
# PHILIPPINE REPORTS

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**VOLUME 601**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

MARCH 19, 2009 TO APRIL 1, 2009

SUPREME COURT
MANILA
2013

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2013


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# REPORT OF CASES

**DETERMINED IN THE**

## SUPREME COURT OF THE PHILIPPINES

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**SECOND DIVISION**

[A.M. No. MTJ-08-1715. March 19, 2009]
(Formerly A.M. OCA IPI No. 08-2037-MTJ)

**RODOLFO R. MAGO,** *complainant, vs.* **JUDGE AUREA G. PEÑALOSA-FERMO, MTC, LABO, CAMARINES NORTE,** *respondent.*

**SYLLABUS**

**POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; GROSS IGNORANCE OF THE LAW; RESPONDENT JUDGE'S DELEGATION OF THE EXAMINATION TO THE STENOGRAPHER, AND WORSE, ALLOWING THE WITNESSES TO READ/STUDY THE QUESTIONS PROPOUNDED AND TO WRITE THEIR ANSWERS THERETO, BETRAYED HER LACK OF KNOWLEDGE OF PROCEDURE. —** Prior to the amendment on October 3, 2005 of Rules 112 and 114 of the Rules of Court via A.M. No. 05-8-26-SC, *Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts*, judges of municipal trial courts were empowered to conduct preliminary investigations in which they exercised discretion in determining whether there was probable cause to hale the respondent into court. Such being the case, they could not delegate the discretion to another. An officer to whom a discretion is entrusted cannot delegate

> it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another. In those cases in which the proper execution of the office requires on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another. Then, as now, a personal examination of the complainant in a criminal case and his witness/es was required. Thus, under Section 4, Rule 112 of the Revised Rules of Court before its amendment, the "investigating fiscal" was required to "certify under oath that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses…" By respondent's delegation of the examination of the sheriff-complainant in the grave threats case to the stenographer, and worse, by allowing the witnesses to "read/study the [written] question[s]" to be propounded to them and to "write their answers [thereto]" upon respondent's justification that the scheme was for the convenience of the stenographers, respondent betrayed her lack of knowledge of procedure, thereby contributing to the erosion of public confidence in the judicial system.

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

**CARPIO MORALES, *J.*:**

Rodolfo R. Mago (complainant) filed before the Municipal Trial Court (MTC) of Labo, Camarines Norte a complaint for grave coercion against Sheriff Alex Rodolfo Angeles (of the Department of Agrarian Reform Adjudication Board [DARAB]), *et al.* The case was docketed as Criminal Case No. 04-7800.

Sheriff Angeles filed a counter-charge for grave threats against complainant and his sons, docketed as Criminal Case No. 04-7811.

Alleging that Presiding Judge of the MTC Labo, Camarines Sur Judge Aurea G. Peñalosa-Fermo (respondent) committed

gross ignorance of the law and bias in the disposition of his complaint and of the counter-charge against him, complainant filed the present administrative complaint, the details of which were summarized by the Office of the Court Administrator (OCA) as follows:[1]

Mr. Mago claims that on April 21, 2004 he filed a complaint for Grave Coercion against Department of Agrarian Reform Adjudication Board (DARAB for brevity) Sheriff Alex Roberto Angeles which was docketed as **Criminal Case No. 04-7800**. However, instead of summoning the accused for a "Preliminary Investigation", he received a complaint charging him and his two (2) sons with Grave Threats [which was docketed as **Criminal Case No. 04-7811**]. He stresses the complaint against him as purely fabricated. He states that the complainant in the said case was not DARAB Sheriff Angeles. He avers that the affidavits of the witnesses in the said case could not be found in the records of the Municipal Trial Court (MTC). Complainant further declares that on July 20, 2004, he received a subpoena to attend the preliminary investigation of Criminal Case No. 04-7811. In compliance, he and his witnesses attended, and even without the assistance of counsel, they were examined through a prepared set of questions handed to them by the stenographer. The respondent judge was not present then. The complainant also states that right after the preliminary investigation, he was immediately arrested and was imprisoned for three (3) days. Thereafter, he was released after he posted bail in the amount of Php12,000 pesos.

Complainant also alleges that he filed a Petition for *Certiorari*, *Mandamus*, Prohibition with Application for Preliminary Injunction and *Ex-Parte* Motion for Temporary Restraining Order questioning the order of respondent judge in denying his omnibus motion to quash the information, suppress evidence and produce, inspect and copy documentary evidence. He adds that despite the filing of this petition, the respondent judge continued to direct him to appear at the pre-trial/preliminary conference. He likewise avers that his arraignment was set beyond the period allowed by the Rules of Court. He also laments that he could not locate his lawyer, Atty. Lamberto Bonifacio, Jr. Finally, he alleges that the respondent judge had been biased when hearing his case.[2] (Italics in the original; emphasis an (sic) underscoring supplied)

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[1] *Rollo,* pp. 1-5.

[2] *Id.* at 1-2.

By 2nd Indorsement dated July 31, 2007,[3] respondent gave her side of the case as follows:

Contrary to complainant's allegation, the complaint in Criminal Case No. 04-7811 (for grave threats), and the affidavits of the therein complainant-sheriff's witnesses were attached to the record.[4]

Admitting complainant's allegation that the court stenographer examined complainant and his witnesses during the preliminary investigation of the grave threats complaint against him with the use of prepared written set of questions, respondent explains as follows:

> What [complainant] claimed in his Letter-Complaint that the Court Stenographer has a prepared sheet of questions during the preliminary examination is **true** because after a complaint is filed, the undersigned prepares her questions for preliminary examination based on the affidavits of the complaining witnesses and the counter affidavits of the accused. This is done **to make it easy for the Stenographers to take/print the transcript of the proceedings**. *Some witnesses even ask to read/study the question and request that they write down their answers to the questions for the Stenographers to finalize*. Also, this is convenient when more than one preliminary examination is scheduled for the day. This procedure makes it easier for the Stenographers and the witnesses, too, considering the cramped office space.
>
> After the witnesses are briefed, **the [s]tenographers take over since the prepared sheets are given to them so they could propound the questions and the answers are typed directly.** x x x[5]
> (Emphasis, italics and underscoring supplied)

Denying complainant's allegation that he was arrested within the court premises on July 20, 2004 or right after the conduct of the preliminary examination conducted in the grave threats complaint against him, respondent alleges that the preliminary examination was conducted at 9:00 o'clock in the morning of

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[3] *Id*. at 82-85.

[4] *Id*. at 83. The complaint and the affidavits were attached as Annexes "G", "H", "I", and "J" to the 2nd Indorsement cum Comment.

[5] *Id*. at 83.

July 19, 2004; that she issued an Order[6] the following day, July 20, 2004, finding probable cause and directing the issuance of a warrant of arrest[7] against complainant which the warrant officer received at 4:40 p.m. on even date; and that complainant was arrested on July 21, 2004 at the Poblacion, Labo, Camarines Norte, as shown by the Warrant Officer's Return of Service.[8]

Admitting that there was delay in scheduling the arraignment of complainant after his arrest, respondent surmises that the Clerk of Court or the clerk-in-charge might have overlooked the Return of Service of the warrant officer. Respondent states, however, that when the arraignment was scheduled, complainant's counsel opposed the same and filed an Omnibus Motion which resulted in the repeated resetting of the arraignment. Respondent adds that after complainant was arraigned on June 6, 2006, the preliminary conference/pre-trial was set but was not terminated due to the absence of complainant or his counsel.[9]

In fact, respondent goes on to allege that in complainant's attempt to block his arraignment and to quash the Information against him, he filed a Petition for *Certiorari, Mandamus, Prohibition* with Application for Mandatory Injunction and *Ex-Parte* Motion for Temporary Restraining Order with the Regional Trial Court of Labo which was denied for lack of merit.[10]

On the allegation of bias on her part, respondent claims that until the criminal complaints were filed, she did not know any of the parties.

By June 18, 2008 Report,[11] the OCA came up with the following Evaluation:

x x x x x x x x x

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[6] Annex "O", *id*. at 136.

[7] Annex "P", *id*. at 137.

[8] Annex "Q", *id*. at 137-A.

[9] *Id*. at 84-85.

[10] *Id*. at 85.

[11] *Id*. at 1-5.

. . . [W]e hold [respondent] administratively liable for her **unfamiliarity with the basic rules on preliminary investigation**. There was irregularity during the preliminary investigation when the respondent judge allowed the stenographers to handle the latter part of the proceedings.

x x x x x x x x x

. . . [R]espondent admitted that after the complaint was filed, she prepared a set of questions based on the affidavits of the complaining witnesses and counter affidavits of the accused. She further added that during the preliminary investigation and after briefing the accused and his witnesses, the stenographers took charge of the proceedings. Hence, the respondent judge **violated** the rules on preliminary investigation. Respondent should not have allowed her stenographer to handle the latter part of the proceedings even if she only wanted to expedite the proceedings and it was more convenient. Respondent judge should have personally taken charge of the entire proceedings since **the power to conduct preliminary investigations vests only on her and not on the stenographer.**

x x x[12] (Emphasis and underscoring supplied)

Finding respondent guilty of gross ignorance of the law or procedure, the OCA recommended that respondent be FINED in the amount of ₱20,000 in this wise:

[W]e deem it proper to recommend the imposition upon the respondent judge of a penalty of fine in the amount of ₱20,000[,] this being her first offense.

As regards the issue of continuous hearing of the case by the respondent judge, we opine that the respondent judge only acted in good faith and in accordance with law when she continued to direct the herein complainant to attend the pre-trial. Based on the records, the Petition for *Certiorari, Mandamus*, Prohibition with Application for Mandatory Injunction and *Ex-Parte* Motion for Temporary Restraining Order and the Motion for Reconsideration thereto filed by complainant with the Regional Trial Court, Branch 64, Labo, Camarines Norte were already denied; thus the respondent judge had the authority to proceed with the case. The postponements in the pre-trial were not attributable to the respondent judge but to the accused and his counsel.

[12] *Id*. at 4-5.

Finally, on the issue of bias, complainant failed to submit any evidence showing the respondent biased or partial in hearing the case. Bias and partiality of a judge must be proved by clear and convincing evidence. Mere suspicion that a judge is bias or partial would not be enough.[13] (Italics in the original; underscoring supplied)

By Resolution of August 20, 2008,[14] the Court, on the recommendation of the OCA, re-docketed the case and required the parties to manifest within ten days from notice whether they were willing to submit the matter for resolution on the basis of the pleadings filed and submitted. Both parties have manifested in the affirmative.

The Court finds the evaluation well-taken.

Prior to the amendment on October 3, 2005 of Rules 112 and 114 of the Rules of Court via A.M. No. 05-8-26-SC, *Re: Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts*, judges of municipal trial courts were empowered to conduct preliminary investigations in which they exercised discretion in determining whether there was probable cause to hale the respondent into court. Such being the case, they could not delegate the discretion to another.

An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.

In those cases in which the proper execution of the office requires on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another.[15] (Underscoring supplied)

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[13] *Id*. at 5.

[14] *Id*. at 239-240.

[15] *Benamira v. Garrucho, Jr.*, G.R. No. 92008, July 30, 1990, 188 SCRA 154, 159-160.

Then, as now, a personal examination of the complainant in a criminal case and his witness/es was required. Thus, under Section 4, Rule 112 of the Revised Rules of Court before its amendment, the "investigating fiscal" was required to "certify under oath that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses . . . "

By respondent's delegation of the examination of the sheriff-complainant in the grave threats case to the stenographer, and worse, by allowing the witnesses to "read/study the [written] question[s]" to be propounded to them and to "write their answers [thereto]" upon respondent's justification that the scheme was for the convenience of the stenographers, respondent betrayed her lack of knowledge of procedure, thereby contributing to the erosion of public confidence in the judicial system.

Respondent is thus guilty of gross ignorance of the law or procedure which, under Section 8, Rule 140 of the Rules of Court, is a serious charge,[16] for which Section 11 (A) of the same Rule prescribes the following penalty:

> SEC. 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporations. *Provided, however,* That the forfeiture of benefits shall in no case include accrued leave credits;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than ₱20,000 but not exceeding ₱40,000.00.

The Court thus finds in order the Recommendation of the OCA to impose a fine of ₱20,000 on respondent. The OCA's recommendation to warn respondent that a "repetition of the

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[16] *Garay v. Bartolome*, A.M. No. MTJ-08-1703, June 17, 2008, 554 SCRA 492, 497.

**same act** will be dealt with more severely" does not lie, however, A.M. No. 05-8-26-SC, which took effect on October 3, 2005, having removed the power of judges of the first level courts[17] to conduct preliminary investigation. A warning that a commission of another infraction tantamount to gross ignorance of law or procedures shall be dealt with more severely lies, however.

**WHEREFORE,** the Court finds respondent, Judge Aurea G. Peñalosa-Fermo of the Municipal Trial Court of Labo, Camarines Norte, guilty of Gross Ignorance of the Law or Procedure. She is *FINED* in the amount of Twenty Thousand (₱20,000) Pesos and *WARNED* that a commission of another infraction which is tantamount to the same charge shall be dealt with more severely.

**SO ORDERED.**

*Quisumbing (Chairperson), Velasco, Jr., Nachura,* and *Brion, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 178672. March 19, 2009]

**JULIO MERCADO,** *petitioner, vs.* **EDMUNDO MERCADO,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) DECISION IN CASE NO. 4389 HAD LONG BECOME FINAL AND EXECUTORY**

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[17] *Vide Re:Judicial Audit Conducted in the Municipal Trial Court, Asuncion, Davao del Norte,* A.M. No. 07-8-207-MTC, January 31, 2008, 543 SCRA, 221, 337

**AND THEREFORE IMMUTABLE AND UNALTERABLE. —** The DARAB decision in DARAB Case No. 4389 had long become final and executory, hence, immutable and unalterable. It may thus no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law. Excepted from this rule is when the modification involves correction of 1) clerical errors, 2) *nunc pro tunc* entries which cause no prejudice to any party, and 3) void judgments. None of these exceptions is present in the case at bar, however.

**2. ID.; ID.; JURISDICTION THEREOF OVER A CASE DOES NOT DISAPPEAR THE MOMENT A CERTIFICATE OF TITLE IS ISSUED, FOR THE ISSUANCE OF SUCH CERTIFICATE IS NOT A MODE OF TRANSFER OF PROPERTY BUT MERELY AN EVIDENCE OF SUCH TRANSFER. —** Since jurisdiction over the subject matter is determined by the allegations in the complaint, a recital of the following allegations of respondent in his Complaint which were reproduced substantially in his Amended Complaint is in order: x x x 3. That plaintiff is the owner of a parcel of agricultural land, with an area of more than two (2) hectares and located at Niugan, Angat, Bulacan; said land is being tenanted by the defendant, with whom plaintiff has executed an agricultural leasehold contract in **1976** as shown by a copy of a document herewith attached as Annex "A"; 4. That as per said contract, defendant is obligated to pay plaintiff an annual rental of sixty (60) cavans of *palay*, *payable on two occasions*, namely 25 cavans during the "*panag-ulan*" season; and 35 cavans during the "*panag-araw*" season; x x x Those allegations show the existence of the following elements of a tenancy relationship between the parties, *viz*: 1) that the parties are the landowner and the tenant or agricultural lessee; 2) that the subject matter of the relationship is an agricultural land; 3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to bring about agricultural production; 5) that there is personal cultivation on the part of the tenant or agricultural lessee; and 6) that the harvest is shared between the landowner and the tenant or agricultural lessee. Precisely, respondent filed the complaint against petitioner to question the regularity of the issuance to petitioner of the EP on which EP petitioner anchors his denial of the existence of a tenancy relationship. *Ayo-Alburo v. Matobato* instructs: The **mere issuance of an emancipation patent does not put the**

**ownership of the agrarian reform beneficiary beyond attack and scrutiny**. Emancipation patents may be cancelled for violations of agrarian laws, rules and regulations. Section 12(g) of P.D. 946 (issued on June 17, 1976) vested the then Court of Agrarian Relations with jurisdiction over cases involving the cancellation of emancipation patents issued under P.D. 266. **Exclusive jurisdiction over such cases was later lodged with the DARAB** under Section 1 of Rule 11 of the DARAB Rules of Procedure. Jurisdiction over a case does not thus disappear the moment a certificate of title is issued, for the issuance of such certificate is not a mode of transfer of property but merely an evidence of such transfer. IN ANY EVENT, petitioner may not question the jurisdiction of the DARAB and its adjudicative arm at this late juncture of the proceedings, he having actively participated in the proceedings below.

**3. ID.; ID.; ID.; RELIEF FROM JUDGMENT IS AVAILABLE ONLY AGAINST THE DECISION OF AN ADJUDICATOR, TO BE FILED BEFORE THE ADJUDICATOR, WHEN THE PARTY SEEKING IT HAS NO OTHER ADEQUATE REMEDY AVAILABLE TO HIM IN THE ORDINARY COURSE OF THE LAW. —** Respecting the affirmance by the appellate court of the denial by the DARAB of petitioner's Petition for Relief from Judgment, Rule XVI of the 2003 DARAB Rules of Procedure provides the following conditions for availing of such relief: Section 1. *Petition for Relief from Decision/Resolution/Final Order.* When a decision/resolution/final order is rendered by the **adjudicator** against any party, through fraud, accident, mistake, and excusable negligence and such party has no other adequate remedy available to him in the ordinary course of law, he may file a petition for relief with said **adjudicator**, praying that the decision/resolution/final order be set aside. Section 2. *Form and Time of Filing of Petition.* A petition for relief must be verified and a copy thereof together with its annexes and supporting affidavits, if any, must be furnished to the adverse party or parties and filed within sixty (60) days from the time the fraud, mistake or excusable negligence was discovered and within six (6) months after the decision/resolution/final order was rendered. Relief from judgment is thus available only against the decision of an **adjudicator**, to be filed before the adjudicator, when the party seeking it has no other adequate remedy available to him

in the ordinary course of law. In the case at bar, petitioner sought relief from the decision of the DARAB, not that of the adjudicator, before the DARAB. This leaves it unnecessary to pass upon the other glaring flaws attendant to petitioner's Petition for Relief from Judgment.

**4. ID.; ID.; ID.; PETITIONER HAD BEEN NEGLIGENT IN PROTECTING HIS RIGHT. —** The Court of Appeals' finding in its challenged decision that petitioner had been negligent in not protecting his right is thus well-taken. x x x With respect to the decision of the PARAD, respondent Edmundo filed his appeal memorandum. Petitioner Julio's former counsel, Atty. Antonio Castro, was supposed to file answer or comment to the said appeal memorandum within ten days from October 26, 1995. Instead of filing the same, Atty. Castro filed a Manifestation and Motion to Withdraw as counsel with petitioner Julio's consent. After the lapse of eleven months, or on September 19, 1996, he secured the services of Atty. Glicerio Sampana. The case was eventually decided after the lapse of 6 [*sic*] years without him having filed his answer or comment thereto. He should have at least followed up the status of his case within that span of time with the help of his lawyer but sadly, he did not. He even elevated the case to this Court but the same was dismissed due to the fact that the assailed decision had already become final and executory. While this Court subscribes to the principles of liberality in the availment of due process, in the interest of justice, the same should be extended to those who are vigilant in the protection of one's rights.

**APPEARANCES OF COUNSEL**

*Torres Clemencio Cabochan Torres Law Offices* for petitioner.
*Punzalan and Punongbayan Law Office* for respondent.

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

**CARPIO MORALES, *J.*:**

Julio Mercado (petitioner) was a tenant of an agricultural land (the property) owned by the grandfather of Edmundo

Mercado (respondent). In 1976, petitioner was issued a Certificate of Land Transfer[1] (CLT) covering the property pursuant to Presidential Decree No. 27. In 1982, he was issued an Emancipation Patent (EP).[2]

On August 1, 1994, respondent, relying on a Certificate of Retention (CR) issued in his name on the strength of his grandfather's *Huling Habilin*,[3] filed a complaint[4] against petitioner, for rescission of contract, cancellation of the CLT and EP, payment of rentals in arrears, and ejectment, before the Provincial Adjudication Board (PARAB), Department of Agrarian Reform Adjudication Board (DARAB), docketed as DARAB Case No. 733-Bul-94.

Respondent alleged that petitioner's CLT and EP were irregularly issued as the property is covered by his CR, and that petitioner had not been paying rentals on the property since 1979 despite repeated demands.

Respondent later amended his complaint by impleading the son of petitioner whom he allowed to erect a house on the property.[5]

In his Answer,[6] petitioner, invoking his rights under the EP, contends that respondent's CR was anomalously issued and, in any event, respondent's claim is barred by the statute of limitations under Section 38 of Republic Act No. 3844, as amended by Republic Act No. 6389.

The PARAB, declaring that petitioner's EP was legally and validly issued, dismissed respondent's complaint.[7]

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[1] DARAB records, pp. 24-25.

[2] *Id.* at 23; *rollo*, pp. 112-113.

[3] *Vide* CA *rollo*, p. 363; *rollo*, pp. 114-115.

[4] DARAB records, pp. 1-6.

[5] The records do not show what happened to the complaint against the son.

[6] DARAB records, pp. 28-45, 63-71.

[7] *Id.* at 112-116.

On respondent's appeal[8] which was docketed as DARAB Case No. 4389, the DARAB, finding petitioner to have deliberately failed to comply with the law, **reversed** the PARAB decision in this wise:

> It is categorically admitted by respondent[-herein petitioner] Julio Mercado in his memorandum/position paper dated 05 April 1995 that in 1981, he ceased paying lease rentals and instead paid his amortizations with the Land Bank of the Philippines, Baliuag, Bulacan Branch. x x x To be precise, the payment of lease rentals to the landowner terminates only on the date the value of the land is established. In a situation where the value of the land is yet to be determined, the farmer-beneficiary shall continue paying the lease rentals to the landowner x x x It is the assertion of [herein petitioner] that he paid his amortization with the Land Bank of the Philippines since 1981 but his evidence show[s] that he made payment with the LBP only in 1990 and 1992. It was not explained where he brought the landowner's share or the alleged amortizations from 1981 when he stopped paying the lease rentals to the landowner as well as those from 1993 up to the filing of the instant case. Considering the length of time that the respondent did not pay lease rentals nor paid amortizations, it can be safely concluded that his omission is not merely simple but a **deliberate non-compliance** with the mandate of Presidential Decree No. 816 x x x.
>
> x x x[9] (Underscoring supplied)

The DARAB accordingly ordered, among other things, the rescission of the leasehold contract between petitioner and respondent, disposing as follows:

> WHEREFORE, premises considered, the appealed Decision is hereby **SET ASIDE** and a new judgment is rendered as follows:
>
> 1. Declaring the respondent Julio Mercado guilty of deliberate non-payment of lease rentals pursuant to Section 3 of Presidential Decree No. 816 and Section 26 and 36 of Republic Act No. 3844, as amended;
>
> 2. Ordering the rescission of the leasehold contract between the plaintiff and respondent;

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[8] *Id.* at 117.

[9] *Id.* at 165-166.

3. Ordering the ejectment of respondent Julio Mercado and all person or persons acting in his behalf to vacate the area in dispute and deliver to the same to the peaceful possession and enjoyment of the plaintiff-appellant herein;

4. The concerned official of the DAR is hereby directed to cause the cancellation of CLT No. 033197 and CLT No. 033198 from its record considering that the land covered by said certificate had been certified as retention areas;

5. All claims and counterclaims for damages are dismissed.

**NO COSTS.**

SO ORDERED.[10] (Emphasis in the original, underscoring supplied)

The DARAB decision having become final and executory, a Writ of Execution[11] was issued.

