Rule shall apply to appeals from [judgments or final orders of the Court of Tax Appeals and from] awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.[43]

Clearly, the DOJ is not one of the agencies enumerated in Section 1 of Rule 43 whose awards, judgments, final orders, or resolutions may be appealed to the CA.

The Court has consistently ruled that the **filing with the CA of a petition for review under Rule 43** to question the Justice Secretary's resolution regarding the determination of probable cause **is an improper remedy**.[44]

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[42] CA *rollo*, p. 19.

[43] As amended by Section 11 of Republic Act No. 9282 entitled "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes." Approved on March 30, 2004.

[44] *Alcaraz v. Gonzalez, supra* note 1, at 529; *Orosa v. Roa*, G.R. No. 140423, July 14, 2006, 495 SCRA 22; *Santos v. Go*, G.R. No. 156081, October 19, 2005, 473 SCRA 350, 361.

Under the 1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations or Reinvestigations,[45] the resolution of the investigating prosecutor is subject to appeal to the Justice Secretary[46] who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor.[47] If the appeal is dismissed, and after the subsequent motion for reconsideration is resolved, a party has no more appeal or other remedy available in the ordinary course of law.[48] Thus, the Resolution of the Justice Secretary affirming, modifying or reversing the resolution of the Investigating Prosecutor is final.[49]

There being no more appeal or other remedy available in the ordinary course of law, the remedy of the aggrieved party is to file a petition for ***certiorari*** under Rule 65. Thus, while the CA may review the resolution of the Justice Secretary, it may do so only in a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, **solely** on the ground that the Secretary of Justice committed grave abuse of discretion amounting to excess or lack of jurisdiction.[50]

Verily, when respondent filed a petition for review under Rule 43 instead of a petition for *certiorari* under Rule 65, the CA should have dismissed it outright. However, the appellate court chose to determine if DOJ Secretaries Guingona and Cuevas correctly determined the absence of probable cause.

Now, even if We brush aside technicalities and consider the petition for review filed with the CA as one under Rule 65, the petition must fail just the same.

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[45] Now the 2000 National Prosecution Service Rules on Appeals.

[46] *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, March 30, 2004, 426 SCRA 460, 466-467.

[47] *Alcaraz v. Gonzalez, supra* note 1, at 529.

[48] See *Filadams Pharma, Inc. v. Court of Appeals, supra* note 46.

[49] *Alcaraz v. Gonzalez, supra* note 1, at 529.

[50] *Id*.

While the resolution of the Justice Secretary may be reviewed by the Court, it is not empowered to substitute its judgment for that of the executive branch *when there is no grave abuse of discretion*.[51]

Courts are without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government.[52] The determination of probable cause is one such matter because that authority has been given to the executive branch, through the DOJ.[53]

It bears stressing that the main function of a government prosecutor is to determine the existence of probable cause and to file the corresponding information should he find it to be so.[54] Thus, the decision whether or not to dismiss the criminal complaint against respondent is necessarily dependent on the sound discretion of the investigating prosecutor and ultimately, that of the Secretary of Justice.[55]

A prosecutor, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up its averments, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But this Court must recognize that a prosecutor should not be unduly compelled to work against his conviction. Although the power and prerogative of the prosecutor to determine whether or not the evidence at hand is sufficient to form a reasonable belief that a person committed an offense is not absolute but subject to judicial review, it would be embarrassing

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[51] *Public Utilities Department v. Guingona, Jr.,* 417 Phil. 798, 805 (2001).

[52] *Id*.

[53] See *Buan v. Matugas,* G.R. No. 161179, August 7, 2007, 529 SCRA 263, 270.

[54] *R.R. Paredes v. Calilung,* G.R. No. 156055, March 5, 2007, 517 SCRA 369, 395.

[55] *Alcaraz v. Gonzalez, supra* note 1, at 529.

for him to be compelled to prosecute a case when he is in no position to do so, because in his opinion he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case.[56]

In finding that respondent's goods were not clothed with an appearance which is likely to deceive the ordinary purchaser exercising ordinary care, the investigating prosecutor exercised the discretion lodged in him by law. He found that:

> First, the LIVE'S mark of the respondent's goods is spelled and pronounced differently from the LEVI'S mark of the complainant.
>
> Second, the backpocket design allegedly copied by the respondent from the registered arcuate design of the complainant, appears to be different in view of the longer curved arms that stretch deep downward to a point of convergence where the stitches form a rectangle. The arcuate design for complainant LEVI's jeans form a diamond instead. And assuming *arguendo* that there is similarity in the design of backpockets between the respondent's goods and that of the complainant, this alone does not establish that respondent's jeans were intended to copy the complainant's goods and pass them off as the latter's products as this design is simple and may not be said to be strikingly distinct absent the other LEVI'S trademark such as the prints on the button, rivets, tags and the like. x x x Further, the presence of accessories bearing Levi's trademark was not established as there were no such accessories seized from the respondent and instead genuine LIVE'S hangtags, button and patches were confiscated during the search of latter's premises.
>
> Second, the design of the patches attached to the backpockets of the respondent's goods depicts three men on either side of a pair of jeans attempting to pull apart said jeans, while the goods manufactured by complainant with patches also attached at the right backpockets depicts two horses being whipped by two men in an attempt to tear apart a pair of jeans. It is very clear therefore that the design of the backpocket patches by the respondent is different from that of the complainant, in the former the men were trying to pull apart the pants while in the latter horses are the ones doing the job. Obviously, there is a great difference between a man and a horse and this will naturally not escape the eyes of an ordinary purchaser.

[56] *R.R. Paredes v. Calilung, supra* at 395-396.

Third, the manner by which Levi's jeans are packed and sold with carton tickets attached to the products cannot be appropriated solely by complainant to the exclusion of all other manufacturers of same class. It frequently happens that goods of a particular class are labeled by all manufacturer[s] in a common manner. In cases of that sort, no manufacturer may appropriate for himself the method of labeling or packaging [of] his merchandise and then enjoin other merchants from using it. x x x.

Fourth, evidence shows that there is a copyright registration issued by the National Library over the backpocket design of the respondent. And this copyright registration gives the respondent the right to use the same in his goods x x x.[57]

The determination of probable cause is part of the discretion granted to the investigating prosecutor and ultimately, the Secretary of Justice. Courts are not empowered to substitute their own judgment for that of the executive branch.[58]

The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[59] For grave abuse of discretion to prosper as a ground for *certiorari*, it must be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law.[60]

In the case at bar, no grave abuse of discretion on the part of the DOJ was shown. Petitioner merely harps on the error

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[57] *Rollo,* pp. 224-225.

[58] *Alcaraz v. Gonzalez, supra* note 1, at 529.

[59] *First Women's Credit Corporation v. Baybay,* G.R. No. 166888, January 31, 2007, 513 SCRA 637, 644-645.

[60] *R.R. Paredes v. Calilung, supra* note 54, at 397, citing *Sarigumba v. Sandiganbayan,* G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 549.

committed by the DOJ and the CA in arriving at their factual finding that there is no confusing similarity between petitioner's and respondent's products. While it is possible that the investigating prosecutor and Secretaries Guingona and Cuevas **erroneously** exercised their discretion when they found that unfair competition was not committed, this by itself does not render their acts amenable to correction and annulment by the extraordinary remedy of *certiorari.* There must be a showing of **grave abuse** of discretion amounting to lack or excess of jurisdiction.[61]

We are disinclined to find that grave of abuse of discretion was committed when records show that the finding of no probable cause is supported by the evidence, law, and jurisprudence.

Generally, unfair competition consists in employing deception or any other means contrary to good faith by which any person shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established goodwill, or committing any acts calculated to produce such result.[62]

The elements of unfair competition under Article 189(1)[63] of the Revised Penal Code are:

(a) That the offender gives his goods the general appearance of the goods of another manufacturer or dealer;

(b) That the general appearance is shown in the (1) goods themselves, or in the (2) wrapping of their packages, or in the (3) device or words therein, or in (4) any other feature of their appearance;

(c) That the offender offers to sell or sells those goods or gives other persons a chance or opportunity to do the same with a like purpose; and

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[61] See *R.R. Paredes v. Calilung, supra* note 54, at 396-397.

[62] Reyes, L., *The Revised Penal Code,* Book II, 13th ed., p. 264.

[63] Art. 189. *Unfair competition, fraudulent registration of trade-mark, trade-name or service mark, fraudulent designation of origin, and false description.* – The penalty provided in the next proceeding article shall be imposed upon:

(d) That there is actual intent to deceive the public or defraud a competitor.[64]

All these elements must be proven.[65] In finding that probable cause for unfair competition does not exist, the investigating prosecutor and Secretaries Guingona and Cuevas arrived at the same conclusion that there is insufficient evidence to prove all the elements of the crime that would allow them to secure a conviction.

Secretary Guingona discounted the element of actual intent to deceive by taking into consideration the differences in spelling, meaning, and phonetics between "LIVE'S" and "LEVI'S," as well as the fact that respondent had registered his own mark.[66] While it is true that there may be unfair competition even if the competing mark is registered in the Intellectual Property Office, it is equally true that the same may show *prima facie* good faith.[67] Indeed, registration does not negate unfair competition where the goods are packed or offered for

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1. Any person who, in unfair competition and for the purposes of deceiving or defrauding another of his legitimate trade or the public in general, shall sell his goods giving them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves, or in the wrapping of the packages in which they are contained or the device or words thereon or in any other features of their appearance which would be likely to induce the public to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer or shall give other persons a chance or opportunity to do the same with a like purpose.

[64] *Sony Computer Entertainment, Inc. v. Supergreen, Incorporated,* G.R. No. 161823, March 22, 2007, 518 SCRA 750, 757; *NBI-Microsoft Corporation v. Hwang,* G.R. No. 147043, June 21, 2005, 460 SCRA 428, 445, citing L. Reyes, *The Revised Penal Code*, Vol. II, 15th ed., p. 282.

[65] *Mendoza-Arce v. Office of the Ombudsman (Visayas),* G.R. No. 149148, April 5, 2002, 380 SCRA 325, 336.

[66] CA *rollo,* p. 73.

[67] Agpalo, *The Law on Trademark, Infringement and Unfair Competition*, 2000 ed., pp. 189-190, citing *R.F. Alexander & Co. v. Ang,* 97 Phil. 157 (1955); *Parke Davis & Co. v. Kim Foo & Co.,* 60 Phil. 928 (1934).

sale and passed off as those of complainant.[68] However, the mark's registration, coupled with the stark differences between the competing marks, negate the existence of actual intent to deceive, in this particular case.

For his part, Justice Cuevas failed to find the possibility of confusion and of intent to deceive the public, relying on *Emerald Garment Manufacturing Corporation v. Court of Appeals*.[69] In *Emerald*, the Court explained that since *maong* pants or jeans are not inexpensive, the casual buyer is more cautious and discerning and would prefer to mull over his purchase, making confusion and deception less likely.

We cannot subscribe to petitioner's stance that *Emerald Garment* cannot apply because there was only one point of comparison, *i.e.*, "LEE" as it appears in Emerald Garment's "STYLISTIC MR. LEE." *Emerald Garment* is instructive in explaining the attitude of the buyer when it comes to products that are not inexpensive, such as jeans. In fact, the *Emerald Garment* rationale is supported by *Del Monte Corporation v. Court of Appeals*,[70] where the Court explained that the attitude of the purchaser is determined by the cost of the goods. There is no reason not to apply the rationale in those cases here even if only by analogy.

The rule laid down in *Emerald Garment* and *Del Monte* is consistent with *Asia Brewery, Inc. v. Court of Appeals*,[71] where the Court held that in resolving cases of infringement and unfair competition, the courts should take into consideration **several** factors which would affect its conclusion, to wit: the age, training and education of the usual purchaser, the nature and cost of the article, whether the article is bought for immediate consumption and also the conditions under which it is usually purchased.[72]

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[68] *Id*.

[69] G.R. No. 100098, December 29, 1995, 251 SCRA 600.

[70] G.R. No. 78325, January 25, 1990, 181 SCRA 410.

[71] G.R. No. 103543, July 5, 1993, 224 SCRA 437.

[72] *Id.* at 455.

Petitioner argues that the element of intent to deceive may be inferred from the similarity of the goods or their appearance.[73] The argument is specious on two fronts. *First*, where the similarity in the appearance of the goods as packed and offered for sale is so **striking,** intent to deceive may be inferred.[74] However, as found by the investigating prosecutor and the DOJ Secretaries, striking similarity between the competing goods is not present.

Second, the confusing similarity of the goods was precisely in issue during the preliminary investigation. As such, the element of intent to deceive could not arise without the investigating prosecutor's or the DOJ Secretary's finding that such confusing similarity exists. Since confusing similarity was not found, the element of fraud or deception could not be inferred.

We cannot sustain Secretary Bello's opinion that to establish probable cause, "it is enough that the respondent gave to his product the general appearance of the product"[75] of petitioner. It bears stressing that that is only one element of unfair competition. All others must be shown to exist. More importantly, the likelihood of confusion exists not only if there is confusing similarity. It should also be likely to cause confusion or mistake or deceive purchasers.[76] Thus, the CA correctly ruled that the mere fact that some resemblance can be pointed out between the marks used does not in itself prove unfair competition.[77] To reiterate, the resemblance must be such as is likely to deceive the ordinary purchaser exercising ordinary care.[78]

The consumer survey alone does not equate to actual confusion. We note that the survey was made by showing the interviewees

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[73] *Rollo*, pp. 51-52.

[74] See note 67, at 190, citing *Rueda Hermanos & Co. v. Felix Paglinawan & Co.*, 33 Phil. 196 (1916); *U.S. v. Gaw Chiong*, 23 Phil. 138 (1912); *Inchausti & Co. v. Song Fo & Co.*, 21 Phil. 278 (1912).

[75] CA *rollo*, p. 459.

[76] See S*ociete Des Produits Nestle, S.A. v. Court of Appeals*, G.R. No. 112012, April 4, 2001, 356 SCRA 207, 215.

[77] *Rollo*, p. 100.

[78] *Pro Line Sports Center, Inc. v. Court of Appeals*, G.R. 118192, October 23, 1997, 281 SCRA 162, 173.

actual samples of petitioner's and respondent's respective products, **approximately five feet away** from them. From that distance, they were asked to identify the jeans' brand and state the reasons for thinking so.[79] This method discounted the possibility that the ordinary intelligent buyer would be able to closely scrutinize, and even fit, the jeans to determine if they were "LEVI'S" or not. It also ignored that a consumer would consider the price of the competing goods when choosing a brand of jeans. It is undisputed that "LIVE'S" jeans are priced much lower than "LEVI'S."

The Court's observations in *Emerald Garment* are illuminating on this score:

> First, the products involved in the case at bar are, in the main, various kinds of jeans. x x x *Maong* pants or jeans are not inexpensive. Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion and deception, then, is less likely. In *Del Monte Corporation v. Court of Appeals*, we noted that:
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> > . . . Among these, what essentially determines the attitudes of the purchaser, specifically his inclination to be cautious, is the cost of the goods. To be sure, a person who buys a box of candies will not exercise as much care as one who buys an expensive watch. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. **Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation**. But mass products, low priced articles in wide use, and matters of everyday purchase requiring frequent replacement are bought by the casual consumer without great care.[80] (Emphasis supplied)

We find no reason to go beyond the point of sale to determine if there is probable cause for unfair competition. The CA observations along this line are worth restating:

> We also find no basis to give weight to petitioner's contention that the "post sale confusion" that might be triggered by the perceived

[79] *Id.* at 380.

[80] *Emerald Garment Manufacturing Corporation v. Court of Appeals, supra* note 69.

similarities between the two products must be considered in the action for unfair competition against respondent.

No inflexible rule can be laid down as to what will constitute unfair competition. Each case is, in the measure, a law unto itself. Unfair competition is always a question of fact. The question to be determined in every case is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiff's goods, or, to state it in another way, whether defendant, as a matter of fact, is, by his conduct, passing off defendant's goods as plaintiff's goods or his business as plaintiff's business. The universal test question is whether the public is likely to be deceived.

In the case before us, we are of the view that the probability of deception must be tested at the point of sale since it is at this point that the ordinary purchaser mulls upon the product and is likely to buy the same under the belief that he is buying another. The test of fraudulent simulation is to be found in the likelihood of deception, or the possibility of deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated.[81]

In sum, absent a grave abuse of discretion on the part of the executive branch tasked with the determination of probable cause during preliminary investigation, We cannot nullify acts done in the exercise of the executive officers' discretion. Otherwise, We shall violate the principle that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials.[82]

WHEREFORE, the petition is *DENIED* and the appealed Decision of the Court of Appeals *AFFIRMED*.

SO ORDERED.

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

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[81] *Rollo,* pp. 101-102.

[82] *R.R. Paredes v. Calilung, supra* note 54, at 395.

THIRD DIVISION

[G.R. No. 168906. December 4, 2008]

PERLA S. ESGUERRA, *petitioner, vs.* **JUDGE FATIMA GONZALES-ASDALA, J. WALTER THOMPSON COMPANY (PHILS.), INC., and AGL MARKET RESEARCH INCORPORATED,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AVAILABLE ONLY IN THE ABSENCE OF AN APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; APPLICATION IN CASE AT BAR. — It does well for Esguerra to remember that at the threshold of every special civil action under Rule 65, the person seeking the writs must be able to show, on pain of dismissal of his petition, that his resort to such extraordinary remedy is justified by the "absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law." Esguerra utterly fails in this regard for there is nothing in her Petition in CA-G.R. SP No. 79075, not even an allegation therein, that she had no appeal or any other efficacious remedy against the 28 August 2003 Order of RTC-Branch 87 denying her application for preliminary injunction. The Court of Appeals, therefore, was compelled to dismiss Esguerra's Petition in CA-G.R. SP No. 79075. As the Court of Appeals noted, at the time Esguerra filed her Petition in CA-G.R. SP No. 79075, her motion for reconsideration of the Order dated 28 August 2003 of RTC-Branch 87 denying her application for injunctive relief was still pending. This only shows that the remedy of a motion for reconsideration from the adverse 28 August 2003 Order of RTC-Branch 87 was still available to, and was in fact, availed of by Esguerra.

2. JUDICIAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; JUDGES CANNOT BE SUBJECTED TO LIABILITY FOR ANY OF THEIR OFFICIAL ACTS SO LONG AS THEY ACT IN GOOD FAITH; RATIONALE. — Judges cannot be subjected to liability — civil, criminal or administrative — for any of their official acts, no matter how erroneous, so long as they act in good faith. It

is only when they act fraudulently or corruptly, or with gross ignorance, may they be held criminally or administratively responsible. In *Ang v. Quilala*, we further explained that it is settled doctrine that judges are not liable to respond in a civil action for damages, and are not otherwise administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction. Certain it is that a judge may not be held administratively accountable for every erroneous order or decision he renders. 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 administering justice can be infallible in his judgment. More importantly, the error must be gross or patent, deliberate and malicious, or incurred with evident bad faith. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; EFFECT OF INCLUDING PUBLIC RESPONDENT IN SUCH PETITION, EXPLAINED. — In petitions for *certiorari*, prohibition, and *mandamus*, the public respondent, such as Judge Asdala herein, should not actively participate in the proceedings as a general rule, unless directed otherwise by the court. The inclusion of the public respondent in such petitions is more of a formality, since it is still the private respondent/s who must contest the said petitions. It is likewise explicitly stated in the afore-quoted provision that the public respondent in petitions under Rule 65 shall not be liable for the costs which may be awarded to the petitioner/s. It can be rationally deduced therefrom that in such petitions, the public respondent is not meant to incur or shoulder personal liability for his official actions, even if the writs of *certiorari*, prohibition or *mandamus* are so issued against him.

APPEARANCES OF COUNSEL

Anita R. Tabo for petitioner.

Tiongco Avecilla Flores and Palarca for J.W. Thompson Company (Phils.), Inc.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review under Rule 45 of the Rules of Court are the Decision[1] dated 31 March 2005 of the Court of Appeals in CA-G.R. SP No. 79075 which denied the Petition for Prohibition and *Certiorari*/*Mandamus* with application for Temporary Restraining Order and Writ of Preliminary Injunction of petitioner Perla S. Esguerra (Esguerra); and the Resolution[2] dated 12 July 2005 of the appellate court in the same case denying petitioner's Motion for Reconsideration.

Esguerra is a licensed nutritionist-dietitian presently employed as the Chief Dietitian of the Philippine Heart Center (PHC), located at East Avenue, Diliman, Quezon City. Respondents J. Walter Thompson Company[3] (JWT) and AGL Market Research, Inc. (AGL) are corporations duly organized and existing under Philippine laws. On 15 May 2000, AB Food and Beverages[4] Philippines (AB Food) entered into a contract with JWT whereby the latter would handle the advertising, marketing, promotional and general publicity requirements of the former.

Esguerra filed an Amended Complaint[5] for Damages with Prayer for Preliminary Injunction and Temporary Restraining Order against JWT and AGL, which was docketed as Civil Case No. Q-03-50205 and raffled to Branch 87 of the Quezon

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[1] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Renato C. Dacudao and Edgardo F. Sundiam, concurring. *Rollo*, pp. 89-98.

[2] *Rollo*, p. 106.

[3] Present name is WPP Marketing Communications; *rollo*, p. 243.

[4] Manufacturer of Ovaltine food product; *rollo*, p. 243.

[5] AB Foods was not impleaded in the Amended Complaint but was referred to as one of defendants in Civil Case No.Q-03-50205 although the Records are silent as to when AB Foods was impleaded in the case. (CA *rollo*, p. 17.)

City Regional Trial Court (RTC), presided by respondent Judge Fatima Gonzales-Asdala (Judge Asdala).

In her Amended Complaint, Esguerra alleged that on 14 May 2003, AGL, thru its Director/General Manager Nicanor G. Aguirre (Aguirre), wrote a letter to the PHC, inviting nutritionists from the said hospital to participate in a study it was conducting. Aguirre gave the assurance that "all information that would be generated from this study would be kept completely confidential," and the AGL representative bearing the letter made it understood that, among other things, a talent fee of ₱20,000.00 would be paid to the nutritionist who would be chosen to appear in a commercial that would subsequently be shot.

Esguerra narrated that she showed up at the Cravings Restaurant in San Juan at the appointed time on 16 May 2003 to participate in the AGL "study." The first stage thereof consisted in being "interviewed" by a lady about two unnamed products with disclosed ingredients and nutrients; the second product had evidently higher nutrients. Esguerra was requested to compare the two products and asked whether she would endorse use of the higher-nutrient product. In the second stage of the supposed study, Esguerra was taken inside a room where she was asked additional questions by another lady, while a man, apparently representing JWT, focused a video-camera on her. She was then asked to uncover and find out for herself the product she preferred to endorse. Her candid reaction to the "discovery" was that it was Ovaltine. The incident was taped on the video-camera. As Esguerra emerged from the room, a third lady approached her asking her to sign a piece of paper and telling her that it had to do with the taping that just took place. Since she was in a hurry to keep another appointment in Quezon City, Esguerra signed the document, which appeared to be a contract of agreement, but expressly writing at the side thereof that in case she would be chosen to appear in the commercial, which she thought would still be shot at some future time, clearance from the Director of the PHC must first be obtained before such commercial may be shown to the public. Esguerra also verbally informed the third lady of this condition.

On 16 June 2003, at about noontime, an Ovaltine commercial was aired on television with Esguerra appearing therein. The said commercial showed a portion of Esguerra's interview videotaped on 16 May 2003. According to Esguerra, there was absolutely no advice from either JWT or AGL prior to the airing of the commercial that she had been chosen to so appear therein. Neither did JWT and AGL secure the required clearance from the PHC Director nor did they pay Esguerra any talent fee for the commercial.

That same afternoon of 16 June 2003, after being informed of the unexpected airing of the Ovaltine commercial, and fearful of any adverse consequences, disciplinary sanction, or misunderstanding which may result therefrom, Esguerra allegedly took the following actions: (a) she immediately called up JWT Account Director Joef Peña to protest against the showing of the commercial; (b) she wrote a letter dated 17 June 2003 to JWT, copy furnished AGL, to formally protest the airing of the commercial and to demand the immediate pull-out of the same; and (c) she furnished the PHC Director and her Association with copies of her 17 June 2003 letter to inform and explain to them that what happened anent the Ovaltine commercial was not of her volition.

Esguerra averred that JWT responded by transmitting to her, on 24 June 2003, a communication officially informing her for the first time of her selection as one of those who would appear in the Ovaltine commercial, for which she would receive remuneration in the amount of ₱5,000.00. Not satisfied therewith, Esguerra, through her counsel, wrote JWT on 4 July 2003 a second missive seeking, among other demands, the immediate cessation of the airing of the Ovaltine commercial and payment of the agreed upon talent fee of ₱20,000.00. Despite her letter-protest, received by JWT and AGL, the Ovaltine commercial showing Esguerra continued to be broadcasted on a daily basis up to the time she instituted Civil Case No. Q-03-50205.

Esguerra thus prayed of the RTC-Branch 87 the following:

WHEREFORE, premises considered, [herein petitioner Esguerra] most respectfully prays of this Honorable Court that:

1) Pending hearing on the application for preliminary injunction, a Temporary Restraining Order be immediately issued enjoining [herein respondents JWT and AGL] from airing the subject Ovaltine commercial featuring the appearance therein of [Esguerra]; and after such hearing, for a preliminary prohibitory injunction to issue against such airing;

2) Following trial on the merits, judgment be rendered in favor of [Esguerra] and against [JWT and AGL], making said injunction already permanent, and further ordering [JWT and AGL] as follows:

   a) To pay the amount of ₱20,000.00 as [Esguerra's] talent fee plus interest at the legal rate thereon until fully paid;

   b) To pay the sum of ₱200,000.00 as and by way of moral damages;

   c) To pay the sum of ₱300,000.00 as and by way of exemplary damages;

   d) To pay an amount equivalent to 25% of the amount due, as and by way of attorney's fees;

   e) To pay the costs of suit.[6]

Esguerra claimed to have made several inquiries on the status of her application for preliminary injunction and/or Temporary Restraining Order (TRO) with the RTC Branch Clerk of Court. She was assured that her application would be set for hearing. After almost three weeks of waiting without her application for injunctive relief being set for hearing, Esguerra filed on 26 August 2003 an Urgent Motion for Inhibition of RTC Judge Asdala, asserting therein that "by failing to act swiftly on her application for TRO as mandated under the law, [RTC Judge Asdala] has already displayed partiality and bias against her and in favor of the [herein respondents JWT and AGL], whether or not for `valuable' consideration."

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[6] CA *rollo*, p. 20.

RTC-Branch 87, however, subsequently issued an Order dated 28 August 2003 in which it ruled on Esguerra's application for preliminary injunction and/or TRO, thus:

> From the given facts (par. 2, 3, 4, 5, 6, 7 and 8) in the complaint, this Court finds that not only did [herein petitioner Esguerra] clearly fail to point the specific acts committed by each of the [herein respondents JWT and AGL] in alleged violation of her right or which has caused her or will cause her injustice, [Esguerra] likewise failed to show in her application the material and substantial right she claims to have been invaded by [JWT and AGL] to warrant the issuance of preliminary injunction.
>
> Since facts have not been sufficiently shown by [Esguerra] in her application to bring her case within the conditions required by Sec. 3, Rule 58,[7] this Court has to refuse injunction, more considering the fact that the action for damages which [Esguerra] has already instituted against [JWT and AGL] would adequately compensate the injuries caused her.
>
> From an overall judicious examination of [Eguerra's] allegation in support of her application for injunction, this Court finds that issuance of an injunctive relief based on the facts obtaining is not warranted.
>
> WHEREFORE, [Esguerra's] application for injunction is DENIED for lack of merit.[8]

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[7] Sec. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

[8] CA *rollo*, p. 29.

This led Esguerra to file another Urgent Motion[9] which sought, among other reliefs, reconsideration of the Order dated 28 August 2003 of RTC-Branch 87 and resolution of her Motion for Inhibition. She averred in her Urgent Motion that the denial of her application for injunctive relief was highly irregular, having been issued without a summary hearing, in violation of the provisions of Section 4(d), Rule 58 of the 1997 Rules of Civil Procedure.

However, without waiting for the resolution of her Urgent Motion by RTC-Branch 87, Esguerra filed a Petition[10] before the Court of Appeals, docketed as CA-G.R. SP No. 79075, in which she sought the issuance of: (a) an Order to expedite the proceedings in Civil Case No. Q-03-50205; (b) a Writ of Prohibition permanently enjoining Judge Asdala of RTC-Branch 87 from conducting further proceedings in Civil Case No. Q-03-50205 and an Order to re-raffle the said case to another judge; and (c) a Writ of *Certiorari* to annul and set aside the denial of Esguerra's application for injunction/TRO. In the alternative, Esguerra prayed for the issuance of: (a) a Writ of *Mandamus* ordering Judge Asdala to conduct summary hearing on Esguerra's application for injunction/TRO; (b) an Order directing Judge Asdala to pay damages sustained by Esguerra; and (c) an Order enjoining Judge Asdala from conducting further proceedings in Civil Case No. Q-03-50205.

On 3 September 2003, Judge Asdala issued an Order explaining why no hearing was conducted on the prayer for TRO filed by Esguerra. The Order of Judge Asdala reads:

> Sec. 4, Rule 58 of the Revised Rules of Civil Procedure provides that, a preliminary injunction or temporary restraining order may be granted only when: (a) the application in the action or proceedings is verified, and (b) the application shows facts entitling the applicant to the relief demanded. The Rules further states that the application for a temporary restraining order shall only be acted upon in a summary proceeding which shall be conducted within 24 hours after the sheriff's

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[9] *Id.* at 32.

[10] *Id.* at 2.

return of service and/or the records are received by the branch selected by raffle. From this particular provision, it is clear that the conduct of a summary hearing within 24 hours after the sheriff's return of service is subject to the condition that the summons, as well as, the complaint and the verified application for temporary restraining order have been properly served upon the adverse parties, which requirement however, has not been satisfied in the instant case.

A perusal of the record shows that there is no verified application for temporary restraining order on record, neither is it shown that the applicant has provided the adverse parties with any verified affidavit in support of her application. What is shown is service of the summons and the amended complaint to only one defendant, J. Walter Thompson Company (Phils.), but not to defendant AGL Market. Indeed, there are more reasons than one, as to why this Court did not conduct a summary hearing within the 24 hours period after the sheriff's return of service of summons to defendant J. Walter Thompson and those reasons are, as just stated.

Plaintiff's complaint at the inception was already defective but despite sufficient time allowed for her to correct that, plaintiff did not, complacent, that the Court will overlook them in her favor. With such defects and the filing of the amended complaint, on August 7, 2003, eight (8) days after the Sheriff's return showing that service of summons and the complaint without a verified affidavit or verified application for temporary restraining order, the Court is not obliged to conduct a summary hearing, because the essential "time element" is deemed to have been waived by the plaintiff herself when she filed the amended complaint only on August 7, 2003; the non-service of the complaint and affidavit/application for temporary restraining order to the defendants.[11]

In the meantime, during the pendency of CA-G.R. SP No. 79075 before the Court of Appeals, Judge Asdala issued an Order[12] dated 18 September 2003, inhibiting herself from Civil Case No. Q-03-50205. Civil Case No. Q-03-50205 was then re-raffled on 2 October 2003[13] to the Quezon City RTC-Branch 215, presided over by Judge Maria Luisa Quijano-Padilla (Judge Padilla).

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[11] *Rollo*, pp. 43-44.

[12] CA *rollo*, p. 46.

[13] *Rollo*, p. 224.

At the hearing held on 10 October 2003, Esguerra informed the trial court (Branch 215) that the Ovaltine advertisement had ceased to be aired on television and that she was therefore desisting from asking for the temporary restraining order and/or injunction without prejudice to again avail herself of the said reliefs should the showing thereof resume.[14]

Acting on Esguerra's motion, RTC-Branch 215 issued an Order dated 27 October 2003, in which it decreed:

WHEREFORE, premises considered, this Court declares as follows:

a) The application for TRO is rendered moot and academic by the manifestation of [herein petitioner Esguerra] that she is withdrawing the same with a reservation to revive should it be deemed necessary;

b) The Motion for Reconsideration of the denial of the application for preliminary injunction is likewise rendered moot and academic pursuant to the above-cited reason;

c) The Motion to Admit Answer filed by [herein respondent] J. Walter Thompson is granted;

d) The Urgent Motion (to declare [herein respondent] J. Walter Thompson in default) is rendered moot and academic with the admission of the Answer of said [respondent].[15]

Again, claiming that the airing of the commercial resumed, Esguerra filed another Urgent Motion[16] once more urging the RTC-Branch 215 to issue a preliminary injunction/TRO as she originally prayed for in her Amended Complaint in Civil Case No. Q-03-50205.

On 14 November 2003, RTC-Branch 215 issued an Order granting the TRO Esguerra prayed for, to wit:

Accordingly, let a temporary restraining order issue against the [herein respondents] J. Walter Thompson Company (Phils.) Inc., AGL Market

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[14] *Id.* at 215.

[15] CA *rollo*, p. 60.

[16] *Id.* at 61.

Research Incorporated, and AB Food and Beverage Philippines, directing them to cease and desist from airing on different television networks the commercial of Ovaltine where [herein petitioner Esguerra] appears as an endorser of said product for a period of twenty (20) days from receipt of this Order.

The hearing of the application for preliminary injunction set on November 19, 2003 is maintained.[17]

After conducting a hearing on the application for preliminary injunction prayed for by Esguerra, RTC-Branch 215 issued on 8 June 2004 another Order likewise granting Esguerra's application for preliminary injunction:

WHEREFORE, let a writ of preliminary injunction be issued restraining and enjoining [respondents] from airing the subject commercial pending the resolution of the main case upon posting of a bond in the amount of Five Hundred Thousand (₱500,000.00) Pesos pursuant to Sec. 5, Rule 58 of the 1997 Rules of Civil Procedure.

Let this case be set for pre-trial conference on July 14, 2004 at 8:30 a.m.[18]

Henceforth, RTC-Branch 215 carried on with the proceedings in Civil Case No. Q-03-50205.

Since Esguerra did not withdraw her Petition in CA-G.R. SP No. 79075, the Court of Appeals also proceeded with the same.

In its Decision dated 31 March 2005, the Court of Appeals dismissed Esguerra's Petition. It reasoned that Judge Asdala resolved Esguerra's application for injunction/TRO in Civil Case No. Q-03-50205 in the exercise of her judicial function. Esguerra assailed in her Petition an official act of Judge Asdala, for which the latter cannot be made answerable for damages.

The Court of Appeals also pointed out in its Decision that the writ of *certiorari* is an extraordinary remedy available only when there is no plain, speedy and adequate remedy in the

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[17] *Rollo,* p. 54.

[18] CA *rollo,* p. 117.

ordinary course of law; and in this case, the writ of *certiorari* is a remedy not yet available to Esguerra at the time she filed her Petition for the same. It noted that Esguerra filed her Petition even before the resolution by the RTC-Branch 87 of her motion for reconsideration of its Order dated 28 August 2003. And even though Esguerra already withdrew her application for injunction/TRO, the denial of which by RTC-Branch 87 she was assailing in her Petition, she still wanted to pursue the Petition in apprehension that her reinstated application for injunctive relief would again be denied by RTC-Branch 215. This practice of taking shortcuts of the established rules of procedure would not be countenanced by the appellate court.[19]

Esguerra's Motion for Reconsideration[20] of the Decision dated 31 March 2005 of the Court of Appeals was denied by the same court in its Resolution dated 12 July 2005.[21]

Esguerra is presently before us *via* the Petition at bar, raising the following issues:

1) Whether or not the case had become totally moot and academic.

2) Whether or not the public respondent may be held liable for damages.

3) What is the amount of damages that should be awarded.[22]

Esguerra wants us not only to reverse and set aside the assailed Decision and Resolution of the Court of Appeals, but also to hold Judge Asdala answerable for damages in the amount of ₱2.2 million, plus costs of suit and attorney's fees.

In sum, Esguerra asserts that she suffered damages by reason of the continued showing of the offending commercial from

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[19] *Rollo*, p. 97.

[20] *Id.* at 99.

[21] *Id.* at 106.

[22] *Id.* at 2.

the time the TRO should have been issued by Judge Asdala of RTC-Branch 87, to the time it was actually issued by Judge Padilla of RTC-Branch 215. By Esguerra's determination, Judge Asdala could and should have issued the TRO as early as 1 August 2003, since summons were already served on respondents on 29 July 2003 and Civil Case No. Q-03-50205 was raffled to the RTC-Branch 87 on 31 July 2003. Under Section 4(d) of Rule 58, Judge Asdala was obliged to already conduct a summary hearing on Esguerra's application by the very next day, 1 August 2003, but Judge Asdala dilly-dallied in acting on the application too long. From 1 August 2003 to 17 November 2003, the date when JWT and AGL received copies of the Order dated 14 November 2003 of RTC-Branch 215 granting a TRO in Esguerra's favor and, when the showing of the Ovaltine commercial was actually stopped, the said commercial was already shown 110 times more.[23] Worse, Judge Asdala also delayed ruling on Esguerra's Motion for Inhibition. Esguerra bases her claim for damages on the omission or failure of Judge Asdala to do what was clearly required of her by the law.

The Petition is not meritorious. The Court of Appeals did not err in dismissing Esguerra's Petition in CA-G.R. SP No. 79075.

Esguerra's Petition before the Court of Appeals is one for *certiorari*, prohibition, as well as *mandamus*, all special remedies under Rule 65 of the 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.

[23] *Id.* at 114.

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.

SEC. 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, the 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, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

It does well for Esguerra to remember that at the threshold of every special civil action under Rule 65, the person seeking the writs must be able to show, on pain of dismissal of his petition, that his resort to such extraordinary remedy is justified by the "absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law." Esguerra utterly fails in this regard for there is nothing in her Petition in CA-G.R. SP No. 79075, not even an allegation therein, that she had no appeal or any other efficacious remedy against the 28 August 2003 Order of RTC-Branch 87 denying her application for preliminary injunction. The Court of Appeals, therefore, was compelled to dismiss Esguerra's Petition in CA-G.R. SP No. 79075.

As the Court of Appeals noted, at the time Esguerra filed her Petition in CA-G.R. SP No. 79075, her motion for reconsideration of the Order dated 28 August 2003 of RTC-

Branch 87 denying her application for injunctive relief was still pending. This only shows that the remedy of a motion for reconsideration from the adverse 28 August 2003 Order of RTC-Branch 87 was still available to, and was in fact, availed of by Esguerra.

Esguerra would also later on withdraw her application for preliminary injunction/TRO. At this point, the question of whether RTC-Branch 87 properly denied the said application, became moot and academic.[24] There is no more justiciable controversy insofar as the denial of the petition for preliminary injunction/ TRO is concerned, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief in this regard to which Esguerra would be entitled and which would be negated by the dismissal of her Petition in CA-G.R. SP No. 79075 by the appellate court.[25] Courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved. Courts will not determine a moot question.[26]

Esguerra still insists that her Petition in CA-G.R. SP No. 79075 cannot be moot and academic because the issue of Judge Asdala's liability for the damages Esguerra sustained survived Esguerra's withdrawal of her application for injunctive relief and Judge Asdala's inhibition from Civil Case No. Q-03-50206, and still needed to be resolved.

It is indubitable that Judge Asdala's Order dated 28 August 2003 denying Esguerra's application for a preliminary injunction/ TRO was rendered in the exercise of her official function as the Presiding Judge of RTC-Branch 87 which had jurisdiction over Civil Case No. Q-03-50206 and all its incidents, including the said application. Judges cannot be subjected to liability — civil, criminal or administrative — for any of their official acts, no matter how

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[24] *Kho v. Court of Appeals*, 429 Phil. 140, 151 (2002).

[25] *Gancho-on v. Secretary of Labor and Employment*, 337 Phil. 654, 657-658 (1997).

[26] *Korea Exchange Bank v. Gonzales*, G.R. No. 139460, 31 March 2006, 486 SCRA 166, 176.

erroneous, so long as they act in good faith. It is only when they act fraudulently or corruptly, or with gross ignorance, may they be held criminally or administratively responsible.[27]

In *Ang v. Quilala*,[28] we further explained that it is settled doctrine that judges are not liable to respond in a civil action for damages, and are not otherwise administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction. Certain it is that a judge may not be held administratively accountable for every erroneous order or decision he renders. 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 administering justice can be infallible in his judgment. More importantly, the error must be gross or patent, deliberate and malicious, or incurred with evident bad faith. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.

Although *Ang v. Quilala* is an administrative case, our pronouncements therein are equally relevant to the instant case, a special civil action for *certiorari*, prohibition, and *mandamus*, in which petitioner Esguerra additionally seeks civil compensation from Judge Asdala. Not every error committed by a judge in the exercise of his official functions would make him liable for the damages which a party may sustain by reason thereof, unless it is shown that such error was so gross or patent, deliberate and malicious, or incurred with evident bad faith.

The records do not show that Judge Asdala was moved by bad faith, ill will or malicious intent when she did not grant the TRO and preliminary injunction Esguerra prayed for. Bad faith

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[27] *Contreras v. Judge Solis*, 329 Phil. 376, 388 (1996), citing *Valdez v. Valera*, 171 Phil. 217, 221 (1978).

[28] 444 Phil. 742, 747-748 (2003).

must be proved by clear and convincing evidence.[29] It is not presumed and the party who alleges the same has the *onus* of proving it.[30] Esguerra has not, in fact, adduced any proof to show that impropriety attended the actions of Judge Asdala.

While we have earlier ruled that the question of the propriety of the denial of the application for preliminary injunction has become moot and academic, still let it be stated that Judge Asdala's ruling is not manifestly unjust nor did it constitute gross ignorance. Her reasons for denying Esguerra's application for injunctive relief were clearly stated in her Order of 28 August 2003. She had obviously applied therein the basic requirements, as laid down in jurisprudence, for entitlement to injunctive relief and found that Esguerra's application failed to comply with the requisites.

We also refer Esguerra to Section 5, Rule 65 of the Rules of Court, governing her Petition before the Court of Appeals, which provides:

> SEC. 5. *Respondents and costs in certain cases*. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
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> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If

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[29] *Gatmaitan v. Gonzales,* G.R. No. 149226, 26 June 2006, 492 SCRA 591, 605.

[30] *Sesbreño v. Igonia*, A.M. No. P-04-1791, 27 January 2006, 480 SCRA 243, 256.

the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

It is clear from the foregoing that in petitions for *certiorari*, prohibition, and *mandamus*, the public respondent, such as Judge Asdala herein, should not actively participate in the proceedings as a general rule, unless directed otherwise by the court. The inclusion of the public respondent in such petitions is more of a formality, since it is still the private respondent/s who must contest the said petitions. It is likewise explicitly stated in the afore-quoted provision that the public respondent in petitions under Rule 65 shall not be liable for the costs which may be awarded to the petitioner/s. It can be rationally deduced therefrom that in such petitions, the public respondent is not meant to incur or shoulder personal liability for his official actions, even if the writs of *certiorari*, prohibition or *mandamus* are so issued against him.

Esguerra's subsequent reinstatement of her application for injunction/TRO before RTC-Branch 215 did not revive the grounds for her Petition in CA-G.R. SP No. 79075. She sought recourse with the Court of Appeals because RTC-Branch 87 denied her previous application for injunctive relief. In contrast, RTC-Branch 215, upon reinstatement by Esguerra of her application, actually granted her a TRO and also a preliminary injunction. Esguerra, however, cannot use her reinstated application for injunctive relief which was favorably acted upon by RTC-Branch 215, as the basis for her then pending Petition before the Court of Appeals in CA-G.R. SP No. 79075. This, certainly, will be repugnant to the fundamental due process which Judge Asdala must not be deprived of.

Finally, Esguerra is still litigating her civil case against JWT and AGL before RTC-Branch 215, Quezon City, in which she also prays for compensation for the damages she had suffered from the airing of the Ovaltine commercial. To insist on recovering damages from Judge Asdala for the same act, *i.e.*, the showing of the Ovaltine commercial, suspiciously appears to be an attempt to recover double compensation.

WHEREFORE, premises considered, the instant Petition is denied for lack of merit. The Decision of the Court of Appeals dated 31 March 2005 and its Resolution dated 12 July 2005 CA-G.R. SP No. 79075 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 177188. December 4, 2008]

EL GRECO SHIP MANNING AND MANAGEMENT CORPORATION, *petitioner, vs.* COMMISSIONER OF CUSTOMS, *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE COURT OF TAX APPEALS BINDING UPON THE SUPREME COURT IF SUPPORTED BY SUBSTANTIAL EVIDENCE. — Well-entrenched is the rule that findings of facts of the CTA are binding on this Court and can only be disturbed on appeal if not supported by substantial evidence. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; TECHNICAL RULES OF PROCEDURE AND EVIDENCE ARE NOT STRICTLY APPLIED. — In administrative proceedings, such as those before the BOC, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense. The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side

or an opportunity to seek reconsideration of the action or ruling complained of.

3. TAXATION; TARIFF AND CUSTOMS CODE; PENALTY OF FORFEITURE; WHEN IMPOSABLE UPON VESSEL ENGAGED IN SMUGGLING; REQUISITES. — The penalty of forfeiture is imposed on any vessel engaged in smuggling, provided that the following conditions are present: (1) The vessel is "used unlawfully in the importation or exportation of articles into or from" the Philippines; (2) The articles are imported to or exported from "any Philippine port or place, except a port of entry"; or (3) If the vessel has a capacity of less than 30 tons and is "used in the importation of articles into any Philippine port or place other than a port of the Sulu Sea, where importation in such vessel may be authorized by the Commissioner, with the approval of the department head."

APPEARANCES OF COUNSEL

Valdez Maulit & Associates for petitioner.
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 Revised Rules of Court, filed by petitioner El Greco Ship Manning and Management Corporation (El Greco), seeking to reverse and set aside the Decision[1] of the Court of Tax Appeals (CTA) *En Banc* dated 14 March 2007 in C.T.A. EB No. 162. In its assailed Decision, the CTA *En Banc* affirmed the Decision[2] dated 17 October 2005 of the CTA Second Division

[1] Penned by Associate Justice Lovell R. Bautista with Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring; *rollo*, pp. 137-154.

[2] Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr., and Erlinda P. Uy, concurring; *rollo*, pp. 75-97.

in CTA Case No. 6618, ordering the forfeiture of the vessel M/V Criston, also known as M/V Neptune Breeze, for having been involved in the smuggling of 35,000 bags of imported rice.

The factual and procedural antecedents of this case are as follows:

On 23 September 2001, the vessel M/V Criston docked at the Port of Tabaco, Albay, carrying a shipment of 35,000 bags of imported rice, consigned to Antonio Chua, Jr. (Chua) and Carlos Carillo (Carillo), payable upon its delivery to Albay. Glucer Shipping Company, Inc. (Glucer Shipping) is the operator of M/V Criston.[3]

Upon the directive of then Commissioner Titus Villanueva of the Bureau of Customs (BOC), a Warrant of Seizure and Detention, **Seizure Identification No. 06-2001,** was issued by the Legaspi District Collector, on 23 September 2001 for the 35,000 bags of imported rice shipped by M/V Criston, on the ground that it left the Port of Manila without the necessary clearance from the Philippine Coast Guard. Since the earlier Warrant covered only the cargo, but not M/V Criston which transported it, a subsequent Warrant of Seizure and Detention, **Seizure Identification No. 06-2001-A**, was issued on 18 October 2001 particularly for the said vessel. The BOC District Collector of the Port of Legaspi thereafter commenced proceedings for the forfeiture of M/V Criston and its cargo under Seizure Identification No. 06-2001-A and Seizure Identification No. 06-2001, respectively.[4]

To protect their property rights over the cargo, consignees Chua and Carillo filed before the Regional Trial Court (RTC) of Tabaco, Albay, a Petition for Prohibition with Prayer for the Issuance of Preliminary Injunction and Temporary Restraining Order (TRO) assailing the authority of the Legaspi District Collectors to issue the Warrants of Seizure and Detention and praying for a permanent injunction against the implementation

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[3] *Rollo*, pp. 207-219.

[4] *Id*.

of the said Warrants. Their Petition was docketed as Civil Case No. T-2170.[5]

After finding the Petition sufficient in form and substance and considering the extreme urgency of the matter involved, the RTC issued a 72-hour TRO conditioned upon the filing by Chua and Carillo of a bond in the amount of ₱31,450,000.00, representing the value of the goods. After Chua and Carillo posted the required bond, the 35,000 bags of rice were released to them.[6]

The Legaspi District Collector held in abeyance the proceedings for the forfeiture of M/V Criston and its cargo under Seizure Identification No. 06-2001 and Seizure Identification No. 06-2001-A pending the resolution by the RTC of Civil Case No. T-2170. When the RTC granted the Motion to Dismiss Civil Case No. T-2170 filed by the BOC, the Legaspi District Collector set the hearing of Seizure Identification No. 06-2001 and Seizure Identification No. 06-2001-A. A notice of the scheduled hearing of the aforementioned seizure cases was sent to Glucer Shipping but it failed to appear at the hearing so set. After a second notice of hearing was ignored by Glucer Shipping, the prosecutor was allowed to present his witnesses.[7]

In the meantime, while M/V Criston was berthing at the Port of Tabaco under the custody of the BOC, the Province of Albay was hit by typhoon "Manang." In order to avert any damage which could be caused by the typhoon, the vessel was allowed to proceed to another anchorage area to temporarily seek shelter. After typhoon "Manang" had passed through Albay province, M/V Criston, however, failed to return to the Port of Tabaco and was nowhere to be found.[8]

Alarmed, the BOC and the Philippine Coast Guard coordinated with the Philippine Air Force to find the missing vessel. On 8

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[5] *Chua, Jr. v. Villanueva*, G.R. No. 157591, 16 December 2005, 478 SCRA 264.

[6] *Id.*

[7] *Rollo*, pp. 137-154.

[8] *Id.*

November 2001, the BOC received information that M/V Criston was found in the waters of Bataan sporting the name of M/V Neptune Breeze.[9]

Based on the above information and for failure of M/V Neptune Breeze to present a clearance from its last port of call, a Warrant of Seizure and Detention under **Seizure Identification No. 2001-208** was issued against the vessel by the BOC District Collector of the Port of Manila.[10]

For the same reasons, the Legaspi District Collector rendered a Decision on 27 June 2002 in Seizure Identification No. 06-2001 and Seizure Identification No. 06-2001-A ordering the forfeiture of the M/V Criston, also known as M/V Neptune Breeze, and its cargo, for violating Section 2530 (a), (f) and (k) of the Tariff and Customs Code.[11]

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[9] *Id*.

[10] *Id*.

[11] SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Law*. – Any vehicle, vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture.

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

x x x x x x x x x

f. Any article, the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instruments in the importation or exportation of the former;

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k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage

In the meantime, El Greco, the duly authorized local agent of the registered owner of M/V Neptune Breeze, Atlantic Pacific Corporation, Inc. (Atlantic Pacific), filed with the Manila District Collector, in Seizure Identification No. 2001-208, a Motion for Intervention and Motion to Quash Warrant of Seizure Detention with Urgent Prayer for the Immediate Release of M/V Neptune Breeze. El Greco claimed that M/V Neptune Breeze was a foreign registered vessel owned by Atlantic Pacific, and different from M/V Criston which had been involved in smuggling activities in Legaspi, Albay.[12]

Acting favorably on the motion of El Greco, the Manila District Collector issued an Order[13] dated 11 March 2002 quashing the Warrant of Seizure and Detention it issued against M/V Neptune Breeze in Seizure Identification No. 2001-208 for lack of probable cause that the said vessel was the same one known as M/V Criston which fled from the jurisdiction of the BOC Legaspi District after being seized and detained therein for allegedly engaging in smuggling activities. According to the decretal part of the Manila District Collector's Order:

> WHEREFORE, pursuant to the authority vested in me by law, it is hereby ordered and decreed that the Warrant of Seizure and Detention issued thereof be Quashed for want of factual or legal basis, and that the vessel "M/V Neptune Brreze" be released to [El Greco] after clearance with the Commissioner of Customs, proper identification and compliance with existing rules and regulations pertinent in the premises.

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and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time has no knowledge of the unlawful act.

[12] *Rollo*, pp. 197-204.

[13] *Id*.

On automatic review by BOC Commissioner Antonio Bernardo, the Order dated 11 March 2002 of the District Collector of the Port of Manila was reversed after finding that M/V Neptune Breeze and M/V Criston were one and the same and that the Legaspi District Collector had already acquired prior jurisdiction over the vessel. The Decision dated 15 January 2003 of the BOC Commissioner, contained in his 2nd Indorsement[14] to the Manila District Collector, decreed:

> Respectfully returned to the District Collector, POM, the within case folders in POM S. I. No. 2001-208, EL GRECO SHIP MANNING AND MANAGEMENT CORPORATION, Claimant/Intervenor, with the information that the Decision of that Port in the aforesaid case is hereby REVERSED in view of the following reasons:
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> 1. Subject vessel MV "NEPTUNE BREEZE" and MV "CRISTON" are one and the same as shown by the vessels documents retrieved by the elements of the Philippine Coast Guard from MV "CRISTON" during the search conducted on board thereof when the same was apprehended in Tabaco, Albay, indicating therein the name of the vessel MV "NEPTUNE BREEZE," the name of the master of the vessel a certain YUSHAWU AWUDU, *etc*. These facts were corroborated by the footage of ABS-CBN taken on board the vessel when the same was subjected to search.
>
> 2. Hence, prior jurisdiction over the said vessel was already acquired by the Port of Legaspi when the said Port issued WSD S.I. No. 06-2001-A and therefore, the Decision of the latter Port forfeiting the subject vessel supercedes the Decision of that Port ordering its release.