The finality of the DARAB decision notwithstanding, petitioner filed a Petition for *Certiorari* with Prayer for Preliminary Injunction[12] before the Court of Appeals which dismissed it, due to, in the main, the finality of the DARAB decision.[13]

Petitioner thereupon filed a Petition for Review on *Certiorari*[14] before this Court which it denied due to procedural flaws.[15]

Undaunted, petitioner filed a Petition for Relief from Judgment[16] of the DARAB decision before the DARAB itself which denied the same. Petitioner went on to challenge the denial of the petition via Petition for Review[17] before the Court of Appeals, in which

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[10] *Id.* at 162-163.

[11] *Id.* at 196-198.

[12] CA *rollo*, pp. 130-140

[13] *Id.* at 141-142.

[14] *Id.* at 145-158.

[15] *Id.* at 159-160.

[16] *Id.* at 202-229.

[17] *Id.* at 2-45.

same petition he again sought the review of the DARAB decision on his appeal in DARAB Case No. 4389,[18] contending that:

1. The assailed decision in DARAB Case No. 4389 was rendered **WITHOUT** or **IN EXCESS OF JURISDICTION** and is, therefore, **NULL** and **VOID** *ab initio;* and,

2. The Board seriously **ERRED** and/or **GRAVELY ABUSED** its discretion amounting to lack or excess of jurisdiction when it issued the assailed resolutions denying the petition and petitioner's *Motion for Reconsideration* despite the miserable failure of respondent to produce any single authentic document that would *prima facie* establish his ownership of the parcels of land in question to qualify him as a "*landlord"* or "*land owner"* thereof and despite the clear showing therein that the complaint filed by respondent, as well as the appeal he filed before the Board *a quo*, was barred under the *Statute of Limitations*.

3. The Board seriously ERRED and/or GRAVELY ABUSED its discretion amounting to lack or excess of jurisdiction when it rendered the assailed decision in violation of petitioner's constitutional right to due process of law.[19] (Emphasis and italics in the original)

By Decision[20] of March 21, 2007, the Court of Appeals denied petitioner's petition as well as his Motion for Reconsideration.[21] Hence, the present petition[22] which faults the Court of Appeals in deciding his petition "in a way not in accord[ance with] law or with applicable decisions of [this] Court"[23] and raises the same arguments he raised before the Court of Appeals.[24]

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

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

[20] Penned by Court of Appeals Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Jose C. Mendoza and Ramon M. Bato, Jr.; *id.* at 442-457.

[21] *Id.* at 482-485.

[22] *Rollo*, pp. 28-72.

[23] *Id.* at 42.

[24] *Vide rollo*, pp. 42-67.

The petition is bereft of merit.

The DARAB decision in DARAB Case No. 4389 had long become final and executory, hence, immutable and unalterable. It may thus no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law.[25] Excepted from this rule is when the modification involves correction of 1) clerical errors, 2) *nunc pro tunc* entries which cause no prejudice to any party, and 3) void judgments.[26] None of these exceptions is present in the case at bar, however.

Petitioner insists that the decision in DARAB Case No. 4389 is void for having been rendered without jurisdiction, there having been no more tenancy relationship between him and respondent after the issuance to him of the EP.

Since jurisdiction over the subject matter is determined by the allegations in the complaint,[27] a recital of the following allegations of respondent in his Complaint which were reproduced substantially in his Amended Complaint is in order:

x x x x x x x x x

3. That plaintiff is the owner of a parcel of agricultural land, with an area of more than two (2) hectares and located at Niugan, Angat, Bulacan; said land is being tenanted by the defendant, with whom plaintiff has executed an agricultural leasehold contract in **1976** as shown by a copy of a document herewith attached as Annex "A";

4. That as per said contract, defendant is obligated to pay plaintiff an annual rental of sixty (60) cavans of palay, payable on two occasions, namely 25 cavans during the "*panag-ulan*" season; and 35 cavans during the "*panag-araw*" season;

x x x[28] (Emphasis and underscoring supplied)

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[25] *Vide Biglang-awa v. Philippine Trust Company*, G.R. No. 158998, March 28, 2008, 550 SCRA 160, 177.

[26] *Ibid*.

[27] *Villacastin v. Pelaez*, G.R. No. 170478, May 22, 2008, 554 SCRA 189, 194.

[28] DARAB records, p. 6.

Those allegations show the existence of the following elements of a tenancy relationship between the parties, *viz*:

> 1) that the parties are the landowner and the tenant or agricultural lessee; 2) that the subject matter of the relationship is an agricultural land; 3) that there is consent between the parties to the relationship; 4) that the purpose of the relationship is to bring about agricultural production; 5) that there is personal cultivation on the part of the tenant or agricultural lessee; and 6) that the harvest is shared between the landowner and the tenant or agricultural lessee.[29]

Precisely, respondent filed the complaint against petitioner to question the regularity of the issuance to petitioner of the EP on which EP petitioner anchors his denial of the existence of a tenancy relationship. *Ayo-Alburo v. Matobato*[30] instructs:

> The **mere issuance of an emancipation patent does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny**. Emancipation patents may be cancelled for violations of agrarian laws, rules and regulations. Section 12(g) of P.D. 946 (issued on June 17, 1976) vested the then Court of Agrarian Relations with jurisdiction over cases involving the cancellation of emancipation patents issued under P.D. 266. **Exclusive jurisdiction over such cases was later lodged with the DARAB** under Section 1 of Rule 11 of the DARAB Rules of Procedure.[31] (Emphasis and underscoring supplied)

Jurisdiction over a case does not thus disappear the moment a certificate of title is issued, for the issuance of such certificate is not a mode of transfer of property but merely an evidence of such transfer.[32]

IN ANY EVENT, petitioner may not question the jurisdiction of the DARAB and its adjudicative arm at this late juncture of the proceedings, he having actively participated in the proceedings below.[33]

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[29] *Morta, Sr. v. Occidental*, 367 Phil. 438, 446 (1999).

[30] G.R. No. 155181, April 15, 2005, 456 SCRA 399.

[31] *Id.* at 409.

[32] *Vide Hermoso v. C.L. Realty Corporation*, G.R. No. 140319, May 5, 2006, 489 SCRA 556, 563.

[33] *Vide Ibid.*

Respecting the affirmance by the appellate court of the denial by the DARAB of petitioner's Petition for Relief from Judgment, Rule XVI of the 2003 DARAB Rules of Procedure provides the following conditions for availing of such relief:

> Section 1. *Petition for Relief from Decision/Resolution/Final Order.* When a decision/resolution/final order is rendered by the **adjudicator** against any party, through fraud, accident, mistake, and excusable negligence and such party has no other adequate remedy available to him in the ordinary course of law, he may file a petition for relief with said **adjudicator**, praying that the decision/resolution/final order be set aside. (Underscoring supplied)
>
> Section 2. *Form and Time of Filing of Petition.* A petition for relief must be verified and a copy thereof together with its annexes and supporting affidavits, if any, must be furnished to the adverse party or parties and filed within sixty (60) days from the time the fraud, mistake or excusable negligence was discovered and within six (6) months after the decision/resolution/final order was rendered. (Underscoring supplied)

Relief from judgment is thus available only against the decision of an **adjudicator**, to be filed before the adjudicator, when the party seeking it has no other adequate remedy available to him in the ordinary course of law. In the case at bar, petitioner sought relief from the decision of the DARAB, not that of the adjudicator, before the DARAB.[34] This leaves it unnecessary to pass upon the other glaring flaws attendant to petitioner's Petition for Relief from Judgment.

As for petitioner's plaint of having been deprived of due process, thus:

> x x x Indeed it was unfortunate that, instead of granting petitioner a new period within which to file the answer in view of the sudden withdrawal of his counsel during the very limited period of ten (10) days, the DARAB resolved the appeal without such answer or comment even as it sat on the case for a period of six (6) years without resolving the same. To be sure, petitioner's failure to submit his answer or comment could only be attributed to his lack of education, old age and inability to immediately hire a new lawyer within the said 10-day period.

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[34] *Vide* CA *rollo*, pp. 202-204.

Petitioner's lack of education and understanding of the legal requirements and formalities of a lawsuit is buttressed by the fact that he even allowed himself to be later represented by a non-lawyer, Ms. Edna R. Boja, before the Court *a quo*[,][35]

the same fails. For the records show otherwise. Parenthetically, even petitioner's new counsel conceded in his Manifestation[36] filed before the DARAB that:

x x x x x x x x x

. . . upon the engagement of the undersigned counsel by herein defendant/appelle[e] beyond the period given within which to submit his appellee's memorandum, and after the records and documents were finally handed over to the undersigned for evaluation, **no new matters were presented in the appeal memorandum as to justify a reconsideration or a reversal of the decision dated June 6, 1995**;

4. That, the **appealed decision is fully supported by the evidences** adduced by both parties; hence, the findings thereof, need not be disturbed but fully confirmed by the appellate board;[37] (Underscoring supplied)

The Court of Appeals' finding in its challenged decision that petitioner had been negligent in not protecting his right is thus well-taken.

x x x x x x x x x

With respect to the decision of the PARAD, respondent Edmundo filed his appeal memorandum. Petitioner Julio's former counsel, Atty. Antonio Castro, was supposed to file answer or comment to the said appeal memorandum within ten days from October 26, 1995. Instead of filing the same, Atty. Castro filed a Manifestation and Motion to Withdraw as counsel with petitioner Julio's consent.[38]

After the lapse of eleven months, or on September 19, 1996, he secured the services of Atty. Glicerio Sampana. The case was

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[35] *Rollo,* p. 63. *Vide* DARAB records, p. 144.

[36] *Id.* at 149.

[37] *Ibid.*

[38] CA *rollo,* p. 456.

eventually decided after the lapse of 6 [*sic*] years without him having filed his answer or comment thereto. He should have at least followed up the status of his case within that span of time with the help of his lawyer but sadly, he did not.

He even elevated the case to this Court but the same was dismissed due to the fact that the assailed decision had already become final and executory. While this Court subscribes to the principles of liberality in the availment of due process, in the interest of justice, the same should be extended to those who are vigilant in the protection of one's rights.[39] (Underscoring supplied)

**WHEREFORE,** the petition is *DENIED*. The Decision of the Court of Appeals dated March 21, 2007 is *AFFIRMED*.

Double costs against petitioner.

**SO ORDERED.**

*Quisumbing (Chairperson), Velasco, Jr., Nachura,** and *Brion, JJ.,* concur.

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**THIRD DIVISION**

[A.M. No. RTJ-08-2142. March 20, 2009]
(OCA-IPI No. 08-2779-RTJ)

**ATTY. NORLINDA R. AMANTE-DESCALLAR,** *complainant, vs.* **JUDGE REINERIO ABRAHAM B. RAMAS, Regional Trial Court, Branch 18, Pagadian City,** *respondent.*

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[39] *Id.* at 456-457.

[*] Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga who is on leave.

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; AN ADMINISTRATIVE COMPLAINT IS NOT AN APPROPRIATE REMEDY WHERE JUDICIAL RECOURSE IS STILL AVAILABLE, UNLESS THE ASSAILED ORDER OR DECISION IS TAINTED WITH FRAUD, MALICE, OR DISHONESTY.—** In *Misc. No. 2820*, the Court agrees with the OCA that the ruling of the respondent as to the interpretation of Section 6, Rule 39 of the Rules of Court does not automatically subject him to administrative liability for gross ignorance of the law. *First*, there is no showing that parties to the case have exhausted judicial remedies against the alleged erroneous ruling. Neither was it refuted that, as claimed by respondent, the subject civil case, unlike the other administrative charges, is still pending and active, and should his ruling be erroneous, the parties still have available remedies to contest said ruling. An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with fraud, malice, or dishonesty. The remedy of the aggrieved party is to elevate the assailed decision or order to the higher court for review and correction. *Second*, there was no showing and neither was it alleged that the issuance of the ruling was attended with bad faith, malice, or dishonesty.

**2. ID.; ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; NOT TENABLE WHERE THE DECISION LIES WITH THE JUDICIAL DISCRETION OF THE JUDGE AND ERRONEOUS EXERCISE OF WHICH DOES NOT AUTOMATICALLY RENDER HIM LIABLE.—** As regards *Misc. No. 2861*, the Court agrees that the charge of gross ignorance of the law against the respondent judge should be dismissed. The allegations of complainant and the proffered evidence do not prove the elements of this administrative offense, to wit: that the subject order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence but more importantly must be attended by bad faith, fraud, dishonesty or corruption. The soundness of the provisional dismissal of the criminal case subject of Misc. No. 2861 lies within the judicial discretion of the respondent, erroneous exercise of which does not

automatically render him liable. In proper cases, unreasonable delay in the proceedings, in violation of the right of the accused to speedy trial, may even be a ground for the permanent dismissal of a criminal case. In the subject case, respondent deemed it proper to order only the provisional dismissal of the case.

**3. ID.; ID.; ID.; ID.; RESPONDENT VIOLATED THE BASIC AND FUNDAMENTAL CONSTITUTIONAL PRINCIPLE OF DUE PROCESS WHEN HE GRANTED THE MOTIONS FILED BY THE ACCUSED WITHOUT GIVING THE PROSECUTION ITS DAY IN COURT; WHERE THE LAW IS STRAIGHTFORWARD AND THE FACTS SO EVIDENT, NOT TO KNOW IT OR TO ACT AS IF ONE DOES NOT KNOW IT CONSTITUTE GROSS IGNORANCE OF THE LAW. —** As regards *Misc. No. 2825* and *Misc. No. 2887*, the Court finds that respondent violated the basic and fundamental constitutional principle of due process when he granted the motions filed by the accused in the criminal cases subject of these administrative complaints without giving the prosecution its day in court. Worse, respondent disregarded the period he gave for the prosecution to file comment on the motions. Such action cannot be characterized as mere deficiency in prudence, or lapse of judgment but a blatant disregard of established rules. In the instant administrative cases, the motions filed before respondent judge were likewise litigious in nature which must be heard. Respondent judge should not have acted on said motions filed by the accused without first giving the prosecution the opportunity to present its side. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Where the law is straightforward and the facts so evident, not to know it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the ability to be proficient in the law and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge owes the public and the court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. *Ignorance of the law by a judge can easily be the mainspring of injustice.* Section 8, Rule 140 of the Rules of Court classifies gross

ignorance of the law and procedure as a serious charge punishable by either dismissal from service, suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months, or a fine of more than P20,000.00 but not exceeding ₱40,000.00. In the instant case, the penalty of suspension from office for six months without salary and other benefits, is proper.

**4. ID.; ID.; ID.; ID.; THE DECISION TO ACCEPT OR REJECT A PLEA BARGAINING AGREEMENT LIES WITH THE SOUND DISCRETION OF THE COURT, AND SHOULD THERE BE AN ERROR IN THE DISMISSAL OF THE CASES AS A CONSEQUENCE OF PLEA BARGAINING, PARTIES TO THE CASES ARE NOT WITHOUT JUDICIAL REMEDIES. —** With respect to *Misc. No. 2821 and Misc. No. 2824*, the Court disagrees with the findings of the Office of the Court Administrator that the issuance of the Orders dated September 4, 2000 and August 14, 2000, respectively, amounted to gross ignorance of the law because it was made in violation of the provisions of R.A. No. 6425, as amended, prohibiting plea bargaining. At the time the assailed rulings were issued, the prohibition on plea-bargaining provided in Section 20-A of R.A. No. 6425, as amended, is not absolute. It applies only when the person is charged under R.A. No. 6425 where the imposable penalty is *reclusion perpetua* to death. Though Sections 15 and 16 of the said law, under which the accused was charged, provide that the sale and possession of these drugs is punishable by *reclusion perpetua* to death, these penalties may only be imposed if the same were of the quantities enumerated in Section 20. If the quantity involved is less than that stated, the penalty shall range from *prision correccional* to *reclusion perpetua* depending on the quantity. It is to be noted that the decision to accept or reject a plea bargaining agreement is within the sound discretion of the court subject to certain requirements of statutes or rules. In *Daan v. Sandiganbayan*, the Court defined plea bargaining as a process, in criminal cases, whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge. In the instant administrative cases, the determination of whether the agreement complied

with requirements set forth by the rules lies in the sound discretion of the respondent judge. Whether the quantity of *shabu* in the criminal cases subject of *Misc. No. 2821* and *Misc. No. 2824* is covered by the prohibitory provision of Section 20-A is also within the competence of the trial court judge to pass upon. Should there be an error in the dismissal of the cases as a consequence of plea bargaining, parties to the cases are not without judicial remedies.

**5. ID.; ID.; ID.; ID.; GROSS NEGLIGENCE; THE ERRORS COMMITTED BY RESPONDENT JUDGE IN THE MENTIONED CASES COULD HAVE BEEN AVOIDED HAD HE EXERCISED DILIGENCE AND PRUDENCE EXPECTED OF HIM BEFORE AFFIXING HIS SIGNATURE. —** The Court notes, however, that respondent was also charged with gross negligence in *Misc. No. 2824* and *Misc. No. 2860*. *Misc. No. 2824* relates to the issuance of Search Warrant No. 40-03 where the name of the accused in the caption differs from that mentioned in the body. On the other hand, *Misc. No. 2860* relates to the Order quashing a Search Warrant in another criminal case and reproducing the Prayer in the Motion to Quash filed as its dispositive portion. The errors committed by respondent judge in the mentioned cases could have been avoided had he exercised diligence and prudence expected of him before affixing his signature. As held by the Court in *Padilla v. Judge Silerio*, in "the discharge of the functions of his office, a judge must strive to act in a manner that puts him and his conduct above reproach and beyond suspicion. He must act with extreme care for his office indeed is laden with a heavy burden of responsibility. Certainly, a judge is enjoined, his heavy caseload notwithstanding, to pore over all documents whereon he affixes his signature and gives his official imprimatur." In *Judicial Audit and Physical Inventory of Confiscated Cash, Surety and Property Bonds at the Regional Trial Court of Tarlac City, Branches 63, 64 and 65*, the Court found respondent judge therein negligent for failure to exercise the necessary diligence in the performance of his duties and was imposed a fine of ₱5,000.00. Respondent judge cannot take refuge behind the mistakes and inefficiency of his court personnel. He is charged with the administrative responsibility of organizing and supervising them to secure the prompt and efficient dispatch of business, requiring at all times the observance of high standards of public service and fidelity. Indeed, he is ultimately responsible for ensuring that

court personnel perform their tasks and that the parties are promptly notified of his orders and decisions. In *Co v. Judge Plata*, the Court found respondent judge therein liable for negligence for his failure to scrutinize the documents he had signed and to follow the proper procedure for fixing the amount of bail.

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

**YNARES-SANTIAGO, *J.*:**

Atty. Norlinda R. Amante-Descallar, Clerk of Court, Regional Trial Court of Pagadian City, Branch 18, filed seven administrative complaints against respondent Judge Reinerio Abraham B. Ramas, of the same court, for gross ignorance of the law, gross negligence, and violation of the Code of Judicial Conduct.

In *Misc. No. 2820*, complainant charged respondent with gross ignorance of the law in relation to Civil Case No. 3412. She claimed that in the Order dated August 18, 2006, respondent granted the motion for execution of the prevailing party by counting the five year period provided in Section 6 of Rule 39 from the counsel's receipt of the Entry of Judgment. Complainant averred that Rule 39 expressly provides that the five year period is reckoned from the date of entry of judgment; and not from the date of receipt by counsel; that jurisprudence is replete with rulings that a final judgment ceases to be enforceable after that period, but merely gives the prevailing party a right of action to have the same revived. Hence, respondent should be disciplined for gross ignorance of the law and violation of Rule 3.02[1] Canon 3 of the Code of Judicial Conduct.[2]

In *Misc. No. 2821*, complainant charged respondent with gross ignorance of the law in relation to the conduct of the plea bargaining in Criminal Case Nos. 5601-2000 and 5602-2000 both entitled "*People v. Cebedo.*" On pre-trial, the defense offered to enter into plea bargaining by offering to plead guilty in Crim.

[1] Rule 3.02. — In every case, a judge shall endeavor diligently to ascertain the facts and applicable law unswayed by partisan interests, public opinion or fear of criticism.

[2] *Rollo,* pp. 15-16.

Case No. 5602-2000 for possession of seven (7) decks of *shabu* in exchange for the withdrawal of Crim. Case No. 5601-2000 for selling one deck of shabu. The prosecution agreed and respondent approved the agreement declaring Crim. Case No. 5601-2000 withdrawn[3] and dismissed as a consequence of plea bargaining.[4]

Complainant averred that respondent's conduct was contrary to the provisions on plea bargaining in Section 2 of Rule 116, Rules on Criminal Procedure[5] and Sections 2 and 3 of R.A. No. 8493,[6] and Supreme Court Circular No. 38-98.[7] She argued

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[3] *Id*. at 56.

[4] *Id*. at 57.

[5] Section 2. *Plea of guilty to a lesser offense*. —At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

[6] Rep. Act. No. 8493. **Section 2.** *Mandatory Pre-Trial in Criminal Cases*. — In all cases cognizable by the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, Regional Trial Court, and the Sandiganbayan, the justice or judge shall, after arraignment, order a pre-trial conference to consider the following:

(a) Plea bargaining;

(b) Stipulation of Facts;

(c) Marking for identification of evidence of parties;

(d) Waiver of objections to admissibility of evidence; and

(e) Such other matters as will promote a fair and expeditious trial.

**Section 3.** *Pre-Trial Agreement*. — All agreements or admissions made or entered into during the pre-trial conference shall be reduced to writing and signed by the accused and counsel, otherwise the same shall not be used in evidence against the accused. The agreements in relation to matters referred to in Section 2 hereof is subject to the approval of the court: Provided, That the agreement on the plea of the accused to a lesser offense may only be revised, modified, or annulled by the court when the same is contrary to law, public morals, or public policy.

[7] **Sec. 3**. *MANDATORY PRE-TRIAL IN CRIMINAL CASES*. — In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court

that it was unclear whether the offended party consented and whether the prosecutor has proper authority to enter into such agreement; and that plea bargaining is limited to a plea to a lesser offense which is necessarily included in the offense charged.[8]

In *Misc. No. 2824*, complainant alleged that the validity and propriety of the plea bargaining in Crim. Case Nos. 5760-2K, 5761-2K, 5762-2K entitled "*People v. Dumpit*" and the dismissal of one case as a consequence thereof are questionable. Respondent approved the plea bargaining agreement entered into by the prosecution and the accused[9] and dismissed Crim. Case No. 5760-2K and Crim. Case No. 5762-2K as a consequence of plea bargaining. Upon arraignment,[10] accused pleaded guilty to the sale of *shabu*. Thereafter, respondent issued a Decision[11] finding the accused guilty of selling *shabu* in Crim.

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and Municipal Circuit Trial Court, the court shall, after arraignment, order a pre-trial conference to consider the following:

(a) Plea bargaining;

(b) Stipulation of facts;

(c) Marking for identification of evidence of the parties;

(d) Waiver of objections to admissibility of evidence; and

(e) Such other matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

If the accused has pleaded not guilty to the crime charged, he may state whether he interposes a negative or affirmative defense. A negative defense shall require the prosecution to prove the guilt of the accused beyond reasonable doubt, while an affirmative defense may modify the order of trial and require the accused to prove such defense by clear and convincing evidence.

**Sec. 4**. *PRE-TRIAL AGREEMENT*. — All agreements or admissions made or entered into during the pre-trial conference shall be reduced to writing and signed by the accused and counsel, otherwise the same shall not be used against the accused. The agreements in relation to matters referred to in Section 3 hereof are subject to the approval of the court; Provided, That the agreement on the pleas of the accused should be to a lesser offense necessarily included in the offense charged.

[8] *Rollo*, p. 46.

[9] *Id*. at 92.

[10] *Id*. at 93.