Seeking the reversal of the Decision dated 15 January 2003 of the BOC Commissioner, El Greco filed a Petition for Review with the CTA which was lodged before its Second Division as CTA Case No. 6618. El Greco averred that the BOC Commissioner committed grave abuse of discretion in ordering the forfeiture of the M/V Neptune Breeze in the absence of proof that M/V Neptune Breeze and M/V Criston were one and the same vessel.[15] According

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[14] *Id.* at 220.

[15] *Id.* at 75.

to El Greco, it was highly improbable that M/V Criston was merely assuming the identity of M/V Neptune Breeze in order to evade liability since these were distinct and separate vessels as evidenced by their Certificates of Registry. While M/V Neptune Breeze was registered in St. Vincent and the Grenadines[16] as shown in its Certificate of Registry No. 7298/N, M/V Criston was registered in the Philippines. Additionally, El Greco argued that the Order dated 11 March 2002 of the Manila District Collector already became final and executory for failure of the BOC Commissioner to act thereon within a period of 30 days in accordance with Section 2313 of the Tariff and Customs Code.

On 17 October 2005, the CTA Second Division rendered a Decision[17] in CTA Case No. 6618 sustaining the 15 January 2003 Decision of the BOC Commissioner ordering the forfeiture of M/V Neptune Breeze. Referring to the crime laboratory report submitted by the Philippine National Police (PNP) stating that the serial numbers of the engines and the generators of both M/V Criston and M/V Neptune Breeze were identical, the CTA Second Division concluded that both vessels were indeed one and the same vessel. The CTA Second Division further ruled that nothing in the provisions of Section 2313 of the Tariff and Customs Code could buttress El Greco's contention that the Order dated 11 March 2002 of the Manila District Collector already became final and executory. The dispositive portion of the Decision of the CTA Second Division reads:

> WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED**. The Decision in the 2nd Indorsement dated January 15, 2003 of then Commissioner Bernardo is hereby **AFFIRMED**.[18]

In a Resolution[19] dated 7 February 2006, the CTA Second Division denied the Motion for Reconsideration of El Greco

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[16] An island nation located in the Lesser Antilles chain of the Caribbean Sea, a former British colony that became independent on 27 October 1979.

[17] *Rollo,* pp. 75-97.

[18] *Id.* at 97.

[19] *Id.* at 111-112.

for failure to present issues that had not been previously threshed out in its earlier Decision.

Undaunted, El Greco elevated its case to the CTA *En Banc* through a Petition for Review, docketed as C.T.A. EB No. 162, this time lamenting that it was being deprived of its property without due process of law. El Greco asserted that the CTA Second Division violated its constitutional right to due process when it upheld the forfeiture of M/V Neptune Breeze on the basis of the evidence presented before the Legaspi District Collector in Seizure Identification No. 06-2001 and Seizure Identification No. 06-2001-A, of which El Greco was not notified and in which it was not able to participate.[20]

In its Decision[21] promulgated on 14 March 2007, the CTA *En Banc* declared that the CTA Second Division did not commit any error in its disquisition, and dismissed the Petition of El Greco in C.T.A. EB No. 162 for lack of merit. According to the CTA *En Banc*, the appreciation and calibration of evidence on appeal (from the ruling of the BOC) lies within the sound discretion of its Division, and the latter's findings and conclusions cannot be set aside unless it has been sufficiently shown that they are not supported by evidence on record. The CTA *En Banc* thus disposed:

> WHEREFORE, the instant petition is hereby DISMISSED. Accordingly, the assailed Decision promulgated on October 17, 2005 and Resolution dated February 7, 2006 of the Second Division of this Court, are hereby AFFIRMED.[22]

Without filing a Motion for Reconsideration with the CTA, El Greco already sought recourse before this Court *via* this Petition for Review on *Certiorari*, raising the following issues:

I.

WHETHER OR NOT EL GRECO WAS DENIED OF ITS RIGHT TO DUE PROCESS.

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[20] *Id.* at 137-138.

[21] *Id.* at 137-155.

[22] *Id.* at 154.

II.

WHETHER OR NOT M/V NEPTUNE BREEZE AND M/V CRISTON ARE ONE AND THE SAME VESSEL.

III.

WHETHER OR NOT M/V NEPTUNE BREEZE IS QUALIFIED TO BE THE SUBJECT OF FORFEITURE UNDER SECTION 2531 OF THE TARIFF AND CUSTOMS CODE.

The primordial issue to be determined by this Court is whether M/V Neptune Breeze is one and the same as M/V Criston which had been detained at the Port of Tabaco, Albay, for carrying smuggled imported rice and had fled the custody of the customs authorities to evade its liabilities.

El Greco insists that M/V Neptune Breeze and M/V Criston are not the same vessel. In support of its position, El Greco again presents the foreign registration of its vessel as opposed to the local registration of M/V Criston.

The CTA *En Banc*, however, affirming the findings of the CTA Second Division, as well as the Legaspi District Collector, concluded otherwise.

We sustain the determination of the CTA *En Banc* on this matter.

Well-entrenched is the rule that findings of facts of the CTA are binding on this Court and can only be disturbed on appeal if not supported by substantial evidence.[23] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[24]

A review of the records of the present case unveils the overwhelming and utterly significant pieces of evidence that more than meets the quantum of evidence necessary to establish

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[23] *Commissioner of Internal Revenue v. Tours Specialists, Inc.*, G.R. No. 66416, 21 March 1990, 183 SCRA, 402, 407.

[24] *Ynson v. Court of Appeals*, 327 Phil. 191, 207 (1996).

that M/V Neptune Breeze is the very same vessel as M/V Criston, which left the anchorage area at Legaspi, Albay, without the consent of the customs authorities therein while under detention for smuggling 35,000 bags of imported rice.

The crime laboratory report of the PNP shows that the serial numbers of the engines and generators of the two vessels are identical. El Greco failed to rebut this piece of evidence that decisively identified M/V Neptune Breeze as the same as M/V Criston. We take judicial notice that along with gross tonnage, net tonnage, length and breadth of the vessel, the serial numbers of its engine and generator are the necessary information identifying a vessel. In much the same way, the identity of a land motor vehicle is established by its unique motor and chassis numbers. It is, thus, highly improbable that two totally different vessels would have engines and generators bearing the very same serial numbers; and the only logical conclusion is that they must be one and the same vessel.

Equally significant is the finding of the Legaspi District Collector that all the documents submitted by M/V Criston were spurious, including its supposed registration in the Philippines. In a letter dated 14 March 2002, Marina Administrator Oscar M. Sevilla attested that M/V Criston was not registered with the Marina.

Finally, Customs Guard Adolfo Capistrano testified that the features of M/V Criston and M/V Neptune Breeze were similar; while Coast Guard Commander Cirilo Ortiz narrated that he found documents inside M/V Criston bearing the name M/V Neptune Breeze. These testimonies further fortified the conclusion reached by the Legaspi District Collector that M/V Criston and M/V Neptune Breeze were one and the same.

We also take note that the purported operator of M/V Criston, Glucer Shipping, was a total no-show at the hearings held in Seizure Identification No. 06-2001 and Seizure Identification No. 06-2001-A before the Legaspi District Collector. Despite being sent several notices of hearing to its supposed address, Glucer Shipping still failed to appear in the said proceedings. It becomes highly unfathomable for an owner to ignore proceedings for the seizure of its vessel, risking the loss of a property of enormous value.

From the foregoing, we can only deduce that there is actually no Glucer Shipping and no M/V Criston. M/V Criston appears to be a mere fictional identity assumed by M/V Neptune Breeze so it may conduct its smuggling activities with little risk of being identified and held liable therefor.

We cannot give much credence to the self-serving denial by El Greco that M/V Neptune Breeze is not the same as M/V Criston in light of the substantial evidence on record to the contrary. The foreign registration of M/V Neptune Breeze proves only that it was registered in a foreign country; but it does not render impossible the conclusions consistently reached by the Legaspi District Collector, the CTA Second Division and the CTA *en banc*, and presently by this Court, that M/V Neptune Breeze was the very same vessel used in the conduct of smuggling activities in the name M/V Criston.

Neither can we permit El Greco to evade the forfeiture of its vessel, as a consequence of its being used in smuggling activities, by decrying denial of due process.

In administrative proceedings, such as those before the BOC, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense.[25] The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[26]

Although it was not able to participate in the proceedings in Seizure Identification No. 06-2001 and Seizure Identification No. 06-2001-A before the Legaspi District Collector, it had ample opportunity to present its side of the controversy in Seizure Identification No. 2001-208 before the Manila District Collector. To recall, full proceedings were held before the Manila District

[25] See *Samalio v. Court of Appeals*, G.R. No. 140079, 31 March 2005, 454 SCRA 462, 472.

[26] *Danan v. Court of Appeals*, G.R. No. 132759, 25 October 2005, 474 SCRA 113, 125.

Collector in Seizure Identification No. 2001-208. Even the evidence presented by El Greco in the latter proceedings fails to persuade. The only vital evidence it presented before the Manila District Collector in Seizure Identification No. 2001-208 was the foreign registration of M/V Neptune Breeze. It was still the same piece of evidence which El Greco submitted to this Court. Even when taken into consideration and weighed against each other, the considerably sparse evidence of El Greco in Seizure Identification No. 2001-208 could not successfully refute the substantial evidence in Seizure Identification No. 06-2001 and Seizure Identification No. 06-2001-A that M/V Neptune Breeze is the same as M/V Criston.

Moreover, the claim of El Greco that it was denied due process flounders in light of its ample opportunity to rebut the findings of the Legaspi District Collector in Seizure Identification No. 06-2001 and No. 06-2001-A before the CTA Second Division in CTA Case No. 6618 and the CTA *En Banc* in C.T.A. EB No. 162, and now before this Court in the Petition at bar. Unfortunately, El Greco was unable to make full use to its advantage of these repeated opportunities by offering all possible evidence in support of its case. For example, evidence that could establish that M/V Neptune Breeze was somewhere else at the time when M/V Criston was being held by customs authority at the Port of Legaspi, Albay, would have been helpful to El Greco's cause and very easy to secure, but is glaringly absent herein.

After having established that M/V Neptune Breeze is one and the same as M/V Criston, we come to another crucial issue in the case at bar, that is, whether the order of forfeiture of the M/V Neptune Breeze is valid.

The pertinent provisions of the Tariff and Customs Code read:

SEC. 2530. *Property Subject to Forfeiture Under Tariff and Customs Law.* — Any vehicle, vessel or aircraft, cargo, articles and other objects shall, under the following conditions, be subject to forfeiture:

a. Any vehicle, vessel or aircraft, including cargo, which shall be used unlawfully in the importation or exportation of articles or in conveying and/or transporting contraband or smuggled articles in commercial quantities into or from any Philippine port or place. The mere carrying or holding on board of contraband or smuggled articles in commercial quantities shall subject such vessel, vehicle, aircraft or any other craft to forfeiture; Provided, That the vessel, or aircraft or any other craft is not used as duly authorized common carrier and as such a carrier it is not chartered or leased;

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f. Any article, the importation or exportation of which is effected or attempted contrary to law, or any article of prohibited importation or exportation, and all other articles which, in the opinion of the Collector, have been used, are or were intended to be used as instruments in the importation or exportation of the former;

xxx xxx xxx

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time has no knowledge of the unlawful act.

The penalty of forfeiture is imposed on any vessel engaged in smuggling, provided that the following conditions are present:

(1) The vessel is "used unlawfully in the importation or exportation of articles into or from" the Philippines;

(2) The articles are imported to or exported from "any Philippine port or place, except a port of entry"; or

(3) If the vessel has a capacity of less than 30 tons and is "used in the importation of articles into any Philippine port or place other than a port of the Sulu Sea, where importation in such vessel may be authorized by the Commissioner, with the approval of the department head."[27]

There is no question that M/V Neptune Breeze, then known as M/V Criston, was carrying 35,000 bags of imported rice without the necessary papers showing that they were entered lawfully through a Philippine port after the payment of appropriate taxes and duties thereon. This gives rise to the presumption that such importation was illegal. Consequently, the rice subject of the importation, as well as the vessel M/V Neptune Breeze used in importation are subject to forfeiture. The burden is on El Greco, as the owner of M/V Neptune Breeze, to show that its conveyance of the rice was actually legal. Unfortunately, its claim that the cargo was not of foreign origin but was merely loaded at North Harbor, Manila, was belied by the following evidence - the Incoming Journal of the Philippine Coast Guard, Certification issued by the Department of Transportation and Communications (DOTC) Port State Control Center of Manila, and the letter dated 4 October 2001 issued by the Sub-Port of North Harbor Collector Edward de la Cuesta, confirming that there was no such loading of rice or calling of vessel occurring at North Harbor, Manila. It is, therefore, uncontroverted that the 35,000 bags of imported rice were smuggled into the Philippines using M/V Neptune Breeze.

We cannot give credence to the argument of El Greco that the Order dated 11 March 2002 of the Manila District Collector, finding no probable cause that M/V Neptune Breeze is the same as M/V Criston, has already become final and executory, thus, irreversible, pursuant to Section 2313 of the Tariff and Customs Code. According to said provision:

SEC. 2313. *Review of Commissioner*. — The person aggrieved by the decision or action of the Collector in any matter presented upon

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[27] *Commissioner of Customs v. Manila Star Ferry, Inc.*, G.R. Nos. 31776-78, 21 October 1993, 227 SCRA 317, 321.

protest or by his action in any case of seizure may, within fifteen (15) days after notification in writing by the Collector of his action or decision, file a written notice to the Collector with a copy furnished to the Commissioner of his intention to appeal the action or decision of the Collector to the Commissioner. Thereupon the Collector shall forthwith transmit all the records of the proceedings to the Commissioner, who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as may be necessary to give effect to his decision: Provided, That when an appeal is filed beyond the period herein prescribed, the same shall be deemed dismissed.

If in any seizure proceedings, the Collector renders a decision adverse to the Government, such decision shall be automatically reviewed by the Commissioner and the records of the case elevated within five (5) days from the promulgation of the decision of the Collector. The Commissioner shall render a decision on the automatic appeal within thirty (30) days from receipts of the records of the case. If the Collector's decision is reversed by the Commissioner, the decision of the Commissioner shall be final and executory. However, if the Collector's decision is affirmed, **or if within thirty (30) days from receipt of the record of the case by the Commissioner no decision is rendered** or the decision involves imported articles whose published value is five million pesos (₱5,000,000.00) or more, **such decision shall be deemed automatically appealed to the Secretary of Finance** and the records of the proceedings shall be elevated within five (5) days from the promulgation of the decision of the Commissioner or of the Collector under appeal, as the case may be: Provided, further, That if the decision of the Commissioner or of the Collector under appeal as the case may be, is affirmed by the Secretary of Finance or if within thirty (30) days from receipt of the records of the proceedings by the Secretary of Finance, no decision is rendered, the decision of the Secretary of Finance, or of the Commissioner, or of the Collector under appeal, as the case may be, shall become final and executory.

In any seizure proceeding, the release of imported articles shall not be allowed unless and until a decision of the Collector has been confirmed in writing by the Commissioner of Customs. (Emphasis ours.)

There is nothing in Section 2313 of the Tariff and Customs Code to support the position of El Greco. As the CTA *en*

banc explained, in case the BOC Commissioner fails to decide on the automatic appeal of the Collector's Decision within 30 days from receipt of the records thereof, the case shall again be deemed automatically appealed to the Secretary of Finance. Also working against El Greco is the fact that jurisdiction over M/V Neptune Breeze, otherwise known as M/V Criston, was first acquired by the Legaspi District Collector; thus, the Manila District Collector cannot validly acquire jurisdiction over the same vessel. Judgment rendered without jurisdiction is null and void, and void judgment cannot be the source of any right whatsoever.[28]

Finally, we strongly condemn the ploy used by M/V Neptune Breeze, assuming a different identity to smuggle goods into the country in a brazen attempt to defraud the government and the Filipino public and deprive them of much needed monetary resources. We further laud the efforts of the Commissioner of the Customs Bureau and the other executive officials in his department to curb the proliferation of smuggling syndicates in the country which deserves no less than our full support.

WHEREFORE, in view of the foregoing, the instant Petition is *DENIED*. The Decision dated 17 October 2005 and Resolution dated 7 February 2006 of the Court of Tax Appeals *En Banc* in CTA EB No. 172 are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

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[28] *Vda. de Lopez v. Court of Appeals,* G.R. No. 146035, 9 September 2005, 469 SCRA 515, 523.

THIRD DIVISION

[G.R. No. 177797. December 4, 2008]

SPS. PEDRO TAN and NENA ACERO TAN, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT, AS AMENDED; PROVIDED FOR THE MODES BY WHICH PUBLIC LANDS MAY BE DISPOSED OF. — The Public Land Act, as amended by Presidential Decree No. 1073, governs lands of the public domain, except timber and mineral lands, friar lands, and privately owned lands which reverted to the State. It explicitly enumerates the means by which public lands may be disposed of, to wit: (1) For homestead settlement; (2) By sale; (3) By lease; and (4) By confirmation of imperfect or incomplete titles; (a) By judicial legalization. (b) By administrative legalization (free patent). Each mode of disposition is appropriately covered by separate chapters of the Public Land Act because there are specific requirements and application procedure for every mode. Since the spouses Tan filed their application before the RTC, then it can be reasonably inferred that they are seeking the **judicial confirmation or legalization of their imperfect or incomplete title** over the subject property.

2. ID.; ID.; APPLICATION FOR REGISTRATION OF TITLE; REQUISITES. — The Court notes that Presidential Decree No. 1073, amending the Public Land Act, clarified Section 48, paragraph "b" thereof, by specifically declaring that it applied only to alienable and disposable lands of the public domain. Thus, based on the said provision of Commonwealth Act No. 141, as amended, the two requisites which the applicants must comply with for the grant of their Application for Registration of Title are: (1) the land applied for is alienable and disposable; and (2) the applicants and their predecessors-in-interest have occupied and possessed the land openly, continuously, exclusively, and adversely since 12 June 1945. 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 administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute. Until then, the rules on confirmation of imperfect title do not apply. x x x **As the law now stands, a mere showing of possession for thirty years or more is not sufficient. It must be shown, too, that possession and occupation had started on 12 June 1945 or earlier.**

3. ID.; ID.; ID.; TAX DECLARATIONS AND RECEIPTS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP. — Tax declarations and receipts are not conclusive evidence of ownership. At most, they constitute mere *prima facie* proofs of ownership of the property for which taxes have been paid. **In the absence of actual, public and adverse possession, the declaration of the land for tax purposes does not prove ownership**. They may be good supporting or collaborating evidence together with other acts of possession and ownership; but by themselves, tax declarations are inadequate to establish possession of the property in the nature and for the period required by statute for acquiring imperfect or incomplete title to the land.

4. ID.; ID.; ID.; FOR FAILURE TO SATISFY THE REQUIREMENTS PRESCRIBED, THE SUPREME COURT HAS NO OPTION BUT TO DENY THE APPLICATION; RATIONALE. — For failure of the Spouses Tan to satisfy the requirements prescribed by Section 48(b) of the Public Land Act, as amended, this Court has no other option but to deny their application for judicial confirmation and registration of their title to the subject property. Much as this Court wants to conform to the State's policy of encouraging and promoting the distribution of alienable public lands to spur economic growth and remain true to the ideal of social justice, our hands are tied by the law's stringent safeguards against registering imperfect titles. The Court emphasizes, however, that our ruling herein is without prejudice to the spouses Tan availing themselves of the other modes for acquiring title to alienable and disposable lands of the public domain for which they may be qualified under the law.

APPEARANCES OF COUNSEL

Angelino A. Galeon for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This case 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 28 February 2006 and Resolution[2] dated 12 April 2007 of the Court of Appeals in CA-G.R. CV No. 71534. In its assailed Decision, the appellate court reversed and set aside the Decision[3] dated 9 May 2001 of the Regional Trial Court (RTC) of Misamis Oriental, 10th Judicial Region, Branch 39, Cagayan de Oro City, in LRC Case No. N-2000-055, and ordered herein petitioners, spouses Pedro and Nena Tan (spouses Tan), to return the parcel of land known as Lot 1794, Ap-10-002707, Pls-923, with an area of 215,698 square meters, located in Calingagan, Villanueva, Misamis Oriental (subject property) to herein respondent, Republic of the Philippines (Republic). In its assailed Resolution, the appellate court denied the spouses Tan's Motion for Reconsideration.

The factual milieu of this case is as follows:

The spouses Tan were natural-born Filipino citizens, who became Australian citizens on 9 February 1984.[4] They seek to have the subject property registered in their names.

The subject property was declared alienable and disposable on 31 December 1925, as established by a Certification[5] dated 14 August 2000 issued by the Department of Environment and

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[1] Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo A. Camello and Ricardo R. Rosario, concurring; *rollo*, pp. 24-38.

[2] Penned by Associate Justice Edgardo A. Camello with Associate Justices Mario V. Lopez and Michael P. Elbinias, concurring; *rollo*, pp. 39-40.

[3] Penned by Judge Downey C. Valdevilla; records, pp. 57-60.

[4] The Spouses Tan categorically stated in their Application for Registration of Title to the subject property that they became Australian citizens on 9 February 1984; records, p. 3.

[5] Records, p. 80.

Natural Resources (DENR), Community Environment and Natural Resources Office (CENRO), Cagayan de Oro City.

Prior to the spouses Tan, the subject property was in the possession of Lucio and Juanito Neri and their respective spouses. Lucio and Juanito Neri had declared the subject property for taxation purposes in their names under Tax Declarations No. 8035 (1952),[6] No. 1524[7] and No. 1523 (1955).[8]

The spouses Tan acquired the subject property from Lucio and Juanito Neri and their spouses by virtue of a duly notarized Deed of Sale of Unregistered Real Estate Property[9] dated 26 June 1970. The spouses Tan took immediate possession of the subject property on which they planted rubber, gemelina, and other fruit-bearing trees. They declared the subject property for taxation purposes in their names, as evidenced by Tax Declarations No. 5012[10] (1971); No. 11155,[11] No. 10599,[12] No. 10598[13] (1974); No. 11704[14] (1976); No. 01224[15] (1980); No. 06316[16] (1983); and No. 943000[17] (2000); and paid realty taxes thereon.

However, a certain Patermateo Casiño (Casiño) claimed a portion of the subject property, prompting the spouses Tan to file a Complaint for Quieting of Title against him before the RTC of Cagayan de Oro City, Branch 24, where it was docketed as Civil Case No. 88-204. On 29 August 1989, the RTC rendered

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[6] *Id.* at 84.

[7] *Id.* at 85.

[8] *Id.* at 86.

[9] *Id.* at 13-14.

[10] *Id.* at 88.

[11] *Id.* at 89.

[12] *Id.* at 90.

[13] *Id.* at 91.

[14] *Id.* at 92.

[15] *Id.* at 93.

[16] *Id.* at 94.

[17] *Id.* at 95.

a Decision[18] in Civil Case No. 88-204 favoring the spouses Tan and declaring their title to the subject property thus "quieted." Casiño appealed the said RTC Decision to the Court of Appeals where it was docketed as CA-G.R. CV No. 26225. In a Resolution[19] dated 15 November 1990, the appellate court dismissed CA-G.R. CV No. 26225 for lack of interest to prosecute. Casiño elevated his case to this Court *via* a Petition for Review on *Certiorari*, docketed as UDK-10332. In a Resolution[20] dated 13 March 1991 in UDK-10332, the Court denied Casiño's Petition for being insufficient in form and substance. The said Resolution became final and executory on 3 June 1991.[21]

Refusing to give up, Casiño filed an Application for Free Patent on the subject property before the Bureau of Lands.[22] On 8 December 1999, Casiño's application was ordered cancelled[23] by Officer Ruth G. Sabijon of DENR-CENRO, Cagayan de Oro City, upon the request of herein petitioner Pedro Tan, the declared owner of the subject property pursuant to the 29 August 1989 Decision of the RTC in Civil Case No. 88-204. Similarly, survey plan Csd-10-002779 prepared in the name of Casiño was also ordered cancelled[24] by the Office of the Regional Executive Director, DENR, Region X, Macabalan, Cagayan de Oro City.

In 2000, the spouses Tan filed their Application for Registration of Title[25] to the subject property before the RTC of Cagayan de Oro City, Branch 39, where it was docketed as LRC Case No. N-2000-055. The application of the spouses Tan invoked

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[18] Penned by Presiding Judge Leonardo N. Demecillo; records, pp. 15-21.

[19] Penned by Associate Justice Jose C. Campos, Jr. with Associate Justices Oscar M. Herrera and Abelardo M. Dayrit, concurring; records, p. 22.

[20] Records, p. 23.

[21] As evidenced by an Entry of Judgment; records, p. 24.

[22] Records, p. 108.

[23] *Id.* at 110.

[24] *Id.* at 109.

[25] *Id.* at 3-7.

the provisions of Act No. 496[26] and/or Section 48 of Commonwealth Act No. 141,[27] as amended. In compliance with the request[28] of the Land Registration Authority (LRA) dated 29 August 2000, the spouses Tan filed on 5 October 2000 an Amended Application for Registration of Title[29] to the subject property.

The Office of the Solicitor General (OSG) entered its appearance in LRC Case No. N-2000-055 on behalf of the Republic, but failed to submit a written opposition to the application of the spouses Tan.

When no opposition to the application of the spouses Tan was filed by the time of the initial hearing of LRC Case No. N-2000-055, the RTC issued on 23 April 2001 an order of general default, except as against the Republic. Thereafter, the spouses Tan were allowed to present their evidence *ex-parte*.

After the establishment of the jurisdictional facts, the RTC heard the testimony of John B. Acero (Acero), nephew and lone witness of the spouses Tan. Acero recounted the facts already presented above and affirmed that the spouses Tan's possession of the subject property had been open, public, adverse and continuous.[30]

After Acero's testimony, the spouses Tan already made a formal offer of evidence, which was admitted by the court *a quo*.[31]

On 9 May 2001, the RTC rendered a Decision in LRC Case No. N-2000-055 granting the application of the spouses Tan, the dispositive portion of which reads:

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[26] Also known as Land Registration Act.

[27] Also known as Public Land Act.

[28] The LRA, through its Administrator, Alfredor R. Enriquez, requested the spouses Tan to amend their application and submit the following: 1) the names and complete address of the owners of four adjoining lots; 2) the certified true copy of the technical description of Lot 1794 by the branch clerk of court; and 3) the replacement of the postal money order in the amount of ₱1,012.50, which had become stale; records, p. 36.

[29] Records, pp. 48-52.

[30] *Id.* at 13-14.

[31] *Id.* at 15-18.

WHEREFORE, [Spouses Tan] having conclusively established to the satisfaction of this Court their ownership of the [subject property], Lot 1794, Pls-923, situated in Villanueva, Misamis Oriental, should be as it is hereby adjudicated to the [Spouses Tan] with address at #166 Capistrano Street, Cagayan de Oro City.

Once this judgment becomes final, let the Order for the issuance of decree and corresponding Certificate of Title issue in accordance with Presidential Decree No. 1529, as amended.[32]

In its appeal of the afore-mentioned RTC Decision to the Court of Appeals, docketed as CA-G.R. CV No. 71534, the Republic made the following assignment of errors:

I. The trial court erred in ruling that [herein petitioners Spouses Tan] and their predecessors-in-interest have been in open, continuous and notorious possession of subject property for the period required by law.

II. The trial court erred in granting the application for land registration despite the fact that there is a disparity between the area as stated in [the Spouses Tan's] application and the tax declarations of Juanito Neri, Lucio Neri, and [herein petitioner Pedro Tan].

III. The trial court erred in granting the application for land registration despite the fact that [the Spouses Tan] failed to present the original tracing cloth plan.

IV. The trial court erred in relying on the Decision dated [29 August 1989] by the RTC-Branch 24, Cagayan de Oro City which declared [the Spouses Tan's] "title" on the subject [property] "quieted."

V. The trial court erred in not finding that [the Spouses Tan] failed to overcome the presumption that all lands form part of the public domain.[33]

On 28 February 2006, the Court of Appeals rendered a Decision in CA-G.R. CV No. 71534 granting the appeal of the Republic, and reversing and setting aside the 9 May 2001 Decision of the RTC on the ground that the spouses Tan failed to comply with Section 48(b) of Commonwealth Act No. 141, otherwise known

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[32] CA *rollo*, pp. 59-60.

[33] *Id.* at 31-33.

as the Public Land Act, as amended by Presidential Decree No. 1073, which requires possession of the subject property to start on or prior to 12 June 1945.[34] Hence, the appellate court ordered the spouses Tan to return the subject property to the Republic.

The spouses Tan filed a Motion for Reconsideration of the foregoing Decision of the Court of Appeals. To refute the finding of the appellate court that they and their predecessors-in-interest did not possess the subject property by 12 June 1945 or earlier, the spouses Tan attached to their Motion a copy of **Tax Declaration No. 4627** covering the subject property issued in **1948** in the name of their predecessor-in-interest, Lucio Neri. They called attention to the statement in Tax Declaration No. 4627 that it cancelled **Tax Declaration No. 2948**. Unfortunately, no copy of Tax Declaration No. 2948 was available even in the Office of the Archive of the Province of Misamis Oriental. The spouses Tan asserted that judicial notice may be taken of the fact that land assessment is revised by the government every four years; and since Tax Declaration No. 4627 was issued in the year 1948, it can be presupposed that Tax Declaration No. 2948 was issued in the year **1944**.

The Court of Appeals denied the Motion for Reconsideration of the spouses Tan in a Resolution dated 12 April 2007.

The spouses Tan now come before this Court raising the sole issue of *whether or not [the Spouses Tan] have been in open, continuous, exclusive and notorious possession and occupation of the subject [property], under a bona fide claim of acquisition or ownership, since [12 June 1945], or earlier, immediately preceding the filing of the application for confirmation of title*.[35]

The Court rules in the negative and, thus, finds the present Petition devoid of merit.

To recall, the spouses Tan filed before the RTC their Application for Registration of Title to the subject property in the year 2000

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[34] *Id.* at 36-37.

[35] *Rollo*, p. 84.

generally invoking the provisions of Act No. 496 and/or Section 48 of Commonwealth Act No. 141, as amended.

The Public Land Act,[36] as amended by Presidential Decree No. 1073,[37] governs lands of the public domain, except timber and mineral lands, friar lands, and privately owned lands which reverted to the State.[38] It explicitly enumerates the means by which public lands may be disposed of, to wit:

(1) For homestead settlement;

(2) By sale;

(3) By lease; and

(4) By confirmation of imperfect or incomplete titles;

(a) By judicial legalization.

(b) By administrative legalization (free patent).[39]

Each mode of disposition is appropriately covered by separate chapters of the Public Land Act because there are specific requirements and application procedure for every mode.[40] Since the spouses Tan filed their application before the RTC, then it can be reasonably inferred that they are seeking the **judicial confirmation or legalization of their imperfect or incomplete title** over the subject property.

Judicial confirmation or legalization of imperfect or incomplete title to land, not exceeding 144 hectares, may be availed of by persons identified under Section 48 of the Public Land Act, as amended by Presidential Decree No. 1073,[41] which reads –

Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such

[36] Approved on 7 November 1936.

[37] Approved on 25 January 1977.

[38] Section 2.

[39] Section 11.

[40] *Republic v. Herbieto*, G.R. No. 156117, 26 May 2005, 459 SCRA 183, 200.

[41] *Id.* at 201.

lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:

(a) [Repealed by Presidential Decree No. 1073].

(b) Those who by themselves or through their predecessors-in-interest **have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title**, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture whether disposable or not, under a *bona fide* claim of ownership since June 12, 1945 shall be entitled to the rights granted in subsection (b) hereof. (Emphasis supplied.)

Not being members of any national cultural minorities, spouses Tan may only be entitled to judicial confirmation or legalization of their imperfect or incomplete title under Section 48(b) of the Public Land Act, as amended.

The Court notes that Presidential Decree No. 1073, amending the Public Land Act, clarified Section 48, paragraph "b" thereof, by specifically declaring that it applied only to alienable and disposable lands of the public domain. Thus, based on the said provision of Commonwealth Act No. 141, as amended, the two requisites which the applicants must comply with for the grant of their Application for Registration of Title are: (1) the land applied for is alienable and disposable; and (2) the applicants and their predecessors-in-interest have occupied and possessed the land openly, continuously, exclusively, and adversely since 12 June 1945.[42]

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[42] *Menguito v. Republic*, 401 Phil. 274, 285 (2000).

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 administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute. Until then, the rules on confirmation of imperfect title do not apply.[43]

In the case at bar, the spouses Tan presented a Certification from the DENR-CENRO, Cagayan de Oro City, dated 14 August 2000, to prove the alienability and disposability of the subject property. The said Certification stated that the subject property became alienable and disposable on **31 December 1925**. A certification from the DENR that a lot is alienable and disposable is sufficient to establish the true nature and character of the property and enjoys a presumption of regularity in the absence of contradictory evidence.[44] Considering that no evidence was presented to disprove the contents of the aforesaid DENR-CENRO Certification, this Court is duty-bound to uphold the same.

Nonetheless, even when the spouses Tan were able to sufficiently prove that the subject property is part of the alienable and disposable lands of the public domain as early as 31 December 1925, they still failed to satisfactorily establish compliance with the second requisite for judicial confirmation of imperfect or incomplete title, *i.e.*, open, continuous, exclusive and notorious possession and occupation of the subject property since 12 June 1945 or earlier.

Through the years, Section 48(b) of the Public Land Act has been amended several times. *Republic v. Doldol*[45] provides a summary of these amendments:

> The original Section 48(b) of C.A. No. 141 provided for possession and occupation of lands of the public domain **since July 26, 1894**. This was superseded by R.A. No. 1942, which provided for a **simple thirty-year prescriptive period** of occupation by an applicant for

[43] *Republic v. Candy Maker, Inc.*, G.R. No. 163766, 22 June 2006, 492 SCRA 272, 292.

[44] *Republic v. Consunji*, G.R. No. 158897,13 September 2007, 553 SCRA 269, 286.

[45] 356 Phil. 671, 676-677 (1998).

judicial confirmation of imperfect title. The same, however, has already been amended by Presidential Decree 1073, approved on January 25, 1977. As amended, Section 48(b) now reads:

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945 or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by wars or *force majeure*. Those shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Section 48(b) of the Public Land Act, as amended by PD No. 1073, presently requires, for judicial confirmation of an imperfect or incomplete title, the possession and occupation of the piece of land by the applicants, by themselves or through their predecessors-in-interest, **since 12 June 1945 or earlier**. This provision is in total conformity with Section 14(1) of the Property Registration Decree heretofore cited. (Emphasis ours.)

As the law now stands, a mere showing of possession for thirty years or more is not sufficient. It must be shown, too, that possession and occupation had started on 12 June 1945 or earlier.[46]

It is worth mentioning that in this case, even the spouses Tan do not dispute that the true reckoning period for judicial confirmation of an imperfect or incomplete title is on or before 12 June 1945. They also admit that based on the previous evidence on record, their possession and occupation of the subject property fall short of the period prescribed by law. The earliest evidence of possession and occupation of the subject property can be traced back to a tax declaration issued in the name of their predecessors-in-interest only in 1952. However, the spouses Tan are now asking the kind indulgence of this Court to take into account Tax Declaration No. 4627 issued in 1948, which they had attached to their Motion for Reconsideration before

[46] *Republic v. San Lorenzo Development Corporation*, G.R. No. 170724, 29 January 2007, 513 SCRA 294, 303-304.

the Court of Appeals but which the appellate court refused to consider. Just as they had argued before the Court of Appeals, the spouses Tan point out that Tax Declaration No. 4627 was not newly issued but cancelled Tax Declaration No. 2948; and should the Court take judicial notice of the fact that tax assessments are revised every four years, then Tax Declaration No. 2948 covering the subject property was issued as early as 1944.

Section 34, Rule 132 of 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.

On the basis thereof, it is clear that evidence should have been presented during trial before the RTC; evidence not formally offered should not be considered. In this case, it bears stressing that Tax Declaration No. 4627 was only submitted by the Spouses Tan together with their Motion for Reconsideration of the 28 February 2006 Decision of the Court of Appeals. The reason given by the Spouses Tan why they belatedly procured such evidence was because at the time of trial the only evidence available at hand was the 1952 tax declaration. More so, they also believed in good faith that they had met the 30-year period required by law. They failed to realize that under Section 48(b) of Commonwealth Act No. 141, as amended, a mere showing of possession for thirty years or more is not sufficient because what the law requires is possession and occupation on or before 12 June 1945. This Court, however, finds the reason given by the spouses Tan unsatisfactory. The spouses Tan filed their application for registration of title to the subject property under the provisions of Section 48(b) of Commonwealth Act No. 141, as amended. It is incumbent upon them as applicants to carefully know the requirements of the said law.

Thus, following the rule enunciated in Section 34, Rule 132 of the Rules of Court, this Court cannot take into consideration Tax Declaration No. 4627 as it was only submitted by the Spouses Tan when they filed their Motion for Reconsideration of the 28 February 2006 Decision of the appellate court.

And even if this Court, in the interest of substantial justice, fairness and equity, admits and take into consideration Tax Declaration No. 4627, issued in 1948, it would still be insufficient to establish open, continuous, exclusive and notorious possession and occupation of the subject property by the Spouses Tan and their predecessors-in-interest since 12 June 1945 or earlier.

Tax Declaration No. 4627 was only issued in 1948, three years after 12 June 1945, the cut-off date under the law for acquiring imperfect or incomplete title to public land. For the Court to conclude from the face of Tax Declaration No. 4627 alone that the subject property had been declared for tax purposes before 12 June 1945 would already be too much of a stretch and would require it to rely on mere presuppositions and conjectures. The Court cannot simply take judicial notice that the government revises tax assessments every four years. Section 129 of the Revised Rules of Evidence provides particular rules on which matters are subject to judicial notice and when it is mandatory[47] or discretionary[48] upon the courts or when a hearing is necessary.[49] It is unclear under which context this Court must take judicial notice of the supposed four-year revision of tax assessments on real properties. Moreover, the power to impose realty taxes, pursuant to which the assessment of real property is made, has long been devolved to the local government units (LGU) having jurisdiction over the

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[47] **SECTION 1**. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[48] **SEC. 2**. *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

[49] **SEC. 3**. *Judicial notice, when hearing necessary*. —During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and allow the parties to be heard thereon.

said property. Hence, the rules pertaining to the same may vary from one LGU to another; and regular revision of the tax assessments of real property every four years may not be true for all LGUs, as the spouses Tan would have this Court believe. Given the foregoing, Tax Declaration No. 4627 is far from the clear, positive, and convincing evidence required[50] to establish open, continuous, exclusive and notorious possession and occupation of the subject property by the Spouses Tan and their predecessors-in-interest since 12 June 1945 or earlier.

In addition, tax declarations and receipts are not conclusive evidence of ownership. At most, they constitute mere *prima facie* proofs of ownership of the property for which taxes have been paid. **In the absence of actual, public and adverse possession, the declaration of the land for tax purposes does not prove ownership.**[51] They may be good supporting or collaborating evidence together with other acts of possession and ownership; but by themselves, tax declarations are inadequate to establish possession of the property in the nature and for the period required by statute for acquiring imperfect or incomplete title to the land.

As a final observation, the spouses Tan purchased the subject property and came into possession of the same only in 1970. To justify their application for registration of title, they had to tack their possession of the subject property to that of their predecessors-in-interest. While the spouses Tan undoubtedly possessed and occupied the subject property openly, continuously, exclusively and notoriously, by immediately introducing improvements on the said property, in addition to declaring the same and paying realty tax thereon; in contrast, there was a dearth of evidence that their predecessors-in-interest possessed and occupied the subject property

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After the trial, and before judgment or on appeal, the proper court, on its own initiative or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case.

[50] See *Republic v. Enciso*, G.R. No. 160145, 11 November 2005, 474 SCRA 700, 713.

[51] *Seriña v. Caballero*, G.R. No. 127382, 17 August 2004, 436 SCRA 593, 604.

in the same manner. The possession and occupation of the subject property by the predecessors-in-interest of the spouses Tan were evidenced only by the tax declarations in the names of the former, the earliest of which, Tax Declaration No. 4627, having been issued only in 1948. No other evidence was presented by the spouses Tan to show specific acts of ownership exercised by their predecessors-in-interest over the subject property which may date back to 12 June 1945 or earlier.

For failure of the Spouses Tan to satisfy the requirements prescribed by Section 48(b) of the Public Land Act, as amended, this Court has no other option but to deny their application for judicial confirmation and registration of their title to the subject property. Much as this Court wants to conform to the State's policy of encouraging and promoting the distribution of alienable public lands to spur economic growth and remain true to the ideal of social justice, our hands are tied by the law's stringent safeguards against registering imperfect titles.[52]

The Court emphasizes, however, that our ruling herein is without prejudice to the spouses Tan availing themselves of the other modes for acquiring title to alienable and disposable lands of the public domain for which they may be qualified under the law.

WHEREFORE, premises considered, the instant Petition is hereby *DENIED*. The Decision dated 28 February 2006 and Resolution dated 12 April 2007 of the Court of Appeals in CA-G.R. CV No. 71534 are hereby *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio, Austria-Martinez,* and *Reyes, JJ.,* concur.

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[52] *Republic v. Bibonia*, G.R. No. 157466, 21 June 2007, 525 SCRA 268, 277.

* Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 10 November 2008.

THIRD DIVISION

[G.R. No. 178233. December 4, 2008]

JOSEPH A. GANDOL, *plaintiff-appellee, vs.* **PEOPLE OF THE PHILIPPINES,** *accused-appellant.*

[G.R. No. 180510. December 4, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO GANDOL *y* ALBOR,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; AS A RULE, ASSIGNING VALUES TO THE DECLARATIONS ON THE WITNESS STAND IS BEST AND MOST COMPETENTLY PERFORMED BY THE TRIAL JUDGE; RATIONALE. — Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood. This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court unless it be manifestly shown that the trial court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.

2. ID.; ID.; CREDIBILITY OF WITNESSES.; TESTIMONY OF AN ACCUSED-TURNED-STATE-WITNESS DOES NOT NECESSARILY RENDER HIS TESTIMONY INCREDIBLE; PRESENT IN CASE AT BAR. — The mere fact that Nestor was an accused-turned-state-witness does not necessarily render his testimony incredible. Nestor has no motive to perjure himself because neither Eduardo nor Joseph implicated him in the killing. Eduardo in fact corroborated Nestor's testimony that the latter was forced to help dispose of the body of the victim, not by

his own volition. There is totally nothing that would implicate Nestor in the crime, much less motivate him, to declare a falsity. He did not renege from his agreement to give a good account of the crime, enough to indeed substantiate the conviction of his co-accused, Eduardo and Joseph, by the trial court. Some significant points: the damaging testimony of Nestor against petitioners was corroborated by the medico-legal report submitted and testified to by Dr. Kapuno. Nestor testified that he witnessed Joseph stab the victim at the back more than once, while Eduardo was doing the same frontally, dealing the victim several stab blows. Nestor likewise said he dragged the victim face down towards the brook upon Eduardo's behest. Dr. Kapuno declared that the victim suffered three stab wounds in his back, six in his chest and one in his arm. Dr. Kapuno also opined that the abrasion in the victim's chest was caused by his having been dragged face down. Indeed, the testimonial evidence of the prosecution tallied on material points with its physical evidence. All these point to one thing: Nestor has spoken only one language — that of truth.

3. ID.; ID.; DENIAL AS A DEFENSE; A WEAK DEFENSE WHICH BECOMES EVEN WEAKER IN THE FACE OF THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE PROSECUTION WITNESSES. — As constantly pronounced by this Court, denial, like alibi, is a weak defense which becomes even weaker in the face of the positive identification of the accused by prosecution witnesses. The denial of the accused constitutes self-serving negative evidence which can hardly be considered as overcoming a straightforward and credit-worthy eyewitness account. As between a positive and categorical testimony which has a ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED AND CONSTRUED. — The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. Neither did the presence of "defense wounds" on the body of the victim rule out treachery.

5. ID.; ID.; ID.; TREACHERY IS NOT PRESENT WHEN THE ATTACK WAS PRECEDED BY A HEATED ARGUMENT. — The rule which ordains that there was no treachery if the victim was placed on guard, such as when a heated argument preceded the attack, can only apply when the contending parties to the squabble are the victim and the assailant. In this case, as testified to by Eduardo, it was the victim and Nestor who were allegedly engaged in a heated argument. Nestor was not one of the victim's attackers. Had the victim verbally clashed with Joseph and Eduardo immediately prior to the stabbing, treachery would have been out of the picture. But such is not the case here.

6. ID.; AGGRAVATING CIRCUMSTANCES; RELATIONSHIP; RELATIONSHIP CAN NOT BE APPRECIATED WHEN THE SAME IS NOT ALLEGED IN THE INFORMATION. — Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings shall be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state not only the qualifying but also the aggravating circumstances. Hence, since the aggravating circumstance of relationship was not alleged in the Information, it could not be appreciated against them.

7. ID.; MURDER; IMPOSABLE PENALTY. — Under Article 248 of the Revised Penal Code, as amended, murder is punishable by *reclusion perpetua* to death. With no aggravating circumstances and one generic mitigating circumstance of voluntary surrender, the penalty imposable on the appellant, in accordance with Article 63 (3) of the Revised Penal Code, should be the minimum period, which is *reclusion perpetua*. As to Joseph, he should be meted out the penalty of *reclusion perpetua.* As earlier stated, the penalty for murder is *reclusion perpetua* to death. Article 63 of the same Code provides that when the law prescribes two indivisible penalties, the lesser penalty shall be imposed when, in the commission of the deed, there are neither mitigating nor aggravating circumstances. In the present case, no mitigating circumstances were proven. Neither did the prosecution allege and prove any aggravating circumstance. Hence, the penalty should be *reclusion perpetua*.

8. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; WHEN JUSTIFIED. — The award of exemplary damages is likewise in order since the qualifying circumstance of treachery was proven. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.

9. ID.; ID.; ACTUAL DAMAGES; WHEN PROPER. — During the trial, the prosecution was able to present evidence supported by receipts that the family of the victim incurred actual damages for funeral expenses of ₱5,200.00. However, *People v. Dela Cruz*, it was held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in the present case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages for a lesser amount. This Court ratiocinated that it was anomalous and unfair that the heirs of the victim who succeeded in proving actual damages amounting to less than ₱25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages. Hence, in lieu of actual damages, the heirs of the victim are entitled to ₱25,000.00 as temperate damages.

APPEARANCES OF COUNSEL

National Committee on Legal Aid for J. A. Gandol.
Public Attorney's Office for E. Gandol.

D E C I S I O N

CHICO-NAZARIO, *J.*:

These consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court assail the Decision[1] of the Court

[1] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Jose Catral Mendoza and Sesinando E. Villon, concurring; *Rollo* of G.R. No. 180510, pp. 3-13.

of Appeals in CA-G.R. CR-H.C. No. 00059 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Legazpi City, finding Joseph A. Gandol (Joseph) and Eduardo A. Gandol (Eduardo) guilty of the crime of Murder.

In an Amended Information dated 10 September 1997, Joseph, Eduardo and Nestor Ocaña (Nestor) were charged before the RTC with the crime of Murder defined under Article 248 of the Revised Penal Code, as amended. The accusatory portion of the Information reads:

> That on or about the 1st day of June, 1997, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another for a common purpose, with intent to kill, did then and there willfully, unlawfully and feloniously, and with treachery and taking advantage of superior strength, attack, assault and stab with a knife one RICARDO ASEJO, JR., thereby inflicting upon the latter injuries which directly caused the death of the said RICARDO ASEJO, JR.[3]

During the arraignment on 8 December 1997, Joseph, Eduardo and Nestor, with the assistance of counsel *de oficio,* pleaded not guilty.[4] Thereafter, trial on the merits ensued.

On 17 August 1998, after the prosecution presented four witnesses, the Assistant City Prosecutor of Legazpi City filed a motion for the discharge of Nestor as accused to utilize him as a state witness. Without the opposition of the counsel from the remaining accused, the RTC granted said motion on the same date.[5]

The prosecution presented five witnesses, namely: (1) Senior Police Officer (SPO) 1 Salvador Batas, Jr. (SPO1 Batas), the responding police officer to whom Joseph admitted that he committed the crime; (2) Dr. Modesto T. Kapuno (Dr. Kapuno),

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[2] Penned by Judge Vladimir B. Brusola.

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

[4] Records, p. 60.

[5] *Id.* at 103.

the City Health Officer of Legazpi City, who conducted the autopsy on the victim; (3) Rosita Asejo, mother of the deceased who testified on the actual damages incurred by the family; (4) SPO1 Virgilio Broncano, the Desk Officer of the Legazpi City Philippine National Police, who recorded in the police blotter the killing of Ricardo Asejo, Jr. (Ricardo); and (5) Nestor, who allegedly saw the actual killing of Ricardo.

As documentary evidence, the prosecution offered the following: (1) Exhibit "A" – Medico-Legal Examination Report issued by Dr. Kapuno; (2) Exhibit "B" – a receipt issued by the funeral parlor Nuestra Señora de Salvacion for the funeral services amounting to ₱5,200.00 and other internment expenses written on a piece of paper in the amount of ₱20,035.00; (3) Exhibit "C" – Police Blotter of the incident; (4) Exhibit "D" – the knife allegedly used in the killing of Ricardo; (5) Exhibit "E" – the Joint Sworn Affidavit of SPO1 Batas and a certain SPO3 Brigones.

Taken together, the evidence of the prosecution shows that in the afternoon of 1 June 1997, while Nestor was on his way home from work, he chanced upon the Gandol brothers; Eduardo, Joseph and Celso drinking gin in Celso's house.[6] Nestor arrived home and took a rest in his yard. A little later in the evening, Eduardo and Joseph came and invited Nestor to join them for a drink in the house of Joseph at Taysan, Legazpi City.[7] Nestor accepted the invitation. Eduardo, Joseph and Nestor arrived at the drinking place at around 6:30 pm.[8] They positioned themselves in the living room around a table where two bottles of gin were set. At the center of the table was a big kerosene lamp that illuminated the living room. In a while, Ricardo, a brother-in-law of Eduardo and Joseph, arrived and joined the group.[9] After the group had almost consumed the first bottle, Joseph, with a knife at the back of his waist, stood up and

[6] TSN, 9 December 1998, p. 5.

[7] *Id.* at 8.

[8] *Id*.

[9] TSN, 4 December 1998, p. 4.

went outside the house.[10] Joseph called on Ricardo to go outside as well. In deference to his brother-in-law, Ricardo obliged. Eduardo, who was also armed with a knife, followed Ricardo on his way out.[11] All of a sudden, Joseph stabbed Ricardo twice at the back. Eduardo followed his brother by stabbing Ricardo frontally a couple of times.[12] Ricardo fell down on his back. Dissatisfied, Eduardo again dealt the victim three stab blows on the chest. Eduardo approached Nestor threatening to kill the latter if he would not help in disposing of the body of the victim.[13] Overcome by fear, Nestor helped Eduardo in dragging the body to a nearby brook. Joseph remained at the scene and removed the traces of blood splashed all over the door of the house. After the body was thrown beside the brook, Eduardo and Nestor returned to the house with the former poking a knife at the latter's back.[14] In the house, Eduardo pushed Nestor to a chair. Eduardo heated his knife in the burning embers, and with the reddened knife, he pricked Nestor's right hand with it, and warned him not to tell anybody about the incident.[15] Thereafter, Joseph told Nestor to accompany him to *Barangay* Busay so he could not be used as a witness against the brothers. Afraid for his life, Nestor went with Joseph and Eduardo. On the way to *Barangay* Busay, Nestor was walking between the two brothers who were holding both his hands. They were proceeding to their destination when, by a stroke of luck, Nestor found a chance to escape when Eduardo ran towards the brook, and Joseph was a little far behind him. He then ran away and went home.[16] Nestor, however, did not linger in his house. He temporarily stayed with his uncle who resided in another *barangay*. It was while he was in the house of his uncle that he agreed to surrender to the police authorities.[17]

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[10] *Id.* at 7.
[11] *Id.* at 8.
[12] *Id.* at 9.
[13] *Id.* at 11.
[14] *Id.* at 11.
[15] *Id.* at 13.
[16] *Id.* at 17.
[17] *Id.* at 18.

On the morning of 2 June 1997, responding police officer Batas went to the crime scene to conduct an investigation. When he reached the place, he interviewed Eduardo's mother who told him it was Eduardo who was responsible for the crime. When Eduardo came out of his mother's house, he admitted the killing and voluntarily surrendered to the police officer.[18]

When Dr. Kapuno conducted an autopsy on the corpse of Ricardo, he found ten stab wounds, six of which were in the chest, three at the back and one in the right arm. He likewise found lacerations in both wrists and abrasions in the chest. Dr. Kapuno opined that the abrasion in the chest was caused by the dragging of the victim face down with his clothes on. He stated that the victim was still alive when he was submerged under water and that the fatal wounds in the chest that reached the heart hastened the death of the victim.[19] He then concluded that the ultimate cause of the victim's death was asphyxia by drowning. Dr. Kapuno's autopsy report reveals the following findings:

FINDINGS:

I. STAB WOUNDS

A. ANTERIOR CHEST AND ABDOMEN

1. 3.5 cm in length and 15 cm in depth along midsternal line at the nipple line, penetrating the sternum and left ventricle of the heart.

2. 3.5 cm in length and 3 cm in depth, right costal area.

3. 3.5 cm in length and 3.5 cm in depth, miclavicular line, cm below the right nipple.

4. 3.5 cm in length and 5.5 cm in depth, right costal angle.

5. 3.5 cm in length, penetrating the abdominal cavity with evisceration of intestine, 3 cm below the umbilicus.

6. 3.5 cm in length, penetrating the abdominal cavity.

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[18] TSN, 21 January 1998, p. 12.

[19] TSN, 5 February 1998, pp. 18-19.

B. POSTERIOR CHEST AND BACK

1. 3.5 cm in length and 3 cm in depth, 3 cm lateral to the vertebral line at the level of posterior angle of scapula, left.
2. 3.5 cm in length and 3 in depth, lumbar area, right
3. 3.5 cm in length and 5 cm in depth, lumbar area, right.