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

Case No. 5761-2K. The next day, the accused applied for probation and was released on recognizance.[12]

Complainant also alleged that respondent was grossly negligent relative to the issuance of Search Warrant No. 40-03[13] against accused Dumpit which led to the filing of an Information for possession of shabu docketed as Criminal Case No. 6899.[14] In a Motion to Quash the Information, the accused challenged the jurisdiction of the court over his person and prayed for the suppression of the evidence obtained[15] on ground that Search Warrant No. 40-03 was intended for one Edmun Camello and not Dometilo. In the Order[16] dated May 3, 2004, respondent quashed Search Warrant No. 40-03, admitting that there was indeed an error in the search warrant, particularly the name of the person subject thereof which rendered it intrinsically void.

Complainant argued that respondent's failure to read carefully the contents of the search warrant before affixing his signature constitutes gross negligence; that any inadvertence on the part of the stenographer should not be construed to exonerate the respondent who signed the search warrant without ascertaining the correctness of its contents; that by such negligence, respondent exposed the judicial system to ridicule by declaring null and void a search warrant which he himself issued and likewise caused a blow on the morale of the police officers who lost the case on a technicality.

In *Misc. No. 2825*, complainant assailed the August 2, 2006 Order[17] issued by respondent dismissing Criminal Case No. 8149-2K6 entitled *People v. Lopez* for lack of probable cause. In said case, respondent gave the prosecution ten days from receipt of the order to file a comment or opposition to the accused's Motion to Dismiss and/or for Judicial Determination of Probable

[12] *Id*. at 96-97.

[13] *Id*. at 98.

[14] *Id*. at 99-101.

[15] *Id*. at 102.

[16] *Id*. at 105-106.

[17] *Id*. at 149-151.

Cause. However, on August 2, 2006, or only seven days after the prosecution received its copy of the order, the respondent issued an Order dismissing the case for lack of probable cause. Complainant claimed that respondent disregarded due process because the Order dismissing the case was rendered before the expiration of the 10 day period given to the prosecution to file comment.

Moreover, complainant alleged that respondent should have treated the subject motion as a Motion to Quash. Thus, pursuant to Section 1 of Rule 117, the motion should be made before the accused enters a plea, and not after arraignment, as in this case, and based on any of the grounds stated in Section 3, and failure to assert any ground before arraignment shall be deemed a waiver thereof.

In *Misc. No. 2860*, complainant alleged that on the strength of Search Warrant No. 87-04,[18] the accused in Criminal Case No. 7235-2K4 was arrested after a search conducted in his residence. After arraignment, accused filed a Motion to Quash the Search Warrant and Suppress Evidence. However, the prayer[19] in said motion inadvertently asked for the quashal of another search warrant issued in another case.

Complainant claimed that despite the glaring error, respondent gave due course to the motion; worse, the dispositive portion of the Resolution dated August 8, 2005 was a mere reproduction of the erroneous prayer in the Motion. Complainant alleged that the same cannot be treated as a mere typographical error; that respondent did not read the resolution before affixing his signature; that respondent exhibited gross ignorance in issuing Search Warrant 87-04 and thereafter invalidating the same for

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[18] *Id*. at 180.

[19] *Id*. at 186.

PRAYER

"WHEREFORE, it is prayed that, after due hearing of this incident, Search Warrant No. 01-PMG-SM 2004 dated August 24, 2004, be ordered quashed, all evidences obtained or emanating from it be ordered suppressed and declared as inadmissible in evidence, this case be ordered DISMISSED and the accused be ordered released."

failing to comply with the requisites of a Search Warrant; and that respondent issued several search warrants beyond the territorial jurisdiction of his court which were eventually invalidated thereby putting the efforts of the arresting officers to naught.

In *Misc. No. 2861*, complainant argued that respondent provisionally dismissed Criminal Case No. 6994-2K3 entitled *People v. Fernandez*, for failure of the prosecution to present the laboratory technician on several occasions despite having presented several other witnesses. Complainant claimed that the court cannot *motu proprio* dismiss the case solely on that ground since the prosecution has presented other witnesses whose testimonies respondent is duty bound to pass upon before making a resolution of the case. While Section 23 of Rule 119 allows the Court to dismiss the case for insufficiency of evidence, it requires that the prosecution must first rest its case and be given opportunity to be heard. The right of the accused to a speedy trial does not mean the arbitrary dismissal of the case against him to the prejudice of other parties in the case.

In *Misc. No. 2887*, complainant averred that Raup Ibrahim and Vivian Duerme who were the accused in three criminal cases[20] filed motions to suppress evidence and quash information praying for the dismissal of the cases against them. Respondent gave the prosecution ten days to file a Comment on the said motions. However, in disregard of the period given to the prosecution, respondent issued an Order dated July 31, 2006 dismissing the three cases.

In his Comment, respondent judge argued that complainant failed to show that his decisions were issued whimsically and arbitrarily or that the parties in said cases were deprived of due process; that hearings were conducted and the parties were given equal opportunity to be heard, and the dispositions in question were served upon them; that assuming his rulings to be erroneous, the rules provide remedies by which said rulings

[20] *People v. Raup Ibrahim y Cua*, Criminal Case No. 8284-2K6; *People v. Raup Ibrahim y Cua and Vivian Duerme y Cajutor*, Criminal Case No. 8283-2K6; and *People v. Vivian Duerme y Cajutor*, Criminal Case No. 8285.

may be contested, which the parties failed to avail of. Moreover, if complainant believed that the dispositions were erroneous, she should have alerted the respondent as lawyer and an officer of the court.

Moreover, respondent assailed the standing of complainant to file the administrative complaint docketed as *Misc. No. 2820* because she was not the counsel of the parties nor was she a party to the case. He claimed that assuming the assailed order to be erroneous, the proper party could still avail of proper remedies under the rules; and that the present complaint only attempts to preempt whatever legal action the parties may undertake which is tantamount to a usurpation of the rights of the aggrieved party to a judicial process and an arrogation of judicial discretion.

With respect to the dismissal of Criminal Case No. 5601 as alleged in *Misc. No. 2821*, respondent averred that the prosecution initiated its withdrawal on August 4, 2000; that the assailed orders were properly served to the parties; however, neither contested the disposition of the court hence, the orders became final and executory by operation of law.

In *Misc. No. 2824*, respondent averred that the parties in Criminal Cases Nos. 5760-2K, 5761-2K and 5762-2K actively participated in the proceedings. None of them contested the disposition of the court which are now final and executory.

Respondent imputed ill motive on the part of complainant in filing the present charges. He claimed that he filed an administrative complaint against complainant for irresponsibly disclosing wrong and malicious information in Election Protest Case No 0001-2K4, to which complainant retaliated by filing administrative charges against him for Absenteeism and Falsification of Certificate of Service and for bringing home a piece of evidence, of which respondent was found guilty. Thereafter, respondent filed another administrative charge against complainant for Gross Inefficiency, who in turn filed the instant administrative complaints.

In its Report dated January 7, 2008,[21] the Office of the Court Administrator found respondent guilty of gross ignorance of the law only in Misc. No. 2821 and Misc. No. 2824, and recommended the dismissal of the other complaints for being judicial in nature, thus:

EVALUATION: As can be gleaned from the records, it is evident that the acts being complained of relate to the propriety of the orders issued by respondent judge in resolving the motion to dismiss filed by the counsel of the accused in Misc. No. 2825; motion to suppress evidence filed by the counsel of the accused in Misc. No. 2887. Thus, the same refers to the exercise of respondent judge of his judicial discretion.

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Likewise, as to Misc. No. 2820 and Misc. No. 2860, even assuming that respondent judge made an erroneous decision and/or interpretation of Section 6 of Rule 39 of the Rules of Court, still he cannot be automatically held administratively liable.

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As to Misc. No. 2861, the act complained of actually dwells on an issue evidently judicial in nature since it involves the appreciation of evidence by the respondent judge. It bears without stressing that a trial judge's impression on the testimony of witnesses and his appreciation of evidence presented before him are binding on the Court in the absence of a clear showing of grave abuse of discretion or an obvious misapprehension of facts. The fact that the respondent's appreciation of evidence differed from that of the complainant's does not warrant the conclusion that the respondent judge is ignorant of the law.

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Moreover, as to these charges of ignorance of the law, complainant utterly failed to present substantial proof to negate the presumptions of good faith and the regularity in the performance of judicial functions. It is true that "judges may be held administratively liable for gross ignorance of the law when it is shown that—motivated by bad faith, fraud, dishonesty or corruption—they ignored, contradicted or failed to apply settled law and jurisprudence."

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[21] *Rollo*, pp. 1-13.

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Finally, the present administrative complaint does not even allege that respondent judge was motivated by bad faith, malice, corruption or dishonesty when he issued the assailed orders/decisions. Neither were there any evidence presented tending to prove that respondent judge was motivated by such motives in issuing said orders/decisions.

However, as to Misc. No. 2821 and Misc. No. 2824, the next issue to be resolved is: whether or not the issuance of Orders dated September 4, 2000 and August 14, 2000, respectively, amounted to gross ignorance of the law which would justify an administrative sanction against respondent judge.

To justify his issuances of Orders dated September 4, 2000 and August 14, 2000 in Misc. No. 2821 and Misc. No. 2824, respectively, respondent judge insists that neither the prosecution nor the accused contested the disposition of the Court, thus, said orders are now final and executory.

One need not even go beyond the four corners of RA 6425 (as amended by R.A. 7659 effective December 31, 1993) to see respondent judge's palpable error in the application of the law. The assailed Orders are in connection with violation of the Dangerous Drug Act, particularly, Sections 15 and 16 of R.A. 6425 (as amended) which cannot be a subject of plea bargaining as provided under the plea-bargaining provision of the same law. Nevertheless, respondent judge in his Order dated September 4, 2000 and August 14, 2000 approved and granted the release of the accused by virtue of the plea-bargaining agreement entered by the prosecution and the accused. The pertinent provisions of R.A. 6425 (as amended) reads as thus:

Article III, RA 6425

SEC. 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.*—The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

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> SEC. 16. *Possession or Use of Regulated Drugs.* — The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drugs without the corresponding license or prescription, subject to the provisions of Section 20 hereof.
>
> Article IV, RA 6425
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> SEC. 20-A. Plea-bargaining Provision.—Any person charged under any provision of this Act where the imposable penalty is *reclusion perpetua* to death shall not be allowed.

A plain reading of the above-quoted law would readily show that violation of Sections 15 and 16 of R.A. No. 6425 (as amended) cannot be subject of plea bargaining since the imposable penalty therein is *reclusion perpetua to death*. Had respondent judge been more prudent in going over the pertinent provisions of R.A. 6425 (as amended), particularly Section 15 and Section 16, he would certainly arrive at the same conclusion. It does not take an interpretation of the law but just a plain and simple reading thereof.[22]

The Office of the Court Administrator thus recommended:

1) That this instant case be RE-DOCKETED as a regular administrative matter;

2) That respondent Judge Reinerio Abraham B. Ramas, Presiding Judge, RTC, Branch 18, Pagadian City be found GUILTY of gross ignorance of the law and be DISMISSED from the service with forfeiture of all or part of his benefits, 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; and

3) That Misc. No. 2820, Misc. No. 2825, Misc. No. 2860, Misc. No. 2861 and Misc. No. 2887 against respondent Judge Reinerio Abraham B. Ramas de (sic) DISMISSED for being judicial in nature.[23]

The OCA also noted that in another case docketed as RTJ-06-2015, involving the same parties, respondent judge was

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[22] *Id*. at 9-11.

[23] *Id*. at 13.

found guilty of Simple Misconduct and was fined ₱11,000.00 and sternly warned. The charges of Absenteeism and Falsification of Certificate of Service against him was referred for Investigation but no report has yet been submitted.[24]

The issue for resolution is whether respondent judge is administratively liable for the alleged erroneous rulings and issuances made by him in the exercise of his judicial functions.

It is elementary that not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[25] In *Maquiran v. Grageda*,[26] the Court held that alleged error committed by judges in the exercise of their adjudicative functions cannot be corrected through administrative proceedings but should instead be assailed through judicial remedies. Thus:

> Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil, or administrative liability may be said to have opened, or closed.
>
> Law and logic decree that "administrative" or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof. Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the

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[24] *Id*. at 8.

[25] *Philippine Amusement and Gaming Corporation v. Hon. Romulo A. Lopez*, A.M. No. RTJ-04-1848, October 25, 2005, 474 SCRA 76, 99.

[26] A.M. No. RTJ-04-1888, February 11, 2005, 451 SCRA 15, 43-44.

fear of civil, criminal or administrative sanctions for acts they may do and dispositions they may make in the performance of their duties and functions; and it is sound rule, which must be recognized independently of statute, that judges are not generally liable for acts done within the scope of their jurisdiction and in good faith; and that exceptionally, prosecution of the judge can be had only if "there be a final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order, and ** also evidence of malice or bad faith, ignorance of inexcusable negligence, on the part of the judge in rendering said judgment or order" or under the stringent circumstances set out in Article 32 of the Civil Code.

In *Misc. No. 2820*, the Court agrees with the OCA that the ruling of the respondent as to the interpretation of Section 6, Rule 39 of the Rules of Court does not automatically subject him to administrative liability for gross ignorance of the law. *First*, there is no showing that parties to the case have exhausted judicial remedies against the alleged erroneous ruling. Neither was it refuted that, as claimed by respondent, the subject civil case, unlike the other administrative charges, is still pending and active, and should his ruling be erroneous, the parties still have available remedies to contest said ruling. An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with fraud, malice, or dishonesty. The remedy of the aggrieved party is to elevate the assailed decision or order to the higher court for review and correction.[27] *Second*, there was no showing and neither was it alleged that the issuance of the ruling was attended with bad faith, malice, or dishonesty.

As regards *Misc. No. 2861*, the Court agrees that the charge of gross ignorance of the law against the respondent judge should be dismissed. The allegations of complainant and the proffered evidence do not prove the elements of this administrative offense, to wit: that the subject order or actuation of the judge in the performance of his official duties must not only be contrary to

[27] *Claro v. Judge Efondo*, A.M. No. MTJ-05-1585, March 31, 2005, 454 SCRA 218, 226.

existing law and jurisprudence but more importantly must be attended by bad faith, fraud, dishonesty or corruption.[28] The soundness of the provisional dismissal of the criminal case subject of Misc. No. 2861 lies within the judicial discretion of the respondent, erroneous exercise of which does not automatically render him liable. In proper cases, unreasonable delay in the proceedings, in violation of the right of the accused to speedy trial, may even be a ground for the permanent dismissal of a criminal case.[29] In the subject case, respondent deemed it proper to order only the provisional dismissal of the case.

As regards *Misc. No. 2825* and *Misc. No. 2887*, the Court finds that respondent violated the basic and fundamental constitutional principle of due process when he granted the motions filed by the accused in the criminal cases subject of these administrative complaints without giving the prosecution its day in court. Worse, respondent disregarded the period he gave for the prosecution to file comment on the motions. Such action cannot be characterized as mere deficiency in prudence, or lapse of judgment but a blatant disregard of established rules.

In *Balagtas v. Sarmiento*,[30] the Court found respondent therein grossly ignorant of the law in granting the Urgent *Ex-Parte* Motion to Leave for Abroad in violation of due process. Thus:

> Considering the litigious nature of Peith's motion and the fact that the criminal and civil aspects of the cases were simultaneously instituted, the public prosecutor and the private offended party should have been notified, failing which, the respondent judge should not have acted upon the motion.
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> The Rules of Court is explicit on this point. A motion without notice of hearing is pro forma, a mere scrap of paper. It presents no question which the court could decide. The court has no reason to consider it and the clerk has no right to receive it. The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him

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[28] *Go v. Judge Abrogar*, 446 Phil. 227, 242 (2003).

[29] See *Condrada v. People of the Philippines*, 446 Phil. 635, 650 (2003).

[30] A.M. No. MTJ-01-1377, June 17, 2004, 432 SCRA 343, 349-350.

on his objection. The objective of the rule is to avoid a capricious change of mind in order to provide due process to both parties and to ensure impartiality in the trial.

In granting Peith's Urgent *Ex-Parte* Motion to Leave for Abroad, the respondent judge violated a basic and fundamental constitutional principle, due process. When the law is elementary, not to be aware of it constitutes gross ignorance thereof. After all, judges are expected to have more than just a modicum of acquaintance with the statutes and procedural rules. Hence, the respondent judge is guilty of gross ignorance of the law.

In the instant administrative cases, the motions filed before respondent judge were likewise litigious in nature which must be heard. Respondent judge should not have acted on said motions filed by the accused without first giving the prosecution the opportunity to present its side.

Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Where the law is straightforward and the facts so evident, not to know it or to act as if one does not know it constitutes gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the ability to be proficient in the law and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge owes the public and the court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. *Ignorance of the law by a judge can easily be the mainspring of injustice*.[31]

Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law and procedure as a serious charge punishable by either dismissal from service, suspension from office without salary and other benefits for more than three (3) months but not exceeding six (6) months, or a fine of more than ₱20,000.00

[31] *Lim v. Judge Cesar M. Dumlao*, A.M. No. MTJ-04-1556, March 31, 2005, 454 SCRA 196, 201-203.

but not exceeding ₱40,000.00. In the instant case, the penalty of suspension from office for six months without salary and other benefits, is proper.

With respect to *Misc. No. 2821 and Misc. No. 2824*, the Court disagrees with the findings of the Office of the Court Administrator that the issuance of the Orders dated September 4, 2000 and August 14, 2000, respectively, amounted to gross ignorance of the law because it was made in violation of the provisions of R.A. No. 6425, as amended, prohibiting plea bargaining.

At the time the assailed rulings were issued, the prohibition on plea-bargaining provided in Section 20-A of R.A. No. 6425, as amended, is not absolute. It applies only when the person is charged under R.A. No. 6425 where the imposable penalty is *reclusion perpetua* to death. Though Sections 15 and 16 of the said law, under which the accused was charged, provide that the sale and possession of these drugs is punishable by *reclusion perpetua* to death, these penalties may only be imposed if the same were of the quantities enumerated in Section 20.[32] If the quantity involved is less than that stated, the penalty shall range from *prision correccional* to *reclusion perpetua* depending on the quantity.[33]

It is to be noted that the decision to accept or reject a plea bargaining agreement is within the sound discretion of the court subject to certain requirements of statutes or rules.[34] In *Daan v. Sandiganbayan*,[35] the Court defined plea bargaining as a process, in criminal cases, whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts

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[32] Section 20.

x x x x x x x x x

3. 200 grams or more of *shabu* or methylamphetamine hydrochloride

x x x x x x x x x

[33] 2nd paragraph of Section 20, R.A. No. 6425.

[34] 21 Am. Jur. 2d Criminal Law §§ 648, 638.

[35] G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233.

of a multi-count indictment in return for a lighter sentence than that for the graver charge.[36]

In the instant administrative cases, the determination of whether the agreement complied with requirements set forth by the rules lies in the sound discretion of the respondent judge. Whether the quantity of *shabu* in the criminal cases subject of *Misc. No. 2821* and *Misc. No. 2824* is covered by the prohibitory provision of Section 20-A is also within the competence of the trial court judge to pass upon. Should there be an error in the dismissal of the cases as a consequence of plea bargaining, parties to the cases are not without judicial remedies.

The Court notes, however, that respondent was also charged with gross negligence in *Misc. No. 2824* and *Misc. No. 2860*. *Misc. No. 2824* relates to the issuance of Search Warrant No. 40-03 where the name of the accused in the caption differs from that mentioned in the body. On the other hand, *Misc. No. 2860* relates to the Order quashing a Search Warrant in another criminal case and reproducing the Prayer in the Motion to Quash filed as its dispositive portion. The errors committed by respondent judge in the mentioned cases could have been avoided had he exercised diligence and prudence expected of him before affixing his signature.

As held by the Court in *Padilla v. Judge Silerio*,[37] in "the discharge of the functions of his office, a judge must strive to act in a manner that puts him and his conduct above reproach and beyond suspicion. He must act with extreme care for his office indeed is laden with a heavy burden of responsibility. Certainly, a judge is enjoined, his heavy caseload notwithstanding, to pore over all documents whereon he affixes his signature and gives his official imprimatur." In *Judicial Audit and Physical Inventory of Confiscated Cash, Surety and Property Bonds at the Regional Trial Court of TarlacCity, Branches 63, 64 and 65*,[38] the Court found respondent judge therein negligent for failure to exercise the necessary diligence in the performance of his duties and was imposed a fine of ₱5,000.00.

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[36] *Id*. at 240; citing *People v. Villarama, Jr.*, G.R. No. 99287, June 23, 1992, 210 SCRA 246, 251-252.

[37] 387 Phil. 538 (2000).

[38] OCA-IPI No. 04-7-358-RTC, 464 SCRA 21, 29-30 (2005).

Respondent judge cannot take refuge behind the mistakes and inefficiency of his court personnel. He is charged with the administrative responsibility of organizing and supervising them to secure the prompt and efficient dispatch of business, requiring at all times the observance of high standards of public service and fidelity. Indeed, he is ultimately responsible for ensuring that court personnel perform their tasks and that the parties are promptly notified of his orders and decisions.[39] In *Co v. Judge Plata*,[40] the Court found respondent judge therein liable for negligence for his failure to scrutinize the documents he had signed and to follow the proper procedure for fixing the amount of bail.

**WHEREFORE,** in view of all the foregoing, this Court finds respondent Judge Reinerio Abraham B. Ramas of the Regional Trial Court of Pagadian City, Branch 18, *GUILTY*:

1) of gross ignorance of the law in Misc. No. 2825 and Misc. No. 2887, for which he is suspended from office for six (6) months without salary and other benefits;

2) of negligence in Misc. No. 2860 and Misc. No. 2824, for which he is meted a FINE of ₱5,000.00.

Respondent is *STERNLY WARNED* that a repetition of the same or similar acts shall be dealt with more severely.

The charges in Misc. No. 2820, Misc. No. 2821, and Misc. No. 2861 against respondent Judge Reinerio Abraham B. Ramas are *DISMISSED* for lack of merit.

**SO ORDERED.**

*Austria-Martinez, Tinga,*[*] *Nachura,* and *Peralta, JJ.*, concur.

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[39] *Visbal v. Judge Buban*, 481 Phil. 111, 117 (2004).

[40] 453 Phil. 326, 332 (2005).

[*] In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 590 dated March 17, 2009.

**THIRD DIVISION**

[G.R. No. 150334. March 20, 2009]

**DOLLY A. OCAMPO, MARIO S. VERONA, ISAGANI O. DAWAL, JOSE ARCADIO R. RELOVA, ARISTOPHANE PALENCIA and ARMANDO HERNANDEZ,** *petitioners, vs.* **THE HONORABLE COURT OF APPEALS (Former Second Division), HON. BENEDICTO ERNESTO R. BITONIO, HON. MAXIMO B. LIM, EDGARDO C. OREDINA, and PHILIPPINE AIRLINES, INC.,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; FOR FAILING TO FILE A PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS, PETITIONERS ARE DEEMED TO HAVE ACQUIESCED TO THE ADVERSE BUREAU OF LABOR RELATIONS (BLR) JUDGMENT. —** Basic is the rule that when a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, he loses the right to do so, and the judgment or decision, as to him, becomes final and binding. In this case, we are mindful that petitioners are among the several respondents in the cases decided by the DOLE-NCR and later on appealed to and upheld by the BLR. Notably, however, as pointed out by Oredina, petitioners did not take any further action after the BLR issued its Resolution denying their motion for reconsideration. When Peñas challenged the BLR Resolutions by filing a petition for *certiorari* with the CA, petitioners did not join him. Such was a serious procedural lapse that tolled the finality of the BLR Resolutions as against them, thus, warranting the dismissal of the instant petition. As admitted by petitioners, their counsel received the copy of the BLR Resolution dated August 24, 2000 denying their Motion for Reconsideration on 31 August 2000. Petitioners, therefore, had sixty (60) days, or until 30 October 2000, to file a petition under Rule 65 before the CA, This, petitioners failed to do. For failing to file a petition for *certiorari* with the CA, petitioners are deemed to have acquiesced to the adverse BLR

judgment. There is, therefore, no cogent reason why petitioners should be allowed to come before this Court to assail the decision rendered by the CA when they were never parties to the said action. In *Siliman University v. Fontelo-Paalan* and *Itogon-Suyoc Mines, Inc. v. NLRC, et al.*, we have explained that: The rule is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him; and while he may make counter assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof, for in such case, he must appeal.

**2. ID.; ID.; NO EXCEPTIONAL GROUND OR EXTRAORDINARY CIRCUMSTANCE THAT WOULD WARRANT THE RELAXATION OF PROCEDURAL RULES; THE FINALITY OF A DECISION IS A JURISDICTIONAL EVENT WHICH CANNOT BE MADE TO DEPEND ON THE CONVENIENCE OF THE PARTIES. —** Petitioners must understand that a petition for review on *certiorari* under Rule 45 is an appeal and, as such, it is merely a continuation of an original suit. The original suit is the case appealed from and, in the case at bench, it is the petition for *certiorari* filed by Peñas before the CA that would have given rise to the suit in which the decision is the subject of petitioners' appeal. Not being parties to that original suit, they have no personality to continue the same through an appeal. While we may relax procedural rules to serve substantial justice, we do so only on exceptional grounds or under extraordinary circumstances. Here, we find no exceptional ground or extraordinary circumstance that would warrant the relaxation of procedural rules. Neither did petitioners provide any justifiable reason for their failure to question the adverse BLR resolutions within the reglementary period or to join Peñas in the *certiorari* petition before the appellate court. More importantly, we cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed a judgment to become final and executory and, after the same has become immutable, seek iniquitous ways to assail it. The finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of the parties.

**3. ID.; ID.; THE SUBJECT INTRA-UNION CONTROVERSY IS ALREADY MOOT AND ACADEMIC; THE FIVE-YEAR**

**TERM OF OFFICE CONTESTED BY THE PARTIES HAS ALREADY EXPIRED. —** In any event, the intra-union controversy has already been rendered moot and academic. The five-year term of office contested by the parties has already expired. Moreover, petitioners are estopped from further pursuing this petition and are deemed to have abandoned the same when they actively participated in the formulation of PALEA election guidelines with the DOLE-NCR, following the order of the BLR for the union to conduct a new election. In fact, petitioner Ocampo even filed her certificate of candidacy as president of PALEA after the DOLE set the date for the new election on April 5, 2002.

**APPEARANCES OF COUNSEL**

*Potenciano A. Flores, Jr.* for petitioners.
*Bienvenido T. Jamoralin, Jr.* for PAL.
*Cabalitan and Associates Law Offices* for E.C. Oredina.

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

**NACHURA, *J.*:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the March 28, 2001 Decision[1] of the Court of Appeals (CA), and its October 12, 2001 Resolution[2] in CA-G.R. SP No. 60886. The appellate court, in its assailed decision and resolution, affirmed the July 28, 2000 Resolution[3] issued by Bureau of Labor Relations (BLR) Director Benedicto Ernesto R. Bitonio, Jr., which, in turn, affirmed the June 15, 2000 Decision[4] of the Department of Labor and

[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Cancio C. Garcia (now a retired member of this Court) and Andres B. Reyes, Jr., concurring; *rollo*, pp. 161-171.

[2] *Id*. at 173-177.

[3] *Id*. at 196-211.

[4] *Id*. at 182-193.

Employment-National Capital Region (DOLE-NCR) Director Maximo B. Lim nullifying the election of officers of the Philippine Airlines Employees Association (PALEA) held on February 17 to 24, 2000, and ordering a new election of officers for PALEA.

The factual antecedents of this case follow.

The PALEA-International Transport Workers' Federation-Trade Union Congress of the Philippines (ITF-TUCP) is the sole and exclusive collective bargaining representative of all regular and rank-and-file employees of Philippine Airlines (PAL).

On February 17, 21, 23 and 24, 2000, a general election of PALEA officers was conducted following the expiration of the term of office of its set of incumbent officers. After the casting of the ballots, the PALEA Commission on Election (Comelec) proceeded to count and canvass the same except some 500 ballots that had been segregated pursuant to a circular which provides that segregated ballots "apply only to voters casting their ballots [in] precinct other than their own and upon canvassing, the same would be double checked against official voters list assigned in their respective area to avoid double balloting." Three (3) ballot boxes containing ballots from the PALEA precinct and the precincts from Cubao and Padre Faura were likewise questioned.

Without waiting for the final result of the canvass, Nida Villagracia, one of the candidates for union president, and her group filed, on March 7, 2000, a petition asking the DOLE-NCR to assume jurisdiction and to complete the canvassing of votes, with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction against the PALEA Comelec. The case was docketed as Case No. NCR-OD-0003-004-IRD.

On March 16, 2000, while Villagracia's petition was still pending, PALEA Comelec declared the segregated ballots and the ballots contained in the three unopened ballot boxes as invalid, and proclaimed the following candidates as the duly elected union officers:

President: Jose T. Peñas III
Vice President: Avelino G. Capili
Secretary: Isagani O. Dawal
Treasurer: Dolly A. Ocampo
Board of Directors:

1. Aristophane Palencia
2. Nelson F. Menes
3. Rosemarie L. Flores
4. Noel S. Tria
5. Armando Hernandez
6. Lope Dollesin
7. Joselito O. Rodrigo
8. Jaime O. Bautista
9. Jorge P. Dela Rosa
10. Mario S. Verona
11. Jose Arcadio R. Relova
12. Manuel C. Belda
13. Ronaldo C. Ramos
14. Carlos V. Bandalao
15. Eutiquio C. Bulambot
16. Alexander Ubano
17. Vincent Francisco Casimiro[5]

On March 30, 2000, Villagracia's petition was dismissed due to prematurity and for failure to exhaust the administrative remedies provided for in Article XIX, Section VI of the PALEA

[5] *Id*. at 163.

Constitution and By-laws.[6] On that same day, herein private respondent Edgardo Oredina, also a candidate for union president, together with his group, filed a petition to declare a failure of election, with an urgent prayer for the issuance of a TRO and/or writ of preliminary injunction. The petition was docketed as Case No. NCR-OD-0003-010-IRD. A Decision[7] was rendered by DOLE-NCR on June 15, 2000, granting the Oredina petition, thereby nullifying the results of the PALEA election and the proclamation of the winners made by the Comelec. The decision also ordered PALEA Comelec to conduct a new election of union officers, this time under the direct supervision of the DOLE.

Aggrieved, Jose Peñas III and herein petitioners, all of whom had been previously declared by the PALEA Comelec as the winning candidates, filed an appeal with the BLR. On July 28, 2000, the BLR, through a Resolution,[8] denied the appeal for lack of merit. Separate motions for reconsideration were filed by petitioners, Peñas and the PALEA Comelec, but the same were denied in a Resolution[9] issued on August 24, 2000.

Only Peñas went further to challenge the BLR Resolution by filing a petition for *certiorari*[10] with the CA. Peñas argued that both the DOLE-NCR and the BLR did not have jurisdiction over the controversy, because the action filed by Oredina and his group was premature for failure to exhaust the administrative remedies provided for in PALEA's constitution and by-laws.

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[6] Art. XIX, Sec. VI of the PALEA Constitution and By-Laws provides in full:

Section 6. In cases where a situation arises, whereby the losing candidate does not concede to the result of the election, he may, if he so desires, submit in writing, his protest to the Commission on Elections within thirty (30) days after the proclamation of the winning candidates, and the Commission on Elections sitting *en banc*, shall hear and decide such protest within ninety (90) days from the date the protest was filed provided, however, that all expenditures involving his protest shall be shouldered by him.

[7] *Rollo*, pp. 182-193.

[8] *Id.* at 196-211.

[9] *Id.* at 214-218.

[10] *Id.* at 219-313.

On March 28, 2001, the CA promulgated the assailed Decision[11] affirming the resolution of the BLR. A motion for reconsideration was filed by Peñas but the same was denied by the CA through a Resolution[12] dated October 12, 2001.

Peñas did nothing more. Instead, the herein petitioners, who were Peñas' co-respondents in the original action filed before the DOLE-NCR, lodged this petition for review on *certiorari* with this Court on November 29, 2001, asserting the same arguments raised by Peñas in his previous appeal before the CA.

In his comment,[13] private respondent Oredina argued that petitioners were not proper parties to appeal the CA decision because they were not parties to the case before the CA. Only Peñas, acting on his own, filed a petition for *certiorari* before the appellate court challenging the BLR Resolutions. Oredina reasoned further that since Peñas failed to elevate the CA decision to this Court within the prescribed period, the same had thus acquired finality.

The sole issue for us to resolve is whether petitioners — who were not parties to the case before the CA, but co-respondents of Peñas in the original action before the DOLE-NCR and before the BLR — are proper parties to file this petition for review on *certiorari*.

We answer in the negative.

Basic is the rule that when a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, he loses the right to do so, and the judgment or decision, as to him, becomes final and binding.[14]

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[11] *Supra* note 1.

[12] *Supra* note 2.

[13] *Rollo*, p. 556.

[14] See *Anadon v. Herrera*, G.R. No. 159153, July 9, 2007, 527 SCRA 90, 95, citing *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 638.

In this case, we are mindful that petitioners are among the several respondents in the cases decided by the DOLE-NCR and later on appealed to and upheld by the BLR. Notably, however, as pointed out by Oredina, petitioners did not take any further action after the BLR issued its Resolution denying their motion for reconsideration. When Peñas challenged the BLR Resolutions by filing a petition for *certiorari* with the CA, petitioners did not join him. Such was a serious procedural lapse that tolled the finality of the BLR Resolutions as against them, thus, warranting the dismissal of the instant petition.

As admitted by petitioners, their counsel received the copy of the BLR Resolution[15] dated August 24, 2000 denying their Motion for Reconsideration on 31 August 2000. Petitioners, therefore, had sixty (60) days,[16] or until 30 October 2000, to

[15] *Rollo,* p. 235.

[16] RULES OF COURT, Rule 65, Secs. 1 and 4 pertinently provide:

SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

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SEC. 4. *When and where position filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the

file a petition under Rule 65 before the CA,[17] This, petitioners failed to do.

For failing to file a petition for *certiorari* with the CA, petitioners are deemed to have acquiesced to the adverse BLR judgment. There is, therefore, no cogent reason why petitioners should be allowed to come before this Court to assail the decision rendered by the CA when they were never parties to the said action.

In *Siliman University v. Fontelo-Paalan*[18] and *Itogon-Suyoc Mines, Inc. v. NLRC, et al.*,[19] we have explained that:

> The rule is well-settled that a party cannot impugn the correctness of a judgment not appealed from by him; and while he may make counter assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof, for in such case, he must appeal.[20]

Petitioners must understand that a petition for review on *certiorari* under Rule 45 is an appeal and, as such, it is merely a continuation of an original suit.[21] The original suit is the case appealed from and, in the case at bench, it is the petition for *certiorari* filed by Peñas before the CA that would have given rise to the suit in which the decision is the subject of petitioners' appeal. Not being parties to that original suit, they have no personality to continue the same through an appeal.

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Sandiganbayan, if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

[17] *St. Martin Funeral Home v. NLRC*, G.R. No. 130866, September 16, 1998, 295 SCRA 494, 509.

[18] G.R. No. 170948, June 26, 2007, 525 SCRA 759.

[19] 202 Phil. 850 (1982).

[20] *Siliman University v. Fontelo-Paalan, supra* note 18, at 771; *Itogon-Suyoc Mines, Inc. v. NLRC, et al., id.* at 854-855.

[21] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation,* G.R. No. 156067, August 11, 2004, 436 SCRA 123; *Sy v. Commission on Settlement of Land Problems*, 417 Phil. 378 (2001).

While we may relax procedural rules to serve substantial justice, we do so only on exceptional grounds or under extraordinary circumstances.[22] Here, we find no exceptional ground or extraordinary circumstance that would warrant the relaxation of procedural rules. Neither did petitioners provide any justifiable reason for their failure to question the adverse BLR resolutions within the reglementary period or to join Peñas in the *certiorari* petition before the appellate court.

More importantly, we cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed a judgment to become final and executory and, after the same has become immutable, seek iniquitous ways to assail it. The finality of a decision is a jurisdictional event which cannot be made to depend on the convenience of the parties.[23]

In any event, the intra-union controversy has already been rendered moot and academic. The five-year term of office contested by the parties has already expired.[24] Moreover, petitioners are estopped from further pursuing this petition and are deemed to have abandoned the same when they actively participated in the formulation of PALEA election guidelines with the DOLE-NCR, following the order of the BLR for the union to conduct a new election.[25] In fact, petitioner Ocampo even filed her certificate of candidacy as president of PALEA after the DOLE set the date for the new election on April 5, 2002.[26]

**WHEREFORE,** the petition is hereby *DENIED* for lack of merit. Costs against petitioners.

**SO ORDERED.**

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[22] *Republic v. Court of Appeals*, 379 Phil. 92, 98-99 (2000).

[23] *Spouses Aguilar v. Court of Appeals*, 369 Phil. 655, 665 (1999).

[24] *Rollo*, p. 707; see *Lanuza, Jr. v. Yuchengco*, G.R. No. 157033, March 28, 2005, 454 SCRA 130, 138.

[25] TSN, May 14, 2002, pp. 57-59.

[26] *Rollo*, p. 710.

*Ynares-Santiago (Chairperson), Austria-Martinez, Tinga,** and *Peralta, JJ.*, concur.

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**THIRD DIVISION**

[G.R. No. 160596. March 20, 2009]

**REPUBLIC OF THE PHILIPPINES, represented by the Office of the Ombudsman,** *petitioner, vs.* **IGNACIO BAJAO,** *respondent.***

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; AUTHORITY TO IMPOSE ADMINISTRATIVE PENALTIES, DISCUSSED; RELEVANT LAW AND RULINGS, CITED. —** [T]he scope of the authority of the Ombudsman in administrative cases as defined under the Constitution and R.A. No. 6770 is broad enough to include the direct imposition of the penalty of removal, suspension, demotion, fine or censure on an erring public official or employee. In *Office of the Ombudsman v. Court of Appeals and Armilla*, the Court held: Still in connection with their administrative disciplinary authority, the Ombudsman and his deputies are expressly given the power to preventively suspend public officials and employees facing administrative charges in accordance with Section 24 of Republic Act No. 6770: Section 25 thereof sets forth the penalties as follows: x x x As referred to in the above provision, under Presidential Decree No. 807,[32] the penalties that may be imposed by the disciplining authority in administrative disciplinary cases are

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* Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 590 dated March 17, 2009.

** The present petition impleaded the Court of Appeals as respondent. Pursuant to Section 4, Rule 45 of the Rules of Court, the name of the Court of Appeals is deleted from the title.

removal from the service, transfer, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months' salary, or reprimand. Section 27 of Republic Act No. 6770 provides for the period of effectivity and finality of the decisions of the Office of the Ombudsman: Sec. 27. *Effectivity and Finality of Decisions*. — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory. x x x Findings of facts by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable. x x x ***All these provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.*** Moreover, in *Office of the Ombudsman v. Court of Appeals and Santos*, the Court drew attention to subparagraph 3 of Sec. 15 of R.A. No. 6770, which provides: Sec. 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties: x x x (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: ***Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer.*** The Court held that the aforecited proviso — that the refusal, without just

cause, of any officer to comply with an order of the Ombudsman to penalize an erring officer or employee with removal, suspension, demotion, fine, censure, or prosecution is a ground for disciplinary action against said officer — is a strong indication that the Ombudsman's "recommendation" is not merely advisory in nature but is actually mandatory within the bounds of law.

**2. ID.; ID.; ID.; ID.; THE DECISION OF THE OFFICE OF THE OMBUDSMAN IMPOSING THE PENALTY OF SUSPENSION FOR NOT MORE THAN ONE MONTH IS FINAL AND UNAPPEALABLE; APPLICATION. —** The next issue is whether the imposition of such penalty can no longer be appealed to the CA. The Court had occasion to resolve the same issue in *Herrera v. Bohol.* In said case, the Ombudsman found therein petitioner Herrera guilty of simple misconduct and imposed upon him the penalty of suspension for one month without pay. Herrera filed an appeal with the CA, but the same was dismissed on the ground "that the questioned decision of the Ombudsman is unappealable x x x." Citing *Lopez v. Court of Appeals*, the Court affirmed the decision of the CA, thus: x x x [T]he Court, again citing Sec. 27 of R.A. No. 6770, Sec. 7, Rule III of the Rules of Procedure of the Office of the Ombudsman and *Lapid v. Court of Appeals*, reiterated that decisions of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine equivalent to one month salary shall be final and unappealable. ***The penalty imposed upon herein petitioner being suspension for one month without pay, we hold the same final and unappealable, as correctly ruled by the Court of Appeals.*** Thus, the CA erred when it reviewed on appeal the factual basis of the Ombudsman decision despite its being final and unappealable under Sec. 27 of R.A. No. 6770. As we held in *Republic v. Francisco,* considering that a decision of the Ombudsman imposing the penalty of suspension for not more than one month is final and unappealable, "it follows that the CA ha[s] no appellate jurisdiction to review, rectify or reverse the same." This is not to say that decisions of the Ombudsman cannot be questioned – such decisions are still subject to the test of arbitrariness or grave abuse of discretion through a petition for *certiorari* under Rule 65 of the Rules of Court. However, as earlier discussed, the Ombudsman did not act with grave abuse of

discretion in imposing on respondent the penalty of suspension without pay for not more than one month, the same being within its ample authority to impose under the Constitution and R.A. No. 6770.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Zamora Law Offices* for respondent.

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

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

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the May 22, 2003 Decision[1] of the Court of Appeals (CA) which reversed the September 27, 2001 Decision[2] of the Office of the Deputy Ombudsman for the Visayas (Ombudsman) in OMB-VIS-ADM-2000-0854, and the October 13, 2003 CA Resolution[3] which denied the Ombudsman's Motion for Reconsideration.

The relevant facts are as follows:

On the basis of a Complaint[4] filed by Candijay, Bohol Municipal Vice-Mayor Antonio L. Po and *Sangguniang Bayan* Members Deodoro G. Hinacay, Gaspar G. Amora, Philbert H. Bertumen, Leonardo A. Tutor, Peregrine Castrodes and Sergio G. Amora, Jr. (complainants) against Municipal Treasurer Ignacio Bajao (respondent) for Failure to Make Delivery of Public Funds punishable under Article 221 of the Revised Penal Code and Section 3(F) of Republic Act (R.A.) No. 3019, and for Grave Abuse of Authority in relation to respondent's withholding of

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[1] Penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Eliezer R. de Los Santos and Regalado E. Maambong; *rollo,* p. 48.

[2] CA *rollo,* p. 29.

[3] *Rollo,* p. 64.

[4] CA *rollo,* p. 35.

complainants' uniform allowance for 1999, the Office of the Ombudsman (Visayas) issued a decision, the dispositive portion of which reads:

> IN VIEW OF ALL THE FOREGOING, after finding respondent to be administratively liable for Simple MISCONDUCT a penalty of one (1) month suspension from office without pay is hereby imposed, with a warning that a repetition of the same act will be dealt with more severely.
>
> SO ORDERED.[5]

The Ombudsman also issued an Order dated January 14, 2002, directing the immediate implementation of its decision pursuant to Administrative Order No. 14, dated July 30, 2000, amending Rule III of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) which provides that a penalty not exceeding one month suspension is final and unappealable.[6]

Respondent filed with the CA a Special Civil Action for *Certiorari* and an Amended Petition for Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court. Respondent disputed the factual basis of the Ombudsman decision as well as its authority to directly impose a penalty of suspension, arguing that the Ombudsman may only recommend to the proper disciplining authority the implementation of such penalty.[7]

The Ombudsman itself, through the Solicitor General, filed a Comment[8] and Memorandum,[9] maintaining that its decision to suspend respondent is valid under the facts established.

The CA issued a Temporary Restraining Order against the implementation of the Ombudsman decision.[10] Thereafter, it

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[5] *Id.* at 33-34.

[6] *Id.* at 134.

[7] *Id.* at 96-98.

[8] CA *rollo*, p. 326.

[9] *Id.* at 299.

[10] *Id.* at 116.

rendered the May 22, 2003 Decision assailed herein, declaring that the Ombudsman exceeded its authority in penalizing respondent. According to the CA, the Constitution itself and R.A. No. 6770 or the Ombudsman Act of 1989, limit the authority of the Ombudsman in administrative cases to recommending the appropriate penalty to be imposed on an erring public official or employee, leaving the adoption and enforcement of the recommended penalty to the discretion of the immediate disciplining authority. The CA elaborated:

> Paragraph 3, Section 13, Article XI of the Constitution dealing specifically on the power of the Ombudsman, provides:
>
> > (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
>
> In conjunction thereto, Section 12 of Article XI states:
>
> > Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.
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> We must give Our assent to the stand of petitioner that the operative phrase in Paragraph 3, Section 13, Article XI, is "to recommend". The word "recommend" has been defined by Black's Law Dictionary as "an action which is advisory in nature rather than one having any binding effect."[11]
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> x x x x x x x x x
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> Even under the Ombudsman Act of 1989, wherein the Legislature sought to put more teeth, so to speak, to the Office of the Ombudsman, it may be gleaned from the language of the law that punitive prerogatives have still be withheld from the Ombudsman in so far as the official complained against is concerned. Paragraph 3 of Section 15 of the said law reads:

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[11] *Rollo*, p. 51.

> Sec. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:
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> [x x x x x x x x x]
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> (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer; (Emphasis supplied)
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> x x x x x x x x x x x x

Thus, even Republic Act No. 6770 recognizes that the power of the Ombudsman to adjudicate penalty after investigation is merely recommendatory or suggestive, for otherwise, the law would not have to provide for the Ombudsman to first go to the disciplining authority and direct the latter to take appropriate action against the erring government functionary. This is as it should be. For to give it a contrary construction would be productive of nothing but mischief, such being at war with the explicit language of the Fundamental Law. As the spring cannot rise higher than its source, neither can a statute be at variance with the Constitution.

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Indeed, the Supreme Court in *Tapiador v. Office of the Ombudsman*, per Justice Sabino de Leon, stated, albeit in an *obiter dictum*, that "(b)esides, assuming that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only 'recommend' the removal of the public official or employee found to be at fault, to the public official concerned.

In fine, We find, and so hold, that the Office of the Ombudsman has only the power to investigate possible misconduct of a government official or employee in the performance of his functions, and thereafter recommend to the disciplining authority the appropriate penalty to be meted out, and that it is the disciplining authority that has the power or prerogative to impose such penalty.[12]

The CA further absolved respondent of the offense of simple misconduct in view of findings that respondent was justified in withholding complainants' uniform allowance for lack of authorization from the municipal mayor for the release of said funds as required under the Local Government Code and its implementing rules, as well as Local Budget Circular No. 68 of the Department of Budget and Management.[13] The dispositive portion of the CA Decision reads:

WHEREFORE, the Petition is hereby GRANTED. The impugned Order [sic] of the Office of the Ombudsman, having been issued without grave abuse of discretion amounting to excess of jurisdiction, hereby ANNULLED AND SET ASIDE.

SO ORDERED.[14]

The Ombudsman's motion for reconsideration was denied by the CA.[15]

On its own, the Ombudsman filed a Petition for Review on *Certiorari*[16] with the Court but the same was denied for having been filed out of time.[17]

Through the Solicitor General, the Ombudsman filed the present petition which the Court initially denied, also for having been filed out of time; but upon motion for reconsideration by the

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[12] *Rollo*, pp. 57-58.

[13] *Rollo*, pp. 59-60.

[14] *Id*. at 60.