C. UPPER EXTREMITIES:

1. 4 cm in length and 3 cm in depth, distal third of arm, posterior aspect, right.

II. LACERATED WOUNDS:

1. 1.0 cm, posterior aspect of wrist area, right
2. 1.5 cm, middle third of forearm, posterior aspect, left.
3. 5.0 cm, gaping medial aspect of forearm, left.

III. ABRASIONS:

- Confluent, bilateral, posterior chest.

OTHER FINDINGS:

- Positive for WASHERWOMAN'S HANDS

- Positive for Alcoholic smell of viscera

LUNGS

- doughy and positive for crepitations

- pale looking

HEART:

- Positive for Stab wound, running antero-posteriorly hitting the left vetricle.

PERICARDIUM & THORACIC CAVITY:

- Positive for Dark Reddish Blood, app. 300 mm.

CAUSE OF DEATH: Asphyxia by Drowning

CONTRIBUTORY CONDITION: Cardiac Tamponade, Secondary to Stab Wound at Heart.[20]

As to the funeral expenses incurred by the family of the deceased, the prosecution's witness, Rosita Asejo, testified that she paid ₱5,200.00 for the funeral services, as evidenced by the official receipt issued by the Nuestra Señora de Salvacion funeral parlor.[21] She also testified that she spent another ₱19,835.00 for the wake and burial.[22]

Both Eduardo and Joseph advanced the theory of denial as they pointed at each other as the author of the killing.

On the witness stand, Eduardo admitted that he, Joseph, Nestor and Ricardo were having a drinking spree at Joseph's house. According to him, during the drinking session, Nestor and Ricardo were having an argument over the slow passing around of the glass of gin. Joseph got mad and asked the squabbling buddies, Nestor and Ricardo, to leave the living room. Thereafter, Joseph went outside and was followed by Ricardo. There, Joseph stabbed Ricardo.

Although Eduardo confessed that he and Nestor were the ones who dragged the lifeless body of the victim to a nearby brook, he, however, explained that he was coerced by Joseph into doing such.[23]

On his part, Joseph claimed that at some point during the drinking spree, he fell asleep and was awakened by the noise

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[20] Exhibit "A"; records, pp. 153-155.

[21] TSN, 11 March 1998, p. 8.

[22] *Id.* at 9-10.

[23] TSN, 21 April 1999, pp. 10-11.

of Ricardo and Nestor quarrelling. Then he saw his brother Eduardo enter the house with a knife and told him: "*Mano ta nadeskuedo ko si bayaw*" (I accidentally stabbed my brother-in-law.'[24]

In a decision dated 7 January 2002, the RTC found Eduardo guilty beyond reasonable doubt of the crime charged and imposed upon him the penalty of *reclusion perpetua*. The RTC stated that while relationship — the victim was a brother-in-law of both Eduardo and Joseph — could have earned the death penalty for Eduardo, he was able to present one mitigating circumstance of surrender to offset the aggravating circumstance of relationship. On the other hand, the RTC adjudged Joseph guilty of murder aggravated by relationship and imposed on him the supreme penalty of death.

The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, the accused Eduardo Gandol *y* Albor and Joseph Gandol *y* Albor are hereby found GUILTY beyond reasonable doubt of the crime of murder. Accordingly, the accused Eduardo Gandol *y* Albor is hereby sentenced to suffer the penalty of imprisonment of *reclusion perpetua*. The accused Joseph Gandol *y* Albor is hereby sentenced to suffer the supreme penalty of death.
>
> Both accused are hereby ordered to pay jointly and severally, the sum of ₱5,000.00 as actual funeral expenses, ₱50,000.00 as indemnity for the death of Ricardo Asejo, Jr. and the further sum of ₱10,000.00 as moral damages pursuant to Art. 2219 (1) of the Civil Code. Costs against the accused.[25]

Eduardo and Joseph appealed the RTC decision to the Court of Appeals. In a decision dated 27 September 2006, the Court of Appeals affirmed the murder convictions of Eduardo and Joseph but modified the penalty imposed on the latter by reducing the penalty from death to *reclusion perpetua* pursuant to Republic Act No. 9346 which abolished the imposition of the death penalty. The judgment provides:

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[24] TSN, 6 March 2001, p. 6.

[25] Records, p. 313.

WHEREFORE, the January 7, 2002 Decision of the Regional Trial Court of Legazpi City, Branch 6, in Criminal Case No. 7517, is AFFIRMED with modification reducing the penalty imposed upon Joseph Gandol to *RECLUSION PERPETUA*. The Decision is further modified ordering both accused to pay jointly and severally, the amounts of ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages to the legal heirs of Ricardo Asejo, Jr. All other aspects of the Decision are maintained.[26]

Joseph and Eduardo separately filed their respective petitions before this Court. On 4 August 2008, this Court resolved to consolidate the petitions since the same set of facts and the same parties are involved in the said petitions.[27]

Eduardo assails the RTC and the Court of Appeals' findings which gave weight and credence to the testimony of state witness Nestor. Eduardo stresses that the testimony of Nestor is not completely corroborated by the medico-legal report since according to Dr. Kapuno the stab wounds of the victim were caused by only one instrument; hence, there was only one assailant, contrary to Nestor's declaration that there were two attackers. Eduardo also points out that Nestor's account that the victim was defenseless when stabbed is belied by the medico-legal report which shows that the victim was able to defend himself as manifested by the defense wounds in the victim's forearm and wrist area. He adds that since the victim was able to parry the thrusts aimed at hurting him, treachery could not be appreciated in the killing of Ricardo. Eduardo likewise insists that treachery is totally lacking in the case since the killing was immediately preceded by a heated argument between the victim and Nestor. He adds that state witness Nestor should not be believed being a polluted source since he participated in the crime by helping dispose of the body of the victim and testified against Eduardo and Joseph in order to exculpate himself of the wrongdoing.

Joseph maintains that he was not involved in the killing of Ricardo. To support this thesis, he stressed that if the victim fell on his back

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[26] CA *rollo*, p. 246.

[27] *Rollo* of G.R. No. 180510, p. 29.

as testified to by Nestor, he would have been dragged with his back rubbing against the ground. Joseph insists that the stab wounds at the back of the victim could not be his doing since Nestor testified that it was Eduardo who stabbed the victim several times when the latter fell on the ground. Since the body was dragged face down, ergo, it was in that position when Eduardo stabbed the victim. Thus, such facts would discount the possibility that Joseph even had the slightest participation in the incident.

Fundamentally, the question in these cases is the credibility of the parties and their witnesses.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[28] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court unless it be manifestly shown that the trial court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[29]

In the instant case, the prosecution's main witness, Nestor, steadfastly pointed to brothers Eduardo and Joseph as the persons who assailed the victim. He narrated the circumstances that led to the killing in this fashion:

Q: And when Joseph Gandol was already outside, what did he do, if any?

A: He called up Ricardo Asejo, Jr., sir.

Q: Will you please (sic) us exactly what were the words stated by Joseph Gandol in calling for Ricardo Asejo, Jr.?

A: He called Ricardo Asejo, Jr. by the term as "*bayaw*". Joseph Gandol called Ricardo Asejo, Jr. in this manner: "*bayaw*

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[28] *People v. Matito*, 468 Phil. 14, 24-25 (2004).

[29] *People v. Castillo*, G.R. No. 118912, 28 May 2004, 430 SCRA 40, 50.

marina", which if we translate it in English: "brother in-law, please come here."

Q: What did Ricardo Asejo, Jr. do when he was called by his brother-in-law Joseph Gandol when Joseph Gandol was outside?

A: Ricardo Asejo, Jr. also went outside in deference to the call of his brother-in-law Joseph Gandol, sir.

Q: Now, before Joseph Gandol went out or stood up and went out or during the time that he was going out where you were, what did you observe from him when he went outside?

A: When he stood up, I saw from behind his back a knife tucked in his waist, sir.

Q: How were you able to see that knife tucked in his waist?

A: When he stood up and facing me his back, I saw that knife tucked behind his waist, sir.

Q: Now, after Ricardo went out of the house having been called by Joseph Gandol went out of the room where you were then drinking, what did Eduardo Gandol do if he did anything?

A: After Ricardo Asejo, Jr. went outside, Eduardo Gandol also went outside, sir.

Q: Now, what did you observe from Eduardo Gando (sic) when he went out of the house?

A: I also saw a knife tucked in his waist, sir.

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Q: Now, when Eduardo Gandol went out of the place where you were drinking, what next?

A: A little while, I became uneasy and I [looked] towards the door. That was the time when Joseph Gandol stabbed Ricardo Asejo, Jr. on the left side of this (sic) back and followed by Eduardo Gandol by stabbing the deceased Ricardo Asejo, Jr. frontally.

Q: Where was Joseph Gandol at the time when he stabbed the victim, Ricardo Asejo, Jr.?

A: Joseph Gandol at that time was behind Ricardo Asejo, Jr., sir.

Q: What hands did he use in stabbing Ricardo Asejo, Jr.?

A: It was his left hand, sir.

Q: Now, how about his right hand, what was the right hand doing while the left hand was stabbing Ricardo Asejo, Jr.?

A: Joseph Gandol held Ricardo Asejo, Jr. on the right side of his shoulder then Eduardo thrust the knife at the back of the said Ricardo Asejo, sir.

Q: How many times did Joseph Gandol stab Ricardo Asejo, Jr. at his back?

A: Twice, sir.

Q: Now, after Ricardo Asejo, Jr. was stabbed twice by Joseph Gandol at his back, what happened to him?

A: When I actually saw Joseph Gandol stabbed Ricardo Asejo at his back, I also saw (sic) actually Eduardo Gandol stabbing the deceased frontally, sir.

Q: How many times did Eduardo Gandol stab the victim on his front?

A: I cannot just count how many times did Eduardo Gandol stabbed Ricardo Asejo, but it was several times, sir.

Q: What happened to Ricardo Asejo, Jr. having been stabbed by Joseph Gandol at the back and by Eduardo Gandol several times on his front?

A: Ricardo Asejo fell down.

Q: And when he fell down, what happened next?

A: Eduardo Gandol again stabbed Ricardo Asejo frontally.

Q: So, after the stab wounds, Ricardo Asejo fell to the ground? Where was he facing when he fell to the ground?

A: He fell on his back, sir.

Q: Now, you said after he fell on his back to the ground, he was still stabbed how many times by Eduardo Gandol?

A: I saw Eduardo Gandol stabbed Ricardo Asejo three (3) times, sir.[30]

Nestor vividly saw the incident as it was unfolding because it happened before his very eyes. He unmistakably identified Eduardo and Joseph as the attackers because they were drinking buddies and were still in a drinking session when the incident took place. Considering that the place was amply lit and taking into account that the stabbing happened in close proximity to where Nestor was, there was no doubt that what he recounted was what he saw.

This Court pored over the records of the case and found that Nestor's candid and straightforward narration of the brutal act perpetrated by Eduardo and Joseph on the night of the incident indubitably deserves credence.

The mere fact that Nestor was an accused-turned-state-witness does not necessarily render his testimony incredible. Nestor has no motive to perjure himself because neither Eduardo nor Joseph implicated him in the killing. Eduardo in fact corroborated Nestor's testimony that the latter was forced to help dispose of the body of the victim, not by his own volition. There is totally nothing that would implicate Nestor in the crime, much less motivate him, to declare a falsity. He did not renege from his agreement to give a good account of the crime, enough to indeed substantiate the conviction of his co-accused, Eduardo and Joseph, by the trial court. Some significant points: the damaging testimony of Nestor against petitioners was corroborated by the medico-legal report submitted and testified to by Dr. Kapuno. Nestor testified that he witnessed Joseph stab the victim at the back more than once, while Eduardo was doing the same frontally, dealing the victim several stab blows. Nestor likewise said he dragged the victim face down towards the brook upon Eduardo's behest. Dr. Kapuno declared that the victim suffered three stab wounds in his back, six in his chest and one in his arm. Dr. Kapuno also opined that the abrasion in the victim's chest was caused by his having been

[30] TSN, 4 December 1998, pp. 7-10.

dragged face down. Indeed, the testimonial evidence of the prosecution tallied on material points with its physical evidence. All these point to one thing: Nestor has spoken only one language - that of truth.

Militating against petitioners' denial are their respective testimonies pointing to each other as the author of the crime. Eduardo categorically said he saw Joseph stab the victim, while Joseph declared it was Eduardo who committed the crime. These declarations, taken together with the positive testimony of Nestor, undeniably denigrate Eduardo and Joseph's defense of denial. As constantly pronounced by this Court, denial, like alibi, is a weak defense which becomes even weaker in the face of the positive identification of the accused by prosecution witnesses.[31] The denial of the accused constitutes self-serving negative evidence which can hardly be considered as overcoming a straightforward and credit-worthy eyewitness account.[32] As between a positive and categorical testimony which has a ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.[33]

The fact alone that Nestor's testimony was silent on what had happened in the *interregnum* — between the time the victim fell on his back and at the point when he was dragged face down — would not mean that Joseph had no involvement in the offense nor will it cast doubt upon his guilt. In no uncertain terms, Nestor said he saw Joseph stab Ricardo on his back several times before the victim fell. Whether the body of the victim was pulled face down or otherwise is not material to this case, since it was already established that Joseph did stab the victim.

Eduardo is clutching at straws in making an issue out of Dr. Kapuno's declaration that only one instrument could have been

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[31] *People v. Waggay*, G.R. No. 98154, 9 February 1993, 218 SCRA 742, 753-754; *People v. Caballes*, G.R. Nos. 93437-45, 12 July 1991, 199 SCRA 152, 167.

[32] *Id*.

[33] *Id*.

used that inflicted the stab wounds of the deceased; hence, only one perpetrator assaulted the victim. Eduardo deliberately twisted Dr. Kapuno's statement. What the physician simply meant was that only one kind of instrument or knife was used to wound the victim. For sure, Dr. Kapuno could not have determined the number of malefactors who inflicted wounds on the deceased because he did not witness the crime.

Eduardo's insistence that treachery is absent in the killing of Ricardo is not convincing.

The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape.[34] Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed.[35] What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[36] Neither did the presence of "defense wounds" on the body of the victim rule out treachery. [37]

In the instant case, the victim, who heeded Joseph's call to go outside, was unsuspicious and unwary of what the assailants were about to do and, indeed, without warning, was suddenly attacked by the two. Said assault was so sudden and unexpected that the victim had not been given the opportunity to defend himself or repel the aggression. He was unarmed when he was attacked. Truly, all these circumstances indicate that the assault on the victim was treacherous. While he was at some point able to avoid some of the stab blows, that does not mean the aggression was not sudden. The survival instinct, which is inherent in every extant human being, may have worked well for the victim, or he may have been fortunate to have escaped some of the thrusts dealt unto him, but these things would not negate the presence of treachery. Neither may the presence of "defense wounds" on the body of the victim rule out treachery; Ricardo's

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[34] *People v. Belaro*, 367 Phil. 90, 107 (1999).
[35] *Id*.
[36] *People v. Pidoy*, 453 Phil. 221, 230 (2003).
[37] *People v. Abrenica*, 322 Phil. 53, 63 (1996).

act of parrying with his bare hands the first thrust inflicted by appellant was an instinctive reaction to an attack. After all, the law recognizes man's natural instinct to protect himself from impending danger.[38]

Eduardo also insists that treachery could not be appreciated since the killing was preceded by a heated argument between the victim and Nestor.

This argument is misplaced. The rule which ordains that there was no treachery if the victim was placed on guard, such as when a heated argument preceded the attack, can only apply when the contending parties to the squabble are the victim and the assailant.[39] In this case, as testified to by Eduardo, it was the victim and Nestor who were allegedly engaged in a heated argument. Nestor was not one of the victim's attackers. Had the victim verbally clashed with Joseph and Eduardo immediately prior to the stabbing, treachery would have been out of the picture. But such is not the case here.

In fine, this Court defers to the findings of the trial court which were affirmed by the Court of Appeals, there being no cogent reason to veer away from such findings.

In imposing upon Joseph and Eduardo their respective penalties, the RTC appreciated the aggravating circumstance of relationship. The Information in these cases, however, did not specifically allege the aggravating circumstance of relationship. Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings shall be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state not only the qualifying but also the aggravating circumstances.[40] Hence, since the aggravating circumstance of relationship was not alleged in the Information, it could not be appreciated against them.

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[38] *Soplente v. People*, G.R. No. 152715, 29 July 2005, 465 SCRA 267, 285-286.

[39] *People v. Lopez*, G.R. No. 112448, 30 October 1995, 249 SCRA 610, 625-626.

[40] *People v. Demate*, 465 Phil. 127, 147 (2004).

In the case of Eduardo, the mitigating circumstance of voluntary surrender should be considered in his favor. The evidence shows that appellant surrendered to a person in authority a day after the incident. This fact was not contested by the prosecution. Under Article 248 of the Revised Penal Code, as amended, murder is punishable by *reclusion perpetua* to death. With no aggravating circumstances and one generic mitigating circumstance of voluntary surrender, the penalty imposable on the appellant, in accordance with Article 63(3) of the Revised Penal Code, should be the minimum period, which is *reclusion perpetua*.[41]

As to Joseph, he should be meted out the penalty of *reclusion perpetua*. As earlier stated, the penalty for murder is *reclusion perpetua* to death. Article 63 of the same Code provides that when the law prescribes two indivisible penalties, the lesser penalty shall be imposed when, in the commission of the deed, there are neither mitigating nor aggravating circumstances. In the present case, no mitigating circumstances were proven. Neither did the prosecution allege and prove any aggravating circumstance. Hence, the penalty should be *reclusion perpetua*.

The award of ₱50,000.00 for civil indemnity and ₱50,000.00 as moral damages is in accord with the prevailing jurisprudence.[42]

The award of exemplary damages is likewise in order since the qualifying circumstance of treachery was proven. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[43] This kind of damage is intended to serve as a deterrent to serious wrongdoings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[44]

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[41] *People v. Rollon*, 457 Phil. 378, 402 (2003).

[42] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 663.

[43] *Id*.

[44] *Id*.

During the trial, the prosecution was able to present evidence supported by receipts that the family of the victim incurred actual damages for funeral expenses of ₱5,200.00. However, *People v. Dela Cruz*,[45] it was held that when actual damages proven by receipts during the trial amount to less than ₱25,000.00, as in the present case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages for a lesser amount. This Court ratiocinated that it was anomalous and unfair that the heirs of the victim who succeeded in proving actual damages amounting to less than ₱25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to ₱25,000.00 temperate damages. Hence, in lieu of actual damages, the heirs of the victim are entitled to ₱25,000.00 as temperate damages.

WHEREFORE, the Decision of the Court of Appeals dated 27 September 2006 which affirmed the 7 January 2002 Decision of the Regional Trial Court of Legazpi City, finding Joseph A. Gandol and Eduardo A. Gandol *GUILTY* of the crime of Murder and imposing upon each of them the penalty of *reclusion perpetua*, is hereby *AFFIRMED* with modifications. Eduardo and Joseph are ordered to pay solidarily the victim's heirs ₱50,000,00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱25,000.00 as temperate damages.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Reyes, and *Brion*,[*] *JJ.*, concur.

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[45] 459 Phil. 130, 138-139 (2003).

[*] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 24 November 2008.

THIRD DIVISION

[G.R. No. 178511. December 4, 2008]

MA. BELEN FLORDELIZA C. ANG-ABAYA, FRANCIS JASON A. ANG, HANNAH ZORAYDA A. ANG, and VICENTE G. GENATO, *petitioners, vs.* **EDUARDO G. ANG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; PROBABLE CAUSE; DEFINED AND CONSTRUED. — Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of prosecution's evidence in support of the charge."

2. ID.; ID.; ID.; ID.; DETERMINATION OF EXISTENCE THEREOF LIES WITHIN THE DISCRETION OF PROSECUTING OFFICER; EXPLAINED. — The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Their decisions are reviewable by the Secretary of Justice who may direct the filing of the corresponding information or to move for the dismissal of the case. In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is based on the principle that every crime is defined by its elements, without which there should be — at the most — no criminal offense.

3. MERCANTILE LAW; CORPORATION CODE; STOCKHOLDER'S RIGHT TO INSPECT CORPORATE BOOKS, WHEN VIOLATED; ELEMENTS. — Thus, contrary to Eduardo's insistence, the stockholder's right to inspect corporate books is not without limitations. While the right of inspection was enlarged under the Corporation Code as opposed to the old Corporation Law (Act No. 1459, as amended), **It is now expressly required** as a condition for such examination that the one requesting it must not have been guilty of using improperly any information secured through a prior examination, or that the person asking for such examination must be acting in good faith and for a legitimate purpose in making his demand. In order therefore for the penal provision under Section 144 of the Corporation Code to apply in a case of violation of a stockholder or member's right to inspect the corporate books/ records as provided for under Section 74 of the Corporation Code, the following elements must be present: First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes; Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and, Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved. Thus, in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation. This being the case, it would be improper for the prosecutor, during preliminary investigation, to refuse or

fail to address the defense of improper use or motive, given its express statutory recognition. In the past we have declared that if justifying circumstances are claimed as a defense, they should have at least been raised during preliminary investigation; which settles the view that the consideration and determination of justifying circumstances as a defense is a relevant subject of preliminary investigation.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; CONSTRUED.— A preliminary investigation is in effect a realistic judicial appraisal of the merits of the case; sufficient proof of the guilt of the criminal respondent must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal. Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair; the officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. After all, the purpose of preliminary investigation is not only to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial; it is just as well for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. More importantly, in the appraisal of the case presented to him for resolution, the duty of a prosecutor is more to do justice and less to prosecute. If the prosecutor is convinced during preliminary investigation of the validity of the respondent's claim of a justifying circumstance, then he must dismiss the complaint; if not, then he must file the requisite information. This is his discretion, the exercise of which we grant sufficient latitude.

5. ID.; ID.; ID.; CHARACTERIZED AS A SUBSTANTIVE RIGHT; RATIONALE. — A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical

right but a substantive one, forming part of due process in criminal justice. Due process, in the instant case, requires that an inquiry into the motive behind Eduardo's attempt at inspection should have been made even during the preliminary investigation stage, just as soon as petitioners set up the defense of improper use and motive.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Gonzales Batiller David Leabris Reyes for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the March 6, 2007 Decision[2] of the Court of Appeals in CA-G.R. SP No. 94708, which nullified and set aside the July 26, 2005 and March 29, 2006 Resolutions[3] of the Secretary of Justice in I.S. No. MAL-2004-1167 directing the withdrawal of the information filed against petitioners for violation of Section 74 of the Corporation Code. Also assailed is the June 19, 2007 Resolution[4] denying the Motion for Reconsideration.

Vibelle Manufacturing Corporation (VMC) and Genato Investments, Inc. (Genato) (collectively referred to as "the corporations") are family-owned corporations, where petitioners Ma. Belen Flordeliza C. Ang-Abaya (Flordeliza), Francis Jason A. Ang (Jason), Vincent G. Genato (Vincent), Hanna Zorayda A. Ang (Hanna) and private respondent Eduardo G. Ang

[1] *Rollo*, pp. 3-46.

[2] *Id.* at 51-63; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Remedios A. Salazar-Fernando and Jose C. Mendoza.

[3] *Id.* at 249-252 and 253.

[4] *Id.* at 65-66.

(Eduardo) are shareholders, officers and members of the board of directors.

Prior to the instant controversy, VMC, Genato, and Oriana Manufacturing Corporation (Oriana) filed Civil Case No. 4257-MC, which is a case for damages with prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction against herein respondent Eduardo, together with Michael Edward Chi Ang (Michael), and some other persons for allegedly conniving to fraudulently wrest control/management of the corporations.[5] Eduardo allegedly borrowed substantial amounts of money from the said corporations without any intention to repay; that he repeatedly demanded for increases in his monthly allowance and for more cash advances contrary to existing corporate policies; that he harassed petitioner Flordeliza to transfer and/or sell certain corporate and personal properties in order to pay off his personal obligations; that he attempted to forcibly evict petitioner Jason from his office and claim it as his own; that he interfered with and disrupted the daily business operations of the corporations; that Michael was placed on preventive suspension due to prolonged absence without leave and commission of acts of disloyalty such as carrying out orders of Eduardo which were detrimental to their business, using privileged information and confidential documents/data obtained in his capacity as Vice President of the corporations, and admitting to have sabotaged their distribution system and operations.

During the pendency of Civil Case No. 4257-MC, particularly in July, 2004, Eduardo sought permission to inspect the corporate books of VMC and Genato on account of petitioners' alleged failure and/or refusal to update him on the financial and business activities of these family corporations.[6] Petitioners denied the

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[5] *Id.* at 134-162, entitled "*Vibelle Manufacturing Corporation, Genato Investments, Incorporated, and Oriana Manufacturing Corporation v. Eduardo Genato Ang, Michael Edward Chi Ang, and John Does and Jane Does*." The case was raffled to Branch 74 of the Regional Trial Court of Malabon City.

[6] *Id.* at 124 and 125.

request claiming that Eduardo would use the information obtained from said inspection for purposes inimical to the corporations' interests, considering that: "a) he is harassing and/or bullying the Corporation[s] into writing off ₱165,071,586.55 worth of personal advances which he had unlawfully obtained in the past; b) he is unjustly demanding that he be given the office currently occupied by Mr. Francis Jason Ang, the Vice-President for Finance and Corporate Secretary; c) he is usurping the rights belonging exclusively to the Corporation; and d) he is coercing and/or trying to inveigle the Directors and/or Officers of the Corporation to give in to his baseless demands involving specific corporate assets."[7]

Because of petitioners' refusal to grant his request to inspect the corporate books of VMC and Genato, Eduardo filed an Affidavit-Complaint[8] against petitioners Flordeliza and Jason, charging them with violation (two counts) of Section 74, in relation to Section 144, of the Corporation Code of the Philippines.[9] Ma. Belinda G. Sandejas (Belinda), Vincent, and

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[7] *Id.* at 221 and 223.

[8] *Id.* at 117-121: I.S. No. Mal. 2004-1167.

[9] Batas Pambansa Blg. 68 (1980),

Sec. 74. Books to be kept; stock transfer agent. — Every corporation shall keep and carefully preserve at its principal office a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made. The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Hanna were subsequently impleaded for likewise denying respondent's request to inspect the corporate books.

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Stock corporations must also keep a book to be known as the "stock and transfer book", in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days.

No stock transfer agent or one engaged principally in the business of registering transfers of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewable annually: Provided, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable.

Sec. 144. Violations of the Code. - Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of

Petitioners filed a Joint Counter-Affidavit praying for the dismissal of the complaint for lack of factual and legal basis, or for the suspension of the same while Civil Case No. 4257-MC is still pending resolution.[10] They denied violating Section 74 of the Corporation Code and reiterated the allegations contained in their complaint in Civil Case No. 4257-MC. Petitioners blamed Eduardo's lavish lifestyle, which is funded by personal loans and cash advances from the family corporations. They alleged that Eduardo consistently pressured petitioner Flordeliza, his daughter, to improperly transfer ownership of the corporations' V.A.G. Building to him;[11] to disregard the company policy prohibiting advances by shareholders; to unduly increase his corporate monthly allowance; and to sell her Wack-Wack Golf proprietary share and use the proceeds thereof to pay his personal financial obligations. When the proposed transfer of the V.A.G. Building did not materialize, petitioners claim that Eduardo instituted an action to compel the donation of said property to him.[12] Furthermore, they claim that Eduardo attempted to forcibly evict petitioner Jason from his office at VMC so he can occupy the same; that Eduardo and his cohorts constantly created trouble by intervening in the daily operations of the corporations without the knowledge or consent of the board of directors.

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appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

[10] *Rollo*, pp. 67-74.

[11] The VAG Building was initially intended to be transferred or donated to Eduardo, subject to certain conditions pursuant to the request or suggestion of the late Belen K. Genato (*Rollo*, pp. 903-907); however, said transfer did not materialize (*Rollo*, pp. 190-191).

[12] Civil Case No. Q-0453241 filed with the Regional Trial Court of Quezon City, Branch 100. The case was dismissed in an Order of the RTC-QC dated January 6, 2006.

Meanwhile, in Civil Case No. 4257-MC, the trial court rendered a Decision granting the permanent injunction applied for by the corporations.[13]

However, the Court of Appeals subsequently rendered a Decision[14] declaring that Eduardo, his son Michael, and the

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[13] *Rollo*, pp. 505-512, the dispostive portion of which, reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Permanently enjoining defendants Eduardo Genato Ang and Michael Edward Chi Ang, and/or any of their agents, representatives, lawyers, assignees, heirs, or any other persons acting under their authority or instructions, from:

a. Occupying, demanding, claiming or otherwise attempting to occupy any position or office in Plaintiff corporations, (except those concomitant to their rights as stockholders, as the case may be), without the consent of the boards of directors of plaintiff corporations;

b. Entering the offices of plaintiff corporations located at 18 J.P. Bautista Ave., Malabon City, Metro Manila, or any of plaintiff corporations' satellite offices, business centers, distribution offices, warehouses, or any other property belonging to plaintiff corporations or otherwise used by them, without consent of the boards of directors of plaintiff corporations;

c. Communicating with the officers and employees, clients, distributors, business associates of plaintiff corporations, as well as pertinent government agencies, for the purpose of sowing enmity between said persons and plaintiff corporations, or to otherwise disrupt the smooth operation and management of plaintiff corporations;

d. Usurping or exercising rights, privileges or property belonging to plaintiff corporations, or representing plaintiff corporations or acting for and in behalf of plaintiff corporations in any transactions or dealing with clients, distributors and banks of plaintiff corporations, or government agencies, or any other persons with business with plaintiff corporations;

e. Seizing, interfering with or otherwise disrupting the management, operations and/or business of plaintiff corporations, and other similar acts of harassment and extortion that would tend to cause damage to plaintiff corporations.

Further, defendants are hereby ordered to pay plaintiffs the amount of ₱500,000.00 for and as attorney's fees and costs of the suit.

SO ORDERED.

[14] CA-G.R. CV No. 84736, penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Edgardo P. Cruz, and Jose C. Reyes, Jr.; *Rollo*, pp. 911-927.

other persons impleaded in Civil Case No. 4257-MC, were imprudently declared in default by the trial court. The appellate court thus annulled the permanent injunction issued by the trial court and remanded the case for further proceedings. VMC, Genato, and Oriana corporations filed a Petition for Review on *Certiorari* before this Court, but the same was denied for failure to sufficiently show any reversible error in the Decision of the Court of Appeals.[15] The three corporations filed a Motion for Reconsideration, but the same was denied with finality on June 25, 2008.

Meanwhile, on February 3, 2005, the City Prosecutor's Office of Malabon City issued a Resolution[16] recommending that petitioners be charged with two counts of violation of Section 74 of the Corporation Code, but dismissed the complaint against Belinda for lack of evidence.[17] Petitioners filed a Petition for Review[18] before the Department of Justice (DOJ), which reversed the recommendation of the City Prosecutor of Malabon City.[19] The dispositive portion of the DOJ Resolution dated July 26, 2005, reads:

> Wherefore, premises considered, the assailed resolution is REVERSED and SET ASIDE. The City Prosecutor of Malabon City is hereby directed to cause the withdrawal of the corresponding information filed against respondents [herein petitioners] for violation of Section 74 of the Corporation Code of the Philippines and to report the action taken thereon within ten (10) days from the receipt hereof.
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> SO ORDERED.[20]

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[15] In G.R. No. 178586.

[16] *Rollo*, pp. 114-116; penned by 1st Assistant City Prosecutor Magno T. Pablo, Jr., as approved by Malabon City-Navotas Prosecutor Jorge G. Catalan, Jr.

[17] *Id.* at 116 and 220: The City Prosecutor of Malabon found that Ma. Belinda G. Sandejas was not present during the board meeting on September 4, 2004 and did not vote on the Resolution denying Eduardo's request to inspect the corporate books of VMC and GII;.

[18] *Id.* at 423-438.

[19] *Id.* at 249-252; penned by Undersecretary Ernesto L. Pineda.

[20] *Id.* at 252.

The DOJ denied Eduardo's Motion for Reconsideration[21] in a Resolution[22] dated March 29, 2006. On appeal, the Court of Appeals rendered the assailed Decision, the dispositive portion of which states:

> WHEREFORE, the instant petition is partially GRANTED. The assailed Resolutions of public respondent dated July 26, 2005 and March 29, 2006 are hereby NULLIFIED and SET ASIDE. However, due to the present existence of a prejudicial question, the criminal case docketed I.S. No. MAL-2004-1167 is hereby SUSPENDED until Civil Case No. 4257-MC is decided on the merits with finality.[23]

The appellate court ruled that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the Resolutions of the Malabon City Prosecutor and in finding that Eduardo did not act in good faith when he demanded for the examination of VMC and Genato's corporate books. It further held that Eduardo can demand said examination as a stockholder of both corporations; that Eduardo raised legitimate questions that necessitated inspection of the corporate books and records; and that petitioners' refusal to allow inspection created probable cause to believe that they have committed a violation of Section 74 of the Corporation Code.

On June 19, 2007, the Court of Appeals denied the Motions for Reconsideration filed by petitioners and the Secretary of Justice.[24] Hence, this petition raising the following issues:

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS WAS CORRECT IN ITS FINDING THAT THE HONORABLE JUSTICE SECRETARY'S REVERSAL OF THE MALABON CITY PROSECUTOR'S *RESOLUTION* FINDING PROBABLE CAUSE AGAINST HEREIN PETITIONERS WAS DONE CONTRARY TO THE APPLICABLE LAW AND JURISPRUDENCE TANTAMOUNT TO GRAVE ABUSE OF DISCRETION.

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[21] *Id.* at 395-406.

[22] *Id.* at 253.

[23] *Id.* at 62-63.

[24] CA *rollo*, pp. 513-532 and *Rollo*, pp. 672-683.

WHETHER OR NOT THE HONORABLE JUSTICE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE RESOLUTION OF THE MALABON CITY PROSECUTOR FINDING PROBABLE CAUSE AGAINST PETITIONERS AFTER PRELIMINARY INVESTIGATION FOR VIOLATION OF SECTION 74 OF THE CORPORATION CODE OF THE PHILIPPINES.

WHETHER OR NOT THE HONORABLE JUSTICE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONERS ACTED IN GOOD FAITH WHEN THEY DENIED PRIVATE RESPONDENT'S DEMAND FOR INSPECTION OF CORPORATE BOOKS.[25]

We grant the petition.

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of prosecution's evidence in support of the charge."[26]

The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Their decisions are reviewable by the Secretary of Justice who

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[25] *Rollo*, pp. 24-25.

[26] *Villanueva v. Secretary of Justice*, G.R. No. 162187, November 18, 2005, 475 SCRA 495, 511.

may direct the filing of the corresponding information or to move for the dismissal of the case.[27]

In reversing the Resolutions of the Secretary of Justice directing the withdrawal of the information filed against petitioners for lack of probable cause, the Court of Appeals held that it was beyond the Secretary of Justice's authority to determine the motives of Eduardo in seeking an inspection of the corporations' books and papers.

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present.[28] This is based on the principle that every crime is defined by its elements, without which there should be – at the most – no criminal offense.

In *Gokongwei, Jr. v. Securities and Exchange Commission*,[29] this Court explained the rationale behind a stockholder's right to inspect corporate books, to wit:

> The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership. This right is predicated upon the necessity of self-protection. It is generally held by majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. **In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be proper and lawful in character and not inimical to the interest of the corporation**.[30]

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[27] *Advincula v. Court of Appeals*, 397 Phil. 641, 650-651 (2000).

[28] *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721.

[29] 178 Phil. 266 (1979).

[30] *Id.* at 314-315, citing Fletcher Cyc, *Private Corporations*, Vol. 5, 1976 Rev. Ed., §. 2213, 2218 & 2222, pp. 693, 709, 725. (Emphasis supplied)

In *Republic v. Sandiganbayan*,[31] the Court declared that the right to inspect and/or examine the records of a corporation under Section 74 of the Corporation Code is circumscribed by the express limitation contained in the succeeding proviso, which states that:

> [I]t shall be a defense to **any** action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes **has improperly used any information secured** through any prior examination of the records or minutes of such corporation or of any other corporation, **or was not acting in good faith or for a legitimate purpose in making his demand**. (Emphasis supplied)

Thus, contrary to Eduardo's insistence, the stockholder's right to inspect corporate books is not without limitations. While the right of inspection was enlarged under the Corporation Code as opposed to the old Corporation Law (Act No. 1459, as amended),

> **It is now expressly required** as a condition for such examination that the one requesting it must not have been guilty of using improperly any information secured through a prior examination, or that the person asking for such examination must be acting in good faith and for a legitimate purpose in making his demand.[32] (Emphasis supplied)

In order therefore for the penal provision under Section 144 of the Corporation Code to apply in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code, the following elements must be present:

First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;

Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;

Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under

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[31] G.R. Nos. 88809 and 88858, July 10, 1991, 199 SCRA 39.

[32] *Gonzales v. Philippine National Bank*, 207 Phil. 425, 430.

this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,

Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.

Thus, in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation.[33] This being the case, it would be improper for the prosecutor, during preliminary investigation, to refuse or fail to address the defense of improper use or motive, given its express statutory recognition. In the past we have declared that if justifying circumstances are claimed as a defense, they should have at least been raised during preliminary investigation;[34] which settles the view that the consideration and determination of justifying circumstances as a defense is a relevant subject of preliminary investigation.

A preliminary investigation is in effect a realistic judicial appraisal of the merits of the case; sufficient proof of the guilt of the criminal respondent must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal.[35]

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[33] 5A Fletcher Cyc. Corp. §. 2220, 2008.

[34] *People v. Caratao*, G.R. No. 126281, June 10, 2003, 403 SCRA 482; *People v. Dorado*, G.R. No. 122248, February 11, 1999, 303 SCRA 61; *People v. Ronquillo*, G.R. No. 96125, August 31, 1995, 247 SCRA 793; *People v. Salazar*, G.R. No. 84391, April 7, 1993, 221 SCRA 170; *People v. Vicente*, G.R. No. L-31725, February 18, 1986, 141 SCRA 347.

[35] *Perez v. Ombudsman*, G.R. No. 131445, May 27, 2004, 429 SCRA 357.

Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair; the officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused.[36] After all, the purpose of preliminary investigation is not only to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial; it is just as well for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.[37] More importantly, in the appraisal of the case presented to him for resolution, the duty of a prosecutor is more to do justice and less to prosecute.[38]

If the prosecutor is convinced during preliminary investigation of the validity of the respondent's claim of a justifying circumstance, then he must dismiss the complaint; if not, then he must file the requisite information. This is his discretion, the exercise of which we grant sufficient latitude.[39]

In the instant case, the Court finds that the Court of Appeals erred in declaring that the Secretary of Justice exceeded his authority when he conducted an inquiry on the petitioners' defense of improper use and motive on Eduardo's part. As a necessary element in the offense of refusal to honor a stockholder/member's right to inspect the corporate books/records, it was incumbent upon the Secretary of Justice to determine that all the elements

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[36] *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2001, 369 SCRA 293.

[37] *Okabe v. Judge Gutierrez*, G.R. No. 150185, May 27, 2004, 429 SCRA 685, citing *People v. Poculan*, 167 SCRA 176 (1988).

[38] *Estrada v. Desierto*, G.R. Nos. 146710-15, March 2, 2001, 356 SCRA 108.

[39] *Camanag v. Guerrero*, G.R. No. 121017, February 17, 1997, 268 SCRA 473.

which constitute said offense are present, in line with our ruling in *Duterte v. Sandiganbayan*.

A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other. Thus, we have characterized the right to a preliminary investigation as not a mere formal or technical right but a substantive one, forming part of due process in criminal justice.[40] Due process, in the instant case, requires that an inquiry into the motive behind Eduardo's attempt at inspection should have been made even during the preliminary investigation stage, just as soon as petitioners set up the defense of improper use and motive.

Petitioners argue that Eduardo's demand for an inspection of the corporations' books is based on the latter's attempt in bad faith at having his more than ₱165 million advances from the corporations written off; that Eduardo is unjustly demanding that he be given the office of Jason, or the Vice Presidency for Finance and Corporate Secretary; that Eduardo is usurping rights belonging exclusively to the corporations; and Eduardo's attempts at coercing the corporations, their directors and officers into giving in to his baseless demands involving specific corporate assets. Specifically, petitioners accuse Eduardo of the following:

1. He is a spendthrift, using the family corporations' resources to sustain his extravagant lifestyle. During his incumbency as officer of VMC and Genato (from 1984 to 2000), he was able to obtain massive amounts by way of cash advances from these corporations, amounting to more than ₱165 million;

2. He is exercising undue pressure upon petitioners in order to acquire ownership, through the forced execution of a deed of donation, over the VAG Building in San Juan, which building belongs to Genato;

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[40] *Maza v. Gonzalez*, G.R. Nos. 172074-76, June 1, 2007, 523 SCRA 318.

3. He is putting pressure on the corporations, through their directors and officers, for the latter to disregard their respective policies which prohibit the grant of cash advances to stockholders.

4. At one time, he coerced Flordeliza for the latter to sell her Wack-Wack Golf Proprietary Share;

5. In May 2003, without the requisite authority, he called a "stockholders' meeting" to demand an increase in his ₱140,000.00 monthly allowance from the corporation to ₱250,000.00; demand a cash advance of US$10,000; and to demand that the corporations shoulder the medical and educational expenses of his family as well as those of the other stockholders;

6. In November 2003, he demanded that he be given an office within the corporations' premises. In December 2003, he stormed the corporations' common office, ordered the employees to vacate the premises, summoned the directors to a meeting, and there he berated them for not acting on his requests. In January 2004, he returned to the office, demanding the transfer of the Accounting Department and for Jason to vacate his office by the end of the month. He likewise left a letter which contained his demands. At the end of January 2004, he returned, ordered the employees to leave the premises and demanded that Jason surrender his office and vacate his desk. He did this no less than four (4) times. As a result, the respective boards of directors of the corporations resolved to ban him from the corporate premises;

7. He has been interfering in the everyday operations of VMC and Genato, usurping the duties, rights and authority of the directors and officers thereof. He attempted to lease out a warehouse within the VMC premises without the knowledge and consent of its directors and officers; during the wake of the former President of VMC and Genato, he issued instructions for the employees to close down operations for the whole duration of the wake, against the corporate officers' instructions to attend the wake by batch, so as not to hamper business operations; he has caused chaos and confusion in VMC and Genato as a result;[41]

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[41] Court of Appeals *Rollo*, pages omitted, Joint Counter-Affidavit of Flordeliza Ang-Abaya and Jason Ang.

8. He is out to sabotage the family corporations.[42]

These serious allegations are supported by official and other documents, such as board resolutions, treasurer's affidavits and written communication from the respondent Eduardo himself, who appears to have withheld his objections to these charges. His silence virtually amounts to an acquiescence.[43] Taken together, all these serve to justify petitioners' allegation that Eduardo was not acting in good faith and for a legitimate purpose in making his demand for inspection of the corporate books. Otherwise stated, there is lack of probable cause to support the allegation that petitioners violated Section 74 of the Corporation Code in refusing respondent's request for examination of the corporation books.

WHEREFORE, the Petition for Review on *Certiorari* is *GRANTED*. The March 6, 2007 Decision and June 19, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 94708 are *REVERSED* and *SET ASIDE*. The July 26, 2005 and March 29, 2006 Resolutions of the Secretary of Justice directing the withdrawal of the information filed against petitioners for violation of Section 74 of the Corporation Code are accordingly *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Carpio Morales,[*] *Chico-Nazario,* and *Reyes, JJ.,* concur.

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[42] *Id.*, Joint Counter-Affidavit of Hannah Ang and Vincent Genato.

[43] *Lagon v. Hooven Comalco Industries, Inc.*, G.R. No. 135657, January 17, 2001, 349 SCRA 363.

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura.

THIRD DIVISION

[G.R. No. 183087. December 4, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **IGNACIO ISANG *y* LAGAY,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; RAPE; AS A RULE; NO GIRL WOULD CONCOCT A SORDID TALE OF SO SERIOUS A CRIME AS RAPE AT THE HANDS OF HER OWN FATHER IF HER MOTIVE WERE OTHER THAN A FERVENT DESIRE TO SEEK JUSTICE. — The fact that this testimony came from a young barrio girl who charged her own father with rape added more credibility to her testimony. We have held that no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.

2. REMEDIAL LAW.; EVIDENCE; FLIGHT OF THE ACCUSED; WHEN FLIGHT EVIDENCES GUILT. — That Isang escaped from detention during the pendency of the case before the trial court is in itself an indication of his guilt. The flight of an accused is an indication of his guilt or of his guilty mind. Flight evidences guilt and a guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.

3. CRIIM INAL LAW.; SPECIAL QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; EFFECT UPON THE PENALTY. — The special qualifying circumstances of minority and relationship were properly alleged in the Information and were duly proven during the trial through a copy of AAA's birth certificate and the testimonies of AAA and BBB. The trial court was therefore correct in originally imposing the death penalty on Isang in accordance with Article 266-B of the Revised Penal Code, which provides: The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances: 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

The Court of Appeals, however, correctly modified the penalty imposed upon Isang in accordance with the aforementioned Republic Act No. 9346 prohibiting the imposition of the death penalty. Republic Act No. 9346 was enacted on 24 June 2006, less than two years after the Regional Trial Court rendered its Decision on 24 September 2004. Republic Act No. 9346 mandates that the penalty of *reclusion perpetua* shall be imposed in lieu of the death penalty when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Since said provision is favorable to the accused, the same shall be given retroactive effect pursuant to Article 22 of the Revised Penal Code.

4. ID.; CIVIL LIABILITY; CIVIL INDEMNITY; WHEN AWARD THEREOF IS MANDATORY. — As regards the award of damages, we have held that if the crime is qualified by circumstances which warrant the imposition of the death penalty by the applicable laws, the accused should be ordered to pay the complainant the amount of ₱75,000.00 as civil indemnity. The award of civil indemnity is mandatory in rape convictions. While the death penalty can no longer be imposed, the trial court was nevertheless correct in awarding the amount of ₱75,000.00 as civil indemnity. We have qualified in *People v. Victor* that the said award is not supposed to be dependent on the actual imposition of the death penalty, but on the fact that the qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

5. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF, WHEN PROPER. — The award of ₱25,000.00 as exemplary damages is likewise proper. Article 2230 of the Civil Code provides that exemplary damages may be imposed when the crime is committed with one or more aggravating circumstances. As held by the Court of Appeals, the term **aggravating circumstance** as used in Article 2230 should be construed in its generic sense. Furthermore, exemplary damages should be imposed as a deterrent to "fathers with aberrant sexual behaviors from sexually abusing their daughters."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a review of the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01528 dated 30 May 2007 affirming with modification the Decision of the Regional Trial Court (RTC) of La Trinidad, Benguet, convicting accused-appellant Ignacio Isang *y* Lagay (Isang) of rape.

On 19 November 1999, Isang was charged with two counts of rape committed against his daughter, AAA,[2] in two separate Informations, as follows:

Criminal Case No. 99-CR-3628

That sometime in the month of June, 1996, at Barangay Gumatdang, Municipality of Itogon, Province of Benguet, Philippines, and within the Jurisdiction of this Honorable Court, the above-named accused, being the biological father of the victim [AAA], did then and there willfully, unlawfully and feloniously, have carnal knowledge of one [AAA], who is his eleven (11) year old daughter.

That in the commission of the crime, the aggravating circumstance of nighttime is present, the same having been purposely sought to facilitate the commission thereof.

Criminal Case No. 99-CR-3629

That on or about the 5th day of September 1999, at Barangay Ampucao, Municipality of Itogon, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], who is under eighteen (18) years of age and his daughter.

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[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *rollo*, pp. 3-21.

[2] The real name of the victim is withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

On 7 June 2000, Isang, assisted by counsel, pleaded not guilty to the crimes charged. The two criminal cases were jointly tried.

The prosecution presented the testimonies of private complainant AAA, her mother BBB, psychologist Dr. Ruby M. Bell, and examining physician Dr. Vladimir Villaseñor. During the turn of the presentation of evidence by the defense, Isang escaped from detention and has since remained at large. Trial *in absentia* against accused, thus, proceeded.

The evidence of the prosecution tends to establish the following:

AAA was born on 24 October 1985 to her parents Isang and BBB. She is the second child. She has three brothers, XXX, YYY and ZZZ. BBB worked as an overseas Filipino worker in Singapore from 1989 to 1990 and again from 1996 to 2001. Her father, accused-appellant Isang, was jobless.

AAA testified that she was sexually abused by her father from 1994 to 1999. However, it was only her account of the last assault that allegedly occurred on 5 September 1999, which the trial court found sufficient for conviction.

In the afternoon of 5 September 1999, AAA, who was then thirteen years old, was out of their house in Gumatdang, Itogon, Benguet, washing the family's clothes. Isang, who was in the *sala* of their house, called AAA to approach him. When AAA went inside the house, she realized that she and her father were alone upon learning that YYY and ZZZ were sent out (by their father) to buy *merienda*, while XXX was in Balitoc.

Isang forced AAA to lie down in the *sala*. He forcibly removed her pants and panty and then forcibly inserted his penis into her vagina. AAA struggled and tried to push her father, but her efforts proved futile. Isang ravished her and stopped only when something sticky and white appeared on AAA's legs. Isang told AAA not to tell anybody about the incident. AAA obeyed out of fear, because the former whipped his children even for little mistakes. Feeling helpless, she just put on her clothes and cried in a corner.

On 11 September 1999, BBB went home from Taiwan to attend her mother's funeral. On said date, BBB and AAA went to the house of CCC (BBB's sister). There, they talked about sexual abuses of children in the Philippines. At this point, CCC jokingly asked AAA if her father also abused her. At first, AAA tried to deny what her father did to her. She later, however, went inside another room and cried.

Sensing that something was not right, BBB confronted AAA and demanded that she tell the truth. AAA then told her mother that her father had been raping her since she was in Grade 3. Isang was not with them at CCC's house at this time; he was at their house in Itogon, Benguet.

BBB sought the assistance of a certain Atty. Gayaman who referred their case to the Department of Social Welfare and Development (DSWD). They were then accompanied to the National Bureau of Investigation-Cordillera Autonomous Region (NBI-CAR), where their statements were taken.

On 16 September 1999, AAA was brought to Dr. Vladimir Villaseñor, the physician and medico-legal officer of the Philippine National Police (PNP) Crime Laboratory Service, Camp Dangwa, La Trinidad, Benguet, for medical examination. Dr. Villaseñor examined the external part of the body of the victim and found no external signs of injuries. On examination of the genitalia, however, Dr. Villaseñor observed that the hymen had shallow healed lacerations at the three o'clock position and a healed laceration at the six o'clock position. He concluded that AAA was physically in a non-virgin state. The lacerations may have been caused by the insertion of foreign object, such as a fully rect penis. He documented his findings in Medico-Legal Report No. M-175-99.

Dr. Ruby M. Bell, a psychologist connected with the Philippine Mental Health Association, conducted a series of psychological tests on AAA. She found that AAA was suffering from emotional disturbances and had problems with her parents, especially her father who allegedly raped her several times. She recommended that AAA and her family undergo counseling

and therapy sessions. She suggested that if AAA should testify in court, she be asked simple questions in a gentle manner. While in court, Dr. Bell testified that she only learned about AAA's rape from BBB. However, the profile in her tests confirmed that AAA was a victim of rape.

On 9 July 2001, when it was the turn of the defense to present its evidence, Atty. Jerome Selmo formally withdrew his appearance as counsel for Isang, with the conformity of the latter. The trial court referred the case to the Public Attorney's Office.

On 10 January 2002, the trial court received notice from the Office of the Provincial Warden, through Assistant Provincial Jail Warden Delfin Carimpal, that Isang escaped from the Provincial Jail at dawn of 6 January 2002. An *alias* warrant for his arrest was issued.

The RTC, acting on a Motion by the prosecution, considered Criminal Cases No. 99-CR-3628 and No. 99-CR-3629 submitted for decision.

On 24 September 2004, the RTC rendered its Decision acquitting Isang in Criminal Case No. 99-CR-3628, but finding him guilty beyond reasonable doubt of rape in Criminal Case No. 99-CR-3629. The dispositive portion of the RTC's Decision is as follows:

> WHEREFORE, PREMISES CONSIDERED, ACCUSED Ignacio Isang, is hereby ACQUITTED in Criminal Case No. 99-CR-3628 for insufficiency of evidence against him but declared guilty beyond reasonable doubt of the crime of Rape under Criminal Case No. 99-CR-3629.
>
> Pursuant to Art. 266-B par. No. 1 of Republic Act No. 8353 or the Anti-Rape Law of 1997, with the minority of the victim and her relationship to the accused, both alleged in the information and duly proven during trial, accused, IGNACIO ISANG, is hereby meted the extreme penalty of DEATH.
>
> Further, the accused is ordered to pay the victim the sum of Seventy Five Thousand (₱75,000.000) Pesos, Philippine currency as civil indemnity; the amount of Fifty Thousand (₱50,000.00) Pesos as Moral

damages; and Twenty Five Thousand (₱25,000.00) Pesos as Exemplary Damages.[3]

According to the RTC, the prosecution failed to adduce evidence to establish the crime in Criminal Case No. 99-CR-3628 beyond reasonable doubt, allegedly committed sometime in June 1996, since the private complainant testified that she could no longer remember the exact date, time and manner she was raped by her father. In Criminal Case No. 99-CR-3629, however, where the subject matter was the rape which allegedly occurred on 5 September 1999, the private complainant was able to narrate in a straightforward, positive and convincing manner how she was forced by her father to lie down and to remove her pants and panty, and how he forcibly inserted his penis into her vagina in the *sala* of their house.

Since the penalty imposed was death, the case was elevated to this Court on automatic appeal. However, pursuant to *People v. Mateo*,[4] this case was forwarded to the Court of Appeals for intermediate review and disposition, where the case was docketed as CA-G.R. CR.-H.C. No. 01528.