[15] *Id*. at 67.

[16] Docketed as G.R. No. 160501.

[17] Entry of Judgment dated March 15, 2004, *rollo*, p. 164.

Ombudsman, the petition was eventually given due course per its Resolution dated April 12, 2004.[18]

The claim of respondent — that the present petition is barred by the Ombudsman prior petition (G.R. No. 160501), which was dismissed — is not plausible. Suffice it to state that the Court gave due course to the present petition, for it raises highly meritorious arguments, dealing with the undue diminution of the constitutionally mandated investigatory power of the Ombudsman, against which the Ombudsman must be accorded every opportunity to defend itself;[19] and that the assailed decision of the CA is blatantly erroneous.[20]

Exactly the same issues raised in the petition, to wit:

I

Is the Office of the Ombudsman empowered to conduct administrative adjudication proceedings against public officers over whom it has jurisdiction?

II

Are orders/decisions of the Office of the Ombudsman imposing the penalty of suspension of one month appealable?[21]

have long been resolved by the Court in *Office of the Ombudsman v. Court of Appeals and Armilla*,[22] *Office of the Ombudsman v. Court of Appeals and Santos*,[23] and *Herrera v. Bohol*.[24]

In *Office of the Ombudsman v. Court of Appeals and Armilla*, therein respondents Armilla, all employees of the Department

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[18] *Id.* at 153.

[19] *Ombudsman v. Court of Appeals*, G.R. No. 159395, May 7, 2008, 554 SCRA 75.

[20] *Id*.

[21] Petition, *rollo*, p. 17.

[22] G.R. No. 160675, June 16, 2006, 491 SCRA 92.

[23] G.R. No. 167844, November 22, 2006, 507 SCRA 593.

[24] G.R. No. 155320, February 5, 2004, 422 SCRA 282.

of Environment and Natural Resources, were found by the Ombudsman administratively liable for simple misconduct and meted the penalty of suspension for one month. On petition for *certiorari* filed by Armilla, *et al.*, the CA held that the Ombudsman committed grave abuse of discretion in imposing the penalty of one-month suspension. Citing *Tapiador v. Office of the Ombudsman*,[25] the CA declared that the Ombudsman's power in administrative cases is limited to the *recommendation* of the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault; accordingly, it has no power to impose the penalty of suspension on Armilla, *et al.*

The CA adopted the same view in *Office of the Ombudsman v. Court of Appeals and Santos* where it held that the Ombudsman had no authority to directly penalize therein respondent Lorena Santos, but may only recommend to her agency, the Land Transportation Franchising and Regulatory Board, the imposition of an administrative penalty against her.

In both cases, the Court reversed the CA and declared that the scope of the authority of the Ombudsman in administrative cases as defined under the Constitution and R.A. No. 6770 is broad enough to include the direct imposition of the penalty of removal, suspension, demotion, fine or censure on an erring public official or employee. In *Office of the Ombudsman v. Court of Appeals and Armilla*, the Court held:

> Still in connection with their administrative disciplinary authority, the Ombudsman and his deputies are expressly given the power to preventively suspend public officials and employees facing administrative charges in accordance with Section 24 of Republic Act No. 6770:
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> > Sec. 24. *Preventive Suspension*. — The Ombudsman and his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty; (b) the

[25] 429 Phil. 47, 58 (2002).

charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Section 25 thereof sets forth the penalties as follows:

Sec. 25. *Penalties*. — (1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine ranging from five thousand pesos (₱5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges.

As referred to in the above provision, under Presidential Decree No. 807,[32] the penalties that may be imposed by the disciplining authority in administrative disciplinary cases are removal from the service, transfer, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months' salary, or reprimand.

Section 27 of Republic Act No. 6770 provides for the period of effectivity and finality of the decisions of the Office of the Ombudsman:

Sec. 27. *Effectivity and Finality of Decisions*. — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.

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Findings of facts by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.

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***All these provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.***

Moreover, in *Office of the Ombudsman v. Court of Appeals and Santos,* the Court drew attention to subparagraph 3 of Sec. 15 of R.A. No. 6770, which provides:

Sec. 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x x x x x x

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: ***Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer***. (Emphasis supplied)

The Court held that the aforecited proviso — that the refusal, without just cause, of any officer to comply with an order of the Ombudsman to penalize an erring officer or employee with

removal, suspension, demotion, fine, censure, or prosecution is a ground for disciplinary action against said officer — is a strong indication that the Ombudsman's "recommendation" is not merely advisory in nature but is actually mandatory within the bounds of law.

It being settled that the Ombudsman has the authority to impose administrative penalties, it did not act with grave abuse of discretion in the present case when it meted the penalty of suspension on respondent for simple misconduct. The CA therefore erred in granting the petition for *certiorari* of respondent.

The next issue is whether the imposition of such penalty can no longer be appealed to the CA.

The Court had occasion to resolve the same issue in *Herrera v. Bohol*.[26] In said case, the Ombudsman found therein petitioner Herrera guilty of simple misconduct and imposed upon him the penalty of suspension for one month without pay. Herrera filed an appeal with the CA, but the same was dismissed on the ground "that the questioned decision of the Ombudsman is unappealable x x x." Citing *Lopez v. Court of Appeals*,[27] the Court affirmed the decision of the CA, thus:

> x x x [T]he Court, again citing Sec. 27 of R.A. No. 6770, Sec. 7, Rule III of the Rules of Procedure of the Office of the Ombudsman and *Lapid v. Court of Appeals*, reiterated that decisions of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine equivalent to one month salary shall be final and unappealable. ***The penalty imposed upon herein petitioner being suspension for one month without pay, we hold the same final and unappealable, as correctly ruled by the Court of Appeals.*** (Emphasis added)

Thus, the CA erred when it reviewed on appeal the factual basis of the Ombudsman decision despite its being final and unappealable under Sec. 27 of R.A. No. 6770. As we held in

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[26] *Supra* note 24. See also *Office of the Ombudsman v. Alano*, G.R. No. 149102, February 15, 2007, 516 SCRA 18; *Barata v. Abalos, Jr.*, G.R. No. 142888, June 6, 2001, 358 SCRA 575.

[27] G.R. No. 144573, September 24, 2002, 389 SCRA 570.

*Republic v. Francisco*,[28] considering that a decision of the Ombudsman imposing the penalty of suspension for not more than one month is final and unappealable, "it follows that the CA ha[s] no appellate jurisdiction to review, rectify or reverse the same." This is not to say that decisions of the Ombudsman cannot be questioned — such decisions are still subject to the test of arbitrariness or grave abuse of discretion through a petition for *certiorari* under Rule 65 of the Rules of Court. However, as earlier discussed, the Ombudsman did not act with grave abuse of discretion in imposing on respondent the penalty of suspension without pay for not more than one month, the same being within its ample authority to impose under the Constitution and R.A. No. 6770.

**WHEREFORE,** the petition is *GRANTED*. The May 22, 2003 Decision and October 13, 2003 Resolution of the Court of Appeals are *REVERSED and SET ASIDE*.

No costs.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Tinga,**** *Nachura,* and *Peralta, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 163344. March 20, 2009]

**VILLARICA PAWNSHOP, INC., represented by Atty. Henry R. Villarica, Maria Consolacion Valmadrid and Rafael Valmadrid Tan,** *petitioners, vs.* **SPOUSES ROGER G. GERNALE and CORAZON C. GERNALE, FAR EAST BANK & TRUST CO. (now Bank of the Philippine Islands) and the REGISTER OF DEEDS of Meycauayan, Bulacan,** *respondents.*

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[28] G.R. No. 163089, December 6, 2006, 510 SCRA 377.

[***] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 590 dated March 17, 2009.

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; INSTANCES WHEN A WRIT OF *CERTIORARI* IS ALLOWED EVEN WHEN APPEAL IS AVAILABLE AND IS THE PROPER REMEDY; APPLICATION. —** While indeed, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is not intended to correct every controversial interlocutory ruling, and that the appropriate recourse is to file an answer and to interpose as defenses the objections raised in the motion, to proceed to trial, and, in case of an adverse decision, to elevate the entire case by appeal in due course, this rule is not absolute. Even when appeal is available and is the proper remedy, the Supreme Court has allowed a writ of *certiorari* (1) where the appeal does not constitute a speedy and adequate remedy; (2) **where the orders were also issued either in excess of or without jurisdiction or with grave abuse of discretion;** (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) **where the decision in the *certiorari* case will avoid future litigations**. As will be shown forthwith, the CA correctly held that the RTC committed grave abuse of discretion in issuing its assailed orders. Moreover, the assailed decision of the CA will avoid future litigations that may arise from the judgments that will be issued by the trial courts where Civil Case Nos. 438-M-2002 and 502-M-2002 are pending. More importantly, it would avoid the possibility of conflicting decisions by these courts.

**2. ID.; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; *LITIS PENDENTIA* AS A GROUND THEREFOR, EXPLAINED. —** *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more

than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.

**3. ID.; ID.; ID.; REQUISITES OF *LITIS PENDENTIA*, PRESENT.** — The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. With respect to the first requisite, the Court finds no error in the ruling of the CA that there is identity of parties in Civil Case Nos. 438-M-2002 and 502-M-2002. It is true that in Civil Case No. 502-M-2002, Valmadrid and Tan were added as plaintiffs, while BPI and the Register of Deeds of Meycauayan, Bulacan were added as defendants. However, identity of parties does not mean total identity of parties in both cases. It is enough that there is substantial identity of parties. The inclusion of new parties in the second action does not remove the case from the operation of the rule of *litis pendentia*. What is primordial is that the primary litigants in the first case are also parties to the second action. A different rule would render illusory the principle of *litis pendentia*. The facility of its circumvention is not difficult to imagine given the resourcefulness of lawyers. The fact that new parties were included in Civil Case No. 502-M-2002 does not detract from the fact that the principal litigants, Villarica and the Gernale spouses, are the same in both cases. Besides, it is clear that Valmadrid and Tan, being the previous owners from whom Villarica bought the subject properties, represent the same interests as the latter. On the other hand, the Register of Deeds of Meycauayan, Bulacan was impleaded merely as a nominal party. With respect to the second and third requisites, hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. 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. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. Civil Case No. 438-M-2002 is for quieting of title and damages, while Civil Case No. 502-M-2002 is for annulment and cancellation of titles and damages. The two cases are different only in the form of action, but an examination of the allegations in both cases reveals that the main issue raised, which is ownership of the land, and the principal relief sought, which is cancellation of the opposing parties' transfer certificates of title, are substantially the same. The evidence required to substantiate the parties' claims is likewise the same. The proceedings in Civil Case No. 502-M-2002 would entail the presentation of essentially the same evidence, which should be adduced in Civil Case No. 438-M-2002. As cited by the CA, this Court held in *Stilianopulos v. City of Legaspi* that: The underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same – adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title. Thus, it becomes readily apparent that the same evidence of facts as those considered in the quieting-of-title case would also be used in this petition. The subject cases are so intimately related to each other that the judgment that may be rendered in one, regardless of which party would be successful, would amount to *res judicata* in the other. From the foregoing, it is clear that there is *litis pendentia*, and that the RTC committed grave abuse of discretion in refusing to grant respondents' motion to dismiss.

**4. ID.; ID.; ID.; RELEVANT FACTORS IN DETERMINING WHICH ACTION SHOULD BE DISMISSED ON THE GROUND OF *LITIS PENDENTIA*; APPLICATION. —** There is no hard and fast rule in determining which actions should be abated on the ground of *litis pendentia*. However, the Supreme Court has set the relevant factors that lower courts must consider when they have to determine which case should be dismissed, given the pendency of two actions. These are: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the latter action or to anticipate its filing and lay the basis for its dismissal;

and (3) whether the action is the appropriate vehicle for litigating the issues between the parties. Consistent with the third factor, the Court has ruled that the earlier case can be dismissed in favor of the later case if the later case is the more appropriate forum for the ventilation of the issues between the parties. In the present case, the mere fact that the action for quieting of title (Civil Case No. 438-M-2002) was filed earlier than the case for annulment and cancellation of titles (Civil Case No. 502-M-2002) does not necessarily mean that the first case will be given preference. Indeed, the rule on *litis pendentia* does not require that the latter case should yield to the earlier case. What is required merely is that there be another pending action, not a *prior* pending action. There is reason to dismiss Civil Case No. 438-M-2002, considering that the issue of whether or not the contract of mortgage entered into between BPI and the Gernale spouses should be annulled is, understandably, not raised in this case and was brought up only in Civil Case No. 502-M-2002. Thus, to dismiss Civil Case No. 502-M-2002, instead, would leave this issue unresolved. Another reason why Civil Case No. 502-M-2002 should not be dismissed is that it is a direct action attacking the registered titles of the Gernale spouses over the properties in question, as opposed to petitioners' answer in Civil Case No. 438-M-2002 which would merely be considered a collateral and not a direct attack on the said titles. Settled is the rule that a certificate of title shall not be subject to a collateral attack; and it cannot be altered, modified, or canceled except in a direct proceeding in accordance with law. Hence, to dismiss Civil Case No. 502-M-2002 would, in effect, deprive petitioners of their right to attack respondent spouses' titles over the disputed properties and pray for their cancellation. On the other hand, there are countervailing considerations which make dismissal of Civil Case No. 438-M-2002 inequitable. Aside from the fact that it was the first action which was filed, pre-trial conference has already been conducted in this case as evidenced by the Pre-Trial Order issued by the RTC of Malolos, Branch 18 on October 29, 2002, and the first trial date already set as early as January 28, 2003. In fact, the trial court in said Order has noted that the deposition of Valmadrid, who is one of the witnesses for petitioners, was already taken.

**5. ID.; ID.; ID.; CONSOLIDATION OF CASES, PROPER IN CASE AT BAR. —** This Court has held that two cases involving the

same parties and affecting closely related subject matters must be ordered consolidated and jointly tried in the court where the earlier case was filed. This is consistent with Section 1, Rule 31 of the Rules of Court, which provides as follows: Section 1. Consolidation. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. In the instant case, it would therefore be more in keeping with the demands of law and equity if Civil Case No. 502-M-2002 will be consolidated with Civil Case No. 438-M-2002 in order that all the issues raised by the parties in both cases will be properly resolved, and so that the evidence already presented in the former case will no longer have to be presented in the latter.

**6. ID.; ID.; ID.; BENEFITS RESULTING FROM CONSOLIDATION OF CASES. —** Consolidation of cases, when proper, results in the simplification of proceedings, which saves time, the resources of the parties and the courts, and a possible major abbreviation of trial. It is a desirable end to be achieved within the context of the present state of affairs, where court dockets are full and individual and state finances are limited. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Another compelling argument that weighs heavily in favor of consolidation is the avoidance of the possibility of conflicting decisions being rendered by the courts in two or more cases which would otherwise require a single judgment.

**APPEARANCES OF COUNSEL**

*Federico N. Alday, Jr.* and *Grapilon Chan Obias & Hidalgo* for petitioners.

*Beltran Beltran Rubrico Koa and Mendoza* for Heirs of Roger Gernale.

*Benedicto Versoza Gealogo and Burkley* for BPI.

## D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) promulgated on January 26, 2004 and its Resolution[2] dated April 22, 2004 in CA-G.R. SP No. 74967. The assailed Decision reversed and set aside the Orders dated September 10, 2002 and November 27, 2002 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 10, in Civil Case No. 502-M-2002; while the questioned Resolution denied the Motion for Reconsideration of Villarica Pawnshop, Inc. (Villarica) represented by Atty. Henry R. Villarica, Maria Consolacion Valmadrid (Valmadrid) and Rafael Valmadrid Tan (Tan) [hereinafter collectively referred to as petitioners].

The facts of the case are as follows:

On May 29, 2002, herein respondent spouses Roger and Corazon Gernale (Gernale spouses) filed with the Regional Trial Court (RTC) of Malolos, Bulacan a Complaint for Quieting of Title and Damages[3] against Villarica. The case was docketed as Civil Case No. 438-M-2002 and assigned to Branch 18 of RTC, Malolos.

The Gernale spouses alleged that on April 16, 1978, they purchased two parcels of land located at Marilao, Bulacan from Valmadrid as evidenced by two deeds of sale of even date; subsequently, they sought to register the sale and cause the transfer of the title to their names, but they failed because the then acting Register of Deeds of Marilao, Bulacan informed them that Transfer Certificate of Title (TCT) Nos. 90266 and 90267 covering the subject lots were among those totally burned during a conflagration that took place on March 7, 1987; on

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[1] Penned by Justice Eloy R. Bello, Jr. with the concurrence of Justices Amelita G. Tolentino and Arturo D. Brion (now a member of this Court), *rollo*, pp. 73-80.

[2] *Id*. at 82.

[3] *Rollo*, pp. 181-186.

June 20, 1994 the Gernale spouses filed a petition for the reconstitution of the original copy of TCT Nos. 90266 and 90267; their petition was granted and the reconstituted titles TCT Nos. RT-46962(90266) and RT-46963(90267) were issued; by virtue of the deed of sale in favor of the Gernales, TCT Nos. T-286452(M) and T-286453(M) were subsequently issued in their names in 1996; thereafter, the Gernale spouses saw representatives of Villarica fencing the said properties; upon verification with the Registry of Deeds of Meycauayan, Bulacan, respondent spouses discovered that TCT Nos. T-225971(M) and T-225972(M), covering the same parcels of land which they bought, were issued in the name of Villarica in 1995; and the titles of Villarica were void, as the issuance thereof proceeded from an illegal source. The Gernales prayed that the TCTs in the name of Villarica as well as all documents and conveyances relevant thereto be declared null and void, and that Villarica be ordered to pay them moral and exemplary damages and attorney's fees.

On July 1, 1998, the Gernale spouses mortgaged the subject properties to then Far East Bank & Trust Company, now Bank of the Philippine Islands (BPI).

On July 3, 2002, Villarica filed its Answer with Counterclaim[4] denying the material allegations of the Complaint and contending in its special and affirmative defenses that it was the registered owner of 10 adjoining lots denominated as Lots 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, with a total area of 3,102 square meters located at the De Castro Subdivision in Ibayo, Marilao, Bulacan; Lots 13, 14, 15, 16, 17 and 18 were purchased from Valmadrid on May 23, 1995; while Lots 19, 20, 21 and 22 were bought from Tan on even date; on June 7, 1995, separate and individual TCTs were issued for each lot; from May 23, 1995 up to the filing of its Answer, Villarica had been in actual, open, physical and continuous possession of the 10 lots, and it had been regularly paying real estate taxes thereon; Lots 13 and 14 were the parcels of land being claimed by the Gernale spouses; the deeds of sale in favor of the Gernale spouses which were supposedly executed on April 16, 1978 were fake; in her

[4] *Rollo*, pp. 187-208.

affidavit, Valmadrid denied having met or known respondent spouses or having sold Lots 13 and 14 to them; she claimed in said affidavit that her signature appearing in the Deed of Sale in favor of the Gernale spouses was falsified; and it was only in 1996 that the said Deed of Sale was registered with the Registry of Deeds of Meycauayan, Bulacan. As counterclaim, Villarica alleged that the Gernale spouses were guilty of malicious prosecution, and that they should be made liable for moral and exemplary damages as well as attorney's fees, litigation expenses and cost of suit.

Meanwhile, on June 25, 2002, petitioners filed with the RTC of Malolos, Bulacan, Branch 10, a Complaint,[5] docketed as Civil Case No. 502-M-2002, for annulment and cancellation of titles and for damages against herein respondents. Petitioners raised material allegations which were substantially the same as the special and affirmative defenses contained in Villarica's Answer to the Complaint filed by the Gernales. However, in addition to the Gernale spouses, petitioners impleaded the Register of Deeds of Meycauayan, Bulacan as defendant, alleging that through connivance with respondent Roger Gernale or through manifest partiality, evident bad faith or gross inexcusable negligence, it caused the irregular, anomalous and unlawful issuance of TCT Nos. T-286452 and T-286453. Petitioners also impleaded BPI as additional defendant on the ground that, as a mortgagor, it was a real party-in-interest as well as a necessary party, because it stood to be benefited or injured by the judgment in the suit; and that its participation was necessary for a complete determination or settlement of the claim subject of the action. Petitioners prayed that the two deeds of sale, both dated April 16, 1978, and executed in favor of the Gernale spouses, be declared null and void; TCT Nos. T-286452 and T-286453 issued by the Registry of Deeds of Meycauayan, Bulacan in the name of the Gernale spouses be annulled and cancelled; the real estate mortgage executed by the Gernales in favor of BPI be declared null and void; and the Gernales be held liable for moral and exemplary damages, as well as attorney's fees, litigation expenses and cost of suit. The case was docketed as Civil Case No. 502-M-2002 and assigned to Branch 10 of RTC, Malolos.

[5] *Id.* at 87-107.

On July 30, 2002, the Gernale spouses filed a Motion to Dismiss Civil Case No. 502-M-2002,[6] contending that petitioners' allegations in their Complaint were identical with its allegations in its Answer with Counterclaim, and that all the elements of *litis pendentia* were present in the said cases. Respondent spouses also argued that the remedy of annulment and cancellation of titles was inefficacious and contrary to procedure, as the proper remedy was the filing of an action for quieting of title as had been done by them in Civil Case No. 438-M-2002.

Petitioners filed their Opposition to Motion to Dismiss[7] asserting that the elements of *litis pendentia* were not present in the subject cases.

In its Order[8] dated September 10, 2002, the RTC denied the Motion to Dismiss filed by the Gernale spouses and directed them to file their answer to petitioners' Complaint. Respondent spouses filed a Motion for Reconsideration,[9] but the RTC denied it in its Order[10] of November 27, 2002.

On January 17, 2003, the Gernales filed a petition for *certiorari* and *mandamus* with the CA questioning the September 10, 2002 and November 27, 2002 Orders of the RTC and reiterating their contention that *litis pendentia* existed.

On January 26, 2004, the CA rendered the presently assailed Decision, the dispositive portion of which reads as follows:

WHEREFORE, the petition for *certiorari* is hereby **GRANTED**. The assailed Orders of respondent Judge denying petitioners' motion to dismiss Civil Case No. 502-M-2002 is now reversed and set aside. Accordingly, public respondent is directed to dismiss Civil Case No. 502-M-2002 on the ground of *litis pendentia*.

SO ORDERED.[11]

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[6] *Rollo*, pp. 159-166.

[7] *Rollo*, pp. 167-180.

[8] *Id.* at 213-216.

[9] *Id.* at 217-221.

[10] *Id.* at 230.

[11] CA *rollo*, p. 434.

Petitioners filed a Motion for Reconsideration, but it was denied by the CA in its Resolution[12] dated April 22, 2004.

Hence, herein petition based on the following Assignment of Errors:

1. CONTRARY TO THE SWEEPING, MANIFESTLY ERRONEOUS AND HIGHLY ARBITRARY CONCLUSION OF THE COURT OF APPEALS, THE TRIAL COURT DID NOT COMMIT ANY ABUSE OF DISCRETION OR EVEN ERROR OF JUDGMENT IN CORRECTLY, FAIRLY AND JUSTIFIABLY DENYING THE "MOTION TO DISMISS" OF RESPONDENTS ROGER G. GERNALE AND CORAZON C. GERNALE AND IN DIRECTING THEM TO ANSWER THE COMPLAINT OF THE PETITIONERS IN CIVIL CASE NO. 502-M-2002.