On 30 May 2007, the Court of Appeals affirmed with modification the Decision of the RTC, to wit:

> WHEREFORE, the appealed Decision dated September 24, 2004 finding accused-appellant Ignacio Isang *y* Lagay guilty beyond reasonable doubt of the crime of qualified rape is **AFFIRMED** with **MODIFICATION** in that the penalty of death meted on the accused-appellant is reduced to *reclusion perpetua* pursuant to Republic Act No. 9346 without eligibility for parole, and the award of moral damages is hereby increased to ₱75,000.00.
>
> Let the entire records of this case be elevated to the Supreme Court for its review.[5]

The Court of Appeals agreed with the RTC that AAA was clear and straightforward in narrating her traumatic experience.

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[3] CA *rollo*, p. 63.

[4] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[5] CA *rollo*, pp. 115-116.

The Court of Appeals added that AAA remained unshaken even during cross-examination. However, in view of Republic Act No. 9346,[6] it modified the sentence of Isang, imposing on him instead the penalty of *reclusion perpetua*.

The Court of Appeals forwarded the records of the case to this Court for review.

Isang, through counsel, argues that the trial court failed to scrutinize the testimony of AAA with great caution. He highlights the following part of the testimony of AAA:

Q: You stated that he was able to remove your pants and your panty. What happened next?

A: He forced to insert his penis in my vagina.

Q: Was his penis able to be inserted in your vagina?

A: No, sir.

Q: About how many minutes did your father try to insert his penis in your vagina?

A: I cannot recall, sir.

Q: And when did he stop?

A: When I felt something sticky and then he left.[7]

Isang claims that the foregoing testimony shows that AAA was apparently confused about what constitutes rape. Allegedly, kissing, embracing and attempts to force the victim to have sex do not constitute rape. Hence, according to Isang, since there was no insertion, there was no rape committed.

Isang's claim is misleading. A close reading of the testimony of AAA shows that when she made the above statement, she was giving an account of an alleged earlier rape. Isang had already been acquitted of the rape charge in Criminal Case

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[6] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[7] TSN, 7 November 2000, pp, 9-10; underscoring supplied by accused-appellant Isang.

No. 99-CR-3628. The part of the RTC's Decision that is being reviewed by this Court is the rape charge in Criminal Case No. 99-CR-3629, which was allegedly committed on 5 September 1999. As held by the RTC and the Court of Appeals, the testimony of AAA on this charge of rape was clear and straightforward:

Q How about the last time when your father raped you. Can you remember?

A Yes, sir.

Q When was that?

A September 5, 1999.

Q And where did your father rape you?

A Inside the sala in our house.

Q And where is your house located?

A At Gumatdang, Itogon, Benguet.

Q You stated that you transferred to Pilapil, Cervantes, Ilocos Sur. When did you return back (sic) to Gumatdang, Itogon, Benguet?

A In 1996, sir.

Q What time did your father rape you on September 5, 1999?

A I cannot remember the time but I know it is in the afternoon.

ATTY. GAYAMAN:

What were you doing when your father raped you?

A I was washing when my father called me.

Q What were you washing?

A Our clothes with my brothers.

Q How about your brothers [XXX], [YYY] and [ZZZ], what were they doing at that time?

A [XXX] was in Balatoc with the brother of my father and my two brothers, my father sent them to buy *meriend*a.

Q And after your father called you what did you do?

COURT:

What's the question, what did you do?

ATTY. GAYAMAN:

Yes, your Honor.

WITNESS:

When my father called e (sic), I went to him thinking that my brothers were with him.

ATTY. GAYAMAN:

When you went to the place where your father was, what did your father do?

A He forced me to lie down in the sala and forcibly removed my pants and panty.

Q And was he able to remove your pants and your panty?

A Yes, sir.

Q After he was able to remove your pants and your panty, what did your father do?

A He forced me to lie down and forcible inserted his penis in my vagina.

Q And was his penis able to be inserted in your vagina?

A Yes, sir.

Q For how many minutes was that if you can recall?

A I can no longer recall.

ATTY. GAYAMAN:

When did he stop?

A When I saw something sticky and white on my legs.

Q After that what did your father do?

A He said that I will not tell it to anyone.

Q How about you, what did your father do after that incident?

A I put on my clothes and just cried in one corner.

Q When your father was doing that or inserting his penis in your vagina, what were you doing?

A I was struggling and pushing my father.

Q And were you able to push your father?

A No, sir.[8]

The fact that this testimony came from a young barrio girl who charged her own father with rape added more credibility to her testimony. We have held that no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[9]

It should be borne in mind that the evidence presented by the prosecution is entirely unrebutted, as the defense failed to present any evidence on account of Isang's escape from detention. That Isang escaped from detention during the pendency of the case before the trial court is in itself an indication of his guilt. The flight of an accused is an indication of his guilt or of his guilty mind.[10] Flight evidences guilt and a guilty conscience: the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.[11]

The special qualifying circumstances of minority and relationship were properly alleged in the Information and were duly proven during the trial through a copy of AAA's birth certificate and the testimonies of AAA and BBB. The trial court was therefore correct in originally imposing the death penalty on Isang in accordance with Article 266-B of the Revised Penal Code, which provides:

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[8] TSN, 7 November 2000, pp. 11-13.

[9] *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 117.

[10] *People v. Vallador*, 327 Phil. 303, 315 (1996).

[11] *People v. Acosta, Sr.*, 444 Phil. 385, 415 (2003), citing *People v. Rabanal*, 402 Phil. 709, 717 (2001); *People v. Gregorio*, 325 Phil. 689, 706 (1996).

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

The Court of Appeals, however, correctly modified the penalty imposed upon Isang in accordance with the aforementioned Republic Act No. 9346 prohibiting the imposition of the death penalty. Republic Act No. 9346 was enacted on 24 June 2006, less than two years after the Regional Trial Court rendered its Decision on 24 September 2004. Republic Act No. 9346 mandates that the penalty of *reclusion perpetua* shall be imposed in lieu of the death penalty when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Since said provision is favorable to the accused, the same shall be given retroactive effect pursuant to Article 22 of the Revised Penal Code.[12]

As regards the award of damages, we have held that if the crime is qualified by circumstances which warrant the imposition of the death penalty by the applicable laws, the accused should be ordered to pay the complainant the amount of ₱75,000.00 as civil indemnity.[13] The award of civil indemnity is mandatory in rape convictions.[14] While the death penalty can no longer be imposed, the trial court was nevertheless correct in awarding the amount of ₱75,000.00 as civil indemnity. We have qualified

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

[13] *People v. Cayabyab*, G.R. No. 167147, 3 August 2005, 465 SCRA 681, 693.

[14] *People v. Glodo*, G.R. No. 136085, 7 July 2004, 433 SCRA 535, 549.

in *People v. Victor*[15] that the said award is not supposed to be dependent on the actual imposition of the death penalty, but on the fact that the qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

The award of ₱25,000.00 as exemplary damages is likewise proper. Article 2230 of the Civil Code provides that exemplary damages may be imposed when the crime is committed with one or more aggravating circumstances. As held by the Court of Appeals, the term **aggravating circumstance** as used in Article 2230 should be construed in its generic sense. Furthermore, exemplary damages should be imposed as a deterrent to "fathers with aberrant sexual behaviors from sexually abusing their daughters."[16]

Finally, the Court of Appeals correctly increased the award of moral damages from ₱50,000.00 to ₱75,000.00, in accordance with the prevailing jurisprudence on the matter.[17]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01528 dated 30 May 2007 finding accused-appellant Ignacio Isang *y* Lagay guilty beyond reasonable doubt of qualified rape is *AFFIRMED in toto*.

SO ORDERED.

*Ynares-Santiago (Chairperson), Austria-Martinez, Corona,** and *Reyes, JJ.,* concur.

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[15] 354 Phil. 195, 209 (1998).

[16] *People v. Tamsi*, 437 Phil. 424, 451 (2002).

[17] *People v. Salome*, G.R. No. 169077, 31 August 2006, 500 SCRA 659, 676.

* Associate Justice Renato C. Corona was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 12 November 2008.

SECOND DIVISION

[A.C. No. 6713. December 8, 2008]

ZENAIDA B. GONZALES, *petitioner, vs.* **ATTY. NARCISO PADIERNOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; 2004 RULES OF NOTARIAL PRACTICE; VIOLATED WHEN THE RESPONDENT DID NOT REQUIRE PROOF OF IDENTITY FROM THE PERSON WHO APPEARED BEFORE HIM AND EXECUTED AND AUTHENTICATED THE THREE SUBJECT DOCUMENTS. — Under the given facts, the respondent clearly failed to faithfully comply with the foregoing rules when he notarized the three documents subject of the present complaint. The respondent did not know the complainant personally, yet he did not require proof of identity from the person who appeared before him and executed and authenticated the three documents. The IBP Report observed that had the respondent done so, "the fraudulent transfer of complainant's property could have been prevented." Through his negligence in the performance of his duty as a notary public resulting in the loss of property of an unsuspecting private citizen, the respondent eroded the complainant's and the public's confidence in the notarial system; he brought disrepute to the system. As we held in *Pantoja Mumar vs. Flores*, he thereby breached Canon 1 of the Code of Professional Responsibility (which requires lawyers to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes) as well as Rule 1.01 of the same Code (which prohibits lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct). The respondent should be reminded that a notarial document is, on its face and by authority of law, entitled to full faith and credit. For this reason, notaries public must observe utmost care in complying with the formalities intended to ensure the integrity of the notarized document and the act or acts it embodies. x x x A notary public is duty bound to require the person executing a document to be personally present, and to swear before him that he is the person named in the document and is voluntarily and

freely executing the act mentioned in the document. The notary public faithfully discharges this duty by at least verifying the identity of the person appearing before him based on the identification papers presented.

2. ID.; ID.; ID.; IMPOSABLE PENALTY. — For violating his duties as a lawyer and as a notary public, as well as for the grave injustice inflicted on the complainant, it is only proper that the respondent be penalized and suffer the consequences of his acts. We note in this regard that in her amended complaint, the complainant no longer sought the disbarment of respondent; she confined herself to the revocation of the respondent's notarial commission and his suspension from the practice of law. Thus, the recommendation of the IBP is for revocation of his notarial commission and for his suspension from the practice of law for three (3) months. We approve this recommendation as a sanction commensurate with the transgression committed by the respondent as a member of the bar and as a notary public.

D E C I S I O N

BRION, *J.*:

Before the Court is the Complaint for Disbarment of Atty. Narciso Padiernos (*respondent*) filed on May 12, 2003 by Ms. Zenaida B. Gonzales (*complainant*) with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP). Commissioner Milagros V. San Juan conducted the fact-finding investigation on the complaint.

Commissioner San Juan submitted a Report and Recommendation[1] dated September 10, 2004 to the IBP Board of Governors who approved this Report and Recommendation in a resolution dated November 4, 2004.

In a letter[2] dated March 14, 2005, IBP Director for Bar Discipline Rogelio A. Vinluan transmitted to the Office of Chief Justice Hilario

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[1] *Rollo*, pp. 53-57.

[2] *Rollo*, p. 51.

G. Davide, Jr. (retired) a Notice of Resolution[3] and the records of the case.

The Factual Background

The complainant alleged in her complaint for disbarment that on three (3) separate occasions the respondent notarized the following documents: (1) a Deed of Absolute Sale[4] dated July 16, 1979 which disposed of her property in Jaen, Nueva Ecija in favor of Asterio, Estrella and Rodolfo, all surnamed Gonzales; (2) a Subdivision Agreement[5] dated September 7, 1988 which subdivided her property among the same persons; and (3) an affidavit of Non-Tenancy[6] dated March 3, 1988 which certified that her property was not tenanted. All three documents were purportedly signed and executed by complainant. All three documents carried forged signatures and falsely certified that the complainant personally appeared before the respondent and that she was "known to me (the respondent) to be the same person who executed the foregoing and acknowledged to me that the same is her own free act and voluntary deed." The complainant claimed that she never appeared before respondent on the dates the documents were notarized because she was then in the United States.

The respondent filed his Answer[7] on June 16, 2003. He admitted that he notarized the three documents, but denied the "unfounded and malicious imputation" that the three documents contained the complainant's forged signatures. On the false certification aspect, he countered that "with the same or identical facts obtained in the instant case, the Highest Tribunal, the Honorable Supreme Court had this to say – That it is not necessary to know the signatories personally, provided he or she or they signed in the presence of the Notary, alleging that they are the same persons who signed the names."

[3] *Id.*, p. 52.

[4] Annex "A", Complaint; *id.*, p. 2.

[5] Annex "B", Complaint; *id.*, p. 3.

[6] Annex "C", Complaint; *id.*, p. 4.

[7] *Id.*, pp. 6-7.

On October 13, 2003, the respondent moved to dismiss the complaint for lack of verification and notification of the date of hearing.[8]

On December 19, 2003, complainant amended her complaint.[9] This time, she charged respondent with gross negligence and failure to exercise the care required by law in the performance of his duties as a notary public, resulting in the loss of her property in Jaen, Nueva Ecija, a 141,497 square meters of mango land covered by TCT NT-29578. The complainant claimed that because of the respondent's negligent acts, title to her property was transferred to Asterio Gonzales, Estrella Gonzales and Rodolfo Gonzales. She reiterated that when the three documents disposing of her property were notarized, she was out of the country. Estrella Gonzales Mendrano, one of the vendees, was also outside the country as shown by a certification issued by the Bureau of Immigration and Deportation (BID) on September 14, 1989.[10] She likewise claimed that Guadalupe Ramirez Gonzales (the widow of Rodolfo Gonzales, another vendee) executed an affidavit describing the "Deed of Absolute Sale and Subdivision Agreement" as spurious and without her husband's participation.[11] The affidavit further alleged that the complainant's signatures were forged and the respondent did not ascertain the identity of the person who came before him and posed as vendor despite the fact that a large tract of land was being ceded and transferred to the vendees.

The complainant prayed for the revocation of the respondent's notarial commission and his suspension from the practice of law due to "his deplorable failure to hold the importance of the notarial act and observe [with] utmost care the basic requirements in the performance of his duties as a notary public which include the ascertainment that the person who signed the document as the very person who executed and personally appeared before him."

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[8] *Rollo,* pp. 14-15.

[9] *Id.,* pp. 20-23.

[10] *Id.,* p. 31.

[11] *Id.,* p. 32.

On May 3, 2004, the complainant moved that the case be considered submitted for resolution in view of respondent's failure to answer the amended complaint.[12]

The IBP Findings

In her report to the IBP Board of Governors,[13] Commissioner San Juan categorically noted the respondent's admission that he notarized the three documents in question – the Deed of Absolute Sale on July 16, 1979; the Subdivision Agreement on September 7, 1988 and the affidavit of Non-Tenancy on March 3, 1988. Commissioner San Juan also noted that the complainant's documentary evidence supported her claim that she never executed these documents and never appeared before the respondent to acknowledge the execution of these documents. These documentary evidence consisted of the certification from the BID that complainant did not travel to the Philippines on the dates the documents were allegedly notarized;[14] and the affidavit of Guadalupe Ramirez Gonzales described above.[15]

Commissioner San Juan found that the respondent had no participation in the preparation or knowledge of the falsity of the spurious documents, and found merit in the complainant's contention that the respondent "was negligent in the performance of his duties as a notary public." She faulted the respondent for not demanding proof of the identity of the person who claimed to be complainant Zenaida Gonzales when the documents were presented to him for notarization. She concluded that the respondent failed to exercise the diligence required of him as notary public to ensure the integrity of the presented documents. She recommended that the respondent's notarial commission be revoked and that he be suspended from the practice of law for a period of three months.

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[12] *Rollo*, p. 47.

[13] *Supra* note 1, p. 1.

[14] *Supra* note 10, p. 3

[15] *Supra* note 11, p. 3

The Court's Ruling

Rule II of the 2004 Rules of Notarial Practice[16] provides:

SECTION 1. Acknowledgment. — "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and present an integrally complete instrument on document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purpose stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity that he has the authority to sign in that capacity."

Under the given facts, the respondent clearly failed to faithfully comply with the foregoing rules when he notarized the three documents subject of the present complaint. The respondent did not know the complainant personally, yet he did not require proof of identity from the person who appeared before him and executed and authenticated the three documents. The IBP Report observed that had the respondent done so, "the fraudulent transfer of complainant's property could have been prevented."

Through his negligence in the performance of his duty as a notary public resulting in the loss of property of an unsuspecting private citizen, the respondent eroded the complainant's and the public's confidence in the notarial system; he brought disrepute to the system. As we held in *Pantoja Mumar vs. Flores*,[17] he thereby breached Canon 1 of the Code of Professional Responsibility (which requires lawyers to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes) as well as Rule 1.01 of the

[16] A.M. No. 02-8-13-SC.

[17] A.C. No. 5426, April 4, 2007, 520 SCRA 470.

same Code (which prohibits lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct).

The respondent should be reminded that a notarial document is, on its face and by authority of law, entitled to full faith and credit. For this reason, notaries public must observe utmost care in complying with the formalities intended to ensure the integrity of the notarized document and the act or acts it embodies.[18]

We are not persuaded by the respondent's argument that this Court, in a similar case or one with identical facts, said "that it is not necessary to know the signatories personally provided he or she or they signed in the presence of the notary, alleging that they are the persons who signed the names." The respondent not only failed to identify the cited case; he apparently also cited it out of context. A notary public is duty bound to require the person executing a document to be personally present, and to swear before him that he is the person named in the document and is voluntarily and freely executing the act mentioned in the document.[19] The notary public faithfully discharges this duty by at least verifying the identity of the person appearing before him based on the identification papers presented.

For violating his duties as a lawyer and as a notary public, as well as for the grave injustice inflicted on the complainant, it is only proper that the respondent be penalized and suffer the consequences of his acts. We note in this regard that in her amended complaint, the complainant no longer sought the disbarment of respondent; she confined herself to the revocation of the respondent's notarial commission and his suspension from the practice of law. Thus, the recommendation of the IBP is

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[18] *Traya Jr. v. Villamor*, A.C. No. 5595, February 6, 2004, 422 SCRA 293.

[19] *Social Security Commission v. Coral*, A.C. No. 6249, October 24, 2004, 440 SCRA 291.

for revocation of his notarial commission and for his suspension from the practice of law for three (3) months. We approve this recommendation as a sanction commensurate with the transgression committed by the respondent as a member of the bar and as a notary public.

WHEREFORE, premises considered, *ATTY. NARCISO PADIERNOS* of 103 Del Pilar Street, Cabanatuan City, is *SUSPENDED* from the practice of law for a period of *THREE (3) MONTHS*, and his notarial commission is hereby *REVOKED.*

SO ORDERED.

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

EN BANC

[A.M. No. MTJ-92-687. December 8, 2008]

ENGR. EDGARDO C. GARCIA, *complainant, vs.* **JUDGE MELJOHN DE LA PEÑA, Municipal Circuit Trial Court, Caibiran-Culaba, Leyte (Acting Judge, Municipal Trial Court, Naval, Leyte),** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PENALTY FOR SERIOUS CHARGES; WHEN LENIENCY MAY BE ACCORDED. — To be sure, the penalty imposed on respondent was made pursuant to Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) which provides: The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for re-employment in the government service. Further, it may be

imposed without prejudice to criminal or civil liability. However, there have been instances in the past when this Court has shown compassion in modifying already final decisions in administrative cases. In *Cathay Pacific Airways, Ltd. v. Romillo, Jr.*, this Court, out of humanitarian considerations, allowed dismissed Judge Romillo, Jr. to enjoy all vacation and sick leave benefits that he earned during his government service. In *Prudential Bank v. Castro*, this Court likewise allowed respondent Judge to enjoy the money equivalent of all his vacation and sick leave benefits. Furthermore, Civil Service Commission Memorandum Circular (MC) No. 41, Series of 1998, as amended by MC No. 14, Series of 1999, provides: Section 37. *Payment of terminal leave*. — Any official/employee of the government who retires, voluntarily resigns, or is separated from the service and who is not otherwise covered by special law, shall be entitled to the commutation of his leave credits exclusive of Saturdays, Sundays and Holidays without limitation and regardless of the period when the credits were earned. Section 65. *Effect of decision in administrative case*. — An official or employee who has been penalized with dismissal from the service is likewise not barred from entitlement to his terminal leave benefits. Also, Section 11.A.1, Rule 140 of the Revised Rules of Court, as amended by A.M. No. 01-8-10-SC, provides: Section 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits. The Court finds that the same leniency may be accorded Judge de la Peña. Thus, in the interest of justice, he may be allowed to claim the leave credits that he earned during his employment in the government service.

APPEARANCES OF COUNSEL

Dexter M. Ricafort for respondent.

R E S O L U T I O N

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

MAY the Court now lift the ban on reemployment against respondent and order the payment of all his financial benefits? This is the sole issue to be resolved in his plea for judicial clemency and compassion.

In its Resolution dated February 9, 1994, the Court dismissed respondent Judge Meljohn de la Peña from the service for partiality, abuse of authority and grave abuse of discretion relative to Criminal Case No. 2577. The dispositive portion of the resolution states:

> ACCORDINGLY, **respondent Judge Meljohn de la Peña** (Acting Judge of Municipal Trial Court of Naval, Leyte) of the Municipal Circuit Trial Court of Caibiran-Culaba, Leyte **is hereby DISMISSED from the service with forfeiture of all benefits and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations**.
>
> SO ORDERED.[1] (Emphasis supplied)

Filed on August 28, 2007, respondent now presents for consideration of the Court a "Plea for Judicial Clemency and Compassion," alleging that his dismissal from the service made him and his family suffer the insult and ridicule of his peers and the general public for many years; that his dismissal made him realize that the most valuable things in life – honor, honesty, dignity, service to the public and respect for fellowmen – can be obtained only through a simple and honorable life and honest service to fellowmen; that consistent with this realization, he devoted himself to his church by serving as a member of the Knights of Columbus and as a member of the Parish Pastoral Council of the Sto. Rosario Parish of Naval, Biliran; that he devoted substantial time to the Biliran Chapter of the Integrated

[1] *Garcia v. De la Peña*, A.M. No. MTJ-92-687, February 9, 1994, 229 SCRA 778.

Bar of the Philippines where he served as its president from 2003-2005 and from 2007 to the present.[2]

He also says that after living in the path of righteousness and respectability, the trust and confidence in him of the people in his community were restored. As proof of this trust, he was chosen as the legal counsel of the Rural Bank of Naval, Biliran which is composed of the prominent and influential businessmen and residents of Biliran Province.[3]

Furthermore, respondent states that his reformation and redemption from his unenviable fate did not escape the attention of the very person who filed the administrative case against him.[4] Respondent attached to his plea an "Affidavit of No Objection," executed by Engr. Edgardo Garcia, complainant in the administrative case that merited his dismissal. According to Engr. Garcia, since the dismissal of respondent from the service, he has been closely observing respondent; that he has noticed that respondent "has reformed and has conducted himself in our locality with decency, dignity and honorably befitting of a lawyer and a judge"; that when respondent asked for his forgiveness, "my family willingly forgave him"; that he had no objection to any appeal or petition of respondent for the lifting of his (respondent's) disqualification from government employment and/or for the payment of the financial benefits that he (respondent) would have been entitled to if he were not dismissed from the service.[5]

Also, in his Comment[6] filed on October 14, 2008, complainant reiterated that he interposes no objection to respondent's plea.

Respondent thus seeks the lifting of the prohibition on reemployment in the government service and the payment of all financial benefits he might otherwise be entitled to.

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[2] See Respondent's "Plea for Judicial Clemency and Compassion," pp. 1-2.

[3] *Id.* at 2.

[4] *Id.*

[5] See Complainant's "Affidavit of No Objection," p. 1.

[6] Complainant's "Comment," pp. 1-2.

To be sure, the penalty imposed on respondent was made pursuant to Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) which provides:

> The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and the disqualification for re-employment in the government service. Further, it may be imposed without prejudice to criminal or civil liability.

However, there have been instances in the past when this Court has shown compassion in modifying already final decisions in administrative cases.[7]

In *Cathay Pacific Airways, Ltd. v. Romillo, Jr.*,[8] this Court, out of humanitarian considerations, allowed dismissed Judge Romillo, Jr. to enjoy all vacation and sick leave benefits that he earned during his government service. In *Prudential Bank v. Castro*,[9] this Court likewise allowed respondent Judge to enjoy the money equivalent of all his vacation and sick leave benefits.

Furthermore, Civil Service Commission Memorandum Circular (MC) No. 41, Series of 1998, as amended by MC No. 14, Series of 1999, provides:

> Section 37. *Payment of terminal leave*. — Any official/employee of the government who retires, voluntarily resigns, or is separated from the service and who is not otherwise covered by special law, shall be entitled to the commutation of his leave credits exclusive of Saturdays, Sundays and Holidays without limitation and regardless of the period when the credits were earned.

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[7] *Villaros v. Orpiano*, A.M. No. P-02-1548, October 1, 2003, 412 SCRA 396; *Re: Jovelita Olivas and Antonio Cuyco*, A.M. No. CA-02-12-P, May 2, 2002, 381 SCRA 630; *Fojas, Jr. v. Rollan*, A.M. No. P-00-1384, February 27, 2002, 378 SCRA 20.

[8] G.R. No. 64276, August 12, 1986, 143 SCRA 396.

[9] Adm. Case No. 2756, June 27, 1988, 162 SCRA 554.

Section 65. *Effect of decision in administrative case*. — An official or employee who has been penalized with dismissal from the service is likewise not barred from entitlement to his terminal leave benefits.

Also, Section 11.A.1, Rule 140 of the Revised Rules of Court, as amended by A.M. No. 01-8-10-SC, provides:

> Section 11. *Sanctions*. —
>
> A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits. (Underscoring supplied)

The Court finds that the same leniency may be accorded Judge de la Peña. Thus, in the interest of justice, he may be allowed to claim the leave credits that he earned during his employment in the government service.

We note, however, that the lifting of the prohibition on reemployment of respondent in the government service will serve no practical value or useful purpose, considering that he is now more than 73 years old.

WHEREFORE, premises considered, the Court resolves to *AMEND* the dispositive portion of its Resolution of February 9, 1994 to read as follows: "ACCORDINGLY, respondent Judge Meljohn de la Peña (Acting Judge of the Municipal Trial Court of Naval, Leyte) of the Municipal Circuit Trial Court of Caibiran-Culaba, Leyte is hereby *DISMISSED* from the service with forfeiture of all benefits and with prejudice to reinstatement or reappointment to any public office, including government-owned or controlled corporations. *He may, however, enjoy all vacation and sick leave benefits that he earned during the period of his government service*.[10]

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[10] *Prudential Bank v. Castro, supra* note 9, at 554; *Cathay Pacific Airways, Ltd. v. Romillo, Jr., supra* note 8, at 397.

The Fiscal Management and Budget Office is ordered to compute and immediately release those leave benefits to him." [Revision italicized]

This Resolution is immediately executory.

SO ORDERED.

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

*Leonardo-de Castro, J.,** on official leave.

THIRD DIVISION

[A.M. No. P-04-1793. December 8, 2008]
(Formerly OCA I.P.I. No. 03-1650-P)

RAUL ZAMUDIO, *complainant, vs.* **EFREN AURO, Deputy Sheriff, Regional Trial Court, Camarines Norte,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION; MANDATORY DUTY OF THE SHERIFF TO MAKE A RETURN OF THE WRIT OF EXECUTION; EXPLAINED. — Section 14, Rule 39 of the Rules of Court makes it mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it. Specifically, a sheriff is required (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if the judgment cannot be satisfied in full, to make a report to the court within 30 days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue

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* No part. Justice Leonardo-De Castro is on official leave per Special Order No. 539 dated November 14, 2008.

making a report every 30 days in the proceedings being undertaken by him until judgment is fully satisfied. The reason behind this requirement is to update the court on the status of the execution and to take necessary steps to ensure speedy execution of decisions.

2. ID.; ID.; ID.; ID.; INFRACTIONS BY THE SHERIFF; EXEMPLIFIED; PENALTY. — Failure to comply with Section 14, Rule 39 constitutes simple neglect of duty, which is defined as the failure of an employee to give one's attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. However, the Court finds that respondent's infraction does not end with his failure to make a report. As the Court has held time and again, execution of a final judgment is the fruit and end of the suit and is the life of the law. A judgment, if not executed, would be an empty victory on the part of the prevailing party; and sheriffs are the ones primarily responsible for the execution of final judgments. Thus, they are expected at all times to show a high degree of professionalism in the performance of their duties. A sheriff is not required to give the judgment debtor some time to raise cash; otherwise, the property may be placed in danger of being lost or absconded. A period of fifteen days as initially given by respondent to Mrs. Aloc in order to comply with the writ may be considered excusable in order to give her ample time to confer with her husband, who was the defendant in the civil case and was allegedly out of the country. After the said period however, and with the wife clearly acting in behalf of her husband, respondent took a risk in not immediately implementing the writ. As held by the Court, a sheriff, after serving the writ and upon failure of the judgment obligor to immediately pay the amounts therein, should levy on whatever personal properties he may find in defendant's house and, in default thereof, defendant's real properties. By allowing Mrs. Aloc to have a total of three extensions, respondent risked, as it happened in this case, that the judgment may no longer be satisfied. Disregard of the rules on execution of judgment is tantamount to neglect of duty. Under Section 52 (B) (2) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty carries the penalty of suspension of one month and one day to six months for the first offense and dismissal from the service for the second offense.

3. POLITICAL LAW; ADMINISTRATIVE LAW; SIMPLE NEGLECT OF DUTY; IMPOSABLE PENALTY. — The Court finds that respondent committed two offenses in this case, failure to implement the writ and failure to make a report, which both constitute simple neglect of duty. Following Section 55 of the Uniform Rules on Administrative Cases in the Civil Service, only one penalty shall be imposed, with one of the infractions to be considered as an aggravating circumstance. Such aggravating circumstance, however, shall be offset by mitigating circumstances in respondent's favor, such as his length of service, having been part of the judiciary since 1979, and the fact that this is his first administrative infraction. The Court in several cases also imposed the penalty of fine instead of suspension as an alternative penalty to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Considering the foregoing circumstances and following several cases involving simple neglect of duty, the Court finds the imposition of a ₱5,000.00 fine reasonable in this case. **WHEREFORE**, the Court finds Efren Auro, Deputy Sheriff, Regional Trial Court, Daet, Camarines Norte, guilty of simple neglect of duty for which he is *FINED* the amount ₱5,000.00 with the *STERN WARNING* that repetition of the same or similar acts in the future shall be dealt with more severely.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

In a Complaint dated April 23, 2003, Raul Zamudio (complainant) charges Efren Auro (respondent), Deputy Sheriff of the Regional Trial Court (RTC), Daet, Camarines Norte, with gross negligence of duty for his failure to implement the writ of execution in Civil Case No. 2527 entitled "*Raul Zamudio v. Romeo Aloc*" for Sum of Money.

Complainant avers: The Municipal Trial Court (MTC) of Daet, Camarines Norte issued a writ of execution on October 30, 2002, pursuant to its decision[1] in Civil Case No. 2527 which ordered defendant therein (Aloc) to pay complainant ₱144,680.00 as unpaid

[1] Dated June 28, 2002.

balance of the value of the subject motor vehicle, ₱37,265.00 as interest, and attorney's fees of ₱10,000.00 and ₱500.00 per appearance. The writ was forwarded to the Office of the Clerk of Court (OCC), RTC, Daet and endorsed to respondent for service and implementation. However, respondent up to the date of the filing of the instant complaint has failed to implement the writ. Such failure constitutes gross negligence of duty and has caused complainant damage as he was not able to recover the amount due him as awarded by the court.[2]

Respondent filed his Comment dated July 24, 2003, claiming that he was not negligent of his duties and his failure to implement the writ was for reasons beyond his control; and praying that the administrative case against him be dismissed. He explained that he received the folder of Civil Case No. 2527 only on January 20, 2003; that he sent a Notice of Levy dated March 27, 2003 to Aloc which was received by Aloc's wife on April 3, 2003; that before he could take possession of the subject vehicle, however, it became subject of Criminal Case No. 03-7675 for Violation of the Anti-Carnapping Act. Presently, the subject vehicle is impounded at the Old Municipal Building of Daet as it was used to transport illegal logs.[3]

Complainant filed a Reply dated August 7, 2003, stating that while respondent received the folder of Civil Case No. 2527 on January 20, 2003, he prepared the Notice of Levy only on March 27, 2003 or two months after receipt of the records. Respondent also did not cause the annotation of the Notice of Levy in the records of the Land Transportation Office (LTO) in Daet and from January 20, 2003 to June 30, 2003, respondent did not execute the writ despite constant reminders from complainant.[4]

The Court, in its Resolution dated March 10, 2004, referred the instant complaint to the Executive Judge of the RTC, Daet for investigation, report and recommendation.[5]

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

[3] *Id.* at 11-12.

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

[5] *Rollo*, p. 22.

In compliance with the Court's directive, Investigating Judge Winston Racoma submitted his report dated December 21, 2007 recommending that the instant complaint against respondent be dismissed.[6]

Judge Racoma held: Respondent had not been remiss in his duty and he implemented the writ of execution in accordance with Section 9, Rule 39 of the Rules of Court[7] on money judgment, which requires the sheriff to first make a demand on the obligor for the immediate payment of the full amount stated in the writ of execution before a levy can be made. Respondent served the writ of execution on Aloc through his wife and demanded the immediate payment of the money judgment. Respondent accommodated the request of Mrs. Aloc and gave her time to comply with the monetary obligation of her husband. Respondent cannot be faulted for granting such request for extension of time to satisfy the writ of execution because from January 20, 2003 to March 3, 2003, Aloc, who was the judgment obligor in Civil Case No. 2527 was still abroad and the wife did not have the money to satisfy the judgment of the court. Moreover, Mrs. Aloc not a party to the case; thus, the liability of Aloc was something personal to him. When Mrs. Aloc failed to pay the amount within the additional period requested, that was the time respondent issued the Notice of Levy. Respondent also cannot be faulted for failing to take

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[6] *Id.* at 379.

[7] Sec. 9. *Execution of judgments for money, how enforced.* —

(a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate full payment of the full amount stated in the writ of execution and all the lawful fees. x x x

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

possession of the motor vehicle owned by Aloc after the Notice of Levy had been served on his wife, since the vehicle became the subject matter in a criminal case for carnapping and was later impounded for having been used in transporting illegal logs. The motor vehicle was in the legal custody of the Criminal Investigation and Detection Group (CIDG) of Daet which had every right to hold the same as it was an evidence of an offense. If ever respondent failed to take physical possession of the vehicle, it was already beyond his control.[8]

The Court referred Judge Racoma's report to the Office of the Court Administrator (OCA) for its evaluation, report and recommendation[9] and in its Memorandum dated July 23, 2008, the OCA[10] agreed with Judge Racoma that every effort had been exerted by respondent in implementing the writ. However, the OCA disagreed that respondent was totally free from administrative liability. The OCA noted that no sheriff's report was filed by respondent and under Section 14, Rule 39 of the Rules of Court, it is respondent's duty to make a report to the court every 30 days on the proceedings taken on the writ of execution until the judgment is satisfied in full or its effectivity expires. The existence of the present case did not excuse respondent from filing the required sheriff's report. The OCA then recommended that respondent be reprimanded for failure to file the required sheriff's report and that he be warned that a repetition of the same or similar offenses will warrant the imposition of a more severe penalty.[11]

The Court agrees that respondent should be disciplined for his failure to comply with Section 14, Rule 39 of the Rules of Court, but disagrees as to the extent of his liability.

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[8] *Rollo*, pp. 378-379.

[9] *Id.* at 373.

[10] Through Court Administrator Jose P. Perez and Deputy Court Administrator Antonio H. Dujua.

[11] *Rollo*, pp. 399-340 (sic).

Section 14, Rule 39 of the Rules of Court[12] makes it mandatory for a sheriff to make a return of the writ of execution to the clerk or judge issuing it. Specifically, a sheriff is required (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if the judgment cannot be satisfied in full, to make a report to the court within 30 days after his receipt of the writ and state why full satisfaction could not be made. The sheriff shall continue making a report every 30 days in the proceedings being undertaken by him until judgment is fully satisfied.[13] The reason behind this requirement is to update the court on the status of the execution and to take necessary steps to ensure speedy execution of decisions.[14]

In this case, respondent in his testimony before Judge Racoma admitted that after he served the writ of execution, he did not make a report to the court stating only that he did not do so because he was waiting for the result of his arrangement with Mrs. Aloc who promised to pay upon the arrival of her husband, and there was already the instant administrative case filed against him.[15]

Whatever arrangement Mrs. Aloc made with him or complainant does not justify respondent's failure to make a report on the writ. The filing of the present administrative case also cannot absolve

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

[13] *Zarate v. Untalan,* A.M. No. MTJ-05-1584, March 31, 2005, 454 SCRA 206, 213.

[14] *Mangubat v. Camino,* A.M. No. P-06-2115, February 23, 2006, 483 SCRA 163, 171.

[15] TSN, November 12, 2004, *rollo,* pp. 300-302, 304-305.

him from non-compliance with Section 14, because from the time he received the folder of Civil Case No. 2527 on January 20, 2003 up to April 23, 2003, the date of the complaint, three months had already lapsed with respondent not having complied with the Rules.

Failure to comply with Section 14, Rule 39 constitutes simple neglect of duty, which is defined as the failure of an employee to give one's attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.[16]

However, the Court finds that respondent's infraction does not end with his failure to make a report.

As the Court has held time and again, execution of a final judgment is the fruit and end of the suit and is the life of the law. A judgment, if not executed, would be an empty victory on the part of the prevailing party; and sheriffs are the ones primarily responsible for the execution of final judgments. Thus, they are expected at all times to show a high degree of professionalism in the performance of their duties.[17]

Here respondent avers that he served the writ on defendant Aloc through his wife on January 20, 2003 and gave her 15 days to settle her husband's obligation. Mrs. Aloc went to the OCC on February 10, 2003 requesting an additional 15 days within which to comply with the writ; and again on March 3, 2003 pleading for another extension. It was only upon Mrs. Aloc's failure to keep her promise after the 3rd extension that respondent decided to levy on Aloc's property.[18] The Notice of Levy is dated March 27, 2003.[19]

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[16] *Gillana v. Germinal,* A.M. No. P-07-2307, March 14, 2008, 548 SCRA 230, 237*; Patawaran v. Nepomuceno,* A.M. No. P-02-1655, February 6, 2007, 514 SCRA 265, 276*; Zarate v. Untalan, supra* note 13.

[17] *Mangubat v. Camino, supra* note 14; *Zarate v. Untalan, supra* note 13.

[18] TSN, October 11, 2004, *rollo,* pp. 257-265.

[19] Exhibit "G", *id.* at 14.

A sheriff is not required to give the judgment debtor some time to raise cash; otherwise, the property may be placed in danger of being lost or absconded.[20] A period of fifteen days as initially given by respondent to Mrs. Aloc in order to comply with the writ may be considered excusable in order to give her ample time to confer with her husband, who was the defendant in the civil case and was allegedly out of the country. After the said period however, and with the wife clearly acting in behalf of her husband, respondent took a risk in not immediately implementing the writ. As held by the Court, a sheriff, after serving the writ and upon failure of the judgment obligor to immediately pay the amounts therein, should levy on whatever personal properties he may find in defendant's house and, in default thereof, defendant's real properties.[21] By allowing Mrs. Aloc to have a total of three extensions, respondent risked, as it happened in this case, that the judgment may no longer be satisfied.

Disregard of the rules on execution of judgment is tantamount to neglect of duty.[22] Under Section 52 (B) (2) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty carries the penalty of suspension of one month and one day to six months for the first offense and dismissal from the service for the second offense.

The Court finds that respondent committed two offenses in this case, failure to implement the writ and failure to make a report, which both constitute simple neglect of duty. Following Section 55 of the Uniform Rules on Administrative Cases in the Civil Service, only one penalty shall be imposed, with one of the infractions to be considered as an aggravating

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[20] See *Torres v. Cabling*, A.M. No. P-97-1249, July 11, 1997, 275 SCRA 329, 334; *Mangubat v. Camino*, *supra* note 14.

[21] *Mangubat v. Camino*, *supra* note 14.

[22] *Id*.

circumstance. Such aggravating circumstance, however, shall be offset by mitigating circumstances in respondent's favor,[23] such as his length of service, having been part of the judiciary since 1979,[24] and the fact that this is his first administrative infraction.[25] The Court in several cases also imposed the penalty of fine instead of suspension as an alternative penalty[26] to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension.[27] Considering the foregoing circumstances and following several cases involving simple neglect of duty, the Court finds the imposition of a ₱5,000.00 fine reasonable in this case.[28]

WHEREFORE, the Court finds Efren Auro, Deputy Sheriff, Regional Trial Court, Daet, Camarines Norte, guilty of simple neglect of duty for which he is *FINED* the amount ₱5,000.00 with the *STERN WARNING* that repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

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

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[23] See Section 54, Uniform Rules on Administrative Cases in the Civil Service, Memorandum Circular No. 19, s. 1999.

[24] Respondent started as a security guard in the Court of Agrarian Relations on December 1,1977 up to 1979, then served as sheriff at the RTC Daet starting February 28, 1986 up to the present, per OCA OAS Records Division. See also Section 53, Uniform Rules on Administrative Cases in the Civil Service, Memorandum Circular No. 19, s. 1999.

[25] Per OCA Docket Legal Office.

[26] *Juario v. Labis,* A.M. No. P-07-2388, June 30, 2008; *Patawaran v. Nepomuceno, supra* note 16.

[27] *Juario v. Labis, id.*

[28] See *Juario v. Labis, supra* note 26; *Patawaran v. Nepomuceno, supra* note 16; *Balanag, Jr. v. Osita,* A.M. No. P-01-1454, September 12, 2002, 388 SCRA 630, 636.

THIRD DIVISION

[A.M. No. RTJ-07-2092. December 8, 2008]
(Formerly OCA I.P.I. No. 07-2685-RTJ)

EVA LUCIA Z. GEROY, *complainant, vs.* **HON. DAN R. CALDERON, Presiding Judge, Branch 26 of the Regional Trial Court of Medina, Misamis Oriental,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; NO POSITION IS MORE DEMANDING AS REGARDS THE MORAL RIGHTEOUSNESS AND UPRIGHTNESS OF ANY INDIVIDUAL THAN A SEAT ON THE BENCH; CONSTRUED. — The Court has not been sparing in its exhortation of judges that they should avoid impropriety and the appearance of impropriety in all activities. No position is more demanding as regards the moral righteousness and uprightness of any individual than a seat on the Bench; thus, their personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for they are, as they so aptly are perceived to be, the visible representation of law and of justice. A judge traces a line around his official as well as personal conduct, a price he has to pay for occupying an exalted position in the judiciary, beyond which he may not freely venture. The complainant, in administrative proceedings, has the burden of proving by substantial evidence the allegations in her complaint, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion; the Court finds that the complainant in this case was able to discharge such burden.

2. ID.; EVIDENCE; DENIAL IS AN INHERENTLY WEAK DEFENSE; PRESENT IN CASE AT BAR. — As the Court has held, mere denial does not overturn the relative weight and probative value of an affirmative assertion. Denial is an inherently weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and has no evidentiary value. The bottom line is that respondent

failed to adhere to the exacting standards of morality and decency which every member of the judiciary is expected to observe. Respondent is a married man, yet he engaged in a romantic relationship with complainant. Granting *arguendo* that respondent's relationship with complainant never went physical or intimate, still he cannot escape the charge of immorality, for his own admissions show that his relationship with her was more than professional, more than acquaintanceship, more than friendly.

3. ID.; DISCIPLINE OF JUDGES; IMMORALITY IS A SERIOUS CHARGE; PENALTIES. — Immorality under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001 on the discipline of Justices and Judges, is a serious charge which carries any of the following sanctions: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

4. ID.; ID.; ID.; IMPOSABLE PENALTY. — As the Court has explained, the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust. And complainants are, in a real sense, only witnesses therein. The Court agrees, however, that this is respondent's first administrative infraction since he took his office as judge on January 3, 1997. It should be considered as mitigating his liability. In view thereof, the Court finds the recommended penalty of suspension for six months without salary and other benefits, with a stern warning as recommended by the OCA, to be sufficient in this case.

APPEARANCES OF COUNSEL

Jud A. Yuson, Rodolfo D. Uy and *Soriano Aranda Serina Saarenas & Sarceno Law Office* for respondent.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

"A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized. He should not only possess proficiency in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man."[1]

Before the Court is a letter-complaint dated June 13, 2007 filed by Eva Lucia Z. Geroy (complainant) charging Judge Dan R. Calderon (respondent) of the Regional Trial Court (RTC), Branch 26, Medina, Misamis Oriental, with gross immorality for having an extra-marital affair with her.

Complainant alleges: She was introduced by her cousin Cesar Badilas (Badilas) to respondent in a Rotary Club dinner on November 30, 2002. Thereafter, respondent always communicated with her, visited her at her house and showered her with food and gifts, making her believe that he was single or separated as he acted like a bachelor towards her. They spent most of their time in his house in Upper Balulang, Cagayan de Oro City where complainant would sleep over during weekdays and spend entire weekends with respondent. They would dine in public places, watch movies, go to malls, groceries and hear mass together. Respondent lent her money and she ran errands for him such as making reservations for his trips and purchasing items for his house, encode decisions, pay bills and encash checks for him. Respondent paid her tuition in a caregiver course and gave her a cell phone for an e-load business.[2]

There were times, however, when complainant felt she was being abused by respondent, such as when he wanted to take a picture of them naked after they had sexual contact, when he asked her to buy abortive pills because his son impregnated

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[1] *Tan v. Pacuribot*, A.M. No. RTJ-06-1982, December 14, 2007, 540 SCRA 246, 298.

[2] *Rollo*, pp. 11-13.

his girlfriend, and when he (respondent) forced her to utter vulgar words during their intercourse. In August 2005, complainant went to Xavier University where respondent was a professor, and respondent uttered hurtful words towards her. On December 24, 2005, complainant received a call from respondent and his wife degrading and threatening her. She also received a text message from respondent on December 29, 2005 saying that she had made herself a "despicable disease." Respondent's wife and daughter also called complainant, confronting and threatening her. On March 21, 2007, complainant saw respondent in a restaurant with a woman and when she approached respondent, he cursed and looked angrily at her and asked the guard to drive her out. Respondent then went to his car and locked the doors. Complainant knocked at the window near the driver's seat but respondent arrogantly looked at her and maneuvered his car, nearly hitting her, as he sped past her.[3]

Complainant avers that she was expecting that if her relationship with respondent would end, there should be a friendly talk and a peaceful closure between them, but none took place.[4] She further claims that respondent is in another relationship and she is filing the present case, not just to put an end to the immoral conduct of respondent, but to prevent other women from being victimized by him.[5]

Attached to the complaint are transcripts of respondent's text messages to her from December 2002 to 2005, pictures of her taken inside respondent's house, pictures of complainant's diary, cellphones, gifts allegedly given to her by respondent, receipts showing the name of respondent, and a photocopy of a check showing that respondent lent her money.[6]

Respondent, in his Comment dated July 24, 2007, denies that he had any illicit relationship with complainant; and claims that

[3] *Id.* at 14-17.

[4] *Rollo*, p. 13.

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

[6] *Id.* at 18-145.

her allegations are completely manufactured to suit her elaborate plan to extort money from him. He claims that he is the original complainant in the public prosecutor's office; thus, the present case is in the nature of a counter-charge. While respondent admits that he met complainant at a Rotary dinner sometime in late 2002 through Bardilas, a fellow Rotarian, he didn't realize that when she tagged along with respondent and Bardilas that night, a malicious plan had been set into motion. Respondent further claims that complainant had no regular job and expressed dire financial need; that out of charity, respondent hired her to encode simple case facts and test questions in her house using respondent's laptop; that it was arranged that he would stop by her house to hand her materials for typing, and later pick up the same from her residence; that she later offered to run other errands for him in exchange for a reasonable fee.[7]

Respondent further relates: later, complainant started visiting his house unannounced during weekdays saying she was in a nearby subdivision. Thinking it was innocent, respondent allowed her inside the house and told her to help herself to snacks, and then she would leave shortly. In the total of four or five unannounced visits of complainant, respondent noticed a shift in her conversation, relating to him lurid sex experiences with her previous boyfriends. She also insinuated that it was now accepted in society for married men to have paramours, upon which respondent bluntly told her, personally and in several text messages, that he had no such inclination. In her last unwelcome visit, complainant gave respondent letters professing her uncontrollable love for him. Unknown to respondent and his helpers, complainant had sneaked into his house and the upper bedrooms, where she took pictures alleging that sexual activity had taken place therein. Respondent started ignoring respondent in 2005, but she did not stop sending him text messages asking for a meeting. She also sent text messages to his wife, children, relatives and friends and even went to his wife's dental clinic in St. Luke's, Quezon City, telling her that she was his woman. She also tried to talk to his son by waiting for him in

[7] *Id.* at 152-153.

his company's shuttle bus. She kept every receipt which would show favors she received from him, taking advantage of his generous disposition. She borrowed from him her tuition fee for a caregiver course, as well to buy cellphones for an e-load business which loans respondent gave in good faith. When complainant realized that all the good things she was getting from him were coming to an end and that he was not falling for her blackmail, she started to become vicious and physically assaulted him, such as when she waited for him in the parking lot of Xavier University and tried to enter respondent's car. On March 21, 2007, complainant saw respondent in an eatery and then tried to board his car. In her frustration, she broke the car's side mirror and threw the same at the departing car. On April 24, 2007, while respondent was in his car along Pabayo St., complainant suddenly appeared and again tried to enter the locked car; failing to do so, she started hitting the car with her umbrella and blocked the car's way, forcing respondent to get down the car and wrest the umbrella away. As the car left, complainant grabbed the car's rear plate number, destroying its frame. It was at this time that respondent decided to file a case against her for malicious mischief and slander by deed. In her desperation to support her charge, complainant now concocts another malicious, baseless charge that he is presently involved with another woman. Respondent avers that he has gained the respect of the community as a nationally awarded outstanding prosecutor for Region X in 1994 and a Centennial Judge awardee in 2001 and therefore he cannot compromise such reputation through alleged extra-marital liaisons.[8]

Attached to said Comment is a copy of the Resolution of the Asst. City Prosecutor finding sufficient evidence to support respondent's charge of malicious mischief and finding no sufficient basis to support respondent's charge of slander by deed and complainant's counter-charge for violation of Republic Act (R.A.) No. 9262 (Violence Against Women and Their Children Act).[9]

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[8] *Rollo,* pp. 152-157.

[9] *Id.* at 168-173.

He also attached affidavits of his gardener, caretaker, his wife's assistant, and that of Bardilas and his wife, corroborating his allegations.[10]

In the Resolution dated November 26, 2007, the Court, upon recommendation of the OCA, redocketed the complaint as a regular administrative matter and referred the same to the Executive Justice of the Court of Appeals (CA), Cagayan de Oro Station, for investigation, report and recommendation after a raffle of the case among the Justices.[11]

Complainant filed a Rejoinder dated October 31, 2007 refuting respondent's Comment[12] and a Motion for Early Resolution dated December 26, 2007,[13] which the Court referred to the Investigating Justice.[14]

The hearings before Investigating Justice Rodrigo F. Lim, Jr. were reset twice as complainant could not find any counsel, since no lawyer in the city or the province wanted to take her case. Thus, the summary hearing only commenced on June 3, 2008 and continued on June 12, 13, 20 and 23, 2008. Complainant and her witness, Ofelia Labitad, a neighbor, were cross-examined by the counsel of respondent; while respondent and his witness, Bardilas, were cross-examined by complainant herself without the assistance of any counsel.[15] Thereafter, the parties submitted their respective memoranda.[16]

In the Report which the Court received on July 31, 2008, Investigating Justice Rodrigo F. Lim found respondent guilty of immorality and recommended his suspension for six months without salary and other benefits.[17]

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[10] *Id.* at 176-182.

[11] *Id.* at 229; see also *rollo*, p. 7.

[12] *Id.* at 231-235.

[13] *Id.* at 273-274.

[14] *Id.* at 295.

[15] Investigation Report, pp. 1-2.

[16] *Rollo*, pp. 402-412, 413-424.

[17] Investigation Report, p. 25.

The Investigating Justice held: There were admissions on respondent's part which revealed the existence of an illicit affair. Complainant was able to disclose that respondent had skin tags between his thighs which respondent admitted. Complainant would not have had knowledge of such intimate and concealed marks unless she was able to see respondent naked. While respondent claimed that he may have divulged such fact in one of their casual conversations, such disclosure goes against respondent's very claim that what they had was only a platonic employer-employee relationship. The pictures taken by complainant showing the rooms in the house and her familiarity with the same proves that complainant had access to all the rooms in the house and would also show that some of their sexual trysts took place in respondent's house. Respondent also asked complainant to assist him in the solemnization of three marriages when he could have utilized a staff from his office. From these, it could be inferred that complainant's services were utilized so that they could be together in the evening after the reception. Respondent also asked complainant to encode his draft orders/decisions when he has four stenographers. Respondent, in doing so, disregarded the fact that by giving complainant such encoding jobs, he was compromising the integrity of the court records. Despite the finding of immorality, however, the ultimate penalty of dismissal from service, as prayed for by complainant, should not be imposed upon respondent, as records revealed that complainant was equally guilty, if not more so, in the whole sordid affair. Considering his length of service and the fact that this was the first time that respondent was charged with immorality or any other administrative offense, the penalty of six months suspension should suffice.[18]

The Investigating Justice also found incredible complainant's claim that she was misled by respondent into thinking that he was single or unmarried, since she admitted in one of her affidavits that by his age and the way he carried himself, she knew that he was really a married man and it was up to her

[18] Investigation Report, pp. 16-21.

discretion whether to reciprocate respondent's affections knowing respondent's marital status.[19]

The Court finds the report and recommendation of the Investigating Justice to be well-taken.