2. CONTRARY TO THE SWEEPING, MANIFESTLY ERRONEOUS AND HIGHLY ARBITRARY CONCLUSION OF THE COURT OF APPEALS, THERE IS CLEARLY AND EVIDENTLY NO "*LITIS PENDENCIA*" (sic) BETWEEN CIVIL CASE NO. 502-M-2002 WHERE ALL THE HEREIN PETITIONERS ARE THE PLAINTIFFS AND WHERE RESPONDENTS GERNALES, FAR EAST BANK AND TRUST CO. (BPI) ARE THE DEFENDANTS, AND CIVIL CASE. NO. 438-M-2002 WHERE RESPONDENTS GERNALES ARE THE PLAINTIFFS AND WHERE VILLARICA PAWNSHOP, INC. IS THE ONLY DEFENDANT.[13]

which boils down to the basic question of whether there is *litis pendentia* involving Civil Case Nos. 502-M-2002 and 438-M-2002.

However, before proceeding to resolve the main issue, we shall first address the question of whether the petition for *certiorari* filed by respondents with the CA was the proper remedy to question the orders of the RTC, which denied their motion to dismiss and their subsequent motion for reconsideration.

Petitioners contend that the CA erred in granting the Gernale spouses's petition for *certiorari,* because what was being questioned in the said petition was the September 10, 2002

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[12] *Id.* at 475.

[13] *Rollo,* pp. 40-41.

Order of the RTC, which denied the Gernales's motion to dismiss Civil Case No. 502-M-2002 and the November 27, 2002 RTC Order which denied their motion for reconsideration. Petitioners aver that these are interlocutory orders which cannot be questioned in a petition for *certiorari,* and that the proper procedural remedy is to file an answer, go to trial, and if the decision is adverse, reiterate the same on appeal from the final judgment.

The petition lacks merit.

While indeed, the general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is not intended to correct every controversial interlocutory ruling,[14] and that the appropriate recourse is to file an answer and to interpose as defenses the objections raised in the motion, to proceed to trial, and, in case of an adverse decision, to elevate the entire case by appeal in due course,[15] this rule is not absolute.

Even when appeal is available and is the proper remedy, the Supreme Court has allowed a writ of *certiorari* (1) where the appeal does not constitute a speedy and adequate remedy; (2) **where the orders were also issued either in excess of or without jurisdiction or with grave abuse of discretion**; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) **where the decision in the *certiorari* case will avoid future litigations**.[16]

As will be shown forthwith, the CA correctly held that the RTC committed grave abuse of discretion in issuing its assailed

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[14] *Heirs of Florencio Adolfo v. Cabral,* G.R. No. 164934, August 14, 2007, 530 SCRA 111, 117; *Khemani v. Heirs of Anastacio Trinidad,* G.R. No. 147340, December 13, 2007, 540 SCRA 83, 93.

[15] *Hasegawa v. Kitamura,* G.R. No. 149177, November 23, 2007, 538 SCRA 261, 271.

[16] *Development Bank of the Philippines v. Pingol Land Transport System Company, Inc.*, G.R. No. 145908, January 22, 2004, 420 SCRA 652, 661, citing *Casil v. Court of Appeals,* 349 Phil. 187 (1998).

orders. Moreover, the assailed decision of the CA will avoid future litigations that may arise from the judgments that will be issued by the trial courts where Civil Case Nos. 438-M-2002 and 502-M-2002 are pending. More importantly, it would avoid the possibility of conflicting decisions by these courts.

We now come to the main issue.

*Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.[17]

The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action.[18]

This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.[19]

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[20]

With respect to the first requisite, the Court finds no error in the ruling of the CA that there is identity of parties in Civil

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[17] *Guevarra v. BPI Securities Corporation*, G.R. No. 159786, August 15, 2006, 498 SCRA 613, 637.

[18] *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*, G.R. No. 158455, June 28, 2005, 461 SCRA 517, 531.

[19] *Forbes Park Association, Inc. v. Pagrel, Inc.*, G.R. No. 153821, February 13, 2008, 545 SCRA 39, 49.

[20] *Dayot v. Shell Chemical Company, (Phils.) Inc.*, G.R. No. 156542, June 26, 2007, 525 SCRA 535, 545-546; *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 429.

Case Nos. 438-M-2002 and 502-M-2002. It is true that in Civil Case No. 502-M-2002, Valmadrid and Tan were added as plaintiffs, while BPI and the Register of Deeds of Meycauayan, Bulacan were added as defendants. However, identity of parties does not mean total identity of parties in both cases.[21] It is enough that there is substantial identity of parties.[22] The inclusion of new parties in the second action does not remove the case from the operation of the rule of *litis pendentia*.[23] What is primordial is that the primary litigants in the first case are also parties to the second action.[24] A different rule would render illusory the principle of *litis pendentia*.[25] The facility of its circumvention is not difficult to imagine given the resourcefulness of lawyers.[26] The fact that new parties were included in Civil Case No. 502-M-2002 does not detract from the fact that the principal litigants, Villarica and the Gernale spouses, are the same in both cases. Besides, it is clear that Valmadrid and Tan, being the previous owners from whom Villarica bought the subject properties, represent the same interests as the latter. On the other hand, the Register of Deeds of Meycauayan, Bulacan was impleaded merely as a nominal party.

With respect to the second and third requisites, hornbook is the rule that identity of causes of action does not mean absolute identity;[27] otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought.[28] The test to determine whether the causes of action

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[21] *Ssangyong Corporation v. Unimarine Shipping Lines, Inc.*, G.R. No. 162727, November 18, 2005, 475 SCRA 523, 537.

[22] *City of Caloocan v. Court of Appeals*, G.R. No. 145004, May 3, 2006, 489 SCRA 45, 57.

[23] *Ssangyong Corporation v. Unimarine Shipping Lines, Inc.*, *supra* note 21.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393.

[28] *Id*.

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.[29] 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.[30] Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies.[31]

Civil Case No. 438-M-2002 is for quieting of title and damages, while Civil Case No. 502-M-2002 is for annulment and cancellation of titles and damages. The two cases are different only in the form of action, but an examination of the allegations in both cases reveals that the main issue raised, which is ownership of the land, and the principal relief sought, which is cancellation of the opposing parties' transfer certificates of title, are substantially the same. The evidence required to substantiate the parties' claims is likewise the same. The proceedings in Civil Case No. 502-M-2002 would entail the presentation of essentially the same evidence, which should be adduced in Civil Case No. 438-M-2002. As cited by the CA, this Court held in *Stilianopulos v. City of Legaspi*[32] that:

> The underlying objectives or reliefs sought in both the quieting-of-title and the annulment-of-title cases are essentially the same — adjudication of the ownership of the disputed lot and nullification of one of the two certificates of title. Thus, it becomes readily apparent that the same evidence of facts as those considered in the quieting-of-title case would also be used in this petition.[33]

The subject cases are so intimately related to each other that the judgment that may be rendered in one, regardless of which

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[29] *Id*.

[30] *Id*.

[31] *Lim v. Montano*, A.C. No. 5653, February 27, 2006, 483 SCRA 192, 201.

[32] 374 Phil. 879 (1999).

[33] *Id.* at 897.

party would be successful, would amount to *res judicata* in the other.

From the foregoing, it is clear that there is *litis pendentia*, and that the RTC committed grave abuse of discretion in refusing to grant respondents' motion to dismiss.

Having resolved that there is *litis pendentia*, the remaining question is: which of the two cases, Civil Case No. 438-M-2002 or Civil Case No. 502-M-2002, should be dismissed?

There is no hard and fast rule in determining which actions should be abated on the ground of *litis pendentia*. However, the Supreme Court has set the relevant factors that lower courts must consider when they have to determine which case should be dismissed, given the pendency of two actions. These are:

(1) the date of filing, with preference generally given to the first action filed to be retained;

(2) whether the action sought to be dismissed was filed merely to preempt the latter action or to anticipate its filing and lay the basis for its dismissal; and

(3) whether the action is the appropriate vehicle for litigating the issues between the parties.[34]

Consistent with the third factor, the Court has ruled that the earlier case can be dismissed in favor of the later case if the later case is the more appropriate forum for the ventilation of the issues between the parties.[35]

In the present case, the mere fact that the action for quieting of title (Civil Case No. 438-M-2002) was filed earlier than the case for annulment and cancellation of titles (Civil Case No. 502-M-2002) does not necessarily mean that the first case will be given preference. Indeed, the rule on *litis pendentia* does not require that the latter case should yield to the earlier case.

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[34] *Panganiban v. Pilipinas Shell Petroleum Corp*., 443 Phil. 753, 767 (2003)

[35] *Id*.; *Calo v. Tan*, G.R. No. 151266, November 29, 2005, 476 SCRA 426, 442; *Cruz v. Court of Appeals*, *supra* note 27; *Abines v. Bank of the Philippine Islands*, *supra* note 20.

What is required merely is that there be another pending action, not a *prior* pending action.[36]

There is reason to dismiss Civil Case No. 438-M-2002, considering that the issue of whether or not the contract of mortgage entered into between BPI and the Gernale spouses should be annulled is, understandably, not raised in this case and was brought up only in Civil Case No. 502-M-2002. Thus, to dismiss Civil Case No. 502-M-2002, instead, would leave this issue unresolved.

Another reason why Civil Case No. 502-M-2002 should not be dismissed is that it is a direct action attacking the registered titles of the Gernale spouses over the properties in question, as opposed to petitioners' answer in Civil Case No. 438-M-2002 which would merely be considered a collateral and not a direct attack on the said titles. Settled is the rule that a certificate of title shall not be subject to a collateral attack; and it cannot be altered, modified, or canceled except in a direct proceeding in accordance with law.[37] Hence, to dismiss Civil Case No. 502-M-2002 would, in effect, deprive petitioners of their right to attack respondent spouses' titles over the disputed properties and pray for their cancellation.

On the other hand, there are countervailing considerations which make dismissal of Civil Case No. 438-M-2002 inequitable. Aside from the fact that it was the first action which was filed, pre-trial conference has already been conducted in this case as evidenced by the Pre-Trial Order issued by the RTC of Malolos, Branch 18 on October 29, 2002, and the first trial date already set as early as January 28, 2003.[38] In fact, the trial court in said Order has noted that the deposition of Valmadrid, who is one of the witnesses for petitioners, was already taken.

This Court has held that two cases involving the same parties and affecting closely related subject matters must be ordered

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[36] *Ramos v. Peralta*, G.R. No. L-45107, November 11, 1991, 203 SCRA 412, 419.

[37] *Caraan v. Court of Appeals*, G.R. No. 140752, November 11, 2005, 474 SCRA 543, 549; *Co v. Militar*, 466 Phil. 217, 225 (2004).

[38] *Rollo*, p. 222.

consolidated and jointly tried in the court where the earlier case was filed.[39] This is consistent with Section 1, Rule 31 of the Rules of Court, which provides as follows:

> Section 1. Consolidation. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In the instant case, it would therefore be more in keeping with the demands of law and equity if Civil Case No. 502-M-2002 will be consolidated with Civil Case No. 438-M-2002 in order that all the issues raised by the parties in both cases will be properly resolved, and so that the evidence already presented in the former case will no longer have to be presented in the latter.[40] Consolidation of cases, when proper, results in the simplification of proceedings, which saves time, the resources of the parties and the courts, and a possible major abbreviation of trial.[41] It is a desirable end to be achieved within the context of the present state of affairs, where court dockets are full and individual and state finances are limited.[42] It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts.[43] Another compelling argument that weighs heavily in favor of consolidation is the avoidance of the possibility of conflicting decisions being rendered by the courts in two or more cases which would otherwise require a single judgment.[44]

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[39] *Esguerra v. Manantan*, G.R. No. 158328, February 23, 2007, 516 SCRA 561, 568; *Zulueta v. Asia Brewery, Inc.*, 406 Phil. 543, 556 (2001).

[40] *Allied Banking Corporation v. Court of Appeals*, 328 Phil. 710, 719-720 (1996).

[41] *Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc.*, G.R. Nos. 138701-02, October 17, 2006, 504 SCRA 618, 633.

[42] *Id.*

[43] *Id.*

[44] *Id.*

**WHEREFORE,** the Decision of the Court of Appeals dated January 26, 2004 and its Resolution of April 22, 2004 in CA-G.R. SP No. 74967 are *SET ASIDE*. A new judgment is rendered *DIRECTING* that Civil Case No. 502-M-2002, now pending before Branch 10 of the Regional Trial Court of Malolos, Bulacan, be *CONSOLIDATED* with Civil Case No. 438-M-2002 pending in Branch 18 of the same court, the two cases to be heard and decided by the latter court.

No costs.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Tinga,* Nachura,* and *Peralta, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 164875. March 20, 2009]

**BANK OF THE PHILIPPINE ISLANDS,** *petitioner, vs.* **LA SUERTE TRADING & INDUSTRIAL CORPORATION, as represented by EDWARD O. JOSON,** *respondent.*

**SYLLABUS**

**REMEDIAL LAW; APPEALS; QUESTIONS OF FACT ARE BEYOND THE AMBIT OF A RULE 45 PETITION; EXCEPTION THERETO, APPLIED. —** As we had stressed time and again, questions of fact are beyond the ambit of a petition for review under Rule 45, since only questions of law may be raised therein. However, there are several exceptions to the said rule, and one of which is present in the instant case, *i.e. the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.*

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* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 590 dated March 17, 2009.

The Court of Appeals could not be faulted in previously finding in its Decision dated November 20, 2003 that the RTC held a hearing on La Suerte's prayer for the issuance of a writ of preliminary injunction, considering BPI's failure to adequately prove its allegation that no hearing was conducted thereon last September 4, 2001. However, when BPI was able to indubitably show in its motion for reconsideration and the stenographic notes of the hearing dated September 4, 2001, that the scheduled hearing on the matter did not really push through because of a pending motion to dismiss, it was clear that the Court of Appeals erred in not invalidating the said writ since a prior hearing before the issuance of the same is absolutely required.

**APPEARANCES OF COUNSEL**

*Benedicto Versoza Gealogo Burkley Law Offices* for petitioner.

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

**QUISUMBING, *J.*:**

This petition for review assails the Decision[1] dated November 20, 2003 and the Resolution[2] dated August 6, 2004 of the Court of Appeals in CA-G.R. SP No. 73753.

The antecedent facts are as follows:

La Suerte Trading and Industrial Corporation (La Suerte) is the registered owner of five parcels of land located in Cabanatuan City covered by Transfer Certificates of Title Nos. T-34708,[3] T-34709,[4] T-34710,[5] T-34711[6] and T-37455.[7]

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[1] *Rollo*, pp. 35-41. Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Josefina Guevara- Salonga and Rosalinda Asuncion-Vicente concurring.

[2] *Id*. at 42-43.

[3] CA *rollo*, p. 48.

[4] *Id*. at 49.

[5] *Id*. at 50.

[6] *Id*. at 51.

[7] *Id*. at 52.

In 1994, Ricardo Joson, allegedly without authorization from the Board of Directors of La Suerte, mortgaged the said properties to Far East Bank and Trust Company (FEBTC). La Suerte discovered the mortgage only in 2001 when it received a notice[8] of the extra-judicial sale of the subject properties to be held on August 14, 2001.

On August 9, 2001, La Suerte, represented by its president Edward O. Joson, filed before the Regional Trial Court (RTC) of Cabanatuan City a complaint[9] against FEBTC, its successor-in-interest Bank of the Philippine Islands (BPI), and Numeriano T. Galang, *Ex-Officio* Sheriff. It prayed for the nullification of the mortgage and for the issuance of injunction of the scheduled sale through the issuance of temporary restraining order (TRO), and thereafter, through a writ of preliminary injunction.

On August 10, 2001, the RTC, through an *ex parte* TRO,[10] enjoined BPI and Sheriff Galang from proceeding with the scheduled extra-judicial sale.

On August 31, 2001, BPI filed a motion to dismiss[11] the complaint on the ground of lack of jurisdiction over the person of the defendants, lack of cause of action and non-compliance with a condition precedent.

On September 4, 2001, the RTC set the preliminary injunction for hearing. During the hearing itself, however, the RTC decided to determine first if it has jurisdiction over the case and ordered La Suerte to file a comment or opposition to BPI's motion to dismiss. It then set for hearing both the motion to dismiss and preliminary injunction on October 11, 2001.[12]

During the October 11, 2001 hearing, the RTC, after noting that an opposition to the motion to dismiss and reply thereto

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[8] *Id*. at 56.

[9] *Id*. at 43-47. As amended.

[10] *Id*. at 30-31.

[11] *Id*. at 32-39.

[12] *Rollo,* p. 59.

were filed, considered the motion to dismiss submitted for resolution. The preliminary injunction, however, was not taken up.[13]

On May 23, 2002, the RTC issued an order granting a writ of preliminary injunction in favor of La Suerte. BPI moved to reconsider the order, contending that there was no hearing yet on the preliminary injunction in violation of Section 5,[14] Rule 58 of the Rules of Court.

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[13] *Id*. at 68.

[14] Sec. 5. *Preliminary injunction not granted without notice; exception.* —No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance, but shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect, and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service

In an Order[15] dated August 26, 2002, the RTC denied BPI's motion, stating that the prayer for the issuance of the writ of preliminary injunction was set for hearing on September 4, 2001, but BPI failed to adduce evidence on why the writ should not be granted.

BPI elevated the matter to the Court of Appeals via a petition for *certiorari*. It argued that while the prayer for the issuance of the writ was set for hearing on September 4, 2001, the same was not taken up by the RTC because of the pendency of its motion to dismiss. Thus, no hearing was really conducted on La Suerte's prayer for the issuance of a writ of preliminary injunction.[16]

The Court of Appeals dismissed the petition. It held that from a perusal of the RTC's May 23, 2002 and August 26, 2002 Orders, it can be seen that the RTC heard the parties before the writ was issued. The RTC also ruled that BPI failed to present sufficient evidence such as transcript of stenographic notes (TSNs) to prove that no hearing was conducted on the preliminary injunction.

BPI moved to reconsider the dismissal of its petition. This time it attached the TSNs[17] of the September 4, 2001 and October 11, 2001 hearing before the RTC. The Court of Appeals, however, still denied the motion for reconsideration.

Hence the instant petition citing the following errors:

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on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

The trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ. (As amended by A.M. No. 07-7-12-SC, took effect on December 27, 2007.)

[15] *Rollo*, p. 80.

[16] CA *rollo*, p. 7.

[17] *Id*. at 95-105.

I.

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR REVIEW FILED BY THE PETITIONER BY HOLDING THAT THE PETITIONER WAS GIVEN THE OPPORTUNITY TO BE HEARD AND TO PRESENT ITS EVIDENCE IN SUPPORT OF [ITS] OPPOSITION AGAINST THE PRAYER FOR INJUNCTION OF THE RESPONDENT, WHEN IN FACT PETITIONER WAS DENIED DUE PROCESS AND WAS NOT GIVEN OPPORTUNITY BY THE COURT *A QUO* TO PRESENT ITS EVIDENCE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT WAS ENTITLED TO THE INJUNCTION ISSUED BY THE COURT *A QUO* ON THE BASIS MERELY OF THE ALLEGATIONS IN THE PLEADING/COMPLAINT AND NOTWITHSTANDING DENIAL OF DUE PROCESS UPON THE PETITIONER.

III.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE RESPONDENT WOULD BE DAMAGED AND STANDS TO LOSE ITS PROPERTY SHOULD THE PETITIONER PROCEED WITH THE FORECLOSURE AND CONSOLIDATE ON THE SUBJECT PROPERTY WHEN IN FACT IT WAS THE PETITIONER WHICH WAS DAMAGED AND PREJUDICED WHEN THE AUCTION SALE OF THE MORTGAGED PROPERTIES DID NOT PUSH THROUGH IN SPITE OF FAILURE OF THE RESPONDENT TO PAY ITS OBLIGATIONS WITH THE PETITIONER.[18]

Briefly stated, the present controversy boils down to this factual question: Did the RTC conduct a hearing on La Suerte's prayer for the issuance of a writ of preliminary injunction?

As we had stressed time and again, questions of fact are beyond the ambit of a petition for review under Rule 45, since only questions of law may be raised therein. However, there are several exceptions to the said rule, and one of which is present in the instant case, *i.e. the findings of fact of the Court*

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[18] *Rollo,* pp. 21-22.

*of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.*[19]

The Court of Appeals could not be faulted in previously finding in its Decision dated November 20, 2003 that the RTC held a hearing on La Suerte's prayer for the issuance of a writ of preliminary injunction, considering BPI's failure to adequately prove its allegation that no hearing was conducted thereon last September 4, 2001. However, when BPI was able to indubitably show in its motion for reconsideration and the stenographic notes of the hearing dated September 4, 2001, that the scheduled hearing on the matter did not really push through because of a pending motion to dismiss, it was clear that the Court of Appeals erred in not invalidating the said writ since a prior hearing before the issuance of the same is absolutely required.[20]

**WHEREFORE,** the petition is *GRANTED*. The assailed Decision dated November 20, 2003 and Resolution dated August 6, 2004 of the Court of Appeals in CA-G.R. SP No. 73753 are hereby *REVERSED AND SET ASIDE*.

**SO ORDERED.**

*Carpio Morales, Tinga, Velasco, Jr.,* and *Peralta,* JJ.,* concur.

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[19] *Rosario v. PCI Leasing and Finance, Inc.*, G.R. No. 139233, November 11, 2005, 474 SCRA 500, 506.

[20] *Supra* note 14.

[*] Designated member of Second Division per Special Order No. 587 in place of Associate Justice Arturo D. Brion who is on leave.

**THIRD DIVISION**

[G.R. No. 165494. March 20, 2009]

**ANGELITA, REYNALDO, NARCISO, CECILIA, FEDERIO and LEONIDA all surnamed LEVARDO and NORMA PONTANOS *VDA. DE* LEVARDO, for herself and as proposed Guardian *Ad Litem* of her minor daughter ELENA P. LEVARDO,** *petitioners, vs.* **TOMAS B. YATCO and GONZALO PUYAT AND SONS, INC., represented By JOSE G. PUYAT, JR., President, as Principal defendants and DR. RUBEN B. YATCO, as necessary defendant,** *respondents.*

**HERNANDO LEVARDO,** *petitioner, vs.* **LEONCIO YATCO and GONZALO PUYAT AND SONS, INC., represented by JOSE G. PUYAT, JR., and GAUDENCIO BAUTISTA,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; PRESIDENTIAL DECREE NO. 27 (P.D. NO. 27) MUST BE READ IN CONJUNCTION WITH LOI NO. 474 AND DAR MEMORANDUM DATED JULY 10, 1975; LANDS WITH AN AREA OF SEVEN HECTARES OR LESS SHALL NOT BE COVERED BY OPERATION LAND TRANSFER; APPLICATION.—** P.D. No. 27 should be read in conjunction with Letter of Instruction No. 474 (LOI No. 474) and the DAR Memorandum on the "Interim Guidelines on Retention by Small Landowners" dated July 10, 1975 (DAR Memorandum). The pertinent portion of LOI No. 474 is as follows: You shall undertake to place the Land Transfer Program of the government pursuant to Presidential Decree No. 27, **all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own <u>other</u> agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families**. The pertinent portion of the DAR Memorandum is as follows: x x x 5. **Tenanted rice**

**and/or corn lands seven (7) hectares or less shall not be covered by Operation Land Transfer**. The relation of the land owner and tenant-farmers in these areas shall be leasehold x x x. Based on the foregoing, it is clear that the lands in dispute do not fall under the coverage of P.D. No. 27. The DAR Memorandum is categorical that lands with seven hectares or less shall not be covered by OLT. In DARAB Case No. 3361, the land in dispute only had an area of 4.3488 hectares. In DARAB Case No. 3362, the land in dispute only has an area of 4.2406 hectares. Furthermore, LOI No. 474 contains a provision that lands less than seven hectares or less may still fall under the coverage of P.D. No. 27, if the landowner owns other properties. On this point, this Court agrees with the finding of the DARAB, when it observed that there was no record of any circumstance found by DAR field personnel that the landowner owned other agricultural lands in excess of seven hectares or urban land area, from which he derived adequate income for his support and that of his family. It was incumbent on petitioners to show that respondents owned other properties in excess of seven hectares, since he who alleges a fact has the burden of proving it. Moreover, as found by the DARAB, there is nothing of record to show that CLTs have in fact been issued to petitioners or their predecessors.

**2. ID.; AGRICULTURAL TENANCY; WAIVERS OF LEASEHOLDER TENANCY RIGHTS, HELD VALID.—** Based on the DAR Memorandum, the relationship of petitioners and respondents shall be one of leasehold. This Court finds that respondents have complied with Section 28 of Republic Act No. 3844: Section 28. *Termination of Leasehold by Agricultural Lessee During Agricultural Year* – The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes: x x x **(5) Voluntary surrender due to circumstances more advantageous to him and his family.** Based on the evidence on record, respondents paid Aguido ₱2,000,000.00 and Hernando ₱2,417,142.00 as disturbance compensation. A reading of the *Pinanumpaang Salaysay* executed by petitioners show that they gave up their leasehold rights "*dahil sa aming kagustuhang umiba ng hanap buhay ng higit ang pagkikitaan kaysa panakahan.*" The money given by respondents as disturbance compensation was indeed advantageous to the families of petitioners, as it would have allowed them to pursue other sources of livelihood. Petitioners

did not refute in their pleadings the authenticity of the documents purporting to be their waiver of tenancy rights. As a matter of fact, they themselves attached the said documents to their complaints and argued that said waivers were obtained through fraud and misrepresentation, since they were unaware that CLTs were issued in their names. However, such argument deserves scant consideration, since it has been established that no such CLTs were issued to petitioners; and more importantly, the lands in dispute do not fall under the coverage of P.D. No. 27. In addition, said waivers of tenancy rights were notarized and therefore the same have the presumption of regularity in their favor. There is nothing on record to convince this Court to hold otherwise.

**3. ID.; P.D. NO. 27; A CERTIFICATE OF LAND TRANSFER (CLT) DOES NOT VEST IN THE FARMER/GRANTEE OWNERSHIP OF THE LAND DESCRIBED THEREIN.—** [A] CLT does not vest in the farmer/grantee ownership of the land described therein. At most, the CLT merely evidences the government's recognition of the grantee as partly qualified to await the statutory mechanism for the acquisition of ownership of the land titled by him as provided in P.D. No. 27. Neither is this recognition permanent or irrevocable. Herein petitioners cannot escape the fact that the lands in dispute do not fall under the coverage of P.D. No. 27; and thus, any supposed or alleged CLTs issued in their names are without bases.

**4. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE, NOT A CASE OF; A "MASTERLIST OF TENANTS ISSUED CLTs" IS NOT THE BEST EVIDENCE TO PROVE THAT CLTs WERE ACTUALLY ISSUED.—** The documents presented by petitioners to prove that CLTs were in fact issued in their names have no probative value. An examination of the documents shows that they are two photocopied pages of what purports to be a "Masterlist of Tenants issued CLTs." Page 6801, where the name of Aguido is listed, appears to be a certified xerox copy sourced from the Bureau of Land Acquisition and Distribution. Page 5695, where the names of Hernando and Francisco are listed, is not so authenticated; thus, its source is highly suspect. These two documents are not sufficiently useful in proving the fact that the CLTs, which would be the best evidence of petitioners' claim over the subject properties, were actually issued. At best, they only serve to prove the probability that

CLTs **may have been** issued in the name of the petitioners. These documents do not and cannot override the PARO and DARAB findings that no CLTs were issued to petitioners.

**APPEARANCES OF COUNSEL**

*Franco L. Loyola* for petitioners.
*Patrocinio S. Palanog* for respondents.

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

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

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the September 27, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69220 which affirmed the June 20, 2000 Resolution[2] and January 21, 2002 Resolution[3] of the Department of Agrarian Reform Adjudication Board (DARAB).

Stripped of the non-essentials, the facts of the case are as follows:

**DARAB Case No. 3361**

Asuncion Belizario (Belizario) is the owner of a parcel of land with an area of 4.3488 hectares located in Binan, Laguna. On May 17, 1971, Belizario donated the said parcel of land to herein respondent Tomas Yatco (Tomas) as evidenced by a Deed of Donation *Inter Vivos*. Said land is tenanted by Aguido Levardo (Aguido). During his lifetime, Aguido executed a "*Pinanumpaang Salaysay*,"[4] where he declared:

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[1] Penned by Associate Justice Eugenio S. Labitoria with the concurrence of Associate Justices Rebecca de Guia-Salvador and Rosalinda Asuncion-Vicente, *rollo*, pp. 73-83.

[2] *Id*. at 57-65

[3] *Id*. at 70-71.

[4] Annex "H" of Complaint, DARAB Records, Vol. I, pp. 27-28; Annex "3" of Supplemental Motion to Dismiss, *id*. at 143.

x x x x x x x x x

*Na AKO, sampu ng aking pamilya ay nagpasiya na buong puso at laya, na ibalik, isasauli at ibalik ang lahat ng aking karapatan sa paggawa o pananakahan sa nasabing* x x x *hectarya* x x x area *at* x x x *centares ng naulit ng isang lagay na lupa, sa may-ari ng nabanggit na lupa dahil sa aming kagustuhang umiba ng hanapbuhay, ng higit ang pagkikitaan kaysa pananakahan.*

*Na AKO, sampu ng aking anak ay lubos na nagpapasalamat sa kagandahang loob ng mga may-ari na nabanggit na lupa, sa mabuting pakikisama nila sa aking mga kapatid at sa kanya ring pagbibigay ng pabuya at bayad pinsala* (Disturbance fee) *sa aking ginagawang pagbabalik, pagsasauli at pagbibigay ng lahat ng karapatan sa paggawa sa naulit na x x x hectarya x x x* area *x x x centares na aking sinasaka.*

*Na sa aking ginagawang pagbabalik, pagsasauli at pagbibigay ng lahat ng aking karapatan sa paggawa nasabing bukid sa may-ari nito ay kaalam ang aking kapatid at lahat kami ay walang gagawing paghahabol salapi o ano pa man laban sa may-ari nitong lupang nabanggit, sa hukuman o sa* Ministry of Agrarian Reform.[5]

The foregoing document was also signed by Aguido's children, namely: Angelita, Reynaldo, Narciso, Cecilia, all surnamed Levardo (petitioners), and was notarized on April 1986. By virtue of the said document, Tomas paid to Aguido disturbance compensation amounting to ₱2,000,000.00. Aguido died on October 9, 1986.

On April 27, 1990, Tomas sold the said parcel of land to respondent Gonzalo Puyat and Sons, Inc. (Puyat Corporation).[6]

On May 24, 1991, petitioners filed with the Office of the Provincial Agrarian Reform Adjudicator (PARO) a complaint for the annulment of the Deed of Donation *Inter Vivos* and Deed of Absolute Sale, and to declare as null and void *ab initio* the waiver of tenancy rights of the late Aguido.[7] Petitioners claim that the land in dispute was covered by Operation Land Transfer (OLT) pursuant to Presidential Decree No. 27 (P.D.

[5] *Id.* at 240.

[6] *Rollo,* p. 60.

[7] *Id.* at 288.

No. 27).[8] Specifically, petitioners contend that they were already deemed the owners of the land on the basis of an alleged Certificate of Land Transfer (CLT) in the name of their father Aguido, which was never issued by the DAR, but on the basis of an alleged certified xerox copy of a Masterlist of tenants wherein his name appeared.[9]

**DARAB Case No. 3362**

Herein respondent Leoncio Yatco (Leoncio) is the owner of a parcel of land with an area of 4.2406 hectares located in Binan, Laguna. Said land is tenanted by Francisco Levardo (Francisco) and his son Hernando, a co-petitioner in the present petition. During his lifetime, Hernando executed a "*Pinanumpaang Salaysay*,"[10] where he declared:

x x x x x x x x x

*Na AKO, sampu ng aking pamilya ay nagpasiya ng buong puso at laya, na ibinalik, isasauli at ibalik ang lahat ng aking karapatan sa paggawa o pananakahan sa nasabing xxx hectarya* xxx area *at* xxx *centares ng naulit na isang lagay na lupa, sa may-ari ng nabanggit na lupa dahil sa aming kagustuhang umiba ng hanap buhay ng higit and* (sic) *pagkikitaan sa panakahan.*

*Na AKO, sampu ng aking mga anak ay lubos na nagpapasalamat sa kagandahang loob ng mga may-ari na nabanggit na lupa, sa mabuting pakikisama nila sa aking mga magulang at sa kanya ring pagbibigay ng pabuya at bayad pinsala* (Disturbance fee) *sa aking ginagawang pagbabalik, pagsasauli at pagbibigay ng lahat ng karapatan sa paggawa sa nauli't na* x x x *hectarya* x x x area x x x *centares na aking sinasaka.*

*Na sa aking ginagawang pagbabalik, pagsasauli at pagbibigay ng lahat ng aking karapatan sa paggawa nasabing bukid sa may-ari nito ay kaalam ang aking magulang at lahat kami ay walang gagawing paghahabol salapi o ano pa man laban sa may-ari nitong lupang nabanggit, sa hukuman o sa* Ministry of Agrarian Reform.[11]

[8] *Id.* at 34.

[9] *Id.* at 177.

[10] Annex "D" of Complaint, DARAB Records, Vol. II, p. 86.

[11] *Rollo,* p. 245.

The foregoing document was also signed by Francisco and was notarized on January 10, 1990. By virtue of the said agreement, Leoncio paid to Hernando the amount of ₱2,417,142.00 as disturbance compensation. Leoncio thereafter sold the parcels of lands to the Puyat Corporation.

On July 8, 1991, Hernando, together with Francisco, filed with the PARO a complaint for the Annulment of Deed of Donation *Inter Vivos* and Deed of Absolute Sale and to declare as null and void *ab initio* the waiver of tenancy rights executed by him. Hernando claims that the land in dispute was covered by an OLT pursuant to P.D. No. 27.[12] More specifically, Hernando claims that he and his father were already deemed the owners of the land on the basis of an alleged CLT in their names, which was never issued by the DAR, but on the basis of an alleged certified xerox copy of a Masterlist of tenants wherein their names appeared.[13]

## THE PARO RULING

### In DARAB Case No. 3361

On December 3, 1993, the PARO rendered a Decision,[14] declaring the waiver of tenancy rights, the Deed of Donation *Inter Vivos* and the Deed of Sale as null and void. Furthermore, the PARO ordered the Department of Agrarian Reform (DAR) to issue an Emancipation Patent Title in favor of the heirs of Aguido.

### In DARAB Case No. 3362

On December 15, 1993, the PARO rendered a Decision,[15] declaring the waiver of tenancy rights and the Deed of Sale as null and void. The PARO also ordered the DAR to issue an Emancipation Patent Title in favor of Francisco and Hernando.

Respondents filed a motion for reconsideration questioning **both** decisions of the PARO.

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[12] *Id.* at 34.

[13] *Id.* at 178.

[14] CA *rollo*, pp. 107-123.

[15] *Rollo*, pp. 138-152.

On September 5, 1994, the PARO issued an Order[16] **granting** respondents' motion, the dispositive portion of which reads as follows:

> WHEREFORE, in light of the foregoing, the defendants VERIFIED MOTION FOR RECONSIDERATION is hereby GRANTED and the DECISIONS sought to be reconsidered are hereby SET ASIDE and in lieu thereof, a decision is entered as follows:
>
> FIRST (DARAB CASE NO. 0116)
>
> 1. Declaring the Waiver of tenancy rights as valid x x x.
> 2. Declaring and upholding the validity of the Deed of Donation Intervivos (Exhibit "K") and the Deed of Sale (Exhibit "N") x x x.
>
> SECOND CASE (DARAB CASE NO. 0125)
>
> 1. Declaring the Waiver of tenancy rights as valid x x x
> 2. Declaring and upholding the validity of the Deed of Sale (Exhibit "H") x x x
>
> In both cases, subject landholdings were declared outside OLT coverage and untenanted.
>
> SO ORDERED.[17]

In said Order, the PARO ruled that the lands in dispute were outside OLT coverage, and that no CLTs were issued and registered with the Register of Deeds.[18] The PARO further ruled that the waivers of tenancy rights executed by petitioners were duly notarized, and that in order to disprove the presumption of regularity in its favor, there must have been clear, convincing and more than merely preponderant evidence. The PARO ruled that there was no proof to overcome the presumption of regularity of the aforementioned public documents and thus upheld the law in favor of the validity of said documents.[19]

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[16] *Id.* at 176-194.

[17] *Rollo*, pp. 193-194.

[18] *Id.* at 189.

[19] *Id.* at 190.

Petitioners then appealed the PARO Order to the DARAB.

**The DARAB Ruling**

On March 29, 2000 the DARAB issued a Decision[20] **reversing** the September 5, 1994 Order of the PARO and reinstating the December 3, 1993 Decision of the PARO.

Respondents then filed a Motion for Reconsideration of the DARAB Decision. On June 20, 2000, the DARAB issued a Resolution[21] granting the motion for reconsideration. The dispositive portion of said decision reads as follows:

> WHEREFORE premises considered, the defendants-appellees verified Motion for Reconsideration is hereby granted and the Decision dated March 29, 2000 rendered by the Board is hereby RECONSIDERED and SET ASIDE and the ORDER dated September 5, 1994 rendered by the Provincial Adjudicator *a quo* is hereby AFFIRMED and REINSTATED.
>
> SO ORDERED.

In said Order, the DARAB ruled that the lands in dispute were outside OLT coverage, and that no CLTs were issued to petitioners. Moreover, the DARAB held that the waiver of tenancy rights by Aguido was valid and enforceable and binding on the petitioners, who were also signatories to the document.[22] Likewise, the DARAB upheld that validity of the waiver of tenancy rights of Hernando which was also signed by his father Francisco.

Petitioners filed a Motion for Reconsideration which was, however, denied by the DARAB on January 21, 2002. Petitioners then appealed the DARAB Decision to the CA.

**The CA Ruling**

On September 27, 2004, the CA rendered a decision denying[23] the petition, the dispositive portion of which reads:

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[20] *Id*. at 39-54.

[21] *Id*. at 57-65.

[22] *Rollo*, p. 61.

[23] *Id*. at 73-83.

WHEREFORE, the petition is DENIED due course, and the Resolution of DARAB issued on June 20, 2000, as well as its Resolution denying the motion for reconsideration of petitioners dated January 21, 2002 are both AFFIRMED in all respect.

SO ORDERED.[24]

Pursuant to the Court's ruling in *Ernesto v. Court of Appeals*[25] that no motion for reconsideration may be entertained from the said decision of the CA, under Section 18, P.D. No. 946, petitioners appealed to this Court via herein petition, with the following assignment of errors:

1. **WHETHER PRESIDENTIAL DECREE NO. 27, TRANSFERRING OWNERSHIP OF THE IRRIGATED RICE LANDS IN FAVOR OF PETITIONERS, PREDECESSORS FRANCISCO LEVARDO AND HERNANDO LEVARDO, AND AGUEDO LEVARDO, BOTH DECEASED, WHO WERE AGRICULTURAL TENANTS OF RICE LANDS WERE DEEMED OWNERS OF THE LAND[S] THEY WERE TILLING;**
2. **WHETHER SAID PRECESSORS (sic) OF PETITIONERS HAVE PAID FOR THE COSTS OF THE LAND[S] PURSUANT TO EXECUTIVE ORDER NO. 228 ISSUED ON JULY 7, 1987, AND AS SUCH, THE ABSOLUTE OWNERS THEREOF;**
3. **WHETHER THE CERTIFICATE[S] OF LAND TRANSFER ISSUED IN FAVOR OF PETITIONERS-PREDECESSORS NULLIFY THE WAIVER OF RIGHTS EXECUTED BY THEM AND WHETHER THE CERTIFICATES OF LAND TRANSFER WHICH WERE CANCELLED WITHOUT GIVING THEM RIGHT TO BE HEARD [ARE] LEGAL AND VALID.**
4. **WHETHER THE LANDOWNER LEONCIO YATCO MAY LEGALLY AND VALIDLY CONVEY THE RICE LAND[S] COVERED BY PRESIDENTIAL DECREE**

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[24] *Id*. at 82.

[25] No. 52178, September 28, 1982, 116 SCRA 755.

**NO. 27 AND [OF] WHICH THE PETITIONERS PREDECESSORS WERE THE ABSOLUTE OWNERS IN FAVOR OF RESPONDENT PUYAT AND SONS, INC**.[26]

**The Court's Ruling**

The petition is not meritorious.

The basic issue in the case at bar is whether the lands in dispute are covered by P.D. No. 27 entitled, "Decreeing the emancipation of tenants from the bondage of the soil transferring to them the ownership of the land[s] they till and providing the instruments and mechanism therefore." The pertinent portions of the Decree are as follows:

x x x x x x x x x

This shall apply to tenant-farmers of private agricultural lands primarily devoted to rice and corn under a system of share-crop or lease-tenancy, whether classified as landed estate or not;

**The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated.** (Emphasis Supplied)

P.D. No. 27 should be read in conjunction with Letter of Instruction No. 474 (LOI No. 474) and the DAR Memorandum on the "Interim Guidelines on Retention by Small Landowners" dated July 10, 1975 (DAR Memorandum).

The pertinent portion of LOI No. 474 is as follows:

1. You shall undertake to place the Land Transfer Program of the government pursuant to Presidential Decree No. 27, **all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own <u>other</u> agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families**. (Emphasis and underscoring supplied)

The pertinent portion of the DAR Memorandum is as follows:

[26] *Rollo*, p. 311.

x x x x x x x x x

**5. Tenanted rice and/or corn lands seven (7) hectares or less shall not be covered by Operation Land Transfer.** The relation of the land owner and tenant-farmers in these areas shall be leasehold x x x (Emphasis supplied)

Based on the foregoing, it is clear that the lands in dispute do not fall under the coverage of P.D. No. 27. The DAR Memorandum is categorical that lands with seven hectares or less shall not be covered by OLT. In DARAB Case No. 3361, the land in dispute only had an area of 4.3488 hectares. In DARAB Case No. 3362, the land in dispute only has an area of 4.2406 hectares.

Furthermore, LOI No. 474 contains a provision that lands less than seven hectares or less may still fall under the coverage of P.D. No. 27, if the landowner owns other properties. On this point, this Court agrees with the finding of the DARAB, when it observed that there was no record of any circumstance found by DAR field personnel that the landowner owned other agricultural lands in excess of seven hectares or urban land area, from which he derived adequate income for his support and that of his family.[27] It was incumbent on petitioners to show that respondents owned other properties in excess of seven hectares, since he who alleges a fact has the burden of proving it.[28] Moreover, as found by the DARAB, there is nothing of record to show that CLTs have in fact been issued to petitioners or their predecessors.[29]

Based on the DAR Memorandum, the relationship of petitioners and respondents shall be one of leasehold. This Court finds that respondents have complied with Section 28 of Republic Act No. 3844:[30]

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[27] *Rollo*, p. 61.

[28] *Antonio v. Estrella,* No. 73319, December 1, 1989, 156 SCRA 68.

[29] *Antonio v. Estrella, supra* note 28, at 62 and 64.

[30] Agricultural Land Reform Code, August 8, 1963, as amended by Republic Act No. 6389.

Section 28. *Termination of Leasehold by Agricultural Lessee During Agricultural Year —*

The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:

x x x x x x x x x

**(5) Voluntary surrender due to circumstances more advantageous to him and his family.** (Emphasis supplied)

Based on the evidence on record, respondents paid Aguido ₱2,000,000.00 and Hernando ₱2,417,142.00 as disturbance compensation. A reading of the *Pinanumpaang Salaysay* executed by petitioners show that they gave up their leasehold rights "*dahil sa aming kagustuhang umiba ng hanap buhay ng higit ang pagkikitaan kaysa panakahan*." The money given by respondents as disturbance compensation was indeed advantageous to the families of petitioners, as it would have allowed them to pursue other sources of livelihood.

Petitioners did not refute in their pleadings the authenticity of the documents purporting to be their waiver of tenancy rights. As a matter of fact, they themselves attached the said documents to their complaints and argued that said waivers were obtained through fraud and misrepresentation, since they were unaware that CLTs were issued in their names.[31] However, such argument deserves scant consideration, since it has been established that no such CLTs were issued to petitioners; and more importantly, the lands in dispute do not fall under the coverage of P.D. No. 27. In addition, said waivers of tenancy rights were notarized and therefore the same have the presumption of regularity in their favor.[32] There is nothing on record to convince this Court to hold otherwise.

The documents presented by petitioners to prove that CLTs were in fact issued in their names have no probative value. An examination of the documents shows that they are two photocopied pages of what purports to be a "Masterlist of Tenants

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[31] *Rollo*, p. 128.

[32] *Antonio v. Estrella*, *supra* note 28.

issued CLTs."[33] Page 6801, where the name of Aguido is listed, appears to be a certified xerox copy sourced from the Bureau of Land Acquisition and Distribution. Page 5695, where the names of Hernando and Francisco are listed, is not so authenticated; thus, its source is highly suspect. These two documents are not sufficiently useful in proving the fact that the CLTs, which would be the best evidence of petitioners' claim over the subject properties, were actually issued. At best, they only serve to prove the probability that CLTs **may have been** issued in the name of the petitioners. These documents do not and cannot override the PARO and DARAB findings that no CLTs were issued to petitioners.

Moreover, assuming *arguendo* that CLTs were actually issued to petitioners, a CLT does not vest in the farmer/grantee ownership of the land described therein. At most, the CLT merely evidences the government's recognition of the grantee as partly qualified to await the statutory mechanism for the acquisition of ownership of the land titled by him as provided in P.D. No. 27. Neither is this recognition permanent or irrevocable.[34] Herein petitioners cannot escape the fact that the lands in dispute do not fall under the coverage of P.D. No. 27; and thus, any supposed or alleged CLTs issued in their names are without bases.

Because petitioners have received millions of pesos as disturbance compensation and the lands in dispute do not fall under the coverage of P.D. No. 27, this Court cannot allow them to renege on their agreement with respondents. It must be remembered that the protective mantle of social justice was never meant to disregard the rights of landowners. Consequently, the conveyances made to respondents Puyat Corporation are valid.

Because of the foregoing, it would be unnecessary to discuss the other issues raised by petitioners.

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[33] Exhibit "I", DARAB Records, Vol. 1, p. 211; Exhibit "F", DARAB Records, Vol. II, p. 222.

[34] *Pagtalunan v. Tamayo*, G.R. No. 54281, March 19, 1990, 183 SCRA 252.

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

The September 27, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 69220 is hereby *AFFIRMED.*

Costs against petitioners.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Tinga*, Nachura,* and *Peralta, JJ.,* concur.

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**SECOND DIVISION**

[G.R. Nos. 166794-96. March 20, 2009]

**CESAR P. GUY,** *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. Nos. 166880-82. March 20, 2009]

**FELIX T. RIPALDA, CONCEPCION C. ESPERAS, EDUARDO VILLAMOR, and ERVIN C. MARTINEZ,** *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. Nos. 167088-90. March 20, 2009]

**NARCISA A. GREFIEL,** *petitioner, vs.* **THE HON. SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (R.A. 3019); ELEMENTS OF THE OFFENSE UNDER SECTION 3 (e)**

* In lieu of Justice Minita V. Chico-Nazario, per Special Order dated March 17, 2009.