The Court has not been sparing in its exhortation of judges that they should avoid impropriety and the appearance of impropriety in all activities. No position is more demanding as regards the moral righteousness and uprightness of any individual than a seat on the Bench; thus, their personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for they are, as they so aptly are perceived to be, the visible representation of law and of justice.[20] A judge traces a line around his official as well as personal conduct, a price he has to pay for occupying an exalted position in the judiciary, beyond which he may not freely venture.[21]

The complainant, in administrative proceedings, has the burden of proving by substantial evidence the allegations in her complaint,[22] *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion;[23] the Court finds that the complainant in this case was able to discharge such burden.

As correctly found by the Investigating Justice, the complainant was able to support her charge of immorality against respondent and has shown that the latter had not exhibited the ideals and principles expected of a magistrate. The disclosure by complainant of very intimate facts about respondent and respondent's own seemingly innocuous admissions clearly reveal the existence

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[19] *Id.* at 23.

[20] *Resngit-Marquez v. Llamas, Jr.*, A.M. No. RTJ-02-1708, July 23, 2002, 385 SCRA 6, 21.

[21] *Id*.

[22] *Tan v. Pacuribot*, *supra* note 1.

[23] *Resngit-Marquez v. Llamas, Jr.*, *supra* note 20.

of an illicit affair. Complainant would not have known personal information about respondent, such as the skin tags in between his thighs, if they really did not have an intimate physical relationship.[24]

As respondent himself testified:

Q Is it not that you have skin tags on the inner thigh of your body, Mr. Witness?

A Yes, I told you about it and in fact it is not just in my thighs but also under my armpit and that was in the course of your asking about my physical features and my scars on my face, and may be that was also the time that I also told you the story about the scars on my face that I got during the fraternity rumble during my college days.[25]

Respondent's own admissions are also inconsistent with his claim that his relationship with complainant is purely platonic and professional. As gathered from the transcripts:

Q Mr. Witness, do you recall that December 1, 2002 you have been calling up and then is it not that November 30 we've met, we were introduced, the following day you texted me and said in Annex A-1 it is there December 1, 2002 at 8:32:33 in the morning you were texting, **"Gud am, just saying thanks for the wonderful evening"**?

A Yes, but I am not sure if that is accurate text message but I was being polite, it is in my nature.[26]

xxx xxx xxx

Q Do you remember then, Mr. Witness that after your family went back to Manila January 6 you were texting me again saying that was already 6 January 2003 you were texting, **"knock, knock hello are you still there"**?

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[24] Cross examination of respondent, TSN, June 20, 2003, p. 48, TSN, June 23, 2003, 2:00 p.m., pp. 32-33.

[25] TSN, June 23, 2008, 2:00 p.m., p. 33.

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

A **This could be right because this was in reply to your earlier text message which I've read**.[27]

x x x x x x x x x

Q In fact, Mr. Witness, you texted me in my Annex "I-c" it was there on December 8, 2002 at 1:24:9 early morning, do you remember because on December 7 I was with you, we were together we were in your house nobody was there and no son Ian Phillip was there, we savor our togetherness at that time, do you remember this text message, Mr. Witness which I quote, **"I feel more 4 your comfort Tet, I felt u really nid d rest, I just can't resist it wen u're here u know.**"

A I don't remember if this is the exact message that I sent you; but this would indicate that I gave you a lot of work, these were the first things that you were working for me but it is not that because you were in my house; that is a lie.[28]

x x x x x x x x x

Q Is it not also, Mr. Witness, you were always appreciating our togetherness and wonderful evening like what you said in your text message on 21 January 2003 2:43:44 in the morning you texted to me I quote, **"Am in my room now thanks for a wonderful evening the songs and the towelets sleep tight"**, it was already 2:43:44 in the morning, do you remember that?

A I remember this particularly and I checked a mistake, this was a Friday and we had our rotary meeting here in the rotary bar site, when I went home I read your text because I believe before I went to the rotary meeting I passed by your house and we talked and you gave me something, I think it was a CD or a recording that you gave me, I do not remember about the towelets but you gave me some CDs and then **I went home from the rotary I read your text that was the only time I read your text and I answered,** but I do not think it was this late also it could have been that you received my text message late or you intentionally erroneously typed this wrong time, this late time.[29] (Emphasis supplied).

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[27] TSN, June 23, 2008, 2:00 p.m., p. 43.

[28] *Id.* at 44-45.

[29] TSN, June 23, 2008, 2:00 p.m., pp. 34-35.

While respondent insists that his relationship with complainant is purely professional, the text messages which admittedly came from him are not of the kind an employer would ordinarily send an employee. Try as he might, respondent's own admissions betray his claim of innocence.

Complainant's witness, her neighbor Ofelia Labitad, also testified that she believed complainant and respondent had an intimate relationship because they were always together, *i.e.*, there were times that she saw respondent's car parked in front of the house of the complainant or across the street.[30]

To this, respondent tried to explain that it was arranged that coming from the Hall of Justice in Cagayan de Oro City and subsequently from Medina, Misamis Oriental, he would stop at the corner or near complainant's residence, which was on the way to his residence, and would hand over to her from the car any encoding job that had to be done for a reasonable fee.[31]

Respondent also admitted that complainant assisted him in at least two weddings which he solemnized.[32]

As correctly observed by the Investigating Justice, however, respondent as RTC judge has several employees under him — a branch clerk of court, four stenographers, a legal researcher, a branch sheriff, personnel in charged of the civil and criminal records plus a utility worker. He could have asked any of his stenographers to do the encoding for him, especially the encoding of decisions, and any of his staff to assist him in the solemnization of weddings. His resort to complainant's services could be nothing but just a convenient excuse for them to be able to spend more time together. Also, as correctly observed by the Investigating Justice, his utilization of complainant's services especially in encoding cases also compromised the integrity of court records.

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[30] TSN, June 12, 2008, pp. 181-189.

[31] Comment, *rollo*, p. 153.

[32] *Id.* at 153.

A person who is not a regular court employee should not be allowed to type decisions and to have access to court records.[33]

Complainant related in detail her relationship with respondent and respondent could only offer general denials. Even then, he could not completely deny some communications which transpired between him and complainant which betrayed his claim of a purely platonic relationship.

As the Court has held, mere denial does not overturn the relative weight and probative value of an affirmative assertion. Denial is an inherently weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and has no evidentiary value.[34]

The bottom line is that respondent failed to adhere to the exacting standards of morality and decency which every member of the judiciary is expected to observe.[35] Respondent is a married man, yet he engaged in a romantic relationship with complainant. Granting *arguendo* that respondent's relationship with complainant never went physical or intimate, still he cannot escape the charge of immorality, for his own admissions show that his relationship with her was more than professional, more than acquaintanceship, more than friendly.

As the Court held in *Madredijo v. Layao, Jr.*:[36]

> [I]mmorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community and an inconsiderate attitude toward good order and public welfare.[37]

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[33] *Office of the Court Administrator v. Sayo, Jr.*, A.M. Nos. RTJ-00-1587, May 7, 2002, 381 SCRA 659, 678.

[34] *Tan v. Pacuribot, supra* note 1.

[35] *Jamin v. De Castro*, A.M. No. MTJ-05-1616, October 17, 2007, 536 SCRA 359, 368.

[36] A.M. No. RTJ-98-1424, October 13, 1999, 316 SCRA 544.

[37] *Id.* at 559.

Immorality under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001 on the discipline of Justices and Judges, is a serious charge which carries any of the following sanctions: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[38]

In recommending the penalty of suspension for six months without salary and other benefits, instead of the ultimate penalty of dismissal from the service, the Investigating Justice gave weight to the fact that complainant was equally, if not more guilty in the whole sordid affair.[39] He also considered respondent's length of service and the fact that this was the first time respondent had been charged with immorality, and it did not appear from the records that he had been previously charged with any offense or that there was any pending administrative case against him.[40]

The Court agrees that complainant clearly consented to the illicit affair. The Investigating Justice correctly observed that complainant was a clearly enamored and highly obsessed woman, as proven by her propensity to be at the exact place and time where respondent happened to be and her insistence on having a "formal closure" between them. Records also revealed that complainant sought out respondent's wife, parents and children, meeting them personally or texting them, when respondent started ignoring her. The Investigating Justice also correctly found incredible complainant's claim that she was misled by respondent into thinking that he was an unmarried man, as complainant

[38] RULES OF COURT, Rule 140, Sections 8 and 11.

[39] Investigation Report, p. 21.

[40] *Id.* at 25.

could have easily verified respondent's status, he being a public figure, which information was readily available to anyone. Complainant also admitted in one of her affidavits that the very first time she met respondent, she knew by the way he carried himself and his age that he was a married man; but because of his perseverance, her heart was won.[41]

As aptly observed by the Investigating Justice in his Report:

> x x x the present case was merely borne out [of] the sentiments of a woman whose affections were unreciprocated, even spurned and not really out of a noble cause to purge the judiciary of magistrates undeserving of the robes they wear. Indeed, she is the epitome of the saying that: "Hell hath no fury like a woman scorned."[42]

However, the Court does not agree that complainant's guilt or intentions should mitigate respondent's liability.

Whatever intentions complainant may have has no bearing on the instant case. As the Court has explained, the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust. And complainants are, in a real sense, only witnesses therein.[43]

The Court agrees, however, that this is respondent's first administrative infraction since he took his office as judge on January 3, 1997.[44] It should be considered as mitigating his liability.[45] In view thereof, the Court finds the recommended penalty of suspension for six months without salary and other

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[41] *Id.* at 23, see also *rollo*, p. 323.

[42] *Rollo*, p. 24.

[43] *Carman v. Zerrudo*, A.M. No. MTJ-98-1146, February 5, 2004, 422 SCRA 1, 9.

[44] Through OAS-OCA Docket Legal and Records Division.

[45] See *Apiag v. Cantero*, A.M. No. MTJ-95-1079, February 12, 1997, 268 SCRA 47.

benefits, with a stern warning as recommended by the OCA, to be sufficient in this case.

WHEREFORE, Presiding Judge Dan R. Calderon, Branch 26 of the Regional Trial Court of Medina, Misamis Oriental is hereby found *GUILTY* of *IMMORALITY* for which he is meted the penalty of *SUSPENSION* for six months without salary and other benefits, with a *STERN WARNING* that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161844. December 8, 2008]

RAFAEL M. CONCEPCION, *petitioner, vs.* **COURT OF APPEALS and LAND BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEALS; DECISION OF THE REGIONAL TRIAL COURT ACTING AS SPECIAL AGRARIAN COURT SHOULD BE BROUGHT TO THE COURT OF APPEALS VIA PETITION FOR REVIEW; APPLICATION IN CASE AT BAR. — The prospective application of *Land Bank of the Phil. v. De Leon* has long been settled by this Court. In *Gabatin v. Land Bank of the Phil.*, the Court explained: It bears noting that the Decision, which prescribed for Rule 42 as the correct mode of appeal from the decisions of the SAC, was promulgated

by this Court only on 10 September 2002, while the Resolution of the motion for reconsideration of the said case giving it a prospective application was promulgated on 20 March 2003. x x x. In *Land Bank v. De Leon*, we held: On account of the absence of jurisprudence interpreting Sections 60 and 61 of RA 6657 regarding the proper way to appeal decisions of Special Agrarian Courts as well as the conflicting decisions of the Court of Appeals thereon, LBP cannot be blamed for availing of the wrong mode. Based on its own interpretation and reliance on the Buenaventura ruling, LBP acted on the mistaken belief that an ordinary appeal is the appropriate manner to question decisions of Special Agrarian Courts. Thus, while the rule is that the appropriate mode of appeal from the decisions of the SAC is through a petition for review under Rule 42, the same rule is inapplicable in the instant case. **The Resolution categorically stated that the said ruling shall apply only to those cases appealed after 20 March 2003.** The non-retroactive application of *Land Bank of the Phils. v. De Leon* has been reiterated by the Court. Thus: Essentially therefore, the rule is that a decision of the RTC acting as a Special Agrarian Court should be brought to the Court of Appeals *via* a Petition for Review. The Court of Appeals will no longer entertain ordinary appeals thereon. However, t**his rule applies only *after* the finality of the Resolution of this Court in *Land Bank of the Philippines v. De Leon* dated 20 March 2003**. Thus, a notice of appeal filed before 20 March 2003 may still be given due course. In this case, respondent's appeal was filed before the finality of *Land Bank of the Phil. v. De Leon*. The Court of Appeals did not commit grave abuse of discretion in issuing its 6 November 2002 and 11 December 2003 Resolutions.

APPEARANCES OF COUNSEL

Quisumbing Ignacio Guia & Lambino Law Offices, Hector Reuben D. Feliciano and *Fernando A. Santiago* for petitioner.
Picson Beramo & Associates for Land Bank of the Phils.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for *certiorari* and prohibition assailing the 6 November 2002[1] and 11 December 2003[2] Resolutions of the Court of Appeals in CA-G.R. CV No. 60227.

The Antecedent Facts

Rafael M. Concepcion (petitioner) was the owner of four parcels of irrigated rice land situated in Pacalcal, Bamban, Tarlac, with a total area of 26.6497 hectares. The parcels of land were put under Presidential Decree No. 27 (PD 27).[3] The Department of Agrarian Reform (DAR) fixed the just compensation at ₱114,865, ₱28,086.32, ₱10,442.65 and ₱32,164.99 for the lands covered by Transfer Certificates of Title (TCT) No. 116708, TCT No. 118975, TCT No. 118977 and TCT No. 118980, respectively.

Petitioner filed a complaint before the Regional Trial Court of Tarlac, Tarlac, Branch 63 (trial court), acting as a Special Agrarian Court, praying for the trial court to fix the just compensation for the parcels of land.

The Ruling of the Trial Court

In its Decision[4] dated 18 December 1997, the trial court fixed the just compensation at ₱100,000 per hectare. The trial

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[1] *Rollo*, pp. 23-27. Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Romeo A. Brawner, Marina L. Buzon, Rodrigo V. Cosico and Bienvenido L. Reyes, concurring.

[2] *Id*. at 16-18. Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Romeo A. Brawner, Marina L. Buzon, Rodrigo V. Cosico and Bienvenido L. Reyes, concurring.

[3] 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 Mechanism Therefor. Issued on 21 October 1972.

[4] *Rollo*, pp. 19-21. Penned by Judge Arsenio P. Adriano.

court ruled that the selling price of *palay* should be ₱400. The trial court stated that it was unrealistic to fix the just compensation at ₱7,057.75 per hectare as computed by the DAR.

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, the Court finds that the just compensation for the parcels of land covered by TCT Nos. 116708, 118975, 118977 and 118980 is ₱100,000.00 per hectare, to be paid in accordance with Section 18 of RA 6657.
>
> SO ORDERED.[5]

Land Bank of the Philippines (respondent) filed an ordinary appeal from the trial court's Decision before the Court of Appeals. The case was docketed as CA-G.R. CV No. 60227. DAR, on the other hand, filed a petition for review before the Court of Appeals, docketed as CA-G.R. SP No. 47006.

The Ruling of the Court of Appeals

In its Resolution[6] promulgated on 14 April 1998, the Court of Appeals denied due course to and dismissed DAR's petition for review in CA-G.R. SP No. 47006 for having been filed late.

In its Resolution promulgated on 6 November 2002, the Court of Appeals dismissed the appeal in CA-G.R. CV No. 60227. Citing this Court's 10 September 2002 Decision in *Land Bank of the Phil. v. De Leon*,[7] the Court of Appeals ruled that the proper mode of appeal from the decision of the Regional Trial Court sitting as a Special Agrarian Court shall be by petition for review.

Respondent filed a motion for reconsideration.

In its 11 December 2003 Resolution, the Court of Appeals granted the motion for reconsideration and reinstated the appeal. The Court of Appeals cited this Court's 20 March 2003 Resolution partially granting the motion for reconsideration in *Land Bank of the Phil.*

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[5] *Id*. at 21.

[6] *Id*. at 22. Penned by Associate Justice Angelina Sandoval-Gutierrez with Associate Justices Romeo J. Callejo, Sr. and Omar U. Amin, concurring.

[7] 437 Phil. 347 (2002).

v. De Leon.[8] The Court of Appeals ruled that this Court's 10 September 2002 Decision holding that a petition for review is the correct mode of appeal from decisions of Special Agrarian Courts shall apply only after the finality of the 20 March 2003 Resolution of this Court in *Land Bank of the Phil. v. De Leon.*

Hence, the petition for *certiorari* and prohibition filed before this Court by petitioner.

The Issue

The sole issue raised by petitioner is whether the ruling of this Court in *Land Bank of the Phil. v. De Leon* applies in this case.

The Ruling of this Court

The petition has no merit.

The prospective application of *Land Bank of the Phil. v. De Leon* has long been settled by this Court. In *Gabatin v. Land Bank of the Phil.*,[9] the Court explained:

> It bears noting that the Decision, which prescribed for Rule 42 as the correct mode of appeal from the decisions of the SAC, was promulgated by this Court only on 10 September 2002, while the Resolution of the motion for reconsideration of the said case giving it a prospective application was promulgated on 20 March 2003. x x x. In *Land Bank v. De Leon*, we held:
>
> > On account of the absence of jurisprudence interpreting Sections 60 and 61 of RA 6657 regarding the proper way to appeal decisions of Special Agrarian Courts as well as the conflicting decisions of the Court of Appeals thereon, LBP cannot be blamed for availing of the wrong mode. Based on its own interpretation and reliance on the Buenaventura ruling, LBP acted on the mistaken belief that an ordinary appeal is the appropriate manner to question decisions of Special Agrarian Courts.
>
> Thus, while the rule is that the appropriate mode of appeal from the decisions of the SAC is through a petition for review under Rule 42,

[8] 447 Phil. 495 (2003).

[9] 486 Phil. 366 (2004).

the same rule is inapplicable in the instant case. **The Resolution categorically stated that the said ruling shall apply only to those cases appealed after 20 March 2003**.[10] (Emphasis supplied)

The non-retroactive application of *Land Bank of the Phil. v. De Leon* has been reiterated by the Court. Thus:

> Essentially therefore, the rule is that a decision of the RTC acting as a Special Agrarian Court should be brought to the Court of Appeals *via* a Petition for Review. The Court of Appeals will no longer entertain ordinary appeals thereon. However, **this rule applies only *after* the finality of the Resolution of this Court in *Land Bank of the Philippines v. De Leon* dated 20 March 2003**.[11] (Emphasis supplied)

Thus, a notice of appeal filed before 20 March 2003 may still be given due course.[12] In this case, respondent's appeal was filed before the finality of *Land Bank of the Phil. v. De Leon*. The Court of Appeals did not commit grave abuse of discretion in issuing its 6 November 2002 and 11 December 2003 Resolutions.

WHEREFORE, we *DISMISS* the petition. We *AFFIRM* the 6 November 2002 and 11 December 2003 Resolutions of the Court of Appeals in CA-G.R. CV No. 60227.

SO ORDERED.

Puno, C.J. (Chairperson), Azcuna, Chico-Nazario,[*] and *Leonardo-de Castro, JJ.,* concur.

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[10] *Id.* at 377.

[11] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, 6 February 2007, 514 SCRA 537, 553.

[12] *Land Bank of the Phils. v. Arceo, et al.*, G.R. No. 158270, 21 July 2008.

[*] As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 541.

SPECIAL THIRD DIVISION

[G.R. No. 164820. December 8, 2008]

VICTORY LINER, INC., *petitioner, vs.* **PABLO RACE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; REMEDIES OF EMPLOYEE. — Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, 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. Based on this provision, an illegally dismissed employee shall be entitled to (1) reinstatement and (2) full backwages. In the event that reinstatement is no longer possible, then payment of separation pay may be ordered in its stead, hence, the illegally dismissed employee may claim (1) separation pay, and (2) full backwages.

2. ID.; ID.; ID.; ID.; VALID MODIFICATION OF REMEDIES BASED ON FAIRNESS AND EQUITY; JUSTIFIED. — We have previously recognized that the constitutional policy of providing full protection to labor is not intended to oppress or destroy management. The employer cannot be compelled to continuously pay an employee who can no longer perform the tasks for which he was hired. Seeing as petitioner continued to pay respondent his salaries and medical expenses for four years following the accident which caused his leg injury, despite the fact that respondent was unable to render actual service to petitioner, it would be the height of injustice to still require petitioner to pay respondent full backwages from the time of his termination in 1998 until the finality of this Decision. Reasons of fairness and equity, as well as the particular factual circumstances attendant in this case, dictate us to modify our Decision by ordering petitioner to pay respondent limited backwages (inclusive of allowances and other benefits or their monetary equivalent) for five years, from 1 January 1998 to 31 December 2002, in addition to the separation pay of one month

for every year of service awarded in lieu of reinstatement. We must clarify, however, that for purposes of computing respondent's separation pay, he must still be deemed in petitioner's employ until the finality of this Decision since his termination remains illegal, and is only mitigated by petitioner's good faith.

3. REMEDIAL LAW; APPEALS; ISSUES NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT NEED NOT BE CONSIDERED BY THE REVIEWING COURT; RATIONALE. — The rule is well-settled that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court (or in this case, the appropriate quasi-judicial administrative body) need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because this would be offensive to the basic rules of fair play, justice and due process. This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has been consistently rejected. We are not prepared to make a conclusion of law herein that may have far-reaching consequences based on an argument that was belatedly raised and evidently a mere after-thought.

APPEARANCES OF COUNSEL

Songco Kho and Lapesura Law Office for petitioner.
J.O.B. Lorenzo & Associates Law Firm for respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Petitioner Victory Liner, Inc. filed the present Motion for Reconsideration seeking modification of our Decision dated 28 March 2007. In the said Decision, we found that respondent Pablo Race, employed as one of petitioner's bus drivers, was illegally dismissed by petitioner since petitioner failed to comply with both substantive and procedural due process in terminating respondent's employment. However, considering the leg injury sustained by respondent in an accident which already rendered

him incapable of driving a bus, we ordered payment of his separation pay instead of his reinstatement. The dispositive portion of our Decision reads:

> WHEREFORE, the petition is PARTLY GRANTED insofar as it prays for the non-reinstatement of respondent. The Decision of the Court of Appeals dated 26 April 2004 in CA-G.R. SP No. 74010, is hereby AFFIRMED with the following MODIFICATIONS: Petitioner is ordered to pay the respondent, in lieu of reinstatement, separation pay of ONE (1) MONTH PAY for every year of service, and full backwages inclusive of allowances and other benefits or their monetary equivalent from 1 January 1998 up to the finality of this Decision. No costs.[1]

Petitioner impugns the Decision on two grounds: (1) the award of full backwages inclusive of allowances and other benefits or their monetary equivalent to respondent is not warranted; and (2) the dismissal of respondent is authorized under Article 284 of the Labor Code.

We find petitioner's motion to be partly meritorious, compelling us to modify our Decision accordingly.

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, 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. Based on this provision, an illegally dismissed employee shall be entitled to (1) reinstatement and (2) full backwages. In the event that reinstatement is no longer possible, then payment of separation pay may be ordered in its stead, hence, the illegally dismissed employee may claim (1) separation pay, and (2) full backwages.[2]

Nonetheless, this statutory provision is not absolute, and its application has been qualified and/or limited by our jurisprudence.

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[1] *Rollo,* p. 201.

[2] *Santos v. National Labor Relations Commission,* G.R. No. 76721, 21 September 1987, 154 SCRA 166, 172-173.

Foremost is the case of *Agabon v. National Labor Relations Commission*,[3] which definitively settled that where there is valid or authorized cause for the dismissal of the employee, but the employer failed to comply with statutory due process in effecting the same, the dismissal is not illegal. Logically, if there is no illegal dismissal in such a case, then we can deduce that the dismissed employee cannot avail himself of the rights under Article 279 of the Labor Code, *i.e.*, reinstatement and full backwages. What the employee can demand from the employer, according to *Agabon*, is the payment of nominal damages as indemnification for the violation of the former's statutory rights.

In *San Miguel Corporation v. Javate, Jr.*,[4] we affirmed the consistent findings and conclusions of the Labor Arbiter, National Labor Relations Commission (NLRC), and Court of Appeals that the employee was illegally dismissed since he was still fit to resume his work; but the employer's liability was mitigated by its evident good faith in terminating the employee's services based on the terms of its Health, Welfare and Retirement Plan.[5] Hence, the employee was ordered reinstated to his former position without loss of seniority and other privileges appertaining to him prior to his dismissal, but the award of backwages was limited to only one year considering the mitigating circumstance of good faith attributed to the employer.

In another case, *Dolores v. National Labor Relations Commission*,[6] the employee was terminated for her continuous absence without permission. Although we found that the employee was indeed guilty of breach of trust and violation of company rules, we still declared the employee's dismissal illegal as it

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[3] G.R. No. 158693, 17 November 2004, 442 SCRA 573.

[4] G.R. No. 54244, 27 January 1992, 205 SCRA 469.

[5] The employer's Health, Welfare and Retirement Plan provides that it can compulsorily retire an employee who has exhausted all his sick leave with pay benefits and is certified by the company physician to be incapable of discharging his regular assigned duties without impairing his own health or endangering that of his fellow workers.

[6] G.R. No. 87673, 24 January 1992, 205 SCRA 348.

was too severe a penalty considering that she had served the employer company for 21 years, it was her first offense, and her leave to study the French language would ultimately benefit the employer who no longer had to spend for translation services. Even so, other than ordering the employee's reinstatement, we awarded the said employee backwages limited to a period of two years, given that the employer acted without malice or bad faith in terminating the employee's services.[7]

While in the aforementioned cases of illegal dismissal, we ordered the employees' reinstatement, but awarded only limited backwages in recognition of the employer's good faith, there were also instances when we only required the employer to reinstate the dismissed employee without any award for backwages at all.

The employee in *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*,[8] was found guilty of breach of trust for stealing high-grade stones from his employer. However, taking into account the employee's 23 years of previously unblemished service to his employer and absent any showing that his continued employment would result in the employer's oppression or self-destruction, we considered the employee's dismissal a drastic punishment. We deemed that the ends of social and compassionate justice would be served by ordering the employee reinstated but without backwages in view of the employer's obvious good faith.

Similarly, in *San Miguel Corporation v. Secretary of Labor*,[9] the employee was dismissed after he was caught buying from his co-workers medicines that were given *gratis* to them by the employer company, and re-selling said medicines, in subversion of the employer's efforts to give medical benefits to its workers. We likewise found in this case that the employee's dismissal was too drastic a punishment in light of his voluntary

[7] The employer company even gave the employee several telex messages and letters to warn her that her permission for leave had already expired.

[8] 202 Phil. 850 (1982).

[9] 159-A Phil. 346 (1975).

confession that he committed trafficking of company-supplied medicines out of necessity, as well as his promise not to repeat the same mistake. We ordered the employee's reinstatement but without backwages, again, in consideration of the employer's good faith in dismissing him.

Reference may also be made to the case of *Manila Electric Company v. National Labor Relations Commission*,[10] wherein the employee was found responsible for the irregularities in the installation of electrical connections to a residence, for which reason, his services were terminated by the employer's company. We, however, affirmed the findings of the NLRC and the Labor Arbiter that the employee should not have been dismissed considering his 20 years of service to the employer without any previous derogatory record and his being awarded in the past two commendations for honesty. We thus ruled that the employee's reinstatement is proper, without backwages, bearing in mind the employer's good faith in terminating his services.

In our Decision in the present Petition, respondent suffered leg injury after figuring in an accident on 24 August 1994 while driving petitioner's bus, for which he was operated on and confined at the hospital. We are unable to sustain petitioner's position that respondent abandoned his job as early as 1994. For the next four years, respondent was reporting to petitioner's office twice a month and still receiving his salary and medical assistance from petitioner. It was only in January 1998 that respondent was actually dismissed from employment when he was expressly informed that he was considered resigned from his job. We further found that respondent was not afforded procedural due process prior to his dismissal in 1998. We ordered that petitioner pay respondent (1) separation pay of one month for every year of service, in lieu of reinstatement; and (2) full backwages inclusive of allowances and other benefits or their monetary equivalent from 1 January 1998 up to the finality of this Decision.

In its present motion, petitioner is asserting that it should be deemed to have acted in good faith when it considered respondent

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[10] G.R. No. 78763, 12 July 1989, 175 SCRA 277.

as resigned from work because the Court itself stated in the Decision that respondent's reinstatement is no longer feasible due to his leg injury, and that to allow the respondent to drive petitioner's bus in his present physical condition would place petitioner in jeopardy of violating its obligation as a common carrier to always exercise extra-ordinary diligence. Thus, invoking good faith, petitioner denies any liability to respondent for the payment of his backwages and allowances from 1 January 1998 to the date of finality of our Decision.

We agree.

While we cannot subscribe to petitioner's argument that respondent had already abandoned his job in 1994, we may concede that petitioner, given the particular circumstances of this case, had sufficient basis to reasonably and in good faith deem respondent resigned by 1998. In attributing good faith to petitioner, we give due regard to the following circumstances:

First, respondent had been working for petitioner for only 15 months, from June 1993 to August 1994, when the accident occurred causing injury to his leg. Hence, he was able to render actual service to petitioner as a bus driver for the mere period of a little over a year, since his injury already kept him from working from 1994 onwards.

Second, respondent's leg injury prevented him from working as a bus driver for petitioner. In January 1998, when he went to petitioner's office and was informed that he was deemed resigned from work, he was still limping heavily. Respondent neither alleged nor proved that despite the injury to his leg, he could still drive a bus. In fact, respondent's letter to petitioner's Vice President, dated 18 March 1996,[11] requesting that he be transferred to the position of dispatcher or conductor, is very revealing of the fact that he could no longer drive a bus because of his leg injury.

Third, despite respondent's inability to render actual service for **four years** following the accident in 1994, petitioner still

[11] Records, p. 116.

continued to pay him his salary and shoulder his medical expenses. When petitioner informed respondent that he was deemed resigned in 1998, petitioner even offered respondent the amount of ₱50,000.00 as financial assistance; and when respondent refused to receive the said amount, petitioner raised its offer to ₱100,000.00. Even though we do not have an exact determination of respondent's monthly salary,[12] it is safe to assume that the ₱100,000.00 would have been sufficient separation pay. In 1998, respondent had been in petitioner's employ for only five years and, should he have agreed to accept the ₱100,000.00, he would have received a separation pay of ₱20,000.00 for every year of service (although strictly speaking, he rendered actual service for only a year and three months).

And finally, as we discussed in our Decision,[13] petitioner is a common carrier and, as such, is obliged to exercise extraordinary diligence in transporting its passengers safely.[14] Understandably, petitioner feared that it would be exposing to danger the lives of its passengers if it allowed the respondent to drive its bus despite the fact that his leg was injured.

Although we still cannot depart from our original ruling that respondent was illegally dismissed since petitioner was, at the beginning, unable to identify with certitude its basis for respondent's termination,[15] as well as the date of effectivity thereof,[16] we are now convinced, taking into account the

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[12] Petitioner alleged that respondent's daily salary was ₱192.00.

[13] *Rollo*, pp. 200-201.

[14] New Civil Code, Article 1733: **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. (Italics supplied).

[15] Petitioner originally alleged that its reasons for dismissing respondent were abandonment of work, insubordination and gross and habitual neglect of duty. Only later, in its petition before us, did petitioner invoke respondent's injury by reasoning that it would be in violation of its duty as a common carrier to exercise extraordinary diligence to still allow respondent to drive a bus.

[16] The year 1994 *vis-à-vis* 1998.

foregoing circumstances, that petitioner acted without malice and in good faith when it formally informed respondent in 1998 that he was deemed resigned from work.

We then proceed to determining what is the effect of petitioner's good faith on its liability for backwages.

Unrebutted and, thus, already established, is the fact that respondent is unable to drive a bus since the accident in August 1994. Yet, petitioner still kept him in its employ, gave him his salary, and paid for his medical expenses for the next four years, despite the fact that respondent did not render actual service for the said period. Respondent wanted to continue working for petitioner as a dispatcher or conductor, but he failed to show that such positions were available and that he would have been qualified and capable for the said jobs.

We have previously recognized that the constitutional policy of providing full protection to labor is not intended to oppress or destroy management.[17] The employer cannot be compelled to continuously pay an employee who can no longer perform the tasks for which he was hired. Seeing as petitioner continued to pay respondent his salaries and medical expenses for four years following the accident which caused his leg injury, despite the fact that respondent was unable to render actual service to petitioner, it would be the height of injustice to still require petitioner to pay respondent full backwages from the time of his termination in 1998 until the finality of this Decision. Reasons of fairness and equity, as well as the particular factual circumstances attendant in this case, dictate us to modify our Decision by ordering petitioner to pay respondent limited backwages (inclusive of allowances and other benefits or their monetary equivalent) for five years,[18] from 1 January 1998 to

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[17] *Garcia v. National Labor Relations Commission*, G.R. No. 110518, 1 August 1994, 234 SCRA 632, 638.

[18] *Panday vs. NLRC*, G.R. No. 67664, 20 May 1992, 209 SCRA 122, 129; *New Manila Candy Workers Union vs. CIR*, No. L-29728, 30 October 1978, 86 SCRA 36, 46-48; *Davao Free Workers Front vs. CIR*, No. L-29356, 31 October 1974, 60 SCRA 408, 431.

31 December 2002, in addition to the separation pay of one month for every year of service awarded in lieu of reinstatement. We must clarify, however, that for purposes of computing respondent's separation pay, he must still be deemed in petitioner's employ until the finality of this Decision since his termination remains illegal, and is only mitigated by petitioner's good faith.

With respect to the second ground, petitioner invokes Article 284 of the Labor Code which provides that "an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees." According to petitioner, the dismissal of respondent on account of his physical infirmity may be deemed analogous to a termination for health reasons because respondent's physical disability rendered him incapable of performing his job as a bus driver. Moreover, respondent's continued employment under such circumstance is prohibited by law because it would place petitioner in jeopardy of violating its common carrier obligation to observe extra-ordinary diligence.

We note that petitioner cites Article 284 of the Labor Code as an authorized cause in dismissing respondent for the first time in its Motion for Reconsideration before us. Petitioner did not raise Article 284 as an authorized cause in terminating respondent's employment during the proceedings before the Labor Arbiter, NLRC, and Court of Appeals, and even in its Petition for Review before us. To reiterate, petitioner alleged causes for dismissing respondent were abandonment of work, insubordination and gross and habitual neglect of duty. Petitioner's reference to Article 284 of the Labor Code at such a belated stage cannot be allowed.

The rule is well-settled that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court (or in this case, the appropriate quasi-judicial administrative body) need not be considered by the reviewing court as they cannot be raised for the first time on appeal, much more in a motion for reconsideration as in this case, because

this would be offensive to the basic rules of fair play, justice and due process.[19] This last ditch effort to shift to a new theory and raise a new matter in the hope of a favorable result is a pernicious practice that has been consistently rejected.[20] We are not prepared to make a conclusion of law herein that may have far-reaching consequences based on an argument that was belatedly raised and evidently a mere after-thought.

WHEREFORE, in view of the foregoing, the Motion is *PARTIALLY GRANTED*. The dispositive portion of the Decision dated 28 March 2007 in G.R. No. 164820 is *MODIFIED* in that petitioner is ordered to pay the respondent, in lieu of reinstatement, *SEPARATION PAY* of one (1) month pay for every year of service, and *LIMITED BACKWAGES*, inclusive of allowances and other benefits or their monetary equivalent, for a period of five (5) years, computed from 1 January 1998 to 31 December 2002.

SO ORDERED.

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

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[19] *Delfino v. St. James Hospital, Inc.*, G.R. No. 166735, 23 November 2007, 538 SCRA 489, 496.

[20] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, 24 April 2007, 522 SCRA 144, 154.

EN BANC

[G.R. No. 168695.* December 8, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARIBEL LAGMAN and ZENG WA SHUI,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL POSSESSION OF REGULATED DRUGS; ELEMENTS. — The essential elements of the crime of illegal possession of regulated drugs are the following: 1) the actual 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 or consciously possessed the said drug. [Illegal possession of regulated drugs] is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. **Possession**, under the law, includes not only **actual** possession, but also **constructive** possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another. The finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the presumption of knowledge and possession thereof which, standing alone, is sufficient to convict.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; ISSUANCE OF VALID SEARCH WARRANT; REQUISITES. — Under Secs. 3 and 4, Rule 126 of the Rules of Court, the requirements for the issuance of a valid search

* Formerly G.R. Nos. 134680-82.

warrant are: "Sec. 3. Requisites for issuing search warrant. — A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the judge or such other responsible officer authorized by law 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 things to be seized.**" "Sec. 4. Examination of complainant; record. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted." Contrary to Maribel's contention, the aforementioned Rule does not require that the search warrant should identify with particularity the person against whom it is directed. It suffices that the place to be searched and things to be seized are described.

3. ID.; ID.; ID.; SEARCH AND SEIZURE WITHOUT A WARRANT; WHEN ADMISSIBLE. — Search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; and (5) when the accused himself waives his right against unreasonable searches and seizures.

4. ID.; ID.; AS A RULE IF THE CRIMINAL CHARGE IS PREDICATED ON NEGATIVE ALLEGATION OR THAT A NEGATIVE AVERMENT IS AN ESSENTIAL ELEMENT OF THE CRIME, THE PROSECUTION HAS THE BURDEN TO PROVE THE CHARGE; EXCEPTION. — The general rule is that if a criminal charge is predicated on a negative allegation, or that a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule is not without exception. Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him. **Stated otherwise, it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily**

be disproved by the production of documents or other evidence within the defendant's knowledge or control. For example, where a charge is made that a defendant carried on a certain business without a license (as in the case at bar, where the accused is charged with the sale of a regulated drug without authority), the fact that he has a license is a matter which is peculiarly within his knowledge and he must establish that fact or suffer conviction.

5. CRIMINAL LAW; ILLEGAL POSSESSION OF DANGEROUS OR REGULATED DRUGS; IMPOSABLE PENALTY. — More importantly, **what the Dangerous Drugs Act punishes is the possession of the dangerous or regulated drugs or substances without authority. Whether the substance is pure or unadulterated is not materia*l;*** hence, quantitative examination of the substance to determine its purity is not indispensable for conviction. Neither does it affect the penalty imposed, for any person who — unless authorized by law — possesses *shabu* or methylamphetamine hydrochloride, shall be punished with *reclusion perpetua* to death; and a fine ranging from five hundred thousand pesos to ten million pesos if two hundred (200) or more grams thereof are found in his possession. Zeng was found by the trial court to have possessed 78 kilograms of *shabu* without mitigating or aggravating circumstances; thus, the Court imposed the correct penalty of death and a fine of ₱1,000,000.00. However, in view of the enactment on June 24, 2006 of R.A. No. 9346, AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, the death penalty can no longer be imposed. Appellants must thus be sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Nestor P. Ifurung for Zeng Wa Shui.

De Guzman Dionido Caga Jucaban and Associates Law Offices and *Anecio R. Guades* for M. Lagman.

D E C I S I O N

CARPIO MORALES, *J.*:

On appeal is the June 6, 2005 Court of Appeals Decision[1] affirming that of the Regional Trial Court (RTC) of Angeles City, Pampanga, Branch 59 convicting herein appellants Zeng Wa Shui (Zeng) *alias* "Alex Chan," and Maribel Lagman (Maribel) of violation of Republic Act (RA) 6425 (Dangerous Drugs Act), as amended by RA 7659.

Culled from the 7-volume trial court records of the case are the following facts:

After receiving reports of clandestine operation of *shabu* laboratories in Pampanga, the National Bureau of Investigation (NBI) conducted in January 1996 surveillance of a piggery farm in Porac which was reportedly being used as a front therefor.

From the surveillance, it was gathered that three Chinese nationals, namely Zeng Wa Shui (Zeng), Li Wien Shien (Li) and Jojo Gan (Gan) occupied the farm, and Maribel frequented the place while Zeng and Li would go over to her rented house in 2609 San Francisco, Balibago, Angeles City which she was sharing with her Chinese common-law husband, Jose "Bobby" Yu.

In the early morning of March 14, 1996, two NBI teams, armed with search warrants, simultaneously raided the Porac farm and the Balibago residence.

The search of the farm, covered by Search Warrant No. 96-102, yielded no person therein or any tell-tale evidence that it was being used as a *shabu* laboratory. Only pigs in their pens, and two (2) containers or drums the contents of which when field-tested on-the-spot by NBI chemist Januario Bautista turned out to be acetone and ethyl,[2] were found.

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[1] CA *rollo*, p. 471. Penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

[2] Inventory of Chemicals Seized at Porac, Exhibits "N to N-2".

The leader and members of the raiding team thereupon brought their vehicles inside the farm and closed its gates, expecting that the suspected operators would arrive. At around 10 a.m., a car driven by Li arrived and entered the premises after the NBI operatives opened the gates.

A search of Li's vehicle, a blue Toyota Corolla sedan, yielded a digital weighing scale and a packet with crystalline substance weighing approximately 317.60 grams which when field-tested by NBI Chemist Januario Bautista, was found positive for *shabu.*

At around 12:00 noon, Zeng arrived at the farm on board an L-300 Mitsubishi van bearing a blue drum containing liquid which, when field-tested on the spot also by NBI Chemist Bautista, was found positive for *shabu.*[3]

With respect to the search of the Balibago residence by the other NBI team by virtue of Search Warrant No. 96-101, since Maribel was out, she was fetched from her place of business. They found two padlocked rooms inside the house, but with Maribel claiming that she did not have any keys thereto, the team forcibly opened the rooms which yielded 18 big plastic containers containing liquid substance, 30 sacks containing a white powdery substance, 10 plastic containers also containing a white powdery substance, plastic gallons, a refrigerator, a big blower, pails, plastic bags, a big glass flask, and a .25 caliber handgun.

The liquid substance contained in 6 of the 18 plastic containers was subjected to a chemical field-test and was found positive for *shabu*. The contents of the drums turned out to be alcohol solvents; the powder in the sacks was determined to be ephedrine hydrochloride; and the liquid in the 10 plastic containers was determined to be sodium hydroxide. These chemicals are used in the manufacture of *shabu*.

Two separate informations against Maribel were thus filed before the Regional Trial Court (RTC) of Angeles City, the first for possession of **527 kilograms of *shabu* in liquid form**,

[3] *Ibid*.

docketed as Criminal Case No. 96-377, and the second for possession of **1,615 kilograms of ephedrine hydrochloride**, a controlled substance, docketed as Criminal Case No. 96-378. Thus she was charged as follows:

Crim. Case No. 96-377:

That on or about March 14, 1996 in Angeles City, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in her possession approximately 527 kilograms of Methamphetamine Hydrochloride, a regulated drug in violation of the above-cited law.

CONTRARY TO LAW.

Crim. Case No. 96-378:

That on or about March 14, 1996 in Angeles City, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in her possession approximately 1,615.0 (sic) kilograms of Ephedrine Hydrochloride, a regulated drug in violation of the above-cited law.

CONTRARY TO LAW.

On the strength of the confiscated regulated substances found in his vehicle, Li was indicted before the RTC of Angeles City, in Criminal Case No. 96-379, for violation of Section 16 *vis-à-vis* Section 2(e), (f), (m), Article III of the Dangerous Drugs Act, *viz:*

That on or about March 14, 1996 in Porac, Pampanga and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in his possession approximately 317.60 grams of Methamphetamine Hydrochloride, a regulated drug, in violation of the above-cited law.

CONTRARY TO LAW.

And Zeng was indicted in Criminal Case No. 96-380, for violation of Article I *vis-à-vis* Section 21 also of the Dangerous Drugs Act, *viz*:

That on or about March 14, 1996 in Porac, Pampanga and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or use any regulated drug, did then and there willfully, unlawfully, feloniously and knowingly have in his possession approximately 78 kilograms of Methamphetamine Hydrochloride, a regulated drug in violation of the above-cited law.

CONTRARY TO LAW.

The cases were consolidated in Branch 59 of the Angeles City RTC.

Maribel disclaimed knowledge that regulated substances and paraphernalia were being kept in the padlocked rooms in the house which she had since 1994 been sharing with Yu who had disappeared. She averred that it was Yu who placed the containers and sacks in the rooms which he padlocked in November 1995 and January 1996, telling her that they were fertilizers and restaurant items belonging to a friend who was to pick them up; that it was Yu who shouldered the rent of the house and provided the household expenses; and that Yu was away most of the time because he was based in Manila and would only go to the house once a month for a three-day visit.

Maribel admitted that Zeng had gone to her house for a visit, and that she was twice brought by Yu to the piggery in Porac to meet his other Chinese friends. She denied, however, any knowledge of Yu's activities, averring that she was not home most of the time as she was tending to a store at the public market which she co-owns with her mother.

Li denied knowledge of or involvement in the alleged operation of the *shabu* laboratory. He even denied knowing Gan and averred that he only went to the farm to buy piglets.

Zeng denied knowing Maribel or Li. He admitted knowing Gan, however, and having gone to the piggery four times as Gan wanted to hire him as manager of the piggery.

By Decision[4] dated July 20, 1988,[5] the trial court acquitted Li but convicted Zeng and Maribel, imposing upon them the death penalty and ordering them to pay a fine of ₱1,000,000 and ₱2,000,000, respectively.

Zeng and Maribel appealed to the Court of Appeals.

Zeng contended that the alleged *shabu* found inside the blue plastic container was inadmissible in evidence, it having been illegally obtained; and that the prosecution failed to prove a basic element of the crime charged – that he did not have authority to possess those substances.

For her part, Maribel insisted that the evidence seized by virtue of the search warrant was not admissible against her as the warrant did not specifically state her name; and that the prosecution failed to prove her actual or constructive possession or intent to possess the substances. She reiterated her claim that she had no knowledge that dangerous drugs/substances were being kept in the locked rooms of her house, she having believed her common-law husband's above-stated explanation.

The Court of Appeals affirmed Maribel's and Zeng's conviction by Decision[6] dated June 6, 2006, and denied Maribel's motion for reconsideration by Resolution[7] dated March 30, 2007; hence they interposed the present appeal.

Maribel faults the appellate court for affirming that Search Warrant No. 96-101 is valid and the pieces of evidence seized by virtue thereof are admissible; for ruling that she had constructive possession of the substances found in her rented house; and for failing to consider the documentary evidence she submitted, such as her loan applications and Deed of Sale of her car which, to her, proves that she had no knowledge of the drug syndicate's

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[4] CA *rollo*, p. 36.

[5] Records, pp. 36-65.

[6] *Vide* note 1.

[7] CA *rollo*, p. 508. Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Fernanda Lampas-Peralta and Vicente S.E. Veloso.

operations; otherwise, there would have been no need to borrow money or sell her car.

Zeng, on the other hand, insists that the 78 kilograms of methamphetamine hydrochloride in liquid form contained in the blue plastic container was illegally obtained and was not even formally offered in evidence, hence, the same should have been excluded; that the prosecution failed to prove that he had no authority to possess the alleged *shabu* confiscated from his person; and that the conclusion that the liquid contents of the blue plastic drum is methamphetamine hydrochloride is erroneous, no quantitative test as to its purity having been conducted.

The petition fails.

The essential elements of the crime of illegal possession of regulated drugs are the following: 1) the actual 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 or consciously possessed the said drug.[8]

> [Illegal possession of regulated drugs] is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. **Possession**, under the law, includes not only **actual** possession, but also **constructive** possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.[9] (Emphasis and underscoring supplied)

The finding of illicit drugs and paraphernalia in a house or building owned or occupied by a particular person raises the

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[8] *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134.

[9] *Ibid*.

presumption of knowledge and possession thereof which, standing alone, is sufficient to convict.[10]

Maribel failed to present any convincing evidence to rebut the presumption of knowledge and possession of the regulated substances and paraphernalia found in her residence. As tenant of the house, she had full access to, full control of and dominion over the rooms.

On why she did not even check the rooms, if what were stored therein in November 1995 and January 1996 were indeed fertilizer and restaurant paraphernalia which the alleged owners would allegedly pick up anytime, and why she did not have keys thereto, assuming that indeed she had none, she proffered no explanation.

As for Maribel's argument that there would have been no need for her to borrow money or sell her car if she was involved in the operations of a drug ring, the same is a *non sequitur*. In any event, it does not suffice to rebut the presumption of her constructive knowledge and possession of the regulated substances.

Respecting her contention that Search Warrant No. 96-101 is invalid for not having identified her with particularity, the same does not lie. Under Sec. 3 and 4, Rule 126 of the Rules of Court, the requirements for the issuance of a valid search warrant are:

> Sec. 3. Requisites for issuing search warrant.
>
> A search warrant shall not issue but upon probable cause in connection with one specific offense to be determined by the judge or such other responsible officer authorized by law 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 things to be seized**.
>
> Sec. 4. Examination of complainant; record. —
>
> The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts

[10] *People v. Torres*, G.R. No. 170837, September 12, 2006.

personally known to them and attach to the record their sworn statements together with any affidavits submitted. (Emphasis and underscoring supplied)

Contrary to Maribel's contention, the aforementioned Rule does not require that the search warrant should identify with particularity the person against whom it is directed. It suffices that the place to be searched and things to be seized are described. The pertinent portion of Search Warrant No. 96-101[11] reads:

x x x x x x x x x

It appearing to the satisfaction of the undersigned after examining under oath SA Renato M. Vaflor of NBI and his witness that there are reasonable grounds to believe that Violation of Sec. 14-A of RA 6425 as amended has been committed or is about to be committed and there are good and sufficient reasons to believe that @ROMEO/JOSEPH/TITO YU/ ALEX CHAN @ APE" **and/or OCCUPANTS of 2609 San Francisco Street, Angeles City** has in his/their possession or control the following:

a. Methylamphetamine (*Shabu*) in liquid or crystal form;

b. Phenyl-2-Propanone, Ephedrine, Pseudo-ephedrine, foremic acid, Benzylmethylketone and ethanol;

c. Weighing scale, burner, graduated cylinder, beakers, glassware, melting point apparatus, titration apparatus, refrigerators, freezers.

x x x (Emphasis supplied)

Clearly, the wording of Search Warrant No. 96-101 sufficiently complies with the requirement for a valid search warrant as it describes the place to be searched and the items to be seized.

As for Zeng's arguments, they are a mere rehash of those already raised before the appellate court. As correctly held by

[11] Annex "G", Exhibits.

the appellate court, the testimonies of five members of the NBI raiding team that a blue drum containing liquid was found in the van driven by Zeng — which liquid, when field-tested, was found to be methamphetamine hydrochloride — deserves full faith and credence, absent any showing that these officers were not properly performing their duty or that they were inspired by any improper motive.

As to the contention that the blue drum was not included as subject of Search Warrant No. 96-102, hence, illegally obtained, the same fails. No doubt, the Constitution prohibits search and seizure without a judicial warrant, and any evidence obtained without such warrant is inadmissible for any purpose in any proceeding. The prohibition is not absolute, however. Search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; and (5) when the accused himself waives his right against unreasonable searches and seizures.

The search made on the van driven by Zeng falls within the purview of the "plain view" doctrine.

> **Objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence**. The 'plain view' doctrine applies when the following requisites concur: **(a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure**. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must

be open to eye and hand and its discovery inadvertent.[12] (Emphasis and underscoring supplied)

Search Warrant No. 96-102 named Zeng, *a.k.a.* "Alex Chan," as one of the subjects thereof. When he arrived in his L-300 van at the piggery during the NBI's stakeout, he came within the area of the search. The drum alleged to have contained the methamphetamine was placed in the open back of the van,[13] hence, open to the eye and hand of the NBI agents. The liquid-filled drum was thus within the plain view of the NBI agents, hence, a product of a legal search.

Zeng's claim that the prosecution failed to prove that he had no license or authority to possess methamphetamine hydrochloride likewise fails. The general rule is that if a criminal charge is predicated on a negative allegation, or that a negative averment is an essential element of a crime, the prosecution has the burden to prove the charge. However, this rule is not without exception.

> Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him. **Stated otherwise, it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control. For example, where a charge is made that a defendant carried on a certain business without a license (as in the case at bar, where the accused is charged with the sale of a regulated drug without authority), the fact that he has a license is a matter which is peculiarly within his knowledge and he must establish that fact or suffer conviction.**[14] (Emphasis supplied)

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[12] *People v. Doria,* G.R. No. 125299, January 22, 1999, 301 SCRA 668.

[13] Exhibit "FF", photograph of back of Mitsubishi L-300 van with Plate No. CMT-352.

[14] *People v. Manalo,* G.R. No. 107623, February 23, 1994, 230 SCRA 309 (1994).

In the case at bar, the negative averment that Zeng had no license or authority to possess *shabu* could have easily been disproved by presenting a copy of the license or authority or any other document evidencing authority to possess it. This he failed to do.

As to Zeng's contention that no quantitative examination was conducted to establish the purity of the methamphetamine hydrochloride contained in the drum, which should have been the basis of determining the imposable penalty per Dangerous Drugs Board Resolution No. 3, dated May 9, 1979, requiring that both qualitative and quantitative examination should be done on seized drugs, the same fails too.

The NBI forensic chemist already testified that the liquid contained therein, when subjected to laboratory examination, tested positive for methamphetamine hydrochloride. Such finding is presumed to be representative of the entire contents of the container unless proven otherwise.[15] No contrary proof was presented by Zeng, however.

More importantly, **what the Dangerous Drugs Act punishes is the possession of the dangerous or regulated drugs or substances without authority. Whether the substance is pure or unadulterated is not material;** hence, quantitative examination of the substance to determine its purity is not indispensable for conviction. Neither does it affect the penalty imposed, for any person who — unless authorized by law — possesses *shabu* or methylamphetamine hydrochloride, shall be punished with *reclusion perpetua* to death; and a fine ranging from five hundred thousand pesos to ten million pesos if two hundred (200) or more grams thereof are found in his possession.[16]

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[15] *Vide People v. Tang Wai Lan*, G.R. Nos. 118736-37, July 23, 1997, 276 SCRA 24, and *People v. Rasul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553.

[16] Sec. 15, Art. III, and Sec. 20, Art. IV, Republic Act 6425, as amended by RA 7659.

Zeng was found by the trial court to have possessed 78 kilograms of *shabu* without mitigating or aggravating circumstances; thus, the Court imposed the correct penalty of death and a fine of ₱1,000,000.00.

However, in view of the enactment on June 24, 2006 of R.A. No. 9346, AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPINES, the death penalty can no longer be imposed. Appellants must thus be sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

WHEREFORE, the Decision appealed from is *AFFIRMED* with *MODIFICATION*. Appellants Maribel Lagman and Zeng Wa Shui are sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay a *FINE* of Two Million (₱2,000,000.00) Pesos and One Million (₱1,000,000.00) Pesos, respectively.

SO ORDERED.

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

Leonardo-de Castro, J., on official leave.

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 169095. December 8, 2008]

HEUNGHWA INDUSTRY CO., LTD., *petitioner, vs.* **DJ BUILDERS CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIRES PRIOR FILING OF MOTION FOR RECONSIDERATION; EXCEPTIONS. — As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in case of urgency. As a fourth exception, it has been held that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a condition *sine qua non* when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court. The Court agrees with petitioner that the main issue of the petition for *certiorari* filed before the CA undoubtedly involved a question of jurisdiction as to which between the RTC and the Construction Industry Arbitration Commission (CIAC) had authority to hear the case. Whether the subject matter falls within the exclusive jurisdiction of a quasi-judicial agency is a question of law. Thus, given the circumstances present in the case at bar, the non-filing of a motion for reconsideration by petitioner to the CIAC Order should have been recognized as an exception to the rule.

2. ID.; ID.; ID.; ORDER DENYING A MOTION TO DISMISS; NOT PROPER SUBJECT THEREFOR; EXCEPTIONS. — As a general rule, an order denying a motion to dismiss cannot be the subject of a petition for *certiorari.* However, this Court has provided exceptions thereto: Under certain situations, recourse to *certiorari* or *mandamus* is considered appropriate, *i.e.,* **(a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court;** or (c) appeal would not prove

to be a speedy and adequate remedy as when appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case." The term "grave abuse of discretion" in its judicial sense connotes a capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The word "capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action.

3. ID.; JURISDICTION; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); ACQUIRED JURISDICTION OVER CONSTRUCTION DISPUTE AS AGREED BY THE PARTIES. — The CIAC, in its assailed Order, correctly applied the doctrine laid down in *Philrock, Inc. v. Construction Industry Arbitration Commission (Philrock)* where this Court held that what vested in the CIAC original and exclusive jurisdiction over the construction dispute was the agreement of the parties and not the Court's referral order. The CIAC aptly ruled that the recall of the referral order by the RTC did not deprive the CIAC of the jurisdiction it had already acquired, thus: x x x The position of CIAC is anchored on Executive Order No. 1008 (1985) which created CIAC and vested in it "original and exclusive jurisdiction" over construction disputes in construction projects in the Philippines provided the parties agreed to submit such disputes to arbitration. The basis of the Court referral is precisely the agreement of the parties in court, and that, by this agreement as well as by the court referral of the specified issues to arbitration, under Executive Order No. 1008 (1985), the CIAC had in fact acquired original and exclusive jurisdiction over these issues. Executive Order 1008 grants to the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. In the case at the bar, it is undeniable that the controversy involves a construction dispute as can be seen from the issues referred to the CIAC. In *National Irrigation Administration v. Court of Appeals*, this Court recognized the new procedure in the arbitration of disputes before the CIAC. There are two acts which may vest the CIAC with jurisdiction over a construction dispute. One is the presence of an arbitration clause in a construction contract, and the other is the agreement by the

parties to submit the dispute to the CIAC. The bare fact that the parties incorporated an arbitration clause in their contract is sufficient to vest the CIAC with jurisidction over any construction controversy or claim between the parties. The rule is explicit that the CIAC has jurisdiction notwithstanding any reference made to another arbitral body. It is well-settled that jurisdiction is conferred by law and cannot be waived by agreement or acts of the parties. Thus, the contention of petitioner that it never authorized its lawyer to submit the case for arbitration must likewise fail. Petitioner argues that notwithstanding the presence of an arbitration clause, there must be a subsequent consent by the parties to submit the case for arbitration. To stress, the CIAC was already vested with jurisdiction the moment both parties agreed to incorporate an arbitration clause in the sub-contract agreement. Thus, a subsequent consent by the parties would be superfluous and unnecessary.

4. CIVIL LAW; DOCTRINE OF LACHES; NOT APPRECIATED IN CASE AT BAR. — Petitioner cannot presume that it would have been estopped from questioning the jurisdiction of the CIAC had it participate in the proceedings. In fact, estoppel is a matter for the court to consider. The doctrine of laches or of stale demands is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. The Court always looks into the attendant circumstances of the case so as not to subvert public policy. Given that petitioner questioned the jurisdiction of the CIAC from the beginning, it was not remiss in enforcing its right. Hence, petitioner's claim that it would have been estopped is premature.

5. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION; CIAC RULES; FAILURE OR REFUSAL TO ARBITRATE; CIAC STILL REQUIRED TO PROCEED WITH THE HEARING OF THE CONSTRUCTION DISPUTE. — Under the CIAC rules, even without the participation of petitioner in the proceedings, the CIAC was still required to proceed with the hearing of the construction dispute. Section 4.2 of the CIAC rules provides:

> SECTION 4.2 Failure or refusal to arbitrate —**Where the jurisdiction of CIAC is properly invoked by the filing of a Request for Arbitaration in accordance with these Rules, the failure despite due notice which amounts to a refusal of the Respondent to arbitrate, shall not stay the proceedings notwithstanding the absence or lack of participation of the Respondent.** In such case, CIAC shall appoint the arbitrator/s in accordance with these Rules. Arbitration proceedings shall continue, and the award shall be made after receiving the evidence of the Claimant. This Court finds that the CIAC simply followed its rules when it proceeded with the hearing of the dispute notwithstanding that petitioner refused to participate therein. The proceedings cannot be voided merely because of the non-participation of petitioner. Section 4.2 of the CIAC Rules is clear and it leaves no room for interpretation.

APPEARANCES OF COUNSEL

Platon Martines Flores San Pedro & Leaño for petitioner.
Follosco Morallos & Herce for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the August 20, 2004 Decision[2] and August 1, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP Nos. 70001 and 71621.

The facts of the case, as aptly presented by the CA, are as follows:

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[1] *Rollo*, pp. 3-40.

[2] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa; *id.* at 51-65.

[3] *Id.* at 66-67.

Heunghwa Industry Co., Ltd. (petitioner) is a Korean corporation doing business in the Philippines, while DJ Builders Corporation (respondent) is a corporation duly organized under the laws of the Philippines. Petitioner was able to secure a contract with the Department of Public Works and Highways (DPWH) to construct the Roxas-Langogan Road in Palawan.

Petitioner entered into a subcontract agreement with respondent to do earthwork, sub base course and box culvert of said project in the amount of Php113,228,918.00. The agreement contained an arbitration clause. The agreed price was not fully paid; hence, on January 19, 2000, respondent filed before the Regional Trial Court (RTC) of Puerto Princesa, Branch 51, a Complaint for "Breach of Contract, Collection of Sum of Money with Application for Preliminary Injunction, Preliminary Attachment, and Prayer for Temporary Restraining Order and Damages" docketed as Civil Case No. 3421.[4]

Petitioner's Amended Answer[5] averred that it was not obliged to pay respondent because the latter caused the stoppage of work. Petitioner further claimed that it failed to collect from the DPWH due to respondent's poor equipment performance. The Amended Answer also contained a counterclaim for Php24,293,878.60.

On September 27, 2000, parties through their respective counsels, filed a "Joint Motion to Submit Specific Issues To The Construction Industry Arbitration Commission"[6] (CIAC), to wit:

> 5. Parties would submit only specific issues to the CIAC for arbitration, leaving other claims to this Honorable Court for further hearing and adjudication. Specifically, the issues to be submitted to the CIAC are as follows:
>
> a. Manpower and equipment standby time;
> b. Unrecouped mobilization expenses;
> c. Retention;
> d. Discrepancy of billings; and

[4] *Rollo*, pp. 131-145.

[5] *Id.* at 151-158.

[6] *Id.* at 159-162.

e. Price escalation for fuel and oil usage.[7]

On the same day, the RTC issued an Order[8] granting the motion.

On October 9, 2000, petitioner, through its counsel, filed an "Urgent Manifestation"[9] praying that additional matters be referred to CIAC for arbitration, to wit:

1. Additional mobilization costs incurred by [petitioner] for work abandoned by [respondent];
2. Propriety of liquidated damages in favor of [petitioner] for delay incurred by [respondent];
3. Propriety of downtime costs on a daily basis during the period of the existence of the previous temporary restraining order against [petitioner].[10]

On October 24, 2000, respondent filed with CIAC a Request for Adjudication[11] accompanied by a Complaint. Petitioner, in turn filed a "Reply/ Manifestation" informing the CIAC that it was abandoning the submission to CIAC and pursuing the case before the RTC. In respondent's Comment on petitioner's Manifestation, it prayed for CIAC to declare petitioner in default.

CIAC then issued an Order[12] dated November 27, 2000 ordering respondent to move for the dismissal of Civil Case No. 3421 pending before the RTC of Palawan and directing petitioner to file anew its answer. The said Order also denied respondent's motion to declare petitioner in default.

Respondent filed a Motion for Partial Reconsideration of the November 27, 2000 Order while petitioner moved to suspend the proceeding before the CIAC until the RTC had dismissed Civil Case No. 3421.

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[7] *Id.* at 160.

[8] *Rollo*, p. 163.

[9] CA *rollo*, CA-G..R. SP No. 71621, p. 126.

[10] *Id*.

[11] *Id.* at 127.

[12] CA *rollo*, CA-G.R. SP No. 70001, pp. 120-121.

On January 8, 2000, CIAC issued an Order[13] setting aside its Order of November 27, 2000 by directing the dismissal of Civil Case No. 3421 only insofar as the five issues referred to it were concerned. It also directed respondent to file a request for adjudication. In compliance, respondent filed anew a "Revised Complaint"[14] which increased the amount of the claim from Php23,391,654.22 to Php65,393,773.42.

On February 22, 2001, petitioner, through its new counsel, filed with the RTC a motion to withdraw the Order dated September 27, 2000 which referred the case to the CIAC, claiming it never authorized the referral. Respondent opposed the motion[15] contending that petitioner was already estopped from asking for the recall of the Order.

Petitioner filed in the CIAC its opposition to the second motion to declare it in default, with a motion to dismiss informing the CIAC that it was abandoning the submission of the case to it and asserting that the RTC had original and exclusive jurisdiction over Civil Case No. 3421, including the five issues referred to the CIAC.

On March 5, 2001, the CIAC denied petitioner's motion to dismiss on the ground that the November 27, 2000 Order had already been superseded by its Order of January 8, 2001.[16]

On March 13, 2001, the CIAC issued an Order setting the preliminary conference on April 10, 2001.[17]

On March 23, 2001 petitioner filed with the CIAC a motion for reconsideration of the March 5, 2001 Order.

For clarity, the succeeding proceedings before the RTC and CIAC are presented in graph form in chronological order.

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[13] CA *rollo*, CA-G.R. SP No. 71621, pp. 164-165.

[14] *Rollo*, pp. 169-179.

[15] CA *rollo*, CA-G.R. SP No. 71621, pp. 166-171.

[16] CA *rollo*, CA-G.R. SP No. 70001, pp. 136-137; CA *rollo*, CA-G.R. SP No. 71621, pp. 164-165.

[17] *Id.* at 138-141.

R T C	CIAC
	April 5, 2001 – Petitioner filed a Motion to Suspend proceedings because of the Motion to Recall it filed with the RTC.
	April 6, 2001 – CIAC granted petitioner's motion and suspended the hearings dated April 10 and 17, 2001.
May 16, 2001 – the RTC issued a Resolution[18] granting petitioner's Motion to Recall.[19]	
June 1, 2001 –Respondent moved for a reconsideration of the May 16, 2001 Resolution and prayed for the dismissal of the case without prejudice to the filing of a complaint with the CIAC.[20]	
June 11, 2001 – Petitioner opposed respondent's motion for reconsideration and also prayed for the dismissal of the case but with prejudice.[21]	
July 6, 2001 – The RTC denied respondent's motion for reconsideration but stated that respondent may file a formal motion to dismiss if it so desired.[22]	
July 16, 2001 – Respondent filed with the RTC a Motion to Dismiss[23] Civil Case No. 3421 praying for the dismissal of the complaint without prejudice to the filing of the proper complaint with the CIAC. **On the same day, the RTC granted the motion without prejudice to petitioner's counterclaim**.[24] August 1, 2001 – Petitioner moved for a reconsideration of the July 16, 2001 Order claiming it was denied due process.[25]	

[18] CA *rollo*, CA-G.R. SP No. 71621, pp. 172-176.

[19] CA *rollo*, CA-G.R. SP No. 70001, pp. 142-146.

[20] CA *rollo*, CA-G.R. SP No. 71621, pp. 177-181.

[21] *Id.* at 182-185.

[22] *Id.* at 188-189.

[23] CA *rollo*, CA-G.R. SP No. 70001, pp.149-150.

[24] CA *rollo*, CA-G.R. SP No. 71621, p. 193; CA *rollo*, CA-G.R. SP No. 70001, pp. 149-150.

[25] CA *rollo*, CA-G.R. SP No. 71621, pp. 194-198.

	August 7, 2001 – Respondent filed with the CIAC a motion for the resumption of the proceedings claiming that the dismissal of Civil Case No. 3421 became final on August 3, 2001.
	August 15, 2001 – Petitioner filed a counter-manifestation[26] asserting that the RTC Order dated July 16, 2001 was not yet final. Petitioner reiterated the prayer to dismiss the case.
	August 27, 2001 – CIAC issued an Order maintaining the suspension but did not rule on petitioner's Motion to Dismiss.
	January 22, 2002 – CIAC issued an Order setting the case for Preliminary Conference on February 7, 2002.
	February 1, 2002 – Petitioner filed a Motion for Reconsideration of the January 22, 2002 Order which also included a prayer to resolve the Motion for Reconsideration of the July 16, 2001 Order.
	February 5, 2002 – CIAC denied petitioner's Motion for Reconsideration. February 7, 2002 – CIAC conducted a preliminary conference.[27]
March 13, 2002 – the RTC issued a Resolution[28] declaring the July 16, 2001 Order which dismissed the case "without force and effect" and set the case for hearing on May 30, 2002.	
	March 15, 2002 – Petitioner filed a Manifestation before the CIAC that the CIAC had no authority to hear the case.
	March 18, 2002 – CIAC issued an Order setting the hearing on April 2, 2002. March 21, 2002 – Petitioner filed a Manifestation/Motion that the RTC had recalled the July 16, 2001 Order and had asserted jurisdiction over the entire case and praying for the dismissal of the pending case.[29]

[26] CA *rollo*, CA-G.R. SP No. 70001, pp. 153-160.

[27] On February 19, 2002, petitioner filed a petition for *certiorari* with the Court of Appeals docketed as CA-G.R. SP No. 69208 questioning the CIAC Order setting the case for preliminary conference which was dismissed for failure to attach the authorization of the General Manager to sign the Certificate of Non-Forum Shopping.

[28] CA *rollo*, CA-G.R. SP No. 70001, pp. 170-172.

[29] CA *rollo*, CA-G.R. SP No. 70001, pp. 181-186.

	March 22, 2002 – CIAC issued an Order[30] denying the Motion to Dismiss filed by petitioner and holding that the CIAC had jurisdiction over the case.
March 25, 2002 – Respondent moved for a reconsideration[31] of the March 13, 2002 Order recalling the July 16, 2001 Order which petitioner opposed.	March 26, 2002 – CIAC ordered respondent to file a reply to petitioner's March 21, 2002 Manifestation.
June 17, 2002 – RTC denied respondent's Motion for Reconsideration.	

The parties, without waiting for the reply required by the CIAC,[32] filed two separate petitions for *certiorari*: petitioner, on April 5, 2002, docketed as CA-G.R. SP No. 70001; and respondent, on July 5, 2002, docketed as CA-G.R. SP No. 71621 with the CA.

In CA-G.R. SP No. 70001, petitioner assailed the denial by the CIAC of its motion to dismiss and sought to enjoin the CIAC from proceeding with the case.

In CA-G.R. SP No. 71621, respondent questioned the March 13, 2002 Order of the RTC which reinstated Civil Case No. 3421 as well as the Order dated June 17, 2002 which denied respondent's motion for reconsideration. Respondent also sought to restrain the RTC from further proceeding with the civil case.

In other words, petitioner is questioning the jurisdiction of the CIAC; while respondent is questioning the jurisdiction of the RTC over the case.

Both cases were consolidated by the CA.

The CA ruled against petitioner on procedural and substantive grounds.

On matters of procedure, the CA took note of the fact that petitioner did not file a motion for reconsideration of the March 22, 2002 Order of the CIAC and held that it is in violation of

[30] *Id.* at 57-61; CA *rollo*, CA-G.R. SP No. 71621, pp. 225-229.

[31] CA *rollo*, CA-G.R. SP No. 71621, pp. 211-216.

[32] Not raised as an issue by any of the parties.

the well-settled rule that a motion for reconsideration should be filed to allow the respondent tribunal to correct its error before a petition can be entertained.[33] Moreover, the CA ruled that it is well-settled that a denial of a motion to dismiss, being an interlocutory order, is not the proper subject for a petition for *certiorari*.[34]

Moreover, the CA ruled against petitioner's main argument that the arbitration clause found in the subcontract agreement between the parties did not refer to CIAC as the arbitral body. The CA held that the CIAC had jurisdiction over the controversy because the construction agreement contained a provision to submit any dispute for arbitration, and there was a joint motion to submit certain issues to the CIAC for arbitration.[35]

Anent petitioner's argument that its previous lawyer was not authorized to submit the case for arbitration, the CA held that what is required for a dispute to fall under the jurisdiction of the CIAC is for the parties to agree to submit to voluntary arbitration. Since the parties agreed to submit to voluntary arbitration in the construction contract, the authorization insisted upon by petitioner was a mere superfluity.[36]

The CA further cited *National Irrigation Administration v. Court of Appeals*[37] (*NIA*), where this Court ruled that active participation in the arbitration proceedings serves to estop a party from denying that it had in fact agreed to submit the dispute for arbitration.

Lastly, the CA found no merit in petitioner's prayer to remand the case to the CIAC.

Petitioner's Motion for Reconsideration was denied by the CA. Hence, herein petition raising the following assignment of errors:

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[33] *Rollo*, p. 61.

[34] *Id*.

[35] *Id.* at 63.

[36] *Id*.

[37] 376 Phil. 362 (1999).

A.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT RULED THAT THE PETITION SUFFERED FROM PROCEDURAL INFIRMITIES WHEN PETITIONER HEUNGHWA, IN VIEW OF THE QUESTIONS OF LAW INVOLVED IN THE CASE, IMMEDIATELY INVOKED ITS AID BY WAY OF PETITION FOR *CERTIORARI* WITHOUT FIRST FILING A MOTION FOR RECONSIDERATION OF THE CIAC'S ORDER DATED 22 MARCH 2002. THE COURT OF APPEALS FURTHER ERRED IN RULING THAT A DENIAL OF A MOTION TO DISMISS (IN REFERENCE TO THE ORDER DATED 22 MARCH 2002), BEING AN INTERLOCUTORY ORDER, IS NOT THE PROPER SUBJECT OF A PETITION FOR *CERTIORARI*.

B.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONFIRMING THE JURISDICTION OF THE CIAC OVER THE CASE. ITS RELIANCE ON THE *NATIONAL IRRIGATION AUTHORITY VS. COURT OF APPEALS* (*"NIA VS. CA"*) WAS MISPLACED AS THE FACTS OF THE INSTANT CASE ARE SERIOUSLY AND SUBSTANTIALLY DIFFERENT FROM THOSE OF *NIA VS. CA*.

C.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DISREGARDING PETITIONER'S REQUEST TO AT LEAST REMAND THE CASE TO THE CIAC FOR FURTHER RECEPTION OF EVIDENCE IN THE INTEREST OF JUSTICE AND EQUITY AS PETITIONER COULD NOT HAVE AVAILED OF ITS OPPORTUNITY TO PRESENT ITS SIDE ON ACCOUNT OF ITS JURISDICTIONAL OBJECTION.[38]

The petition is devoid of merit.

The first assignment of error raises two issues: first, whether or not the non-filing of a motion for reconsideration was fatal to the petition for *certiorari* filed before the CA; and second,

[38] *Rollo*, pp. 22-23.

whether or not a petition for *certiorari* is the proper remedy to assail an order denying a motion to dismiss as in the case at bar.

As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in case of urgency. As a fourth exception, it has been held that the filing of a motion for reconsideration before availment of the remedy of *certiorari* is not a condition *sine qua non* when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[39]

The Court agrees with petitioner that the main issue of the petition for *certiorari* filed before the CA undoubtedly involved a question of jurisdiction as to which between the RTC and the CIAC had authority to hear the case. Whether the subject matter falls within the exclusive jurisdiction of a quasi-judicial agency is a question of law.[40] Thus, given the circumstances present in the case at bar, the non-filing of a motion for reconsideration by petitioner to the CIAC Order should have been recognized as an exception to the rule.

Anent the second issue, petitioner argues that when its motion to dismiss was denied by the CIAC, the latter acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; thus, the same is the proper subject of a petition for *certiorari*.

As a general rule, an order denying a motion to dismiss cannot be the subject of a petition for *certiorari*. However, this Court has provided exceptions thereto:

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[39] *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737, 745 (2003).

[40] *Javellana v. Presiding Judge, RTC, Branch 30, Manila*, G.R. No. 139067, November 23, 2004, 443 SCRA 497, 506.

Under certain situations, recourse to *certiorari* or *mandamus* is considered appropriate, *i.e.*, **(a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court**; or (c) appeal would not prove to be a speedy and adequate remedy as when appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case."[41] (Emphasis supplied)

The term "grave abuse of discretion" in its judicial sense connotes a capricious, despotic, oppressive or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The word "capricious," usually used in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action.[42]

The question then is: "Did the denial by the CIAC of the motion to dismiss constitute a patent grave abuse of discretion?"

Records show that the CIAC acted within its jurisdiction and it did not commit patent grave abuse of discretion when it issued the assailed Order denying petitioner's motion to dismiss. Thus, this Court rules in the negative.

Based on law and jurisprudence, the CIAC has jurisdiction over the present dispute.

The CIAC, in its assailed Order, correctly applied the doctrine laid down in *Philrock, Inc. v. Construction Industry Arbitration Commission*[43] (*Philrock*) where this Court held that what vested in the CIAC original and exclusive jurisdiction over the construction dispute was the agreement of the parties and not the Court's referral order. The CIAC aptly ruled that the recall

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[41] *Far East Bank and Trust Company v. Court of Appeals*, 395 Phil. 701, 709-710 (2000).

[42] *Olanolan v. Commission on Elections*, G.R. No. 165491, March 31, 2005, 454 SCRA 807, 814.

[43] 412 Phil. 236 (2001).

of the referral order by the RTC did not deprive the CIAC of the jurisdiction it had already acquired,[44] thus:

> x x x The position of CIAC is anchored on Executive Order No. 1008 (1985) which created CIAC and vested in it "original and exclusive jurisdiction" over construction disputes in construction projects in the Philippines provided the parties agreed to submit such disputes to arbitration. The basis of the Court referral is precisely the agreement of the parties in court, and that, by this agreement as well as by the court referral of the specified issues to arbitration, under Executive Order No. 1008 (1985), the CIAC had in fact acquired original and exclusive jurisdiction over these issues.[45]

In the case at bar, the RTC was indecisive of its authority and capacity to hear the case. Respondent first sought redress from the RTC for its claim against petitioner. Thereafter, upon motion by both counsels for petitioner and respondent, the RTC allowed the referral of five specific issues to the CIAC. However, the RTC later recalled the case from the CIAC because of the alleged lack of authority of the counsel for petitioner to submit the case for arbitration. The RTC recalled the case even if it already admitted its lack of expertise to deal with the intricacies of the construction business.[46]

Afterwards, the RTC issued a Resolution recommending that respondent file a motion to dismiss without prejudice to the counterclaim of petitioner, so that it could pursue arbitration proceedings under the CIAC.[47] Respondent complied with the recommendation of the RTC and filed a motion to dismiss which was granted by the said court.[48] Later, however, the RTC again asserted jurisdiction over the dispute because it apparently made a mistake in granting respondent's motion to dismiss without conducting any hearing on the motion.[49]

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[44] *Rollo* p. 221.
[45] *Id.* at 223.
[46] *Id.* at 185.
[47] *Id.* at 187.
[48] *Id.* at 189.
[49] *Id.* at 208.

On the other hand, the CIAC's assertion of its jurisdiction over the dispute was consistent from the moment the RTC allowed the referral of specific issues to it.

Executive Order 1008[50] grants to the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. In the case at the bar, it is undeniable that the controversy involves a construction dispute as can be seen from the issues referred to the CIAC, to wit:

1. Manpower and equipment standby time;
2. Unrecouped mobilization expenses;
3. Retention;
4. Discrepancy of billings; and
5. Price escalation for fuel and oil usage.[51]

xxx xxx xxx

The Court notes that the Subcontract Agreement[52] between the parties provides an arbitration clause, to wit:

Article 7
Arbitration

7. Any controversy or claim between the Contractor and the Subcontractor arising out of or related to this Subcontract, or the breach thereof, **shall be settled by arbitration**, **which shall be conducted in the same manner and under the same procedure as provided in the Prime Contract** with Respect to claims between the Owner and the Contractor, except that a decision by the Owner or Consultant shall not be a condition precedent to arbitration. If the Prime Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the

[50] An Act Creating an Arbitration Machinery for the Philippine Construction Industry, February 4, 1985.

[51] *Rollo*, p. 163.

[52] *Id.* at 117-130.

> law of the Philippines currently in effect unless the Parties mutually agree otherwise.[53] (Emphasis supplied)

However, petitioner insists that the General Conditions which form part of the Prime Contract provide for a specific venue for arbitration, to wit:

> 5.19.3. Any dispute shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules.[54]

The claim of petitioner is not plausible.

In *National Irrigation Administration v. Court of Appeals*[55] this Court recognized the new procedure in the arbitration of disputes before the CIAC, in this wise:

> It is undisputed that the contracts between HYDRO and NIA contained an arbitration clause wherein they agreed to submit to arbitration any dispute between them that may arise before or after the termination of the agreement. Consequently, the claim of HYDRO having arisen from the contract is arbitrable. NIA's reliance with the ruling on the case of *Tesco Services Incorporated v. Vera*, is misplaced.
>
> The 1988 CIAC Rules of Procedure which were applied by this Court in Tesco case had been duly amended by CIAC Resolutions No. 2-91 and 3-93, Section 1 of Article III of which reads as follows:
>
> *Submission to CIAC Jurisdiction* — **An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission**. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC.

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[53] *Id.* at 125.

[54] *Id.* at 30.

[55] *Supra* note 37.

Under the present Rules of Procedure, for a particular construction contract to fall within the jurisdiction of CIAC, it is merely required that the parties agree to submit the same to voluntary arbitration. Unlike in the original version of Section 1, as applied in the *Tesco* case, the law as it now stands does not provide that the parties should agree to submit disputes arising from their agreement specifically to the CIAC for the latter to acquire jurisdiction over the same. **Rather, it is plain and clear that as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law, *i.e.*, E.O. No. 1008**.[56] (Emphasis and underscoring supplied)

Based on the foregoing, there are two acts which may vest the CIAC with jurisdiction over a construction dispute. One is the presence of an arbitration clause in a construction contract, and the other is the agreement by the parties to submit the dispute to the CIAC.

The first act is applicable to the case at bar. The bare fact that the parties incorporated an arbitration clause in their contract is sufficient to vest the CIAC with jurisdiction over any construction controversy or claim between the parties. The rule is explicit that the CIAC has jurisdiction notwithstanding any reference made to another arbitral body.

It is well-settled that jurisdiction is conferred by law and cannot be waived by agreement or acts of the parties. Thus, the contention of petitioner that it never authorized its lawyer to submit the case for arbitration must likewise fail. Petitioner argues that notwithstanding the presence of an arbitration clause, there must be a subsequent consent by the parties to submit the case for arbitration. To stress, the CIAC was already vested with jurisdiction the moment both parties agreed to incorporate an arbitration clause in the sub-contract agreement. Thus, a subsequent consent by the parties would be superfluous and unnecessary.

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[56] *Id.* at 374-375.

It must be noted however that the reliance of the CIAC in it's assailed Order on *Philrock*[57] is inaccurate. In *Philrock*, the Court ruled that the CIAC had jurisdiction over the case because of the agreement of the parties to refer the case to arbitration. In the case at bar, the agreement to refer specific issues to the CIAC is disputed by petitioner on the ground that such agreement was entered into by its counsel who was not authorized to do so. In addition, in *Philrock*, the petitioner therein had actively participated in the arbitration proceedings, while in the case at bar there where only two instances wherein petitioner participated, to wit: 1) the referral of five specific issues to the CIAC; and 2) the subsequent manifestation that additional matters be referred to the CIAC.

The foregoing notwithstanding, CIAC has jurisdiction over the construction dispute because of the mere presence of the arbitration clause in the subcontract agreement.

Thus, the CIAC did not commit any patent grave abuse of discretion, nor did it act without jurisdiction when it issued the assailed Order denying petitioner's motion to dismiss. Accordingly, there is no compelling reason for this Court to deviate from the rule that a denial of a motion to dismiss, absent a showing of lack of jurisdiction or grave abuse of discretion amounting to lack of or excess jurisdiction, being an interlocutory order, is not the proper subject of a petition for *certiorari*.

Anent the second assigned error, the Court notes that the reliance of the CA on *NIA* is inaccurate. In *NIA*,[58] this Court observed:

> Moreover, it is undeniable that NIA agreed to submit the dispute for arbitration to the CIAC. NIA through its counsel actively participated in the arbitration proceedings by filing an answer with counterclaim, as well as its compliance wherein it nominated arbitrators to the proposed panel, participating in the deliberations on, and the formulation of the Terms of Reference of the arbitration proceeding,

[57] *Supra* note 43.

[58] *Supra* note 37.

and examining the documents submitted by HYDRO after NIA asked for originals of the said documents."[59]

In the case at bar, the only participation that can be attributed to petitioner is the joint referral of specific issues to the CIAC and the manifestation praying that additional matters be referred to the CIAC. Both acts, however, have been disputed by petitioner because said acts were performed by their lawyer who was not authorized to submit the case for arbitration. And even if these were duly authorized, this would still not change the correct finding of the CA that the CIAC had jurisdiction over the dispute because, as has been earlier stressed, the arbitration clause in the subcontract agreement *ipso facto* vested the CIAC with jurisdiction.

In passing, even the RTC in its Resolution recognized the authority of the CIAC to hear the case, to wit:

> Courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. **And undoubtedly in this case, the CIAC it cannot be denied, is that administrative tribunal.**[60] (Emphasis supplied)

It puzzles this Court why petitioner would insist that the RTC should hear the case when the CIAC has the required skill and expertise in addressing construction disputes. Records will bear out the fact that petitioner refused to and did not participate in the CIAC proceedings. In its defense, petitioner cited jurisprudence to the effect that active participation before a quasi-judicial body would be tantamount to an invocation of the latter bodies' jurisdiction and a willingness to abide by the resolution of the case.[61] Pursuant to such doctrine, petitioner argued that had it participated in the CIAC proceedings, it would have been barred from impugning the jurisdiction of the CIAC.

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[59] *Id.* at 375.

[60] *Rollo*, p. 185.

[61] *Rollo*, p. 35.

Petitioner cannot presume that it would have been estopped from questioning the jurisdiction of the CIAC had it participated in the proceedings. In fact, estoppel is a matter for the court to consider. The doctrine of laches or of stale demands is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[62] The Court always looks into the attendant circumstances of the case so as not to subvert public policy.[63] Given that petitioner questioned the jurisdiction of the CIAC from the beginning, it was not remiss in enforcing its right. Hence, petitioner's claim that it would have been estopped is premature.

The Court finds the last assigned error to be without merit.

It is well to note that in its petition for *certiorari*[64] filed with the CA on April 9, 2002, petitioner prayed for the issuance of a temporary restraining order and a writ of preliminary injunction to enjoin the CIAC from hearing the case. On September 27, 2002, the CIAC promulgated its decision awarding Php31,119,465.81 to respondent. It is unfortunate for petitioner that the CA did not timely act on its petition. Records show that the temporary restraining order[65] was issued only on October 15, 2002 and a writ of preliminary injunction[66] was granted on December 11, 2002, long after the CIAC had concluded its proceedings. The only effect of the writ was to enjoin temporarily the enforcement of the award of the CIAC.

The Court notes that had the CA performed its duty promptly, then this present petition could have been avoided as the CIAC rules allow for the reopening of hearings, to wit:

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[62] OSCAR M. HERRERA, *REMEDIAL LAW: CIVIL PROCEDURE*, 2000 edition, p. 67.

[63] *Parco v. Court of Appeals*, 197 Phil. 240 (1982).

[64] CA *rollo*, CA-G.R. SP No. 70001, pp. 2-46.

[65] CA *rollo*, CA-G.R. SP No. 70001, Vol. II, pp. 368-370.

[66] *Id.* at 455-457.

SECTION 13.14 Reopening of hearing — **The hearing may be reopened by the Arbitral Tribunal on their own motion or upon the request of any party, upon good cause shown, at any time before the award is rendered**. When hearings are thus reopened, the effective date for the closing of the hearing shall be the date of closing of the reopened hearing. (Emphasis supplied)

But because of the belated action of the CA, the CIAC had to proceed with the hearing notwithstanding the non-participation of petitioner.

Under the CIAC rules, even without the participation of petitioner in the proceedings, the CIAC was still required to proceed with the hearing of the construction dispute. Section 4.2 of the CIAC rules provides:

SECTION 4.2 Failure or refusal to arbitrate — **Where the jurisdiction of CIAC is properly invoked by the filing of a Request for Arbitration in accordance with these Rules, the failure despite due notice which amounts to a refusal of the Respondent to arbitrate, shall not stay the proceedings notwithstanding the absence or lack of participation of the Respondent.** In such case, CIAC shall appoint the arbitrator/s in accordance with these Rules. Arbitration proceedings shall continue, and the award shall be made after receiving the evidence of the Claimant. (Emphasis and underscoring supplied)

This Court finds that the CIAC simply followed its rules when it proceeded with the hearing of the dispute notwithstanding that petitioner refused to participate therein.

To reiterate, the proceedings before the CIAC were valid, for the same had been conducted within its authority and jurisdiction and in accordance with the rules of procedure provided by Section 4.2 of the CIAC Rules.

The ruling of the Supreme Court in *Lastimoso v. Asayo*[67] is instructive:

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In addition, it is also understandable why respondent immediately resorted to the remedy of *certiorari* instead of pursuing his motion

[67] G.R. No. 154243, December 4, 2007, 539 SCRA 381.

for reconsideration of the PNP Chief's decision as an appeal before the National Appellate Board (NAB). **It was quite easy to get confused as to which body had jurisdiction over his case. The complaint filed against respondent could fall under both Sections 41 and 42 of Republic Act (R.A.) No. 6975 or the Department of Interior and Local Government Act of 1990**. Section 41 states that citizens' complaints should be brought before the People's Law Enforcement Board (PLEB), while Section 42 states that it is the PNP Chief who has authority to immediately remove or dismiss a PNP member who is guilty of conduct unbecoming of a police officer.

It was only in *Quiambao v. Court of Appeals,* promulgated in 2005 or after respondent had already filed the petition for *certiorari* with the trial court, when the Court resolved the issue of which body has jurisdiction over cases that fall under both Sections 41 and 42 of R.A. No. 6975. x x x

With the foregoing peculiar circumstances in this case, respondent should not be deprived of the opportunity to fully ventilate his arguments against the factual findings of the PNP Chief. x x x

xxx xxx xxx

Thus, the opportunity to pursue an appeal before the NAB should be deemed available to respondent in the higher interest of substantial justice.[68] (Emphasis supplied)

In *Lastimoso,* this Court allowed respondent to appeal his case before the proper agency because of the confusion as to which agency had jurisdiction over the case. In the case at bar, law and supporting jurisprudence are clear and leave no room for interpretation that the CIAC has jurisdiction over the present controversy.

The proceedings cannot then be voided merely because of the non-participation of petitioner. Section 4.2 of the CIAC Rules is clear and it leaves no room for interpretation. Therefore, petitioner's prayer that the case be remanded to CIAC in order that it may be given an opportunity to present evidence is untenable. Petitioner had its chance and lost it, more importantly so, by its own choice. This Court will not afford a relief that is apparently inconsistent with the law.

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[68] *Id.* at 386-387.

WHEREFORE, the petition is denied for lack of merit. The August 20, 2004 Decision and August 1, 2005 Resolution of the Court of Appeals in CA-G.R. SP Nos. 70001 and 71621 are *AFFIRMED*.

Double costs against petitioner.

SO ORDERED.

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

EN BANC

[G.R. No. 175527. December 8, 2008]

HON. GABRIEL LUIS QUISUMBING, HON. ESTRELLA P. YAPHA, HON. VICTORIA G. COROMINAS, HON. RAUL D. BACALTOS (Members of the Sangguniang Panlalawigan of Cebu), *petitioners, vs.* **HON. GWENDOLYN F. GARCIA (In her capacity as Governor of the Province of Cebu), HON. DELFIN P. AGUILAR (in his capacity as Director IV (Cluster Director) of COA), Cluster IV — Visayas Local Government Sector, HON. HELEN S. HILAYO (In her capacity as Regional Cluster Director of COA), and HON. ROY L. URSAL (In his capacity as Regional Legal and Adjudication Director of COA),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE (RA NO. 7160); SEC. 22(C); THAT PRIOR AUTHORIZATION BY THE SANGGUNIAN CONCERNED REQUIRED BEFORE LOCAL CHIEF EXECUTIVE MAY ENTER INTO CONTRACTS ON BEHALF

OF THE LOCAL GOVERNMENT UNIT. — Sec. 22(c) of R.A. No. 7160 provides: Sec. 22. *Corporate Powers*. — (a) Every local government unit, as a corporation, shall have the following powers: x x x (c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the *sanggunian* concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or *barangay* hall. As it clearly appears from the foregoing provision, prior authorization by the *sanggunian* concerned is required before the local chief executive may enter into contracts on behalf of the local government unit.

2. ID.; ID.; ID.; SEC. 306 IN CONJUNCTION WITH SEC. 346; THAT LOCAL CHIEF EXECUTIVE AUTHORIZED TO MAKE DISBURSEMENTS OF FUNDS IN ACCORDANCE WITH THE "ORDINANCE" AUTHORIZING THE ANNUAL OR SUPPLEMENTAL APPROPRIATIONS; NOT AN EXCEPTION TO SEC. 22(C). — Sec. 306 of R.A. No. 7160 merely contains a definition of terms. Read in conjunction with Sec. 346, Sec. 306 authorizes the local chief executive to make disbursements of funds in accordance with the ordinance authorizing the annual or supplemental appropriations. The "ordinance" referred to in Sec. 346 pertains to that which enacts the local government unit's budget, for which reason no further authorization from the local council is required, the ordinance functioning, as it does, as the legislative authorization of the budget. To construe Sections 306 and 346 of R.A. No. 7160 as exceptions to Sec. 22 (c) would render the requirement of prior *sanggunian* authorization superfluous, useless and irrelevant. There would be no instance when such prior authorization would be required, as in contracts involving the disbursement of appropriated funds. Yet, this is obviously not the effect Congress had in mind when it required, as a condition to the local chief executive's representation of the local government unit in business transactions, the prior authorization of the *sanggunian* concerned. The requirement was deliberately added as a measure of check and balance, to temper the authority of the local chief executive, and in recognition of the fact that the corporate powers of the local government unit are wielded as much by its chief executive as by its council.

3. ID.; ID.; ID.; SEC. 323 ON REENACTED BUDGET; THAT ITEMS FOR WHICH DISBURSEMENTS MAY BE MADE UNDER A REENACTED BUDGET ARE EXCLUSIVE; ELUCIDATED.— Sec. 323 of R.A. No. 7160 provides that in case of a reenacted budget, "only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith." It should be observed that, as indicated by the word "only" preceding the above enumeration in Sec. 323, the items for which disbursements may be made under a reenacted budget are exclusive. Clearly, contractual obligations which were not included in the previous year's annual and supplemental budgets cannot be disbursed by the local government unit. It follows, too, that new contracts entered into by the local chief executive require the prior approval of the *sanggunian*.

4. ID.; ID.; ID.; SEC. 22(C) AND SEC. 346 ON "DISBURSEMENT" AND "CONTRACT," HARMONIZED.— We agree that the words "disbursement" and "contract" separately referred to in Sec. 346 and 22 (c) of R.A. No. 7160 should be understood in their common signification. Disbursement is defined as "To pay out, commonly from a fund. To make payment in settlement of a debt or account payable." *Contract*, on the other hand, is defined by our Civil Code as "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." And so, to give life to the obvious intendment of the law and to avoid a construction which would render Sec. 22 (c) of R.A. No. 7160 meaningless, disbursement, as used in Sec. 346, should be understood to pertain to payments for statutory and contractual obligations which the *sanggunian* has already authorized thru ordinances enacting the annual budget and are therefore already subsisting obligations of the local government unit. Contracts, as used in Sec. 22(c) on the other hand, are those which bind the local government unit to new obligations, with their corresponding terms and conditions, for which the local chief executive needs prior authority from the *sanggunian*.

5. ID.; ID.; ID.; SEC. 465, ART. 1, CHAPTER. 3 AND SEC. 468, ART. 3; SANGGUNIAN'S AUTHORIZATION IN THE EXECUTION OF CONTRACTS WHICH BIND THE LOCAL

GOVERNMENT UNIT TO NEW OBLIGATIONS, CONFIRMED; RE FORM OF AUTHORIZATION. — Sec. 465, Art. 1, Chapter 3 of R.A. No. 7160 states that the provincial governor shall "[r]epresent the province in all its business transactions and **sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the *sangguniang panlalawigan*** or pursuant to law or ordinances." Sec. 468, Art. 3 of the same chapter also establishes the *sanggunian's* power, as the province's legislative body, to authorize the provincial governor to negotiate and contract loans, lease public buildings held in a proprietary capacity to private parties, among other things. The foregoing inexorably confirms the indispensability of the *sanggunian's* authorization in the execution of contracts which bind the local government unit to new obligations. Note should be taken of the fact that R.A. No. 7160 does not expressly state the form that the authorization by the *sanggunian* has to take. Such authorization may be done by resolution enacted in the same manner prescribed by ordinances, except that the resolution need not go through a third reading for final consideration unless the majority of all the members of the sanggunian decides otherwise.

6. ID.; ID.; GOVERNMENT PROCUREMENT REFORM ACT (RA NO. 9184); SEC. 37 ON LAW AND PROCEDURE FOR PUBLIC PROCUREMENT; APPROVAL OF APPROPRIATE AUTHORITY, THE SANGGUNIAN IN CASE OF LOCAL GOVERNMENT, THE POINT OF REFERENCE FOR NOTICE TO BE ISSUED TO WINNING BIDDER. — As regards the trial court's pronouncement that R.A. No. 9184 does not require the head of the procuring entity to secure a resolution from the *sanggunian* concerned before entering into a contract, attention should be drawn to the very same provision upon which the trial court based its conclusion. Sec. 37 provides: "The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days **from the date of approval of the contract by the appropriate authority x x x**." R.A. No. 9184 establishes the law and procedure for public procurement. Sec. 37 thereof explicitly makes the approval of the appropriate authority which, in the case of local government units, is the *sanggunian*, the point of reference for the notice to proceed to be issued to the winning bidder. This provision, rather than being in conflict with or providing an exception to

Sec. 22(c) of R.A. No. 7160, blends seamlessly with the latter and even acknowledges that in the exercise of the local government unit's corporate powers, the chief executive acts merely as an instrumentality of the local council. Read together, the cited provisions mandate the local chief executive to secure the *sanggunian's* approval before entering into procurement contracts and to transmit the notice to proceed to the winning bidder not later than seven (7) calendar days therefrom.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; PROPER BEFORE VIOLATION OF STATUTE TO WHICH IT REFERS; ELUCIDATED. — Gov. Garcia's petition for declaratory relief should have been dismissed because it was instituted after the COA had already found her in violation of Sec. 22(c) of R.A. No. 7160. One of the important requirements for a petition for declaratory relief under Sec. 1, Rule 63 of the Rules of Court is that it be filed before breach or violation of a deed, will, contract, other written instrument, statute, executive order, regulation, ordinance or any other governmental regulation. In *Martelino v. National Home Mortgage Finance Corporation*, we held that the purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*., for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify, short of a judgment or final order.

8. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE (RA NO. 7160); WHETHER A SANGGUNIAN AUTHORIZATION SEPARATE FROM APPROPRIATION ORDINANCE IS REQUIRED SHOULD BE RESOLVED DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF THE CASE; ELUCIDATED. — The question of whether a *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort

to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient. On the other hand, should the appropriation ordinance describe the projects in generic terms such as "infrastructure projects," "inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects," "reclamation projects" or "roads and bridges," there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian.* Specific sanggunian approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed within the regular personal services and maintenance operating expenses.

APPEARANCES OF COUNSEL

Florido & Lagro Law Office for petitioners.
Roy L. Ursal for D.P. Aguilar, *et al.*

D E C I S I O N

TINGA, *J.*:

Gabriel Luis Quisumbing (Quisumbing), Estrella P. Yapha, Victoria G. Corominas, and Raul D. Bacaltos (Bacaltos), collectively petitioners, assail the Decision[1] of the Regional Trial Court (RTC) of Cebu City, Branch 9, in Civil Case No. CEB-31560, dated July 11, 2006, which declared that under the pertinent provisions of Republic Act No. 7160 (R.A. No. 7160), or the Local Government Code, and Republic Act No. 9184 (R.A. No. 9184), or the Government Procurement Reform

[1] *Rollo,* pp. 32-39.

Act, respondent Cebu Provincial Governor Gwendolyn F. Garcia (Gov. Garcia), need not secure the prior authorization of the *Sangguniang Panlalawigan* before entering into contracts committing the province to monetary obligations.

The undisputed facts gathered from the assailed Decision and the pleadings submitted by the parties are as follows:

The Commission on Audit (COA) conducted a financial audit on the Province of Cebu for the period ending December 2004. Its audit team rendered a report, Part II of which states: "Several contracts in the total amount of ₱102,092,841.47 were not supported with a *Sangguniang Panlalawigan* resolution authorizing the Provincial Governor to enter into a contract, as required under Section 22 of R.A. No. 7160."[2] The audit team then recommended that, "Henceforth, the local chief executive must secure a *sanggunian* resolution authorizing the former to enter into a contract as provided under Section 22 of R.A. No. 7160."[3]

Gov. Garcia, in her capacity as the Provincial Governor of Cebu, sought the reconsideration of the findings and recommendation of the COA. However, without waiting for the resolution of the reconsideration sought, she instituted an action for Declaratory Relief before the RTC of Cebu City, Branch 9. Impleaded as respondents were Delfin P. Aguilar, Helen S. Hilayo and Roy L. Ursal in their official capacities as Cluster Director IV, Regional Cluster Director and Regional Legal and Adjudication Director of the COA, respectively. The *Sangguniang Panlalawigan* of the Province of Cebu, represented by Vice-Governor Gregorio Sanchez, Jr., was also impleaded as respondent.

Alleging that the infrastructure contracts[4] subject of the audit report complied with the bidding procedures provided under

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[2] *Id.* at 32.

[3] *Id*.

[4] *Id.* at 147; the COA claims that the contracts over which it took exception were mostly infrastructure contracts; Answer to the petition for declaratory relief.

R.A. No. 9184 and were entered into pursuant to the general and/or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan*, Gov. Garcia alleged that a separate authority to enter into such contracts was no longer necessary.

On the basis of the parties' respective memoranda, the trial court rendered the assailed Decision dated July 11, 2006, declaring that Gov. Garcia need not secure prior authorization from the *Sangguniang Panlalawigan* of Cebu before entering into the questioned contracts. The dispositive portion of the Decision provides:

> WHEREFORE, premises considered, this court hereby renders judgment in favor of Petitioner and against the Respondent COA officials and declares that pursuant to Sections 22 paragraph © in relation to Sections 306 and 346 of the Local Government Code and Section 37 of the Government Procurement Reform Act, the Petitioner Governor of Cebu need not secure prior authorization by way of a resolution from the *Sangguniang Panlalawigan* of the Province of Cebu before she enters into a contract involving monetary obligations on the part of the Province of Cebu when there is a prior appropriation ordinance enacted.
>
> Insofar as Respondent *Sangguniang Panlalawigan*, this case is hereby dismissed.[5]

In brief, the trial court declared that the *Sangguniang Panlalawigan* does not have juridical personality nor is it vested by R.A. No. 7160 with authority to sue and be sued. The trial court accordingly dismissed the case against respondent members of the *Sangguniang Panlalawigan*. On the question of the remedy of declaratory relief being improper because a breach had already been committed, the trial court held that the case would ripen into and be treated as an ordinary civil action. The trial court further ruled that it is only when the contract (entered into by the local chief executive) involves obligations which are not backed by prior ordinances that the prior authority of the *sanggunian* concerned is required. In this case, the *Sangguniang Panlalawigan* of Cebu had already given its prior authorization when it passed the appropriation ordinances which authorized the expenditures in the questioned contracts.

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[5] *Id.* at 39.

The trial court denied the motion for reconsideration[6] filed by Quisumbing, Bacaltos, Carmiano Kintanar, Jose Ma. Gastardo, and Agnes Magpale, in their capacities as members of the *Sangguniang Panlalawigan* of Cebu, in an Order[7] dated October 25, 2006.

In the Petition for Review[8] dated November 22, 2006, petitioners insisted that the RTC committed reversible error in granting due course to Gov. Garcia's petition for declaratory relief despite a breach of the law subject of the petition having already been committed. This breach was allegedly already the subject of a pending investigation by the Deputy Ombudsman for the Visayas. Petitioners further maintained that prior authorization from the *Sangguniang Panlalawigan* should be secured before Gov. Garcia could validly enter into contracts involving monetary obligations on the part of the province.

Gov. Garcia, in her Comment[9] dated April 10, 2007, notes that the RTC had already dismissed the case against the members of the *Sangguniang Panlalawigan* of Cebu on the ground that they did not have legal personality to sue and be sued. Since the COA officials also named as respondents in the petition for declaratory relief neither filed a motion for reconsideration nor appealed the RTC Decision, the said Decision became final and executory. Moreover, only two of the members of the *Sangguniang Panlalawigan*, namely, petitioners Quisumbing and Bacaltos, originally named as respondents in the petition for declaratory relief, filed the instant petition before the Court.

Respondent Governor insists that at the time of the filing of the petition for declaratory relief, there was not yet any breach of R.A. No. 7160. She further argues that the questioned contracts were executed after a public bidding in implementation of specific items in the regular or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan*. These

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[6] *Id.* at 40-44.

[7] *Id.* at 46-48.

[8] *Id.* at 4-26.

[9] *Id.* at 100-121.

ordinances allegedly serve as the authorization required under R.A. No. 7160, such that the obtention of another authorization becomes not only redundant but also detrimental to the speedy delivery of basic services.

Gov. Garcia also claims that in its Comment to the petition for declaratory relief, the Office of the Solicitor General (OSG) took a stand supportive of the governor's arguments. The OSG's official position allegedly binds the COA.

Expressing gratitude for having been allowed by this Court to file a comment on the petition, respondent COA officials in their Comment[10] dated March 8, 2007, maintain that Sections 306 and 346 of R.A. No. 7160 cannot be considered exceptions to Sec. 22(c) of R.A. No. 7160. Sec. 346 allegedly refers to disbursements which must be made in accordance with an appropriation ordinance without need of approval from the *sanggunian* concerned. Sec. 306, on the other hand, refers to the authorization for the effectivity of the budget and should not be mistaken for the specific authorization by the *Sangguniang Panlalawigan* for the local chief executive to enter into contracts under Sec. 22(c) of R.A. No. 7160.

The question that must be resolved by the Court should allegedly be whether the appropriation ordinance referred to in Sec. 346 in relation to Sec. 306 of R.A. No. 7160 is the same prior authorization required under Sec. 22(c) of the same law. To uphold the assailed Decision would allegedly give the local chief executive unbridled authority to enter into any contract as long as an appropriation ordinance or budget has been passed by the *sanggunian* concerned.

Respondent COA officials also claim that the petition for declaratory relief should have been dismissed for the failure of Gov. Garcia to exhaust administrative remedies, rendering the petition not ripe for judicial determination.

The OSG filed a Comment[11] dated March 12, 2007, pointing out that the instant petition raises factual issues warranting its

[10] *Id.* at 123-140.

[11] *Id.* at 229-255.

denial. For instance, petitioners, on one hand, claim that there was no appropriation ordinance passed for 2004 but only a reenacted appropriations ordinance and that the unauthorized contracts did not proceed from a public bidding pursuant to R.A. No. 9184. Gov. Garcia, on the other hand, claims that the contracts were entered into in compliance with the bidding procedures in R.A. No. 9184 and pursuant to the general and/or supplemental appropriations ordinances passed by the *Sangguniang Panlalawigan.* She further asserts that there were ordinances allowing the expenditures made.

On the propriety of the action for declaratory relief filed by Gov. Garcia, the OSG states in very general terms that such an action must be brought before any breach or violation of the statute has been committed and may be treated as an ordinary action only if the breach occurs after the filing of the action but before the termination thereof. However, it does not say in this case whether such recourse is proper.

Nonetheless, the OSG goes on to discuss that Sec. 323 of R.A. No. 7160 allows disbursements for salaries and wages of existing positions, statutory and contractual obligations and essential operating expenses authorized in the annual and supplemental budgets of the preceding year (which are deemed reenacted in case the *sanggunian* concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year). Contractual obligations not included in the preceding year's annual and supplemental budgets allegedly require the prior approval or authorization of the local *sanggunian*.

In their Consolidated Reply[12] dated August 8, 2007, petitioners insist that the instant petition raises only questions of law not only because the parties have agreed during the proceedings before the trial court that the case involves purely legal questions, but also because there is no dispute that the Province of Cebu was operating under a reenacted budget in 2004.

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[12] *Id.* at 258-269.

They further defend their standing to bring suit not only as members of the *sanggunian* whose powers Gov. Garcia has allegedly usurped, but also as taxpayers whose taxes have been illegally spent. Petitioners plead leniency in the Court's ruling regarding their legal standing, as this case involves a matter of public policy.

Petitioners finally draw attention to the OSG's seeming change of heart and adoption of their argument that Gov. Garcia has violated R.A. No. 7160.

It should be mentioned at the outset that a reading of the OSG's Comment[13] on the petition for declaratory relief indeed reveals its view that Sec. 22(c) of R.A. No. 7160 admits of exceptions. It maintains, however, that the said law is clear and leaves no room for interpretation, only application. Its Comment on the instant petition does not reflect a change of heart but merely an amplification of its original position.

Although we agree with the OSG that there are factual matters that have yet to be settled in this case, the records disclose enough facts for the Court to be able to make a definitive ruling on the basic legal arguments of the parties.

The trial court's pronouncement that "the parties in this case all agree that the contracts referred to in the above findings are contracts entered into pursuant to the bidding procedures allowed in Republic Act No. 9184 or the 'Government Procurement Reform Act'— *i.e.*, public bidding, and negotiated bid. The biddings were made pursuant to the general and/or supplemental appropriation ordinances passed by the *Sangguniang Panlalawigan* of Cebu x x x"[14] is clearly belied by the Answer[15] filed by petitioners herein. Petitioners herein actually argue in their Answer that the contracts subject of the COA's findings did not proceed from a public bidding. Further,

[13] *Id.* at 77-82.

[14] *Id.* at 32-33.

[15] *Id.* at 65-69.

there was no budget passed in 2004. What was allegedly in force was the reenacted 2003 budget.[16]

Gov. Garcia's contention that the questioned contracts complied with the bidding procedure in R.A. No. 9184 and were entered into pursuant to the general and supplemental appropriation ordinances allowing these expenditures is diametrically at odds with the facts as presented by petitioners in this case. It is notable, however, that while Gov. Garcia insists on the existence of appropriation ordinances which allegedly authorized her to enter into the questioned contracts, she does not squarely deny that these ordinances pertain to the previous year's budget which was reenacted in 2004.

Thus, contrary to the trial court's finding, there was no agreement among the parties with regard to the operative facts under which the case was to be resolved. Nonetheless, we can gather from Gov. Garcia's silence on the matter and the OSG's own discussion on the effect of a reenacted budget on the local chief executive's ability to enter into contracts, that during the year in question, the Province of Cebu was indeed operating under a reenacted budget.

Note should be taken of the fact that Gov. Garcia, both in her petition for declaratory relief and in her Comment on the instant petition, has failed to point out the specific provisions in the general and supplemental appropriation ordinances copiously mentioned in her pleadings which supposedly authorized her to enter into the questioned contracts.

Based on the foregoing discussion, there appear two basic premises from which the Court can proceed to discuss the question of whether prior approval by the *Sangguniang Panlalawigan* was required before Gov. Garcia could have validly entered into the questioned contracts. ***First,*** **the Province of Cebu was operating under a reenacted budget in 2004.** ***Second,*** **Gov. Garcia entered into contracts on behalf of the province while this reenacted budget was in force.**

[16] *Id.* at 66.

Sec. 22(c) of R.A. No. 7160 provides:

> Sec. 22. *Corporate Powers.*—(a) Every local government unit, as a corporation, shall have the following powers:
>
> xxx xxx xxx
>
> (c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the *sanggunian* concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or *barangay* hall.

As it clearly appears from the foregoing provision, prior authorization by the *sanggunian* concerned is required before the local chief executive may enter into contracts on behalf of the local government unit.

Gov. Garcia posits that Sections 306 and 346 of R.A. No. 7160 are the exceptions to Sec. 22(c) and operate to allow her to enter into contracts on behalf of the Province of Cebu without further authority from the *Sangguniang Panlalawigan* other than that already granted in the appropriation ordinance for 2003 and the supplemental ordinances which, however, she did not care to elucidate on.

The cited provisions state:

> Sec. 306. *Definition of Terms.*—When used in this Title, the term:
>
> (a) "Annual Budget" refers to a financial plan embodying the estimates of income and expenditures for one (1) fiscal year;
>
> (b) "Appropriation" refers to an authorization made by ordinance, directing the payment of goods and services from local government funds under specified conditions or for specific purposes;
>
> (c) "Budget Document" refers to the instrument used by the local chief executive to present a comprehensive financial plan to the *sanggunian* concerned;

(d) "Capital Outlays" refers to appropriations for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of the local government unit concerned, including investments in public utilities such as public markets and slaughterhouses;

(e) "Continuing Appropriation" refers to an appropriation available to support obligations for a specified purpose or projects, such as those for the construction of physical structures or for the acquisition of real property or equipment, even when these obligations are incurred beyond the budget year;

(f) "Current Operating Expenditures" refers to appropriations for the purchase of goods and services for the conduct of normal government operations within the fiscal year, including goods and services that will be used or consumed during the budget year;

(g) "Expected Results" refers to the services, products, or benefits that will accrue to the public, estimated in terms of performance measures or physical targets;

(h) "Fund" refers to a sum of money, or other assets convertible to cash, set aside for the purpose of carrying out specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations, and constitutes an independent fiscal and accounting entity;

(i) "Income" refers to all revenues and receipts collected or received forming the gross accretions of funds of the local government unit;

(j) "Obligations" refers to an amount committed to be paid by the local government unit for any lawful act made by an accountable officer for and in behalf of the local government unit concerned;

(k) "Personal Services" refers to appropriations for the payment of salaries, wages and other compensation of permanent, temporary, contractual, and casual employees of the local government unit;

(l) "Receipts" refers to income realized from operations and activities of the local government or are received by it in

> the exercise of its corporate functions, consisting of charges for services rendered, conveniences furnished, or the price of a commodity sold, as well as loans, contributions or aids from other entities, except provisional advances for budgetary purposes; and
>
> (m) "Revenue" refers to income derived from the regular system of taxation enforced under authority of law or ordinance and, as such, accrue more or less regularly every year.
>
> xxx xxx xxx
>
> Sec. 346. *Disbursements of Local Funds and Statement of Accounts.*—Disbursements shall be made in accordance with the ordinance authorizing the annual or supplemental appropriations without the prior approval of the *sanggunian* concerned. Within thirty (30) days after the close of each month, the local accountant shall furnish the *sanggunian* with such financial statements as may be prescribed by the COA. In the case of the year-end statement of accounts, the period shall be sixty (60) days after the thirty-first (31st) of December.

Sec. 306 of R.A. No. 7160 merely contains a definition of terms. Read in conjunction with Sec. 346, Sec. 306 authorizes the local chief executive to make disbursements of funds in accordance with the ordinance authorizing the annual or supplemental appropriations. The "ordinance" referred to in Sec. 346 pertains to that which enacts the local government unit's budget, for which reason no further authorization from the local council is required, the ordinance functioning, as it does, as the legislative authorization of the budget.[17]

To construe Sections 306 and 346 of R.A. No. 7160 as exceptions to Sec. 22(c) would render the requirement of prior *sanggunian* authorization superfluous, useless and irrelevant. There would be no instance when such prior authorization would

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[17] REPUBLIC ACT No. 7160 (1992), Sec. 319 provides that, "On or before the end of the current fiscal year, the *sanggunian* concerned shall enact, through an ordinance, the annual budget of the local government unit for the ensuing fiscal year on the basis of the estimates of income and expenditures submitted by the local chief executive."

be required, as in contracts involving the disbursement of appropriated funds. Yet, this is obviously not the effect Congress had in mind when it required, as a condition to the local chief executive's representation of the local government unit in business transactions, the prior authorization of the *sanggunian* concerned. The requirement was deliberately added as a measure of check and balance, to temper the authority of the local chief executive, and in recognition of the fact that the corporate powers of the local government unit are wielded as much by its chief executive as by its council.[18] However, as will be discussed later, the sanggunian authorization may be in the form of an appropriation ordinance passed for the year which specifically covers the project, cost or contract to be entered into by the local government unit.

The fact that the Province of Cebu operated under a reenacted budget in 2004 lent a complexion to this case which the trial court did not apprehend. Sec. 323 of R.A. No. 7160 provides that in case of a reenacted budget, "only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith."[19]

It should be observed that, as indicated by the word "only" preceding the above enumeration in Sec. 323, the items for which disbursements may be made under a reenacted budget are exclusive. Clearly, contractual obligations which were not included in the previous year's annual and supplemental budgets cannot be disbursed by the local government unit. It follows, too, that new contracts entered into by the local chief executive require the prior approval of the *sanggunian*.

We agree with the OSG that the words "disbursement" and "contract" separately referred to in Sec. 346 and 22(c) of R.A.

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[18] The Sangguniang Panlalawigan is specifically given the mandate to participate in the exercise of the corporate powers of the province as provided for under Sec. 22 of R.A. 7160 and confirmed by Sec. 468 of the same law.

[19] REPUBLIC ACT NO. 7160 (1992), Sec. 323.

No. 7160 should be understood in their common signification. Disbursement is defined as "To pay out, commonly from a fund. To make payment in settlement of a debt or account payable."[20] *Contract*, on the other hand, is defined by our Civil Code as "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service."[21]

And so, to give life to the obvious intendment of the law and to avoid a construction which would render Sec. 22(c) of R.A. No. 7160 meaningless,[22] disbursement, as used in Sec. 346, should be understood to pertain to payments for statutory and contractual obligations which the *sanggunian* has already authorized thru ordinances enacting the annual budget and are therefore already subsisting obligations of the local government unit. Contracts, as used in Sec. 22(c) on the other hand, are those which bind the local government unit to new obligations, with their corresponding terms and conditions, for which the local chief executive needs prior authority from the *sanggunian*.

Elsewhere in R.A. No. 7160 are found provisions which buttress the stand taken by petitioners against Gov. Garcia's seemingly heedless actions. Sec. 465, Art. 1, Chapter 3 of R.A. No. 7160 states that the provincial governor shall "[r]epresent the province in all its business transactions and **sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the *sangguniang panlalawigan*** or pursuant to law or ordinances." Sec. 468, Art. 3 of the same chapter also establishes the *sanggunian*'s power, as the province's legislative body, to authorize the provincial governor

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[20] BLACK'S *LAW DICTIONARY, SPECIAL DELUXE* 5th Ed., 1979, p. 416.

[21] Art. 1305.

[22] As a rule of statutory construction, a provision of a statute should be so construed as not to nullify or render nugatory another provision of the same statute. *Interpretate fienda est res valeat quam pereat. People v. Gatchalian*, 104 Phil. 664 (1958).

to negotiate and contract loans, lease public buildings held in a proprietary capacity to private parties, among other things.

The foregoing inexorably confirms the indispensability of the *sanggunian*'s authorization in the execution of contracts which bind the local government unit to new obligations. Note should be taken of the fact that R.A. No. 7160 does not expressly state the form that the authorization by the *sanggunian* has to take. Such authorization may be done by resolution enacted in the same manner prescribed by ordinances, except that the resolution need not go through a third reading for final consideration unless the majority of all the members of the *sanggunian* decides otherwise.[23]

As regards the trial court's pronouncement that R.A. No. 9184 does not require the head of the procuring entity to secure a resolution from the *sanggunian* concerned before entering into a contract, attention should be drawn to the very same provision upon which the trial court based its conclusion. Sec. 37 provides: "The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days **from the date of approval of the contract by the appropriate authority x x x.**"

R.A. No. 9184 establishes the law and procedure for public procurement. Sec. 37 thereof explicitly makes the approval of the appropriate authority which, in the case of local government units, is the *sanggunian*, the point of reference for the notice to proceed to be issued to the winning bidder. This provision, rather than being in conflict with or providing an exception to Sec. 22(c) of R.A. No. 7160, blends seamlessly with the latter and even acknowledges that in the exercise of the local government unit's corporate powers, the chief executive acts merely as an instrumentality of the local council. Read together, the cited provisions mandate the local chief executive to secure the *sanggunian*'s approval before entering into procurement

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[23] RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE OF 1991 (1992), Art. 107(c).

contracts and to transmit the notice to proceed to the winning bidder not later than seven (7) calendar days therefrom.

Parenthetically, Gov. Garcia's petition for declaratory relief should have been dismissed because it was instituted after the COA had already found her in violation of Sec. 22(c) of R.A. No. 7160. One of the important requirements for a petition for declaratory relief under Sec. 1, Rule 63 of the Rules of Court is that it be filed before breach or violation of a deed, will, contract, other written instrument, statute, executive order, regulation, ordinance or any other governmental regulation.

In *Martelino v. National Home Mortgage Finance Corporation*,[24] we held that the purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*., for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify, short of a judgment or final order.

Thus, the trial court erred in assuming jurisdiction over the action despite the fact that the subject thereof had already been breached by Gov. Garcia prior to the filing of the action. Nonetheless, the conversion of the petition into an ordinary civil action is warranted under Sec. 6, Rule 63[25] of the Rules of Court.

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[24] G.R. No. 160208, June 30, 2008.

[25] Sec. 6. *Conversion into ordinary action.*—If before the final termination of the case, a breach or violation of an instrument or a statute, executive order or regulation, ordinance, or any other governmental regulation should take place, the action may thereupon be converted into an ordinary action, and the parties shall be allowed to file such pleadings as may be necessary or proper.

Erroneously, however, the trial court did not treat the COA report as a breach of the law and proceeded to resolve the issues as it would have in a declaratory relief action. Thus, it ruled that prior authorization is not required if there exist ordinances which authorize the local chief executive to enter into contracts. The problem with this ruling is that it fails to take heed of the incongruent facts presented by the parties. What the trial court should have done, instead of deciding the case based merely on the memoranda submitted by the parties, was to conduct a full-blown trial to thresh out the facts and make an informed and complete decision.

As things stand, the declaration of the trial court to the effect that no prior authorization is required when there is a prior appropriation ordinance enacted does not put the controversy to rest. The question which should have been answered by the trial court, and which it failed to do was whether, during the period in question, there did exist ordinances (authorizing Gov. Garcia to enter into the questioned contracts) which rendered the obtention of another authorization from the *Sangguniang Panlalawigan* superfluous. It should also have determined the character of the questioned contracts, *i.e.*, whether they were, as Gov. Garcia claims, mere disbursements pursuant to the ordinances supposedly passed by the *sanggunian* or, as petitioners claim, new contracts which obligate the province without the provincial board's authority.

It cannot be overemphasized that the paramount consideration in the present controversy is the fact that the Province of Cebu was operating under a re-enacted budget in 2004, resulting in an altogether different set of rules as directed by Sec. 323 of R.A. 7160. This Decision, however, should not be so construed as to proscribe any and all contracts entered into by the local chief executive without formal *sanggunian* authorization. In cases, for instance, where the local government unit operates under an annual as opposed to a re-enacted budget, it should be acknowledged that the appropriation passed by the *sanggunian* may validly serve as the authorization required under Sec. 22(c) of R.A. No. 7160. After all, an appropriation

is an authorization made by ordinance, directing the payment of goods and services from local government funds under specified conditions or for specific purposes. The appropriation covers the expenditures which are to be made by the local government unit, such as current operating expenditures[26] and capital outlays.[27]

The question of whether a *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient.

On the other hand, should the appropriation ordinance describe the projects in generic terms such as "infrastructure projects," "inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects," "reclamation projects" or "roads and bridges," there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian*. Specific *sanggunian* approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed

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[26] Current operating expenditures refer to appropriations for the purchase of goods and services for current consumption or for benefits expected to terminate within the fiscal year. It is classified into personal services and maintenance and operating expenses. Sec. 155(a), Government Accounting and Auditing Manual (GAAM), Vol. 1.

[27] Capital outlays refer to appropriations for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of government, including investments in the capital of government-owned or controlled corporations and their subsidiaries, as well as investments in public utilities such as public markets and slaughterhouses. Sec. 155(b), GAAM, Vol. 1.

within the regular personal services and maintenance operating expenses.

In view of the foregoing, the instant case should be treated as an ordinary civil action requiring for its complete adjudication the confluence of all relevant facts. Guided by the framework laid out in this Decision, the trial court should receive further evidence in order to determine the nature of the questioned contracts entered into by Gov. Garcia, and the existence of ordinances authorizing her acts.

WHEREFORE, the petition is *GRANTED* IN PART. The Decision dated July 11, 2006, of the Regional Trial Court of Cebu City, Branch 9, in Civil Case No. CEB-31560, and its Order dated October 25, 2006, are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the court *a quo* for further proceedings in accordance with this Decision. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Chico-Nazario, Nachura, Reyes, and *Brion, JJ.,* concur.

Velasco, Jr., J., in the result.

Quisumbing, J., no part. Close relation to a party.

Leonardo-de Castro, J., on official leave.

EN BANC

[G.R. No. 176970. December 8, 2008]

ROGELIO Z. BAGABUYO, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PRINCIPLE OF HIERARCHY OF COURTS; JURISDICTION OVER PETITIONS UNDER THE SPECIAL CIVIL ACTIONS SHARED BY THE COURT WITH THE COURT OF APPEALS MUST BE FILED FIRST WITH THE LATTER COURT; EXCEPTION; PETITION IS IN THE NATURE OF ONE AGAINST NATION'S LAWMAKERS, AS IN CASE AT BAR. — The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. It was pursuant to this original jurisdiction that the petitioner filed the present petition. While this jurisdiction is shared with the Court of Appeals and the RTCs, *a direct invocation of the Supreme Court's jurisdiction is allowed only when there are special and important reasons therefor, clearly and especially set out in the petition.* Reasons of practicality, dictated by an increasingly overcrowded docket and the need to prioritize in favor of matters within our exclusive jurisdiction, justify the existence of this rule otherwise known as the "*principle of hierarchy of courts.*" More generally stated, the principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. Among the cases we have considered sufficiently special and important to be exceptions to the rule, are petitions for *certiorari*, prohibition, *mandamus* and *quo warranto* against our nation's lawmakers when the validity of their enactments is assailed. The present petition is of this nature; its subject matter and the nature of the issues raised – among them, whether legislative reapportionment involves a division of Cagayan de Oro City as a local government unit – are reasons enough for considering it an exception to the principle of hierarchy of courts. Additionally, the petition assails as well as resolution of the COMELEC *en banc* issued to implement the legislative apportionment that R.A. No. 9371

decrees. As an action against a COMELEC *en banc* resolution, the case falls under Rule 64 of the Rules of Court that in turn requires a review by this Court *via* a Rule 65 petition for *certiorari*. For these reasons, we do not see the principle of hierarchy of courts to be a stumbling block in our consideration of the present case.

2. STATUTORY CONSTRUCTION; LEGISLATIVE APPORTIONMENT AND REAPPORTIONMENT, DEFINED. — Legislative **apportionment** is defined by Black's Law Dictionary as *the determination of the number of representatives which a State, county or other subdivision may send to a legislative body.* It is *the allocation of seats in a legislative body in proportion to the population; the drawing of voting district lines so as to equalize population and voting power among the districts.* **Reapportionment**, on the other hand, is the *realignment or change in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation.*

3. POLITICAL LAW; CONSTITUTIONAL LAW; APPORTIONMENT AND REAPPORTIONMENT OF LEGISLATIVE DISTRICTS UNDER SECTION 5, ARTICLE VI AND CREATION, DIVISION MERGER, ABOLITION OR ALTERATION OF BOUNDARY OF LOCAL GOVERNMENT UNITS UNDER SECTION 10, ARTICLE X; DISCUSSED. — Article VI (entitled Legislative Department) of the 1987 Constitution lays down the rules on legislative apportionment under its Section 5 which provides: Sec. 5(1). (1) The House of Representatives shall be composed of not more than two hundred fifty members unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional and sectoral parties or organizations. x x x (3) Each legislative district shall comprise, as far as practicable, continuous, 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. (4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this

section. Separately from the legislative districts that legal apportionment or reapportionment speaks of, are the local government units (historically and generically referred to as "municipal corporations") that the Constitution itself classified into provinces, cities, municipalities and *barangays*. In its strict and proper sense, a municipality has been defined as "a body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purpose of local government thereof." The creation, division, merger, abolition or alteration of boundary of local government units, *i.e.*, of provinces, cities, municipalities, and *barangays*, are covered by the Article on Local Government (Article X). Section 10 of this Article provides: No province, city, municipality, or *barangay* may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political unit directly affected. Under both Article VI, Section 5, and Article X, Section 10 of the Constitution, the authority to act has been vested in the Legislature. The Legislature undertakes the apportionment and reapportionment of legislative districts, and likewise acts on local government units by setting the standards for their creation, division, merger, abolition and alteration of boundaries and by actually creating, dividing, merging, abolishing local government units and altering their boundaries through legislation. Other than this, not much commonality exists between the two provisions since they are inherently different although they interface and relate with one another.

4. ID.; ID.; ID.; CONTRAST BETWEEN SECTION 5, ARTICLE VI AND SECTION 10, ARTICLE X; DISCUSSED. — The concern that leaps from the text of Article VI, Section 5 is political representation and the means to make a legislative district sufficiently represented so that the people can be effectively heard. The aim of legislative apportionment is "to equalize population and voting power among districts." Hence, emphasis is given to the number of people represented; the uniform and progressive ratio to be observed among the representative districts; and accessibility and commonality of interests in terms of each district being, as far as practicable, continuous, compact and adjacent territory. In terms of the people represented, every city with at least 250,000 people and every province (irrespective

of population) is entitled to one representative. In this sense, legislative districts, on the one hand, and provinces and cities, on the other, relate and interface with each other. To ensure continued adherence to the required standards of apportionment, Section 5(4) specifically mandates reapportionment as soon as the given standards are met. In contrast with the equal representation objective of Article VI, Section 5, Article X, Section 10 expressly speaks of how local government units may be "created, divided, merged, abolished, or its boundary substantially altered." Its concern is the commencement, the termination, and the modification of local government units' corporate existence and territorial coverage; and it speaks of two specific standards that must be observed in implementing this concern, namely, the criteria established in the local government code and the approval by a majority of the votes cast in a plebiscite in the political units directly affected. Under the Local Government Code (R.A. No. 7160) passed in 1991, the criteria of income, population and land area are specified as verifiable indicators of viability and capacity to provide services. The division or merger of existing units must comply with the same requirements (since a new local government unit will come into being), provided that a division shall not reduce the income, population, or land area of the unit affected to less than the minimum requirement prescribed in the Code.

5. ID.; ID.; ID.; ID.; REQUIREMENT OF PLEBISCITE; ELUCIDATED. — A pronounced distinction between Article VI, Section 5 and, Article X, Section 10 is on the requirement of a plebiscite. The Constitution and the Local Government Code expressly require a plebiscite to carry out any creation, division, merger, abolition or alteration of boundary of a local government unit. *In contrast, no plebiscite requirement exists under the apportionment or reapportionment provision.* In *Tobias v. Abalos*, a case that arose from the division of the congressional district formerly covering San Juan and Mandaluyong into separate districts, we confirmed this distinction and the fact that no plebiscite is needed in a legislative reappointment. The plebiscite issue came up because one was ordered and held for Mandaluyong in the course of its conversion into a highly urbanized city, while none was held for San Juan. In explaining why this happened, the Court ruled that no plebiscite was necessary for San Juan because the

objective of the plebiscite was the conversion of Mandaluyong into a highly urbanized city as required by Article X, Section 10 the Local Government Code; the creation of a new legislative district only followed as a consequence. In other words, the apportionment alone and by itself did not call for a plebiscite, so that none was needed for San Juan where only a reapportionment took place.

6. ID.; ID.; ID.; ID.; ID.; LEGISLATIVE DISTRICT'S CREATION, DISSOLUTION OR ANY OTHER SIMILAR ACTION DOES NOT REQUIRE A PLEBISCITE. — The **legislative district** that Article VI, Section 5 speaks of may, in a sense, be called a political unit because it is the basis for the election of a member of the House of Representatives and members of the local legislative body. It is not, however, a political subdivision through which functions of government are carried out. It can more appropriately be described as a *representative* unit that may or may not encompass the whole of a city or a province, but unlike the latter, it is not a corporate unit. Not being a corporate unit, a district does not act for and in behalf of the people comprising the district; it merely delineates the areas occupied by the people who will choose a representative in their national affairs. Unlike a province, which has a governor; a city or a municipality, which has a mayor; and a *barangay*, which has a *punong barangay*, a district does not have its own chief executive. The role of the congressman that it elects is to ensure that the voice of the people of the district is heard in Congress, not to oversee the affairs of the legislative district. Not being a corporate unit also signifies that it has no legal personality that must be created or dissolved and has no capacity to act. Hence, there is no need for any plebiscite in the creation, dissolution or any other similar action on a legislative district.

7. ID.; ID.; ID.; ID.; ID.; LOCAL GOVERNMENT UNIT'S CREATION, DIVISION, MERGER, ABOLITION OR ALTERATION OF BOUNDARIES REQUIRES A PLEBISCITE. — The local government units, on the other hand, are political and *corporate* units. They are the territorial and political subdivisions of the state. They possess legal personality on the authority of the Constitution and by action of the Legislature. The Constitution defines them as entities that Congress can, by law, create, divide, abolish, merge; or whose boundaries can be altered based on standards again established

by both the Constitution and the Legislature. A local government unit's corporate existence begins upon the election and qualification of its chief executive and a majority of the members of its *Sanggunian*. As a political subdivision, a local government unit is an "instrumentality of the state in carrying out the functions of government." As a corporate entity with a distinct and separate juridical personality from the State, it exercises special functions for the sole benefit of its constituents. It acts as "an agency of the community in the administration of local affairs" and the mediums through which the people act in their corporate capacity on local concerns. In light of these roles, the Constitution saw it fit to expressly secure the consent of the people affected by the creation, division, merger, abolition or alteration of boundaries of local government units through a plebiscite.

7. ID.; ID.; ID.; ON DISTINCTION BETWEEN LEGISLATIVE APPORTIONMENT AND POLITICAL SUBDIVISION. — These considerations clearly show the distinctions between a legislative opportionment or reappointment and the division of a local government unit. Historically and by its intrinsic nature, a legislative opportionment does not mean, *and does not even imply*, a division of a local government unit where the apportionment takes place. Thus, the plebiscite requirement that applies to the division of a province, city, municipality or *barangay* under the Local Government Code should not apply to and be a requisite for the validity of a legislative apportionment or reapportionment.

8. ID.; ID.; ID.; RA NO. 9371 IS A REAPPORTIONMENT LEGISLATION THAT DOES NOT REQUIRE A PLEBISCITE; RELATION TO COMELEC RESOLUTION NO. 7837. — R.A. No. 9371 is, on its face, purely and simply a reapportionment legislation passed in accordance with the authority granted to Congress under Article VI, Section 5(4) of the Constitution. No division of Cagayan de Oro City as a political and corporate entity takes place or is mandated. Cagayan de Oro City politically remains a single unit and its administration is not divided along territorial lines. Its territory remains completely whole and intact; there is only the addition of another legislative district and the delineation of the city into two districts for purposes of representation in the House of Representatives. Thus, Article X, Section 10 of the Constitution does not come

into play and no plebiscite is necessary to validly apportion Cagayan de Oro City into two districts. Admittedly, the legislative reapportionment carries effects beyond the creation of another congressional district in the city by providing, as reflected in COMELEC Resolution No. 7837, for additional *Sangguniang Panglunsod* seats to be voted for along the lines of the congressional apportionment made. The effect on the *Sangguniang Panglunsod,* however, is not directly traceable to R.A. No. 9371 but to another law – R.A. No. 6636. However, neither does this law have the effect of dividing the City of Cagayan de Oro into two political and corporate units and territories. Rather than divide the city either territorially or as a corporate entity, the effect is merely to enhance voter representation by giving each city voter more and greater say, both in Congress and in the *Sangguniang Panglunsod.*

9. ID.; ID.; ID.; EQUALITY OF REPRESENTATION, NOT VIOLATED. — The petitioner argues that the distribution of the legislative districts is unequal. District 1 has only 93,719 registered voters while District 2 has 127,071. District 1 is composed mostly of rural *barangays* while District 2 is composed mostly of urban *barangays*. Thus, R.A. No. 9371 violates the principle of equality of representation. A clarification must be made. The law clearly provides that the basis for districting shall be the *number of the inhabitants* of a city or a province, *not the number of registered voters* therein. We settled this very same question in *Herrera v. COMELEC* when we interpreted a provision in R.A. No. 7166 and COMELEC Resolution No. 2313 that applied to the Province of Guimaras. We categorically ruled that the basis for districting is the number of inhabitants of the Province of Guimaras by municipality based on the official 1995 Census of Population as certified to by Tomas P. Africa, Administrator of the National Statistics Office. The petitioner, unfortunately, did not provide information about the actual population of Cagayan de Oro City. However, we take judicial notice of the August 2007 census of the National Statistics Office which shows that *barangays* comprising Cagayan de Oro's first district have a total population of 254,644, while the second district has 299,322 residents. Undeniably, these figures show a disparity in the population sizes of the districts. The Constitution, however, does not require mathematical exactitude or rigid equality as a standard in gauging

equality of representation. In fact, for cities, all it asks is that "*each city with a population of at least two hundred fifty thousand shall have one representative*," while ensuring representation for every province regardless of the size of its population. To ensure quality representation through commonality of interests and ease of access by the representative to the constituents, all that the Constitution requires is that every legislative district should comprise, *as far as practicable*, contiguous, compact, and adjacent territory. Thus, the Constitution leaves the local government units as they are found and does not require their division, merger or transfer to satisfy the numerical standard it imposes. Its requirements are satisfied despite some numerical disparity if the units are continguous, compact and adjacent as far as practicable. The petitioner's contention that there is a resulting inequality in the division of Cagayan de Oro City into two districts because the *barangays* in the first district are mostly rural *barangays* while the second district is mostly urban, is largely unsubstantiated. But even if backed up by proper proof, we cannot question the division on the basis of the difference in the *barangays'* levels of development or development focus as these are not part of the constitutional standards for legislative apportionment or reapportionment. What the components of the two districts of Cagayan de Oro would be is a matter for the lawmakers to determine as a matter of policy. In the absence of any grave abuse of discretion or violation of the established legal parameters, this Court cannot intrude into the wisdom of these policies.

APPEARANCES OF COUNSEL

Rogelio Zosa Bagabuyo for himself.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the petition for *certiorari*, prohibition, and *mandamus*,[1] with a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction, filed by

[1] Under Rule 65 of the Rules of Court.

Rogelio Bagabuyo (*petitioner*) to prevent the Commission on Elections (*COMELEC*) from implementing Resolution No. 7837 on the ground that Republic Act No. 9371[2] – the law that Resolution No. 7837 implements – is unconstitutional.

BACKGROUND FACTS

On October 10, 2006, Cagayan de Oro's then Congressman Constantino G. Jaraula filed and sponsored House Bill No. 5859: "An Act Providing for the Apportionment of the Lone Legislative District of the City of Cagayan De Oro."[3] This law eventually became Republic Act (R.A.) No. 9371.[4] It increased Cagayan de Oro's legislative district from one to two. For the election of May 2007, Cagayan de Oro's voters would be classified as belonging to either the first or the second district, depending on their place of residence. The constituents of each district would elect their own representative to Congress as well as eight members of the *Sangguniang Panglungsod*.

Section 1 of R.A. No. 9371 apportioned the City's *barangays* as follows:

> *Legislative Districts* – The lone legislative district of the City of Cagayan De Oro is hereby apportioned to commence in the next national elections after the effectivity of this Act. Henceforth, barangays Bonbon, Bayabas, Kauswagan, Carmen, Patag, Bulua, Iponan, Baikingon, San Simon, Pagatpat, Canitoan, Balulang, Lumbia, Pagalungan, Tagpangi, Taglimao, Tuburan, Pigsag-an, Tumpagon, Bayanga, Mambuaya, Dansulihon, Tignapoloan and Bisigan shall comprise the first district while barangays Macabalan, Puntod, Consolacion, Camaman-an, Nazareth, Macasandig, Indahag, Lapasan, Gusa, Cugman, FS Catanico, Tablon, Agusan, Puerto, Bugo, and Balubal and all urban *barangays* from *Barangay* 1 to *Barangay* 40 shall comprise the second district.[5]

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[2] "An Act Providing for the Apportionment of the Lone Legislative District of the City of Cagayan De Oro."

[3] *Rollo*, p. 214.

[4] *Id.*, p. 25.

[5] *Id.*, p. 25.

On March 13, 2007, the COMELEC *en Banc* promulgated Resolution No. 7837[6] implementing R.A. No. 9371.

Petitioner Rogelio Bagabuyo filed the present petition against the COMELEC on March 27, 2007.[7] On 10 April 2008, the petitioner amended the petition to include the following as respondents: Executive Secretary Eduardo Ermita; the Secretary of the Department of Budget and Management; the Chairman of the Commission on Audit; the Mayor and the members of the *Sangguniang Panglungsod* of Cagayan de Oro City; and its Board of Canvassers.[8]

In asking for the nullification of R.A. No. 9371 and Resolution No. 7837 on constitutional grounds, the petitioner argued that the COMELEC cannot implement R.A. No. 9371 without providing for the rules, regulations and guidelines for the conduct of a plebiscite which is indispensable for the division or conversion of a local government unit. He prayed for the issuance of an order directing the respondents to cease and desist from implementing R.A. No. 9371 and COMELEC Resolution No. 7837, and to revert instead to COMELEC Resolution No. 7801 which provided for a single legislative district for Cagayan de Oro.

Since the Court did not grant the petitioner's prayer for a temporary restraining order or writ of preliminary injunction, the May 14 National and Local Elections proceeded according to R.A. No. 9371 and Resolution No. 7837.

The respondent's Comment on the petition, filed through the Office of the Solicitor General, argued that: 1) the petitioner did not respect the hierarchy of courts, as the Regional Trial Court (*RTC*) is vested with concurrent jurisdiction over cases assailing the constitutionality of a statute; 2) R.A. No. 9371 merely increased the representation of Cagayan de Oro City in the House of Representatives and *Sangguniang Panglungsod*

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[6] *Id.*, pp. 23-24.

[7] *Id.*, pp. 3-22.

[8] *Id.*, pp. 60-93.

pursuant to Section 5, Article VI of the 1987 Constitution; 3) the criteria established under Section 10, Article X of the 1987 Constitution only apply when there is a creation, division, merger, abolition or substantial alteration of boundaries of a province, city, municipality, or *barangay*; in this case, no such creation, division, merger, abolition or alteration of boundaries of a local government unit took place; and 4) R.A. No. 9371 did not bring about any change in Cagayan de Oro's territory, population and income classification; hence, no plebiscite is required.

The petitioner argued in his reply that: 1) pursuant to the Court's ruling in *Del Mar v. PAGCOR*,[9] the Court may take cognizance of this petition if compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction; 2) Cagayan de Oro City's reapportionment under R.A. No. 9371 falls within the meaning of creation, division, merger, abolition or substantial alteration of boundaries of cities under Section 10, Article X of the Constitution; 3) the creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a common denominator – the material change in the political and economic rights of the local government units directly affected, as well as of the people therein; 4) a voter's sovereign power to decide on who should be elected as the entire city's Congressman was arbitrarily reduced by at least one half because the questioned law and resolution only allowed him to vote and be voted for in the district designated by the COMELEC; 5) a voter was also arbitrarily denied his right to elect the Congressman and the members of the city council for the other legislative district, and 6) government funds were illegally disbursed without prior approval by the sovereign electorate of Cagayan De Oro City.[10]

THE ISSUES

The core issues, based on the petition and the parties' memoranda, can be limited to the following contentious points:

1) Did the petitioner violate the hierarchy of courts rule; if so, should the instant petition be dismissed on this ground?

[9] G.R. No. 138298, November 29, 2000, 346 SCRA 485.

[10] *Rollo*, pp. 123-148.

2) Does R.A. No. 9371 merely provide for the legislative reapportionment of Cagayan de Oro City, or does it involve the division and conversion of a local government unit?

3) Does R.A. No. 9371 violate the equality of representation doctrine?

OUR RULING

Except for the issue of the hierarchy of courts rule, we find the petition totally without merit.

The hierarchy of courts principle.

The Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.[11] It was pursuant to this original jurisdiction that the petitioner filed the present petition.

While this jurisdiction is shared with the Court of Appeals[12] and the RTCs,[13] *a direct invocation of the Supreme Court's jurisdiction is allowed only when there are special and important reasons therefor, clearly and especially set out in the petition.* Reasons of practicality, dictated by an increasingly overcrowded docket and the need to prioritize in favor of matters within our exclusive jurisdiction, justify the existence of this rule otherwise known as the *"principle of hierarchy of courts."* More generally stated, the principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court.[14]

Among the cases we have considered sufficiently special and important to be exceptions to the rule, are petitions for *certiorari*, prohibition, *mandamus* and *quo warranto* against our nation's lawmakers when the validity of their enactments

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[11] CONSTITUTION, Article VIII, Section 5(1).

[12] Sec. 9 (1), B.P. Blg. 129.

[13] Sec. 21 (1), B.P. Blg. 129.

[14] See: *People v. Cuaresma*, G.R. No. 67787, April 18, 1989, 172 SCRA 415.

is assailed.[15] The present petition is of this nature; its subject matter and the nature of the issues raised – among them, whether legislative reapportionment involves a division of Cagayan de Oro City as a local government unit – are reasons enough for considering it an exception to the principle of hierarchy of courts. Additionally, the petition assails as well a resolution of the COMELEC *en banc* issued to implement the legislative apportionment that R.A. No. 9371 decrees. As an action against a COMELEC *en banc* resolution, the case falls under Rule 64 of the Rules of Court that in turn requires a review by this Court *via* a Rule 65 petition for *certiorari*.[16] For these reasons, we do not see the principle of hierarchy of courts to be a stumbling block in our consideration of the present case.

The Plebiscite Requirement.

The petitioner insists that R.A. No. 9371 converts and divides the City of Cagayan de Oro as a local government unit, and does not merely provide for the City's legislative apportionment. This argument essentially proceeds from a misunderstanding of the constitutional concepts of apportionment of legislative districts and division of local government units.

Legislative **apportionment** is defined by Black's Law Dictionary as *the determination of the number of representatives which a State, county or other subdivision may send to a legislative body.*[17] It is *the allocation of seats in a legislative body in proportion to the population; the drawing of voting district lines so as to equalize population and voting power among the districts.*[18] **Reapportionment**, on the other hand, is the *realignment or change in legislative districts brought about by changes in population and*

[15] *Santiago v. Guingona, Jr.*, G.R. No. 134577, November 18, 1998, 298 SCRA 756.

[16] See: *Bautista v. COMELEC*, G.R. Nos. 154796-97, October 23, 2003, 414 SCRA 299.

[17] Black's *Law Dictionary*, 5th Edition, p. 91.

[18] Clapp, James E., *Dictionary of Law* (2000), p. 33.

mandated by the constitutional requirement of equality of representation.[19]

Article VI (entitled Legislative Department) of the 1987 Constitution lays down the rules on legislative apportionment under its Section 5 which provides:

> Sec. 5(1). (1) The House of Representatives shall be composed of not more than two hundred fifty members unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional and sectoral parties or organizations.
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> (3) Each legislative district shall comprise, as far as practicable, continuous, 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.
>
> (4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

Separately from the legislative districts that legal apportionment or reapportionment speaks of, are the local government units (historically and generically referred to as "municipal corporations") that the Constitution itself classified into provinces, cities, municipalities and *barangays*.[20] In its strict and proper sense, a municipality has been defined as "a body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purpose of local government thereof."[21] The creation, division, merger, abolition or alteration of boundary of local government units, *i.e.*, of provinces, cities, municipalities,

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[19] Black's *Law Dictionary, supra* note 17, p. 1137.

[20] CONSTITUTION, Art. X, Sec. 1.

[21] Martin, *Public Corporations*, Revised 1983 Edition, p. 5.

and *barangays*, are covered by the Article on Local Government (Article X). Section 10 of this Article provides:

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

Under both Article VI, Section 5, and Article X, Section 10 of the Constitution, the authority to act has been vested in the Legislature. The Legislature undertakes the apportionment and reapportionment of legislative districts,[22] and likewise acts on local government units by setting the standards for their creation, division, merger, abolition and alteration of boundaries and by actually creating, dividing, merging, abolishing local government units and altering their boundaries through legislation. Other than this, not much commonality exists between the two provisions since they are inherently different although they interface and relate with one another.

The concern that leaps from the text of Article VI, Section 5 is political representation and the means to make a legislative district sufficiently represented so that the people can be effectively heard. As above stated, the aim of legislative apportionment is "to equalize population and voting power among districts."[23] Hence, emphasis is given to the number of people represented; the uniform and progressive ratio to be observed among the representative districts; and accessibility and commonality of interests in terms of each district being, as far as practicable, continuous, compact and adjacent territory. In terms of the people represented, every city with at least 250,000 people and every province (irrespective of population) is entitled to one representative. In this sense, legislative districts, on the one hand, and provinces and cities, on the other, relate and interface with each other. To ensure continued adherence to the required standards of apportionment, Section 5(4) specifically

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[22] Article VI, Section 5; *Montejo v. COMELEC*, 312 Phil. 492 (1995).

[23] *Supra* note 18.

mandates reapportionment as soon as the given standards are met.

In contrast with the equal representation objective of Article VI, Section 5, Article X, Section 10 expressly speaks of how local government units may be "created, divided, merged, abolished, or its boundary substantially altered." Its concern is the commencement, the termination, and the modification of local government units' corporate existence and territorial coverage; and it speaks of two specific standards that must be observed in implementing this concern, namely, the criteria established in the local government code and the approval by a majority of the votes cast in a plebiscite in the political units directly affected. Under the Local Government Code (R.A. No. 7160) passed in 1991, the criteria of income, population and land area are specified as verifiable indicators of viability and capacity to provide services.[24] The division or merger of existing units must comply with the same requirements (since a new local government unit will come into being), provided that a division shall not reduce the income, population, or land area of the unit affected to less than the minimum requirement prescribed in the Code.[25]

A pronounced distinction between Article VI, Section 5 and, Article X, Section 10 is on the requirement of a plebiscite. The Constitution and the Local Government Code expressly require a plebiscite to carry out any creation, division, merger, abolition or alteration of boundary of a local government unit.[26] *In contrast, no plebiscite requirement exists under the apportionment or reapportionment provision.* In *Tobias v. Abalos*,[27] a case

[24] Section 7, Local Government Code.

[25] CONSTITUTION, Art. X, Sec. 10.

[26] SEC. 10. Plebiscite Requirement. — No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Elections (Comelec) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

[27] G.R. No. 114783, December 8, 1994, 239 SCRA 106.

that arose from the division of the congressional district formerly covering San Juan and Mandaluyong into separate districts, we confirmed this distinction and the fact that no plebiscite is needed in a legislative reapportionment. The plebiscite issue came up because one was ordered and held for Mandaluyong in the course of its conversion into a highly urbanized city, while none was held for San Juan. In explaining why this happened, the Court ruled that no plebiscite was necessary for San Juan because the objective of the plebiscite was the conversion of Mandaluyong into a highly urbanized city as required by Article X, Section 10 the Local Government Code; the creation of a new legislative district only followed as a consequence. In other words, the apportionment alone and by itself did not call for a plebiscite, so that none was needed for San Juan where only a reapportionment took place.

The need for a plebiscite under Article X, Section 10 and the lack of requirement for one under Article VI, Section 5 can best be appreciated by a consideration of the historical roots of these two provisions, the nature of the concepts they embody as heretofore discussed, and their areas of application.

A Bit of History.

In *Macias v. COMELEC*,[28] we first jurisprudentially acknowledged the American roots of our apportionment provision, noting its roots from the Fourteenth Amendment[29] of the U.S. Constitution and from the constitutions of some American states. The Philippine Organic Act of 1902 created the Philippine Assembly,[30] the body that acted as the lower house of the bicameral legislature under the Americans, with the Philippine Commission acting as the upper house. While the members of the Philippine Commission were appointed by the U.S. President

[28] G.R. No. L-18684, September 14, 1961, 113 Phil. 1 (1961).

[29] The Fourteenth Amendment of the U.S. Constitution provides the basis for the requirement of an equitable apportionment scheme. See generally, *Colegrove v. Green*, 328 U.S. 549, cited in *Macias v. COMELEC*, *supra* note 28.

[30] *People v. Santiago*, 43 Phil. 120 (1922).

with the conformity of the U.S. Senate, the members of the Philippine Assembly were elected by representative districts previously delineated under the Philippine Organic Act of 1902 pursuant to the mandate to apportion the seats of the Philippine Assembly among the provinces as nearly as practicable according to population. Thus, legislative apportionment first started in our country.

The Jones Law or the Philippine Autonomy Act of 1916 maintained the apportionment provision, dividing the country into 12 senate districts and 90 representative districts electing one delegate each to the House of Representatives. Section 16 of the Act specifically vested the Philippine Legislature with the authority to redistrict the Philippine Islands.

Under the 1935 Constitution, Article VI, Section 5 retained the concept of legislative apportionment together with "district" as the basic unit of apportionment; the concern was "equality of representation . . . as an essential feature of republican institutions" as expressed in the leading case of *Macias v. COMELEC*.[31] The case ruled that inequality of representation is a justiciable, not a political issue, which ruling was reiterated in *Montejo v. COMELEC*.[32] Notably, no issue regarding the holding of a plebiscite ever came up in these cases and the others that followed, as no plebiscite was required.

Article VIII, Section 2 of the 1973 Constitution retained the concept of equal representation "in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio" with each district being, as far as practicable, contiguous, compact and adjacent territory. This formulation was essentially carried over to the 1987 Constitution, distinguished only from the previous one by the presence of party-list representatives. In neither Constitution was a plebiscite required.

The need for a plebiscite in the creation, division, merger, or abolition of local government units was not constitutionally

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[31] *Supra* note 28.

[32] G.R. No. 118702, March 16, 1995.

enshrined until the 1973 Constitution. However, as early as 1959, R.A. No. 2264[33] required, in the creation of barrios by Provincial Boards, that the creation and definition of boundaries be "*upon petition of a majority of the voters in the areas affected.*" In 1961, the Charter of the City of Caloocan (R.A. No. 3278) carried this further by requiring that the "*Act shall take effect after a majority of voters of the Municipality of Caloocan vote in favor of the conversion of their municipality into a city in a plebiscite.*" This was followed up to 1972 by other legislative enactments requiring a plebiscite as a condition for the creation and conversion of local government units as well as the transfer of *sitios* from one legislative unit to another.[34] In 1973, the plebiscite requirement was accorded constitutional status.

Under these separate historical tracks, it can be seen that the holding of a plebiscite was never a requirement in legislative apportionment or reapportionment. After it became constitutionally entrenched, a plebiscite was also always identified with the creation, division, merger, abolition and alteration of boundaries of local government units, never with the concept of legislative apportionment.

Nature and Areas of Application.

The **legislative district** that Article VI, Section 5 speaks of may, in a sense, be called a political unit because it is the basis for the election of a member of the House of Representatives and members of the local legislative body. It is not, however, a political subdivision through which functions of government are carried out. It can more appropriately be described as a *representative* unit that may or may not encompass the whole

[33] "An Act Amending the Laws Governing Local Governments by Increasing their Autonomy and Reorganizing Provincial Governments."

[34] A plebiscite was a *conditio sine qua non* in the creation of municipal corporations including, but not limited to, the following: 1) the City of Angeles, R.A. 3700; 2) the Municipality of Pio Duran in the Province of Albay, R.A. 3817; 3) the Provinces of Northern Samar, Eastern Samar and Western Samar, R.A. 4221; 4) the Provinces of Agusan del Norte and Agusan del Sur, R.A. 4979. The prior approval of a majority of the qualified voters of certain *sitios* of the Municipality of Anilao was also required before the transfer of the same *sitios* to the Municipality of Banate under R.A. 4614 took effect.

of a city or a province, but unlike the latter, it is not a corporate unit. Not being a corporate unit, a district does not act for and in behalf of the people comprising the district; it merely delineates the areas occupied by the people who will choose a representative in their national affairs. Unlike a province, which has a governor; a city or a municipality, which has a mayor; and a *barangay*, which has a *punong barangay*, a district does not have its own chief executive. The role of the congressman that it elects is to ensure that the voice of the people of the district is heard in Congress, not to oversee the affairs of the legislative district. Not being a corporate unit also signifies that it has no legal personality that must be created or dissolved and has no capacity to act. Hence, there is no need for any plebiscite in the creation, dissolution or any other similar action on a legislative district.

The local government units, on the other hand, are political and *corporate* units. They are the territorial and political subdivisions of the state.[35] They possess legal personality on the authority of the Constitution and by action of the Legislature. The Constitution defines them as entities that Congress can, by law, create, divide, abolish, merge; or whose boundaries can be altered based on standards again established by both the Constitution and the Legislature.[36] A local government unit's corporate existence begins upon the election and qualification of its chief executive and a majority of the members of its *Sanggunian*.[37]

As a political subdivision, a local government unit is an "instrumentality of the state in carrying out the functions of government."[38] As a corporate entity with a distinct and separate juridical personality from the State, it exercises special functions

[35] *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, G.R. No. 135962, March 27, 2000, 328 SCRA 836.

[36] CONSTITUTION, Article X, Secs. 3 and 10; Aquilino Pimentel, Jr., *The Local Government Code of 1991: The Key to National Development*, p. 5.

[37] Sec. 14, Local Government Code.

[38] *Lidasan v. Commission on Elections*, G.R. No. L-28089, October 25, 1967, 21 SCRA 496.

for the sole benefit of its constituents. It acts as "an agency of the community in the administration of local affairs"[39] and the mediums through which the people act in their corporate capacity on local concerns.[40] In light of these roles, the Constitution saw it fit to expressly secure the consent of the people affected by the creation, division, merger, abolition or alteration of boundaries of local government units through a plebiscite.

These considerations clearly show the distinctions between a legislative apportionment or reapportionment and the division of a local government unit. Historically and by its intrinsic nature, a legislative apportionment does not mean, *and does not even imply*, a division of a local government unit where the apportionment takes place. Thus, the plebiscite requirement that applies to the division of a province, city, municipality or *barangay* under the Local Government Code should not apply to and be a requisite for the validity of a legislative apportionment or reapportionment.

R.A. No. 9371 and COMELEC Res. No. 7837

R.A. No. 9371 is, on its face, purely and simply a reapportionment legislation passed in accordance with the authority granted to Congress under Article VI, Section 5(4) of the Constitution. Its core provision – Section 1 – provides:

> SECTION 1. Legislative Districts. — The lone legislative district of the City of Cagayan de Oro is hereby apportioned to commence in the next national elections after the effectivity of this Act. Henceforth, barangays Bonbon, Bayabas, Kauswagan, Carmen, Patag, Bulua, Iponan, Baikingon, San Simon, Pagatpat, Canitoan, Balulang,

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[39] *Ibid.*

[40] Section 15 of the Local Government Code provides: Political and Corporate Nature of Local Government Units. — Every local government unit 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.

Lumbia, Pagalungan, Tagpangi, Taglimao, Tuburan, Pigsag-an, Tumpagon, Bayanga, Mambuaya, Dansulihon, Tignapoloan and Bisigan shall comprise the first district while barangays Macabalan, Puntod, Consolacion, Camaman-an, Nazareth, Macansandig, Indahag, Lapasan, Gusa, Cugman, FS Catanico, Tablon, Agusan, Puerto, Bugo and Balubal and all urban barangays from Barangay 1 to Barangay 40 shall comprise the second district.

Under these wordings, no division of Cagayan de Oro City as a political and corporate entity takes place or is mandated. Cagayan de Oro City politically remains a single unit and its administration is not divided along territorial lines. Its territory remains completely whole and intact; there is only the addition of another legislative district and the delineation of the city into two districts for purposes of representation in the House of Representatives. Thus, Article X, Section 10 of the Constitution does not come into play and no plebiscite is necessary to validly apportion Cagayan de Oro City into two districts.

Admittedly, the legislative reapportionment carries effects beyond the creation of another congressional district in the city by providing, as reflected in COMELEC Resolution No. 7837, for additional *Sangguniang Panglunsod* seats to be voted for along the lines of the congressional apportionment made. The effect on the *Sangguniang Panglunsod*, however, is not directly traceable to R.A. No. 9371 but to another law – R.A. No. 6636[41] – whose Section 3 provides:

SECTION 3. Other Cities. — The provision of any law to the contrary notwithstanding the City of Cebu, City of Davao, and any other city with more than one representative district shall have eight (8) councilors for each district who shall be residents thereof to be elected by the qualified voters therein, provided that the cities of Cagayan de Oro, Zamboanga, Bacolod, Iloilo and other cities comprising a representative district shall have twelve (12) councilors each and all other cities shall have ten (10) councilors each to be elected at large by the qualified voters of the said cities: Provided, That in no case shall the present number of councilors according to their charters be reduced.

[41] Enacted into law on November 6, 1987.

However, neither does this law have the effect of dividing the City of Cagayan de Oro into two political and corporate units and territories. Rather than divide the city either territorially or as a corporate entity, the effect is merely to enhance voter representation by giving each city voter more and greater say, both in Congress and in the *Sangguniang Panglunsod*.

To illustrate this effect, before the reapportionment, Cagayan de Oro had only one congressman and 12 city council members citywide for its population of approximately 500,000.[42] By having two legislative districts, each of them with one congressman, Cagayan de Oro now effectively has two congressmen, each one representing 250,000 of the city's population. In terms of services for city residents, this easily means better access to their congressman since each one now services only 250,000 constituents as against the 500,000 he used to represent. The same goes true for the *Sangguniang Panglungsod* with its ranks increased from 12 to 16 since each legislative district now has 8 councilors. In representation terms, the fewer constituents represented translate to a greater voice for each individual city resident in Congress and in the *Sanggunian*; each congressman and each councilor represents both a smaller area and fewer constituents whose fewer numbers are now concentrated in each representative. The City, for its part, now has twice the number of congressmen speaking for it and voting in the halls of Congress. Since the total number of congressmen in the country has not increased to the point of doubling its numbers, the presence of two congressman (instead of one) from the same city cannot but be a quantitative and proportional improvement in the representation of Cagayan de Oro City in Congress.

Equality of representation.

The petitioner argues that the distribution of the legislative districts is unequal. District 1 has only 93,719 registered voters while District 2 has 127,071. District 1 is composed mostly of rural *barangays* while District 2 is composed mostly of urban

[42] As provided by COMELEC Res. No. 7801 that COMELEC Res. No. 7837 superseded.

barangays.[43] Thus, R.A. No. 9371 violates the principle of equality of representation.

A clarification must be made. The law clearly provides that the basis for districting shall be the *number of the inhabitants* of a city or a province, *not the number of registered voters* therein. We settled this very same question in *Herrera v. COMELEC*[44] when we interpreted a provision in R.A. No. 7166 and COMELEC Resolution No. 2313 that applied to the Province of Guimaras. We categorically ruled that the basis for districting is the number of inhabitants of the Province of Guimaras by municipality based on the official 1995 Census of Population as certified to by Tomas P. Africa, Administrator of the National Statistics Office.

The petitioner, unfortunately, did not provide information about the actual population of Cagayan de Oro City. However, we take judicial notice of the August 2007 census of the National Statistics Office which shows that *barangays* comprising Cagayan de Oro's first district have a total population of 254,644, while the second district has 299,322 residents. Undeniably, these figures show a disparity in the population sizes of the districts.[45] The Constitution, however, does not require mathematical exactitude or rigid equality as a standard in gauging equality of representation.[46] In fact, for cities, all it asks is that "*each city with a population of at*

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[43] *Rollo*, p. 71.

[44] G.R. No. 131499, November 17, 1999, 318 SCRA 337.

[45] Total Population by Province, City, Municipality and *Barangay*: as of August 1, 2007<http://www.census.gov.ph/data/sectordata/2007/region%2010.pdf>, last accessed November 5, 2008.

[46] Harlan, dissenting opinion in *Baker v. Carr*, 369 U.S. 186 citing *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 and *McGowan v. Maryland*, 366 U.S. 420, in which the Supreme Court ruled that the Equal Protection Clause does not demand of legislation "finicky or exact conformity to abstract correlation xxx. The Constitution is satisfied if a legislature responds to the practical living facts with which it deals. Through what precise points in a field of many competing pressures a legislature might most suitably have drawn its lines is not a question for judicial re-examination. It is enough to satisfy the Constitution that in drawing them the principle of reason has not been disregarded. And what degree of uniformity reason demands of a statute is, of course, a function of the complexity of the needs which the statute seeks to accommodate."

least two hundred fifty thousand shall have one representative," while ensuring representation for every province regardless of the size of its population. To ensure quality representation through commonality of interests and ease of access by the representative to the constituents, all that the Constitution requires is that every legislative district should comprise, *as far as practicable*, contiguous, compact, and adjacent territory. Thus, the Constitution leaves the local government units as they are found and does not require their division, merger or transfer to satisfy the numerical standard it imposes. Its requirements are satisfied despite some numerical disparity if the units are contiguous, compact and adjacent as far as practicable.

The petitioner's contention that there is a resulting inequality in the division of Cagayan de Oro City into two districts because the *barangays* in the first district are mostly rural *barangays* while the second district is mostly urban, is largely unsubstantiated. But even if backed up by proper proof, we cannot question the division on the basis of the difference in the *barangays*' levels of development or developmental focus as these are not part of the constitutional standards for legislative apportionment or reapportionment. What the components of the two districts of Cagayan de Oro would be is a matter for the lawmakers to determine as a matter of policy. In the absence of any grave abuse of discretion or violation of the established legal parameters, this Court cannot intrude into the wisdom of these policies.[47]

WHEREFORE, we hereby *DISMISS* the petition for lack of merit. Costs against the petitioner.

SO ORDERED.

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

Ynares-Santiago, J., on leave.

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[47] *Tobias v. Abalos*, G.R. No. 114783, December 8, 1994, 239 SCRA 106.

SECOND DIVISION

[G.R. No. 177931. December 8, 2008]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **DEANG MARKETING CORPORATION and BERLITA DEANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PERIOD FOR PLEADING; TIME TO ANSWER; REGLEMENTARY 15-DAY PERIOD AFTER SERVICE OF SUMMONS; EFFECT WHEN PETITIONER FILED A MOTION FOR EXTENSION 10 DAYS LATER. — Petitioner had, following the reglementary 15-day period after service of summons (unless a different period is fixed by the court), until **May 5, 2006** within which to file an Answer or appropriate pleading. It filed the Motion for Extension, however, via a private courier on May 14, 2006, which was received by the trial court on May 15, 2006 or ten days late. It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.

2. ID.; ID.; ID.; ID.; ID.; ERRONEOUS COMPUTATION IN CASE AT BAR IS DISREGARD OF THE RULES. — In requesting for a 30-day extension or until June 11, 2006 to file answer, petitioner apparently reckoned the date from which the extension would start on May 12, 2006, which was not the last day of the 15-day period sought to be extended, it being May 5, 2006. By computation, petitioner actually sought more than 30 days, contrary to the period of extension it purportedly requested. The counting of the period was erroneous, even if one uses the material dates alleged by petitioner. Petitioner clearly disregarded elementary rules and jurisprudence on the matter.

3. ID.; ID.; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS; FILING THROUGH PRIVATE COURIER IS NOT RECOGNIZED BY THE RULES; THE SAME NOT JUSTIFIED IN CASE AT BAR. — Petitioner served and filed the Motion for Extension through a private courier, LBC, a mode not recognized by the rules. Explanation for availing such mode was not stated in the Motion. The mode was, nonetheless, clearly unjustifiable, considering that (a) petitioner's handling counsel was based in nearby San Fernando; (b) postal registry service is, for lack of explanation to the contrary, available in Pampanga; (c) urgency is out of the equation because the official date of filing done via private messengerial service is the date of actual receipt of the court, and had the motion been personally filed the following day (May 15, 2006), it would have reached the court earlier. It thus shows that the mode was utilized to obscure any indication that the motion was filed out of time.

4. ID.; ID.; PRESCRIBED TIMES ARE MANDATORY, NOT TO BE EXCUSED BY THE MERE INVOCATION OF SUBSTANTIAL JUSTICE. — Rules of procedure, especially those prescribing the time within which certain acts must be done, have often been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules.

5. ID.; ID.; ID.; GOOD FAITH, NOT APPRECIATED. — Good faith is central to the concept of "excusable neglect" justifying failure to answer. An attempt to cover up the procedural lapses and obscure the technical imperfections negates good faith on the part of the party imploring the accommodating arm of the court. There is no arguing that all complaints of whatever nature can only be determined if the parties are heard. There is, however, a standing rule set in place for a declaration of default, in cases where there is no justification for the belated action, and there is showing that the defendant intended to delay the case. In this case, the party lackadaisically squandered its opportunity to file a responsive pleading and, worse, made deceptive moves in an obvious attempt to redeem itself. The Court is duty-bound to observe its rules and procedures and uphold the noble purpose behind their issuance. Rules are laid down for the

benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.

6. ID.; ID.; ID.; DEFENDANT IN DEFAULT; REMEDY AVAILABLE. — If petitioner is confident that the complaint lacks merit, then it need not worry because once the defendant is declared in default, the plaintiff is not automatically entitled to the relief prayed for. Favorable relief can be granted only after it has been ascertained that it is warranted by the evidence offered and the facts proven by the presenting party. In any event, petitioner, even if declared in default, is not deprived of his right to appeal the decision of the trial court.

VELASCO, JR., *J., dissenting opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; PERIOD FOR PLEADING; TIME TO ANSWER; REGLEMENTARY 15-DAY PERIOD AFTER SERVICE OF SUMMONS; COURT HAS DISCRETION TO ALLOW AN ANSWER FILED AFTER REQUIRED PERIOD. — The ruling in the main case turns on a technicality. It holds that petitioner, Philippine National Bank (PNB), failed to file an Answer within the reglementary period. The Order of the RTC granting an extension to file an Answer in favor of PNB is in accord with Section 11, Rule 11: *Extension of time to plead.* — Upon motion and on such terms as may be just, the court may extend the time to plead provided in these Rules. **The court may also, upon like terms, allow an answer or other pleading to be filed after the time fixed by these Rules.** Plainly the matter of admitting an answer filed beyond the reglementary period of fifteen (15) days is DISCRETIONARY on the trial court. Discretion is the power exercised by courts to determine questions arising in the trial of a case to which no rule of law is applicable but which, from their nature and circumstances of the case, are controlled by personal judgment and not by fixed rules of law. Discretion which a judge may exercise means sound discretion exercised, not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the judge's reason and conscience to just result.

2. ID.; ID.; TRIAL ON THE MERITS; NECESSITY THEREOF TO DETERMINE THE PRESENCE OF AGREEMENT, AS REQUIRED, TO A VALID *DACION EN PAGO*. — Case law provides that among the requisites of a valid dation in payment,

there must be an **agreement** between the creditor and debtor that the obligation is immediately extinguished by reason of the performance of a prestation different from that due. As aforementioned, the main issue is whether or not there is such an agreement to a *dacion en pago*. This can only be resolved by hearing the parties and allowing them to present evidence in a full-blown trial, for the law provides that "in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."

3. ID.; EVIDENCE; PAROL EVIDENCE, RULE AND EXCEPTION; IMPORTANCE THEREOF, ELUCIDATED IN CASE AT BAR. — It would be unfair and unjust to declare PNB in default and preclude it from presenting evidence on the import of the contract when it is respondents themselves who are the parties ascribing a different meaning to the written contract. When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. This rule, also known as the Parol evidence Rule, is the general rule. Stated otherwise, a written contract embodies the intention of the parties. To go beyond the four corners of the document is an exception to the general rule, such that a party may present evidence to modify, explain, or add to the terms of written agreement if the party puts in issue in the pleading the existence of other terms agreed to after the execution of the written agreement. To determine whether or not the terms of the agreement between the parties have been changed necessitates that before the court steps in, it must consider the intent of the parties and the surrounding reasons and circumstances bearing on the total import of their true intention. PNB's defense justifies a liberal application of the Rules for respondents seek in the RTC the reformation of the loan contract extended by PNB, alleging that there has been a *dacion en pago* agreement involving the amount of PhP 36,483,699.45. PNB vehemently denies any such reformation and asserts the primacy of its written Consolidation and Restructuring Agreement with the respondents. Respondents are claiming the exception to the parol evidence rule. Thus, the substantive issue revolves on the true agreement of the parties. This cannot be resolved without hearing both

of the parties to the contract. Based on the pleadings, PNB strongly asserts that the Consolidation and Restructuring Agreement is the true agreement between the parties. It is supported by the best evidence of the agreement, the written contract itself, while respondents' claim is anchored on evidence beyond the four corners of the written contract. For us to deprive PNB of the opportunity to refute the respondents' claim is not only unfair but also unjust.

4. ID.; CIVIL PROCEDURE; LIBERAL APPLICATION OF THE RULE; JUSTIFICATIONS. — There is a range of reasons which may provide justification for a court to resist a strict adherence to procedure, such as: (1) matters of life, liberty, honor, or property; (2) counsel's negligence without any participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby. The Rules is to be liberally construed in order to promote its objective of securing a just, speedy, and inexpensive disposition of the subject complaint, especially in this case where it can be conceded that petitioner's counsel, Atty. Elenita Quinsay, is guilty of gross negligence in handling PNB's case. The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice, but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice, have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. Circumspect leniency will give the appellant the fullest opportunity to establish the merits of the appellant's complaint rather than to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to aid the courts in the speedy, just, and inexpensive determination of the cases before them. Liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice.

5. LEGAL ETHICS; ATTORNEY-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTIONS. — As a general rule, the negligence of counsel binds the client, except in the following instances: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. In such cases, courts must step in and accord relief to a party-litigant. The gross negligence of petitioner's counsel amounted to an abandonment or total disregard of its case.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Morales Rojas and Risos-Vidal for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The Philippine National Bank (petitioner) assails the February 26, 2007 Decision[1] and the May 16, 2007 Resolution[2] of the Court of Appeals, which set aside the Orders of May 16, 2006 and August 9, 2006 of the Regional Trial Court (RTC) of Angeles City, Branch 57, and consequently declared petitioner in default.

Respondents Deang Marketing Corporation and Berlita Deang filed before the RTC of Angeles City a Complaint[3] against petitioner, docketed as Civil Case No. 12686, for reformation of contract and specific performance, claiming that a *dacion en pago* arrangement in the February 21, 2005 Consolidation and Restructuring Agreement[4] forged by them transformed

[1] *Rollo*, pp. 10-16, penned by Justice Juan Q. Enriquez, Jr. with Justices Vicente S.E. Veloso and Marlene Gonzales-Sison, concurring.

[2] *Id.* at 18-20, penned by Justice Juan Q. Enriquez, Jr. with Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring.

[3] *Id.* at 80-94.

[4] *Id.* at 70-75.

respondents' outstanding loan obligations into a 7-year term loan of ₱36,483,699.45.

Summons was served on petitioner on April 20, 2006.[5]

On May 15, 2006, respondents filed a Motion to Declare Defendant[-herein petitioner] in Default,[6] which they set for hearing on May 24, 2006. On even date, the trial court received petitioner's Motion for Extension of Time [30 days up to June 11, 2006] to File Answer[7] dated May 5, 2006.

The following day, May 16, 2006 or eight days prior to the slated hearing of respondents' Motion to Declare [Petitioner] in Default, the trial court issued an Order denying said motion and granting petitioner's Motion for Extension of Time to File Answer. To the trial court's Order respondents filed a Motion for Reconsideration.

In the meantime, petitioner filed its Answer to the Complaint on May 25, 2006.

The trial court, by Order of August 9, 2006,[8] denied respondents' Motion for Reconsideration of its May 16, 2006 Order denying their Motion to Declare petitioner in default and granting the latter's Motion for Extension.

Respondents subsequently assailed the trial court's Orders of May 16, 2006 and August 9, 2006 via *certiorari* to the Court of Appeals which, by the challenged Decision of February 26, 2007, annulled the trial court's orders, disposing as follows:

> WHEREFORE**,** premises considered, the petition is **GRANTED**. The Orders dated May 16, 2006 and August 9, 2006 issued by the Hon. Omar T. Viola are hereby **ANNULLED** and **SET ASIDE**. Accordingly, private respondent is declared **IN DEFAULT** and the Answer filed by private respondent is ordered **EXPUNGED** from the records of the case. The case is **REMANDED** to the Regional Trial Court, Branch 57, Angeles City, for further proceedings.

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[5] *Id.* at 217-218.

[6] *Id.* at 214-216.

[7] Records, Vol. 1, pp. 49-53.

[8] *Id.* at 138-141.

SO ORDERED.[9] (Emphasis in the original, underscoring supplied)

Petitioner's Motion for Reconsideration having been denied by Resolution of May 16, 2007, it filed the present Petition for Review (with Prayer for the Issuance of Temporary Restraining Order/ Preliminary Injunction) which ascribes error to the Court of Appeals in:

. . . DECLARING PNB IN DEFAULT AND ORDERING THAT THE ANSWER FILED IN THE RTC BE EXPUNGED FROM THE RECORDS OF THE CASE [AND]

. . . ANNULLING AND SETTING ASIDE THE ORDERS DATED MAY 16, 2006 AND AUGUST 9, 2006 OF THE RTC.[10]

The petition fails.

Petitioner's Motion for Extension of Time to File Answer was laden with glaring lapses.

Petitioner had, following the reglementary 15-day period after service of summons (unless a different period is fixed by the court),[11] until **May 5, 2006** within which to file an Answer or appropriate pleading. It filed the Motion for Extension, however, via a private courier on May 14, 2006, which was received by the trial court on May 15, 2006 or ten days late.

It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended.[12] The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it.[13] Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend.

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[9] *Rollo*, p. 16.

[10] *Id.* at 36.

[11] RULES OF COURT, Rule 11, Sec. 2; *vide* Rule 16, Sec. 1.

[12] *Vda. de Victoria v. Court of Appeals*, G.R. No. 147550, January 26, 2005, 449 SCRA 319, 320.

[13] *Vide Phil. Long Distance Telephone Co., Inc. v. Court of Appeals*, G.R. No. 57079, September 29, 1989, 178 SCRA 94, 95.

Petitioner was not candid enough to aver in the Motion for Extension that the period had lapsed, as it still toyed with the idea that it could get away with it. The allegations therein were crafted as if the said motion was timely filed. Notably, the May 16, 2006 Order expressed no inkling that the motion was filed out of time. The trial court either was deceived by or it casually disregarded the apparent falsity foisted by petitioner. Lest this Court be similarly deceived, it is imperative to carefully examine the facts.

By petitioner's allegation in its Motion for Extension, it received the summons on April 24, 2006. This is belied by the Process Server's Return, which indicates that petitioner received the summons on April 20, 2006. Petitioner's counsel was to later clarify that it was only on April 24, 2006 that she received copies of the summons and complaint which were faxed from petitioner's main office.

In requesting for a 30-day extension or until June 11, 2006 to file answer, petitioner apparently reckoned the date from which the extension would start on May 12, 2006, which was not the last day of the 15-day period sought to be extended, it being May 5, 2006. By computation, petitioner actually sought more than 30 days, contrary to the period of extension it purportedly requested. The counting of the period was erroneous, even if one uses the material dates alleged by petitioner.[14] Petitioner clearly disregarded elementary rules[15] and jurisprudence[16] on the matter.

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[14] Even if the original 15-day period to file pleading were to begin on April 24, 2006 in which case it would expire on May 9, 2006, the 30-day requested extension would be up to June 8, 2006, not June 11, 2006. The erroneously indicated due date presumes that the summons was received on April 27, 2006.

[15] A.M. No. 00-2-14-SC (February 29, 2000) which provides that any extension of time to file the required pleading should be counted from the expiration of the period.

[16] *Bernardo v. People*, G.R. No. 166980, April 3, 2007, 520 SCRA 332, 340 citing *Luz v. National Amnesty Commission*, G.R. No. 159708, September 24, 2004, 439 SCRA 111, which states that the extension should be tacked to the original period, to commence immediately after the expiration of such period. The court has **no discretion** to reckon the commencement of the extension from a date later than the expiration of such period, not even if the expiry date is a Saturday, Sunday, or a legal holiday.

The flaws in petitioner's moves/representations reinforce respondents' claim that the Motion for Extension was "cunningly" dated May 5, 2006 (the last day to file a responsive pleading) to make it appear that it was timely filed, although it was transmitted only on May 14, 2006. Petitioner's allegation that the Motion it filed was the one actually prepared and signed on May 5, 2006[17] contradicts its earlier claim in its Opposition to the Motion to Declare [It] in Default that "[s]hort of time in coming up with [herein petitioner's] Answer on April 28, 2006," its counsel caused to be prepared a Motion for Extension of Time to File Answer which was, however, misplaced, and upon discovery thereof "another motion for extension was immediately caused to be prepared and filed."[18]

More. Petitioner served and filed the Motion for Extension through a private courier, LBC, a mode not recognized by the rules.[19] Explanation for availing such mode was not stated in the Motion.[20] The mode was, nonetheless, clearly unjustifiable, considering that (a) petitioner's handling counsel was based in nearby San Fernando; (b) postal registry service is, for lack of explanation to the contrary, available in Pampanga;[21] (c) urgency is out of the equation because the official date of filing done via private messengerial service is the date of actual receipt of the court,[22] and had the motion been personally filed the

[17] CA *rollo*, p. 112.

[18] *Vide* Opposition to the Motion to Declare Defendant in Default, records, Vol. 1, p. 71.

[19] *Vide* RULES OF COURT, Rule 13, Secs. 3, 5 & 7.

[20] Records, Vol. 1, p. 51. The written explanation in the motion erroneously indicates that petitioner availed of the mode of "registered mail."

[21] While distance is an acceptable explanation why the motion was not served personally upon respondents' counsel in Pasig City, no credible justification has been offered as to why the motion was not instead served by registered mail.

[22] *Industrial Timber Corp. v. NLRC*, G.R. No. 111985, June 30, 1994, 233 SCRA 597, 602; *Bank of the Philippine Islands v. Far East Molasses Corp.*, G.R. No. 89125, July 2, 1991, 198 SCRA 689, 702.

following day (May 15, 2006), it would have reached the court earlier. It thus shows that the mode was utilized to obscure any indication that the motion was filed out of time.

In denying respondents' Motion for Reconsideration of its grant of petitioner's Motion for Extension, the trial court ruled that it was inclined to reconsider or lift an order of default.[23] By such ruling, the trial court preempted the dictates of orderly procedure by unduly anticipating and signifying a slant toward the remedies and arguments yet to be availed of and raised by petitioner.

Petitioner can not harp on *Indiana Aerospace University v. Comm. on Higher Educ.*[24] which it cites. In that case, the Answer had already been filed– albeit after the 15-day period, but before the defendants were declared in default. In the present case, had the hearing on the Motion to Declare Petitioner in Default pushed through on May 24, 2006, the trial court would have readily noticed that no Answer had yet been filed on said date, the Answer having been filed, as earlier stated, only on May 25, 2006.

Neither can petitioner harp on *Sps. Ampeloquio, Sr. v. Court of Appeals,*[25] for the Court therein held that it is within the discretion of the trial court to permit the filing of an answer even beyond the reglementary period, *provided that* there is justification for the belated action and there is no showing that the defendant intended to delay the case. Thus, in that case, the therein defendant-respondent deferred the submission of a prepared Answer as it awaited the trial court's resolution on its motion to dismiss, which resolution had, it turned out, been priorly issued, a copy of which was, however, mistakenly addressed to another counsel.

In the present case, no satisfactory reason was adduced to justify the tardiness of the Answer and no compelling reason

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[23] *Rollo*, p. 129.

[24] 408 Phil. 483 (2001).

[25] 389 Phil. 13 (2000).

was given to justify its admission. The intention to delay was rather obvious.

It is not amiss to mention at this juncture that the Court's attention has been drawn to the fact that petitioner's counsel even notarized the Verification of respondents' Complaint as well as the Corporate Secretary's Certificate as early as April 10, 2006. By such act, which is irregular, to say the least, petitioner's counsel was even made aware in advance of the impending filing of the case against her client-herein petitioner.

Moreover, petitioner's handling counsel belongs to its Legal Department which monitors its pending cases and oversees a network of lawyers.

On petitioner's counsel's belated and trite allegation of heavy volume of work which called for the filing of the Motion for Extension, nowhere is it therein claimed that there was heavy volume of work in other equally important cases.[26] With the implication that petitioner had been all the while preparing an Answer, it defies comprehension how petitioner still attributes the delay to "inadvertence," "honest oversight" and "simple remission" in its having allegedly misplaced the Motion for Extension.[27]

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[26] Records, Vol. 1, pp. 49-50.

[27] *Vide id.* at 70-71, 133; The November 29, 2006 Affidavit of Atty. Elenita G.C. Quinsay (*rollo*, pp. 97-98) reads:

x x x x x x x x x

5. That due to heavy volume of work *vis-à-vis* the need to coordinate with the PNB branch concerned regarding the history of the accounts, the undersigned found it imperative to ask for an extension of time to file answer, thus, she instructed her secretary to prepare a motion for Extension of time to file answer, intended to be filed in court before the reglementary period within which to file answer would elapsed;

6. The Motion was prepared earlier but due to the afore-stated stated reasons, the same was signed by the undersigned in the late hours of 5 May 2006, the last day of filing an answer;

7. That in order to expedite the mailing of the said Motion, undersigned volunteered to use her car in carrying the motion to the post office for mailing, however, the post office closed earlier than 5:00 PM, so undersigned has no recourse but to send it via LBC;

The Court thus finds petitioner's negligence inexcusable, as the circumstances behind and the reasons for the delay are detestable.

Rules of procedure, especially those prescribing the time within which certain acts must be done, have often been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules.[28]

Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.

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8. That on her way to the LBC, the motion placed at the dashboard of the car, slipped and fell off the dash board, together with the other records she is bringing along with her;

9. While driving, undersigned hastily picked up the Motion and inserted the same in one of the folders she is bringing along with records of Civil Case No. 12868;

10. When she reached the LBC Office, she did not notice the motion as it was inserted in a different folder, thus she inadvertently failed to include the motion among the pleadings that she sent via LBC;

x x x x x x x x x

The Court notes petitioner's allegation that it was not until May 14, 2006, a Sunday, when its counsel realized that the motion was not filed when her secretary asked from her the proof of service of the motion. (*vide CA rollo*, pp. 148-149).

[28] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000).

> Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.[29] (Underscoring supplied)

Given the foregoing circumstances, Justice Presbitero Velasco, Jr., in his Dissenting Opinion, still finds "exceptional circumstances" that warrant this Court to suspend its rules and accord liberality to petitioner, citing Section 11, Rule 11 of the Rules of Court, which reads:

> Upon motion and **on such terms as may be just**, the court may extend the time to plead provided in these Rules.
>
> The court may also, **upon like terms**, allow an answer or other pleading to be filed after the time fixed by these Rules. (Emphasis and underscoring supplied)

From the foregoing discussion, it is unimaginable how "such terms as may be just" may be applied in petitioner's favor. Under the stated premises, to grant the petition along the lines of liberality is to countenance the context of fibs and flaws.

Obviously grasping straws in its final pitch to win the court's leniency, petitioner employed a ploy to conceal not just the lapse of time but also the serious lapses of non-compliance with basic rules. The scheme insults the intelligence of the Court. While the Court frowns upon default judgments, it does not condone gross transgressions of the rules and perceptible vestiges of bad faith.

Good faith is central to the concept of "excusable neglect" justifying failure to answer.[30] An attempt to cover up the procedural lapses and obscure the technical imperfections negates

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[29] *Sebastian v. Hon. Morales*, 445 Phil. 595, 605 (2003).

[30] *Villareal v. CA*, 356 Phil. 826, 846 (1998).

good faith on the part of the party imploring the accommodating arm of the court.

In his Dissenting Opinion, Justice Velasco proffers that the complaint centers on the interpretation of a contract which can only be determined if the parties are heard in the course of trial.

There is no arguing that all complaints of whatever nature can only be determined if the parties are heard. There is, however, a standing rule set in place for a declaration of default, in cases where there is no justification for the belated action, and there is showing that the defendant intended to delay the case. In this case, the party lackadaisically squandered its opportunity to file a responsive pleading and, worse, made deceptive moves in an obvious attempt to redeem itself.

The Court is duty-bound to observe its rules and procedures and uphold the noble purpose behind their issuance. Rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.[31]

In preliminarily assessing the merits of the case, the Court is merely tasked to consider whether the reception of defendant's evidence would serve a practical purpose, considering that respondents had, during the pendency of the case, concluded the *ex-parte* presentation of evidence.[32]

Accordingly, after carefully reviewing petitioner's Answer and Pre-Trial Brief, the Court finds that to re-open the presentation of evidence just to ventilate the defense of mere denial – that there exists no *dacion en pago* –and to present the written agreement, the existence of which is already admitted by respondents, would serve no practical purpose.

If petitioner is confident that the complaint lacks merit, then it need not worry because once the defendant is declared in

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[31] *Far Corporation v. Magdaluyo,* G.R. No. 148739, November 19, 2004, 443 SCRA 218.

[32] *Vide* records, Vol. 2.

default, the plaintiff is not automatically entitled to the relief prayed for. Favorable relief can be granted only after it has been ascertained that it is warranted by the evidence offered and the facts proven by the presenting party.[33] In any event, petitioner, even if declared in default, is not deprived of his right to appeal the decision of the trial court.[34]

To emphasize, the case does not involve any outright deprivation of life, liberty or property. Contrary to what is being depicted, intimated or romanticized, petitioner does not stand to lose ₱36,483,699.45 regardless of the characterization of the commercial transaction entered into by the parties. The amount is secured by mortgages over prime real properties, which is precisely the subject of the alleged *dacion en pago*.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Quisumbing (Chairperson) and *Brion, JJ.,* concur.

Tinga, J., joins Justice Velasco's dissent.

Velasco, Jr., J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

I find attendant in the case at bar exceptional circumstances which far outweigh a strict application of the rules of procedure. These circumstances include the resulting injustice due to the gross negligence of petitioner's counsel, the considerable sum which is the object of the prestation involved, and the necessity of taking into account all relevant evidence, especially those of petitioner's, in order to ascertain the true intent of the parties to the contract. With all due respect, I submit that the petition should be granted for the following reasons:

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[33] *Gajudo v. Traders Royal Bank*, G.R. No. 151098, March 21, 2006, 485 SCRA 108.

[34] *Crisologo v. Globe Telecom, Inc.*, G.R. No. 167631, December 16, 2005, 478 SCRA 433.

1. **The Court under Sec. 11, Rule 11 has the discretion to allow an answer filed after the time fixed by the Rules.**

The ruling in the main case turns on a technicality. It holds that petitioner, Philippine National Bank (PNB), failed to file an Answer within the reglementary period. The facts, as found by the majority, are as follows:

Respondents Deang Marketing Corporation and Berlita Deang filed before the Regional Trial Court (RTC) in Angeles City a complaint for reformation of contract and specific performance, claiming that a *dacion en pago* arrangement with PNB altered their outstanding loan obligations into a seven-year term loan in the amount of PhP 36,483,699.45.

The Process Server's Return shows that PNB was served with summons on April 20, 2006[1] through PNB's Chief Legal Counsel in Pasay City. The PNB Branch concerned, PNB San Fernando City, Pampanga, claimed that it received the summons from its head office only on April 24, 2006.

Counting from April 20, 2006, PNB had 15 days, or until May 5, 2006, within which to file an Answer. PNB, however, filed a Motion for Extension of Time to File an Answer only on May 15, 2006. This was granted by the RTC, thereby giving PNB until June 11, 2006 to file an Answer. PNB filed its Answer on May 25, 2006. Even if the original 15-day period to file an Answer is reckoned from April 20, 2006 and the said period was extended up to June 4, 2006, the filing of the answer on May 25, 2006 can be considered as within the extended period of 30 days in the higher interests of justice.

On May 15, 2006, respondents filed a Motion to Declare PNB in Default. On the same date, the RTC received PNB's Motion for Extension of Time to File an Answer. The next day, or on May 16, 2006, the RTC issued an Order denying the Motion to Declare PNB in Default and granting a 30-day extension of time to file an Answer in favor of PNB. The Order of the

[1] Records, Vol. 1, pp. 49-53.

RTC granting an extension to file an Answer in favor of PNB is in accord with Section 11, Rule 11:

Extension of time to plead. — Upon motion and on such terms as may be just, the court may extend the time to plead provided in these Rules.

The court may also, upon like terms, allow an answer or other pleading to be filed after the time fixed by these Rules. (Emphasis supplied.)

Plainly the matter of admitting an answer filed beyond the reglementary period of fifteen (15) days is DISCRETIONARY on the trial court. Discretion is the power exercised by courts to determine questions arising in the trial of a case to which no rule of law is applicable but which, from their nature and circumstances of the case, are controlled by personal judgment and not by fixed rules of law.[2] Discretion which a judge may exercise means sound discretion exercised, not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law, and directed by the judge's reason and conscience to just result.[3]

In its Order of August 9, 2006, the RTC stood by its Order of May 16, 2006 and reasoned that "it would be best if this case will go to trial on the merits rather than ruling in favor of plaintiffs in declaring PNB in default. The Court still believes that its Order serves not the parties, but the ends of justice."[4] The RTC itself saw the need for the subject of the complaint to be exhaustively weighed and discussed, which is related to the second reason for my dissent. Under the circumstances, it is not difficult to say that the trial court acted properly and fairly in allowing the tardy filing of PNB's answer especially considering that a decision has not yet been rendered in the case. To allow the answer and to afford PNB the opportunity to adduce evidence is but in keeping with the norms of fair play. It will grant said party a sporting chance to convince the

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[2] *Gregorio Araneta, Inc. v. Rodas,* 81 Phil. 506 (1948).

[3] *People v. Quibate,* 131 SCRA 96, Dissent (1984).

[4] *Rollo,* pp. 129-130.

court of its proposition. There is nothing arbitrary nor whimsical in the challenged order.

2. **The complaint centers on the interpretation of a contract, which can only be determined if the parties are heard in the course of trial.**

Respondents seek in the RTC the reformation of the loan contract extended by PNB, alleging that there has been a *dacion en pago* agreement involving the amount of PhP 36,483,699.45. PNB refutes this.[5] It claims that after the Consolidation and Restructuring Agreement was signed between the parties, respondents offered in a letter the possibility of turning the agreement into a *dacion en pago*, but no such new agreement was entered into.

Even respondents admit that its claim of *dacion en pago* was not expressed in its written agreement with PNB.[6] Thus, the substantive issue is, what was the true agreement of the parties?

Case law provides that among the requisites of a valid dation in payment, there must be an **agreement** between the creditor and debtor that the obligation is immediately extinguished by reason of the performance of a prestation different from that due.[7] As aforementioned, the main issue is whether or not there is such an agreement to a *dacion en pago*. This can only be resolved by hearing the parties and allowing them to present evidence in a full-blown trial, for the law provides that "in order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."[8]

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[5] *Id.* at 100.

[6] *Id*. at 81.

[7] *Caltex v. Intermediate Appellate Court*, 215 SCRA 580 (1992). The other two requisites are as folllows: (1) There must be the performance of the prestation in lieu of payment (*animo solvendi*) which may consist in the delivery of a corporeal thing or a real right or a credit against the third person; and (2) There must be some difference between the prestation due and that which is given in the substitution (*aliud pro alio*).

[8] Art. 1253, Republic Act No. 386: *An Act to Ordain and Institute the Civil Code of the Philippines* (1950).

It would be unfair and unjust to declare PNB in default and preclude it from presenting evidence on the import of the contract when it is respondents themselves who are the parties ascribing a different meaning to the written contract. When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.[9] This rule, also known as the Parol evidence Rule, is the general rule. Stated otherwise, a written contract embodies the intention of the parties. To go beyond the four corners of the document is an exception to the general rule, such that a party may present evidence to modify, explain, or add to the terms of written agreement if the party puts in issue in the pleading the existence of other terms agreed to after the execution of the written agreement. To determine whether or not the terms of the agreement between the parties have been changed necessitates that before the court steps in, it must consider the intent of the parties and the surrounding reasons and circumstances bearing on the total import of their true intention.

3. **The Rules of Court should be given a liberal construction in this case for two compelling reasons, namely: (a) the gross negligence of PNB's counsel led to PNB's grave prejudice; and (b) PNB's cause appears to be meritorious.**

Gross Negligence of PNB's Counsel

There is a range of reasons which may provide justification for a court to resist a strict adherence to procedure, such as: (1) matters of life, liberty, honor, or property; (2) counsel's negligence without any participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory;

[9] REVISED RULES ON EVIDENCE, Rule 130, Sec. 9.

and (7) the other party will not be unjustly prejudiced thereby.[10] The Rules is to be liberally construed in order to promote its objective of securing a just, speedy, and inexpensive disposition[11] of the subject complaint, especially in this case where it can be conceded that petitioner's counsel, Atty. Elenita Quinsay, is guilty of gross negligence in handling PNB's case.

After the summons was received by PNB San Fernando City from its main office on April 20, 2006, Atty. Quinsay failed to act on it immediately. The confusion on which reglementary period to reckon the extension from was caused by her claim of receiving the summons on April 24 from the PNB main branch. She should have known that April 20 was the official date of receipt of her client of the summons. She should then have acted accordingly. These acts of negligence have led to the prejudice of PNB.

As a general rule, the negligence of counsel binds the client, except in the following instances: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. In such cases, courts must step in and accord relief to a party-litigant.[12] The gross negligence of petitioner's counsel amounted to an abandonment or total disregard of its case.

The Court noted that respondents had, during the pendency of this case, concluded the *ex-parte* presentation of evidence.[13] Since there is no decision rendered yet in the first instance, there is no prejudice that would result on the part of respondents should PNB be allowed to adduce evidence on its behalf.

PNB's Defense Necessitates Presentation of Evidence

PNB's defense justifies a liberal application of the Rules for respondents seek in the RTC the reformation of the loan contract extended by PNB, alleging that there has been a *dacion en pago*

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[10] *Baylon v. Fact-Finding Intelligence Bureau,* 394 SCRA 21, 31 (2002).

[11] 1997 RULES OF CIVIL PROCEDURE, Sec. 6.

[12] *Callagan v. People,* G.R. No. 153414, June 27, 2006.

[13] Footnote 25 of the *Ponencia*.

agreement involving the amount of PhP36,483,699.45. PNB vehemently denies any such reformation and asserts the primacy of its written Consolidation and Restructuring Agreement with the respondents. Respondents are claiming the exception to the parol evidence rule.[14] Thus, the substantive issue revolves on the true agreement of the parties. This cannot be resolved without hearing both of the parties to the contract. Based on the pleadings, PNB strongly asserts that the Consolidation and Restructuring Agreement is the true agreement between the parties. It is supported by the best evidence of the agreement, the written contract itself, while respondents' claim is anchored on evidence beyond the four corners of the written contract. For us to deprive PNB of the opportunity to refute the respondents' claim is not only unfair but also unjust.

The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice, but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice, have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around.[15] Circumspect leniency will give the appellant the fullest opportunity to establish the merits of the appellant's complaint rather than to lose life, liberty, honor, or property on technicalities.[16] The rules of procedure should be viewed as mere tools designed to aid the courts in the speedy, just, and inexpensive determination of the cases before them. Liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice.[17]

In light of the foregoing reasons, I vote to **GRANT** the petition.

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[14] *Supra* note 8.

[15] *Heirs of Spouses Eugenio Natonton and Regina Arcilla v. Spouses Eulogio and Lily Magaway*, 486 SCRA 199 (2006).

[16] *Jaro v. Court of Appeals*, 427 Phil. 532, 536 (2002).

[17] *Sanchez v. Court of Appeals*, 452 Phil, 665, 673 (2003).

EN BANC

[G.R. No. 181644. December 8, 2008]

HERMILINA N. ABAINZA, *petitioner, vs.* **ERNESTO ARELLANO and COMMISSION ON ELECTIONS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMELEC; POWERS. — The COMELEC is empowered by the Constitution to enforce and administer all laws and regulations relative to the conduct of an election. It exercises exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials. In relation thereto, it is empowered to promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies.

2. ID.; ID.; ID.; ID.; COMELEC RULES OF PROCEDURE; PRE-PROCLAMATION CONTROVERSIES FILED DIRECTLY WITH THE COMMISSION; INCLUDES ISSUES ON CORRECTION OF MANIFEST ERRORS IN RESULTS TABULATION DURING CANVASSING EVEN AFTER PROCLAMATION OF WINNER. — Section 5, Rule 27 of the COMELEC Rules of Procedure provides: **Sec. 5**. ***Pre-proclamation Controversies Which May Be Filed Directly With the Commission.* — (a) The following pre-proclamation controversies may be filed directly with the Commission:** x x x 2) **When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where** (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, **(3) there has been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass,** or (4) so-called returns from non-existent precincts were included in the canvass, **and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the**

winning candidates had already been made. Under this rule, correction of manifest errors in the tabulation or tallying of results during the canvassing may be filed directly with the Commission, even after a proclamation of the winning candidates. In the instant case, the proclamation of petitioner as councilor of the Municipality of Jovellar, Albay, was due to a manifest error when what was entered in the election return was 14 instead of 114 as the number of votes obtained by private respondent. Despite the proclamation of the winning candidates, the COMELEC still has jurisdiction to correct manifest errors in the election returns for the *Sangguniang Bayan* candidates. Section 7 of the COMELEC Rules of Procedure provides for the correction of errors in tabulation or tallying of results by the Board of Canvassers, *viz*.: ***Sec. 7. Correction of Errors in Tabulation or Tallying of Results by the Board of Canvassers.*** — **(a) Where it is clearly shown before proclamation that manifest errors were committed in the tabulation or tallying of election returns, or certificates of canvass, during the canvassing as where** (1) a copy of the election returns of one precinct or two or more copies of a certificate of canvass were tabulated more than once, (2) two copies of the election returns or certificate of canvass were tabulated separately, **(3) there was a mistake in the adding or copying of the figures into the certificate of canvass or into the statement of votes by precinct,** or (4) so-called election returns from non-existent precincts were included in the canvass, the board may *motu proprio*, or upon verified petition by any candidate, political party, organization or coalition or political parties, after due notice and hearing, correct the errors committed. It is true that this provision deals with pre-proclamation controversies. However, it has also been held applicable to cases when a proclamation had already been made, where the validity of the candidate's proclamation was precisely in question. After all, the election returns that are later on reflected in the statement of votes form the basis of the certificate of canvass and of the proclamation. Any error in the election returns ultimately affects the validity of the proclamation.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; "MANIFEST ERROR," ELUCIDATED. — A "manifest error" is one that is visible to the eye or obvious to the understanding; that which is open, palpable, incontrovertible, needing no evidence to make it more clear. As stated in the assailed Resolution of the COMELEC, the error in the entry in the election return is very evident to the eye, needing

no evidence to make it clear. Petitioner's proclamation, and eventual assumption of office, was predicated on a clerical and "manifest" error, not on the legitimate will of the electorate.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; WITH MANIFEST ERROR, THERE WAS NO VALID PROCLAMATION AND COMELEC CAN ANNUL THE SAME. — With the finding by the COMELEC of a manifest error in Election Return No. 2900930 from Clustered Precinct Nos. 46-A/47-A, petitioner's proclamation was, therefore, flawed from the very beginning. It was not a valid proclamation. And when a proclamation is null and void, the proclamation is no proclamation at all; thus, the proclaimed candidate's assumption of office cannot deprive the COMELEC of the power to declare such nullity and annul the proclamation.

5. ID.; ID.; ID.; ID.; ID.; ID.; ID.; FILING PERIOD IS NOT LATER THAN FIVE (5) DAYS FROM DATE OF PROCLAMATION; LIBERAL APPLICATION OF THE RULE ALLOWED AT THE DISCRETION OF THE COMELEC. — Under Section 5 (b), Rule 27 of the COMELEC Rules of Procedure, petitions for correction of manifest errors before the Commission must be filed not later than five (5) days following the date of proclamation. Indeed, private respondent failed to file his petition for manifest error on time. Nonetheless, the COMELEC committed no reversible error in granting his petition. Sections 3 and 4 of Rule 1 of the COMELEC Rules of Procedure provides: Sec. 3. *Construction.* — These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission. Sec. 4. *Suspension of the Rules*. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission. Clearly, then, the COMELEC has the discretion to construe its rules liberally and, at the same time, suspend the rules or any portion thereof in the interest of justice. That is what the COMELEC has done in this case. We have consistently held that election laws should be construed liberally to give effect to the popular will, without resort to technicalities. The court frowns upon any interpretation of election laws that would hinder in any way not only the

free and intelligent casting of votes in an election but also the correct ascertainment of the results.

APPEARANCES OF COUNSEL

Expedito P. Nebres for petitioner.
The Solicitor General for public respondent.
Sabio & Pelaez Law Office for private respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for *certiorari*[1] assailing the Resolutions of the Commission on Elections (COMELEC) dated September 3, 2007 and January 30, 2008, respectively.

The Facts

Private respondent Ernesto C. Arellano and petitioner Hermilina N. Abainza were among the candidates for the position of member of the *Sangguniang Bayan* of Jovellar, Albay, in the May 14, 2007 synchronized national and local elections.

On May 15, 2007, the Municipal Board of Canvassers proclaimed the following as the duly elected members of the *Sangguniang Bayan*:

Winning Candidates	Votes Obtained
1. Mirabete, Moises	4,111
2. Vibar, Eddie Ll.	3,604
3. Quirona, Felipe M.	3,589
4. Nobleza, Jose Jr. A.	3,414
5. Romualdo, Victor M.	3,119
6. Millano, Precioso O.	3,107
7. Lovendino, Wiro A.	3,018
8. Abainza, Hermelina N.	3,014

[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

Private respondent received 2,983 votes and held the 9th spot.

On May 21, 2007, private respondent filed a petition for correction of the number of votes in Clustered Precinct Nos. 46-A/47-A due to erroneous tally. Meanwhile, on June 29, 2007, petitioner took her oath of office.

On September 3, 2007, the COMELEC 1st Division rendered a Resolution[2] annulling the proclamation of petitioner as councilor of the Municipality of Jovellar, Albay, due to erroneous tally of votes. Election Return No. 2900930 from Clustered Precinct Nos. 46-A/47-A showed a tally of one hundred fourteen (114) votes in favor of private respondent but indicated a corresponding total in words and figures of only fourteen (14) votes. The said election return was counterchecked with the copy of the Election Records and Statistical Division, and the members of the Board of Election Inspectors executed an affidavit admitting the clerical error in the canvass of votes.

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[2] Penned by Commissioner Romeo A. Brawner, with Presiding Commissioner Resurrection Z. Borra, concurring; *rollo*, pp. 19-25.

The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Commission (First Division) hereby **AFFIRMS** the proclamation of LOVINDINO WIRO as a winning candidate for the position of member of the Sangguniang Bayan of Jovellar, Albay, **SAVE** the indication in the Certificate of Canvass Votes and Proclamation of the Winning Candidates for the Municipal Offices of the same municipality that he garnered the seventh highest number of votes.

The proclamation of HERMILINA N. ABAINZA as a winning candidate for the same position is hereby **ANNULLED,** the same being based on an erroneous tally.

The Municipal Board of Canvassers of Jovellar, Albay is hereby **DIRECTED** to **RECONVENE** within five (5) days after this Resolution shall have become final and, after notice to the parties and hearing in accordance with Rule 27, Section 7 of the Commission on Elections Rules of Procedure, to effect the necessary corrections, if any, in Election Return No. 2900930 for Clustered Precinct Nos. 46-A/47-A and, based on the amended results, proclaim the winning candidates for the seventh and eighth slots for members of the *Sangguniang Bayan* of Jovellar, Albay.

SO ORDERED.

Petitioner filed a motion for reconsideration. However, the COMELEC *en banc* denied the same in a Resolution[3] dated January 30, 2008.

Hence, this petition.

The Issues

Petitioner raised the following issues for resolution, *viz.*:

(1) Whether the COMELEC has original jurisdiction over the petition for correction of manifest error;[4] and

(2) Whether the COMELEC erred in granting the petition for correction of manifest error which was in the nature of a pre-proclamation controversy despite the proclamation and oath by petitioner as elected councilor.[5]

The Ruling of the Court

We resolve to dismiss the petition on the following grounds:

First, the COMELEC is empowered by the Constitution to enforce and administer all laws and regulations relative to the conduct of an election.[6] It exercises exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials.[7] In relation thereto, it is empowered to promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies.[8]

Section 5, Rule 27 of the COMELEC Rules of Procedure provides:

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[3] *Rollo*, pp. 30-34.

[4] *Id*. at 8.

[5] *Id*.

[6] CONSTITUTION, Article IX(C), Section 2(1).

[7] CONSTITUTION, Article IX(C), Section 2(2).

[8] CONSTITUTION, Article IX(C), Section 3.

Sec. 5. ***Pre-proclamation Controversies Which May Be Filed Directly With the Commission.*** **— (a) The following pre-proclamation controversies may be filed directly with the Commission:**

x x x x x x x x x

2) **When the issue involves the correction of manifest errors in the tabulation or tallying of the results during the canvassing as where** (1) a copy of the election returns or certificate of canvass was tabulated more than once, (2) two or more copies of the election returns of one precinct, or two or more copies of certificate of canvass were tabulated separately, **(3) there has been a mistake in the copying of the figures into the statement of votes or into the certificate of canvass,** or (4) so-called returns from non-existent precincts were included in the canvass, **and such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidates had already been made.**[9]

Under this rule, correction of manifest errors in the tabulation or tallying of results during the canvassing may be filed directly with the Commission, even after a proclamation of the winning candidates. In the instant case, the proclamation of petitioner as councilor of the Municipality of Jovellar, Albay, was due to a manifest error when what was entered in the election return was 14 instead of 114 as the number of votes obtained by private respondent.

A "manifest error" is one that is visible to the eye or obvious to the understanding; that which is open, palpable, incontrovertible, needing no evidence to make it more clear.[10] As stated in the assailed Resolution of the COMELEC, the error in the entry in the election return is very evident to the eye, needing no evidence to make it clear. Petitioner's proclamation, and eventual assumption of office, was predicated on a clerical and "manifest" error, not on the legitimate will of the electorate.

Despite the proclamation of the winning candidates, the COMELEC still has jurisdiction to correct manifest errors in the election returns for the *Sangguniang Bayan* candidates.

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[9] Emphasis supplied.

[10] *O'Hara v. COMELEC*, 428 Phil. 1051 (2002).

Section 7 of the COMELEC Rules of Procedure provides for the correction of errors in tabulation or tallying of results by the Board of Canvassers, *viz*.:

Sec. 7. ***Correction of Errors in Tabulation or Tallying of Results by the Board of Canvassers.*** **- (a) Where it is clearly shown before proclamation that manifest errors were committed in the tabulation or tallying of election returns, or certificates of canvass, during the canvassing as where** (1) a copy of the election returns of one precinct or two or more copies of a certificate of canvass were tabulated more than once, (2) two copies of the election returns or certificate of canvass were tabulated separately, **(3) there was a mistake in the adding or copying of the figures into the certificate of canvass or into the statement of votes by precinct**, or (4) so-called election returns from non-existent precincts were included in the canvass, the board may *motu proprio*, or upon verified petition by any candidate, political party, organization or coalition or political parties, after due notice and hearing, correct the errors committed.[11]

It is true that this provision deals with pre-proclamation controversies. However, it has also been held applicable to cases when a proclamation had already been made, where the validity of the candidate's proclamation was precisely in question.[12] After all, the election returns that are later on reflected in the statement of votes form the basis of the certificate of canvass and of the proclamation. Any error in the election returns ultimately affects the validity of the proclamation.

With the finding by the COMELEC of a manifest error in Election Return No. 2900930 from Clustered Precinct Nos. 46-A/47-A, petitioner's proclamation was, therefore, flawed from the very beginning. It was not a valid proclamation. And when a proclamation is null and void, the proclamation is no proclamation at all; thus, the proclaimed candidate's assumption of office cannot deprive

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[11] Emphasis supplied.

[12] *Cumigad v. COMELEC*, G.R. No. 167314, March 20, 2007, 518 SCRA 562, citing *Torres v. COMELEC*, 337 Phil. 363, 250 SCRA 298 (1995) and *Castromayor v. COMELEC*, 320 Phil. 363, 250 SCRA 298 (1995).

the COMELEC of the power to declare such nullity and annul the proclamation.[13]

In *Duremdes v. Commission on Elections*,[14] it was Duremdes' submission that his proclamation could not be declared null and void because a pre-proclamation controversy was not proper after a proclamation had been made, the proper recourse being an election protest. However, the Court ruled that Duremdes' contention was proper only if there had been a valid proclamation.

Second, petitioner maintains that private respondent should have filed a pre-proclamation controversy before the Municipal Board of Canvassers of Jovellar, Albay, during the canvassing and not with the COMELEC eight (8) days after her proclamation.[15]

Under Section 5(b), Rule 27 of the COMELEC Rules of Procedure, petitions for correction of manifest errors before the Commission must be filed not later than five (5) days following the date of proclamation. Indeed, private respondent failed to file his petition for manifest error on time. Nonetheless, the COMELEC committed no reversible error in granting his petition. Sections 3 and 4 of Rule 1 of the COMELEC Rules of Procedure provides:

> Sec. 3. *Construction.* — These rules shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.
>
> Sec. 4. *Suspension of the Rules*. — In the interest of justice and in order to obtain speedy disposition of all matters pending before

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[13] *Suliguin v. COMELEC,* G.R. No. 166046, March 23, 2006, 485 SCRA 227; *Duremdes v. COMELEC*, G.R. Nos. 86362-63, October 27, 1989, 178 SCRA 746.

[14] *Suliguin v. COMELEC, supra*; *Duremdes v. COMELEC, supra*.

[15] Petition for *Certiorari*, *rollo,* p. 13.

the Commission, these rules or any portion thereof may be suspended by the Commission.

Clearly, then, the COMELEC has the discretion to construe its rules liberally and, at the same time, suspend the rules or any portion thereof in the interest of justice.[16] That is what the COMELEC has done in this case.

We have consistently held that election laws should be construed liberally to give effect to the popular will, without resort to technicalities. The court frowns upon any interpretation of election laws that would hinder in any way not only the free and intelligent casting of votes in an election but also the correct ascertainment of the results.[17]

In the instant case, petitioner does not dispute the finding of the COMELEC on the error in the total number of votes reflected in the election return. Petitioner raises only purely technical objections. Considering that the will of the electorate is of paramount importance and should be upheld, technicalities must yield.

WHEREFORE, in view of the foregoing, the petition is *DISMISSED* for lack of merit.

SO ORDERED.

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

Leonardo-de Castro, J., on leave.

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[16] *Suliguin v. COMELEC, supra* note 13.

[17] *Cumigad v. COMELEC, supra* note 12.

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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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