**THEREOF.—** Petitioners were charged with violation of Section 3(e) of R.A. No. 3019. x x x To hold a person liable under this section, the concurrence of the following elements must be established, *viz*: (1) that the accused is a public officer or a private person charged in conspiracy with the former; (2) that said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions; (3) that he or she causes undue injury to any party, whether the government or a private party; and (4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

**2. ID.; ID.; ID.; ELEMENTS PRESENT.—** In the case at bar, all the elements of violation of Sec. 3(e) R.A. No. 3019 are indicated in the Informations. The Informations allege that while in the performance of their respective functions either as city or *barangay* officials, petitioners caused the construction of the subject structures, either without following the approved program of work and drawing plan, or worse, even without any plans and specifications; and furthermore, had given unwarranted benefits to themselves and to Edgar Amago, to the damage and prejudice of the government. x x x We find that the evidence on record amply supports the findings and conclusions of the respondent court. The elements of the offense charged have been successfully proven by the prosecution. First, petitioners could not have committed the offense charged were it not for their official duties or functions as public officials. Their malfeasance or misfeasance in relation to their duties and functions underlies their violation of Sec. 3(e) of R.A. No. 3019. Second, the undue injury caused to the government is evident from the clear deviation from the material specifications indicated in the project plans such as in the case of the basketball court and elevated path walk, and in the use of substandard materials in the case of the day care center. Otherwise stated, "the People did not get the full worth of their money in terms of the benefits they will derive from the (above) sub-standard infrastructure projects." Third, unwarranted benefits were accorded to Amago Construction when the three projects were not inspected and supervised during construction, allowing it to cut costs and save money by using substandard materials and deviating from the specific materials and measurements prescribed in the work programs. Moreover, Amago Construction was able to receive payments for the

projects even before the processing of the disbursement vouchers, thereby preventing the government from refusing or deferring payment on account of discovered defects of the said projects. Fourth, it is clear that from the very inception of the construction of the subject projects up to their completion, petitioners had exhibited manifest partiality for Amago Construction, and acted with evident bad faith against the government and the public which they had sworn to serve.

**3. ID.; ID.; CONSPIRACY IN THE COMMISSION OF THE OFFENSE UNDER SECTION 3 (e) R.A. 3019, PRESENT.—** Neither are we inclined to vacate the Sandiganbayan's finding of conspiracy among petitioners. Jurisprudence teaches us that "proof of the agreement need not rest on direct evidence, as the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out." Therefore, if it is proved that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Conspiracy was thus properly appreciated by the Sandiganbayan because even though there was no direct proof that petitioners agreed to cause injury to the government and give unwarranted benefits to Amago Construction, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective. The *barangay* officials' award of the contract to Amago Construction without the benefit of specific plans and specifications, the preparation of work programs only after the constructions had been completed, the issuance and encashment of checks in favor of Amago Construction even before any request to obligate the appropriation or to issue a disbursement voucher was made, and the subsequent inspection and issuance of certificates of completion by petitioner employees despite the absence of material documents were all geared towards one purpose—to cause undue injury to the government and unduly favor Amago Construction.

**4. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; IN CASE OF VIOLATION OF R.A. 3019, THE INFORMATION MUST SHOW THE CLOSE INTIMACY BETWEEN THE OFFENSE CHARGED AND THE DISCHARGE OF OFFICIAL DUTIES; APPLICATION.—** Petitioners, citing the case of *Lacson v. The Executive Secretary*, assert that the informations do not contain the specific factual allegations showing the close intimacy between the discharge of petitioners' official duties and the commission of the offense charged to qualify the offense as one committed in relation to public office. In *Lacson*, the Court ruled that before the Sandiganbayan may acquire jurisdiction over the offense charged, the intimate relation between the offense charged and the discharge of official duties "must be alleged in the information." Indeed, jurisprudence is replete with cases describing when an offense is deemed committed "in relation to office." In *Montilla and Tobia v. Hilario and Crisologo*, this Court held that for an offense to be committed in relation to the office, the relation between the crime and the office must be direct and not accidental, such that the offense cannot exist without the office. x x x The Court finds that the Informations sufficiently show the close intimacy between petitioners' discharge of official duties and the commission of the offense charged.

**APPEARANCES OF COUNSEL**

*Manuel M. Benedicto* for petitioner in G.R. Nos. 166794-96.

*Torres Clemencio Cabochan Torres Law Offices* for petitioners in G.R. Nos. 166880-82.

*The Solicitor General* for public respondent.

*Dennis A. Davide* for private respondent in G.R. Nos. 167088-90.

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

**TINGA, *J.*:**

These are consolidated petitions for review assailing the decision of the Sandiganbayan dated 2 September 2004 in Criminal Cases

No. 26508-10[1] which found petitioners guilty of violating Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019).

The facts, as culled from the records, follow.

Petitioners Felix T. Ripalda, Concepcion C. Esperas, Eduardo R. Villamor, and Ervin C. Martinez (Ripalda, *et al*.) are officers and employees of the City Engineer's Office of the City of Tacloban.[2] Meanwhile, petitioners Cesar P. Guy (Guy)[3] and Narcisa A. Grefiel (Grefiel)[4] are the *Barangay* Chairman and *Barangay* Treasurer, respectively, of Barangay 36, Sabang District, Tacloban City (Barangay 36). Said petitioners, together with Edgar Amago, a private individual, owner and proprietor of Amago Construction were charged in three (3) separate Informations with violation of Section 3 (e) of R. A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in connection with the construction of three (3) infrastructure projects in Barangay 36, namely: an elevated path walk, a basketball court and a day care center.

It appears that an audit investigation was conducted by the Commission on Audit (COA) in response to a letter-complaint of one Alfredo Alberca regarding the three projects.[5] The audit team found that the Sangguniang Barangay of Barangay 36, acting as the Pre-Qualification, Bids and Awards Committee (PBAC) accepted bid proposals from Amago Construction and General Services (Amago Construction) without issuing the proper

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[1] Penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Efren N. De La Cruz, concurring.

[2] *Rollo* (G.R. Nos. 166880-82), p. 4; Petitioners in G.R. Nos. 166880-82. At the time of the petition, Ripalda was the City Engineer; Esperas was Engineer IV, Villamor was Engineer III; and Martinez was Construction and Maintenance General Foreman.

[3] Petitioner in G.R. Nos. 166794-96.

[4] Petitioner in G.R. Nos. 167088-90.

[5] Letter of Cynthia B. Santos, Team Leader of the Audit Team, Formal Offer of Exhibits, p. 28.

plans and specifications for the basketball court and day care projects and that the work programs for the day care center and the elevated path walk were prepared long after the construction had been completed. Likewise, Guy and Grefiel reported the construction of the projects to the City Engineer's Office only after they had already been completed; thus, petitioner employees inspected the projects only after they had already been accomplished. Petitioner employees approved the accomplishment of the projects despite the absence of material documents, according to the audit team's report. Finally, the audit team found material defects in the projects and discovered that the contract cost for the basketball court and elevated path walk was overpriced.[6]

The Ombudsman Prosecutor (Ombudsman-Visayas) filed the corresponding information for the offenses, essentially charging petitioners with violation of Section 3(e) of R.A. No. 3019.

Petitioner employees claimed that the participation of the City Engineer's Office of Tacloban City in the *barangay* infrastructure projects was only to provide technical assistance to implementing *barangays* and that it was the *barangay* officials who supervised the construction of the projects. They aver that the City Engineer's Office was not a member of the PBAC which conducted the bidding process for the subject projects, and that they did not personally know their co-accused Guy and Grefiel, much more did they have any association with them prior to the approval of the three projects. It was Guy and Grefiel who requested the City Engineer's Office to inspect the projects, and that when the City Engineer's Office conducted the inspection, it found the projects already completed. Lastly, they found the three projects to be in accordance with the plans and specifications set for them and there were no anomalies or irregularities in their construction. They add that the residents of Barangay 36 have benefited from the three projects.[7]

On the other hand, Guy maintained that the three projects were authorized by resolutions duly-enacted by the Sangguniang

[6] Audit Report, Folder of Exhibits, pp. 29-67.

[7] *Rollo* (G.R. Nos. 166794-96), pp. 42-43; Sandiganbayan Decision.

Barangay. He claimed that a public bidding was conducted before the construction of the projects and that Amago Construction was the winning bidder. He added that Amago Construction constructed the projects and was accordingly paid for the work done and the materials supplied by it.[8]

Meanwhile, Grefiel argued that her only participation in the projects was her signing of the blank disbursement vouchers and blank checks covering the projects, and that it was Guy who instructed her to affix her signature on the said documents. She added that she did not participate in the supervision of the construction of the projects nor in the disbursement of the payment of any amount for the projects to Amago Construction.[9]

On 2 September 2004, the Sandiganbayan decided the case against petitioners.

The Sandiganbayan found that Guy and Grefiel awarded the contracts to Amago Construction even if there were no plans and specifications for the day care center and basketball court projects prior to their construction; and that while there was a plan and specification for the elevated path walk, they tolerated Amago Construction's failure to abide by the said plan.[10] Furthermore, Guy and Grefiel are also responsible for giving Amago Construction the check payments even before requests for obligation of appropriations and disbursement vouchers were made.[11] The graft court also found that the construction of the projects were reported to petitioner employees after the projects had already been completed, and that these anomalies notwithstanding, petitioner employees certified that the projects were made in accordance with the plans and that the same were 100% completed. Further, the Sandiganbayan

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[8] *Id.* at 43.

[9] *Id*.

[10] *Id.* at 60; DILG Memorandum Circular No. 94-185 dated October 20, 1994, requires the PBAC to issue plans and specification for the project to be bid.

[11] *Id.* at 61; COA Circular No. 94-004 dated January 28, 1994 prescribes that the Municipal or City Accountant's Advice as a prerequisite to *barangay* check disbursements.

found that the quality of the day care center project was substandard, the program of work was not followed, and worse, the contract amounts for the basketball court and the elevated path walk exceeded the allowable project costs.[12] Finally, the Sandiganbayan ruled that the acts of the petitioners, taken collectively, satisfactorily prove the existence of conspiracy.[13]

Disposing of the graft cases, the Sandiganbayan ruled as follows:

> Considering that all the elements of R.A. No. 3019, Sec. 3(e) were without doubt established in these cases and the allegation of conspiracy shown, a moral certainty is achieved to find the accused liable for the acts they committed.
>
> WHEREFORE, accused FELIX RIPALDA, EDUARDO VILLAMOR, CONCEPCION ESPERAS, ERVIN MARTINEZ, CESAR GUY and NARCISA GREFIEL are found guilty beyond reasonable doubt of having violated R.A. No. 3019, Sec. 3(e) and are sentenced to suffer the indeterminate penalty of six (6) years and one (1) month as minimum and nine (9) years as maximum for each of the three offenses, perpetual disqualification from public office and to indemnify jointly and severally the Government of the Republic of the Philippines in the amount of eleven thousand eight hundred ninety (₱11,895.00).
>
> Since the Court did not acquire jurisdiction over the person of accused EDGAR AMAGO, let the cases against him be, in the meantime, archived, the same to be revived upon his arrest. Let an *alias* warrant of arrest be then issued against accused EDGAR AMAGO.
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> SO ORDERED.[14]

Petitioners filed their separate motions for reconsideration of the decision. However, on 25 January 2005, the Sandiganbayan denied all their motions.[15]

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[12] *Id.* at 44-52; Sandiganbayan Decision.

[13] *Id.* at 67.

[14] *Id.*

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

Before this Court, petitioners separately raised the following issues, thus:

In 166794-96 (*Cesar P. Guy v. People of the Philippines*):

1. The SANDIGANBAYAN (Fourth Division) has decided the above numbered three (3) criminal cases in gross disregard and contrary to the applicable decision of this Honorable Court in the case of *LACSON v. EXECUTIVE SECRETARY, et al*., and thus, committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it rendered the questioned DECISION and RESOLUTION despite the fact that it had no jurisdiction over the instant three (3) cases due to the failure to aver "the specific factual allegations in the INFORMATIONS that would indicate the close intimacy between the discharge of the accused's official duties and the commission of the offense charged, in order to qualify the crime as having been committed in relation to public office."

2. GRANTING *ARGUENDO* that the SANDIGANBAYAN (Fourth Division) had jurisdiction over these three (3) criminal cases—it further committed serious errors of law and disregarded applicable jurisprudence of this Honorable Court and thus, acted with grave abuse of discretion amounting to lack of, or in excess of jurisdiction when it rendered the assailed DECISION convicting herein petitioner and his co-accused and issued the questioned RESOLUTION denying their MOTIONs FOR RECONSIDERATION despite the fact that the prosecution evidently failed to prove the guilt of petitioner and his co-accused beyond reasonable doubt and further miserably failed to prove the allegation of conspiracy beyond reasonable doubt.[16]

In G.R. Nos. 167088-90 ( *Narcisa M. Grefiel v. The Hon. Sandiganbayan and the People of the Philippines*):

THE RESPONDENT SANDIGANBAYAN PALPABLY DISREGARDED THE FUNDAMENTAL RIGHT OF THE PETITIONER TO BE PRESUMED INNOCENT AND, INSTEAD, REVERSED THE PRESUMPTION AND CONVICTED THE PETITIONER OF VIOLATION OF THE ANTI-GRAFT LAW INSPITE OF THE CONCEDED FACT THAT PETITIONER HAS NOT DIRECTLY OR INDIRECTLY PARTICIPATED IN THE PRE-BIDDING, BIDDING, AWARD, PROSECUTION AND SUPERVISION OF THE PROJECTS OF THE *BARANGAY*, THE

[16] *Id*. at 14.

CONVICTION RESTING NOT ON THE BASIS OF CONCRETE INCULPATORY EVIDENCE BUT ON THE SWEEPING DECLARATION THAT SHE WAS ONE OF THE SIGNATORIES OF THE DISBURSEMENT VOUCHERS AND THE CHECKS RESULTED IN A DUBIOUS FINDING THAT THE PETITIONER CONSPIRED AND CONFEDERATED WITH HER CO-ACCUED FOR THE SUBSTANDARD CONSTRUCTION OF THE *BARANGAY* PROJECTS.[17]

In G.R. Nos. 166880-82 (*Felix T. Ripalda, Concepcion C. Esperas, Eduardo Villamor, and Ervin C. Martinez v. People of the Philippines*):

GROUNDS FOR THE PETITION

I

THE COURT *A QUO* DID NOT ACQUIRE JURISDICTION OVER THE CASE

II

THE ASSAILED DECISION OF THE COURT *A QUO* IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT;

III

THE CONCLUSION OF THE COURT *A QUO* FRINDING THE PETITIONERS GUILTY OF THE CRIME CHARGED IS GROUNDED ENTIRELY ON ESTIMATES, SPECULATIONS, SURMISES AND/OR CONJECTURES[18]

In essence, petitioners maintain that the Sandiganbayan had not acquired jurisdiction over them because the three informations failed to state the specific actual allegations that would indicate the connection between the discharge of their official duties and the commission of the offenses charged; or alternatively, assuming that the Sandiganbayan had actually acquired jurisdiction, the prosecution failed to prove the guilt of the accused beyond reasonable doubt, as well as the existence of conspiracy.

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[17] *Rollo* (G.R. Nos. 167088-90), p. 16.

[18] *Rollo*. (G.R. Nos. 166880-92), p. 9.

The People of the Philippines, represented by the Office of the Ombudsman (OMB), argues that the averments in the Informations are "complete and wanting of the slightest vagueness as to denote another interpretation or mislead anyone."[19] Section 6, Rule 110 of the Revised Rules of Court merely require the information to describe the offense with sufficient particularity as to apprise the accused of what they are being charged with and to enable the court to pronounce judgment, such that evidentiary matters need not be alleged in the information. The OMB adds that if it were true that the allegations are vague or indefinite, petitioners should have filed a motion for a bill of particulars as provided under Section 9, Rule 116 of the Rules of Court to question the alleged insufficiency of the informations, or a motion to quash on the ground that the facts averred do not constitute an offense.

The OMB asserts that the prosecution had satisfactorily proven the existence of the elements of the offense under Section 3(e) of R.A. No. 3019, as well as the existence of conspiracy among the accused.[20]

In addition, the OMB alleges that Grefiel's claim that she was merely constrained to sign the disbursement vouchers and checks relative to the subject projects is pure sophistry, since as *barangay* treasurer she is mandated to disburse funds in accordance with the Local Government Code. Even Grefiel's claim of miniscule educational attainment should not excuse her from liability.[21] The OMB posits that petitioners' allegation of error is "actually designed to lure the Court into re-opening the case on the basis of the testimony of the prosecution witnesses which, however, on close scrutiny appear to be credible and substantiated."[22]

The petitions have to be denied.

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[19] *Rollo* (G.R. Nos. 166794-96), p. 148.

[20] *Id.* at 124-161; Comment on the Appeal by *Certiorari* by the Office of the Ombudsman.

[21] *Rollo* (G.R. Nos. 167088-90), p. 142.

[22] *Id.* at 148.

Petitioners were charged with violation of Section 3(e) of R.A. No. 3019, which states:

"SEC. 3. *Corrupt practices of public officers*.—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

To hold a person liable under this section, the concurrence of the following elements must be established, *viz*:

(1) that the accused is a public officer or a private person charged in conspiracy with the former;

(2) that said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;

(3) that he or she causes undue injury to any party, whether the government or a private party; and

(4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence."[23]

Petitioners, citing the case of *Lacson v. The Executive Secretary*,[24] assert that the informations do not contain the specific factual allegations showing the close intimacy between the discharge of petitioners' official duties and the commission of the offense charged to qualify the offense as one committed in relation to public office. In *Lacson*, the Court ruled that before the Sandiganbayan may acquire jurisdiction over the offense

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[23] *Llorente v. Sandiganbayan*, 350 Phil. 820, 837 (1998).

[24] 361 Phil. 251 (1999).

charged, the intimate relation between the offense charged and the discharge of official duties "must be alleged in the information."[25]

Indeed, jurisprudence is replete with cases describing when an offense is deemed committed "in relation to office." In *Montilla and Tobia v. Hilario and Crisologo*,[26] this Court held that for an offense to be committed in relation to the office, the relation between the crime and the office must be direct and not accidental, such that the offense cannot exist without the office. In *Adaza v. Sandiganbayan*,[27] we held that:

> It does not thus suffice to merely allege in the information that the crime charged was committed by the offender in relation to his office or that he took advantage of his position as these are conclusions of law. The specific factual allegations in the information that would indicate the close intimacy between the discharge of the offender's official duties and the commission of the offense charged, in order to qualify the crime as having been committed in relation to public office, are controlling.[28]

The Court finds that the Informations sufficiently show the close intimacy between petitioners' discharge of official duties and the commission of the offense charged. We reproduce the accusatory portions of the Informations in the subject cases, thus:

Criminal Case No. 26508

That in or about the year 1996, and for sometime subsequent thereto, at the City of Tacloban, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named

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[25] *Id.* at 281-282. In this case, several PNP officials were charged with murder in relation to their office before the Sandiganbayan. The Supreme Court, after finding that the amended informations failed to show that the charge of murder was intimately connected with the discharge of the accused's official functions, ruled that the offense charged is just plain murder, and therefore within the exclusive jurisdiction of the regional trial court, and not of the Sandiganbayan.

[26] 90 Phil. 49 (1951).

[27] G.R. No. 154886, 28 July 2005, 464 SCRA 460.

[28] *Id.* at 474.

accused: FELIX T. RIPALDA, EDUARDO R. VILLAMOR, CONCEPCION C. ESPERAS and ERVIN C. MARTINEZ, public officers, being the City Engineer, Project Engineer, Project Inspector and ICD Representative, City Administrator's Office, respectively, of the City Government of Tacloban, CESAR P. GUY and NARCISA A. GREFIEL, also public officers, being *Barangay* Captain and *Barangay* Treasurer, respectively, of Barangay 36, Sabang District, Tacloban City, in such capacity and committing the offense in relation to office, conniving, confederating together and mutually helping with each other and with EDGAR AMAGO, a private individual, Contractor and Proprietor of Amago Construction and General Services, Inc., Tacloban City, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously construct and/or cause the construction of an elevated path walk of Barangay 36, Sabang District, Tacloban City, with the contract cost of SIXTY-TWO THOUSAND PESOS (₱62,000.00), Philippine Currency without following the approved program of work and drawing plan, in violation of the DILG Memorandum Circular No. 94-185, dated October 20, 1994, thereby resulting to (sic) an increase in the project cost by 17.5% or NINE THOUSAND TWO HUNDRED SEVENTY-FOUR PESOS AND EIGHTY-FOUR CENTAVOS (₱9,274.84), Philippine Currency, thus accused in the course of the performance of their official functions had given unwarranted benefits to themselves and to accused Edgar Amago, to the damage and prejudice of the government.

CONTRARY TO LAW.[29]

Criminal Case No. 26509

That in or about the year 1996, and for sometime subsequent thereto, the City of Tacloban, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused: FELIX T. RIPALDA, EDUARDO R. VILLAMOR, CONCEPCION C. ESPERAS and ERVIN C. MARTINEZ, public officers, being the City Engineer, Project Engineer, Project Inspector and ICD Representative, City Administrator's Office, respectively, of the City Government of Tacloban, CESAR P. GUY and NARCISA A. GREFIEL, also public officers, being the *Barangay* Captain and *Barangay* Treasurer, respectively, of Barangay 36, Sabang District, Tacloban City, in such capacity and committing the offense in relation to office, conniving, confederating together and mutually helping

[29] *Rollo* (G.R. Nos. 166794-96), p. 39.

with each other and with EDGAR AMAGO, a private individual, Contractor and Proprietor of Amago Construction and General Services, Inc., Tacloban City, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously construct and/or cause the construction of the Basketball Court of Barangay 36, Sabang District, Tacloban City, without adhering to the approved program of work and non-preparation of the plans and specifications in violation of DILG Memorandum Circular No. 94-185, dated October 20, 1994, thus resulting to (sic) the increase in the contract amount to SIXTY-EIGHT THOUSAND PESOS (₱68,000.00), Philippine Currency, thus accused in the course of the performance of their official functions had given unwarranted benefits to themselves and to accused Edgar Amago, to the damage and prejudice of the government.

CONTRARY TO LAW.[30]

Criminal Case No. 26510

That in or about the year 1996, and for sometime subsequent thereto, the City of Tacloban, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused: FELIX T. RIPALDA, EDUARDO R. VILLAMOR, CONCEPCION C. ESPERAS and ERVIN C. MARTINEZ, public officers, being the City Engineer, Project Engineer, Project Inspector and ICD Representative, City Administrator's Office, respectively, of the City Government of Tacloban, CESAR P. GUY and NARCISA A. GREFIEL, also public officers, being the *Barangay* Captain and *Barangay* Treasurer, respectively, of Barangay 36, Sabang District, Tacloban City, in such capacity and committing the offense in relation to office, conniving, confederating together and mutually helping with each other and with EDGAR AMAGO, a private individual, Contractor and Proprietor of Amago Construction and General Services, Inc., Tacloban City, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously construct and/or cause the construction of the Day Care Center of Barangay 36, Sabang District, Tacloban City, without plans and specifications, and not in accordance with the approved program of work, as the said center was constructed and completed before the completion of the program of work, thereby resulting to (sic) the increase and overpricing of construction cost, which was originally fixed at FORTY-TWO THOUSAND PESOS (₱42,000.00),

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

Philippine Currency, to NINETY-THREE THOUSAND PESOS (₱93,000.00), Philippine Currency, in violation of the DILG Memorandum Circular No. 94-185, dated October 20, 1994, thus accused in the course of the performance of their official functions had given unwarranted benefits to themselves and to accused Edgar Amago, to the damage and prejudice of the government.

CONTRARY TO LAW.[31]

The *Lacson* case is not applicable because in that case there was a failure to show that the charge of murder was intimately connected with the discharge of the official functions of the accused. Specifically, the Court observed:

> While the above-quoted information states that the above-named principal accused committed the crime of murder "in relation to their public office,["] there is, however, no specific allegation of facts that the shooting of the victim by the said principal accused was intimately related to the discharge of their official duties as police officers. Likewise, the amended information does not indicate that the said accused arrested and investigated the victim and then killed the latter while in their custody.[32]

In the case at bar, all the elements of violation of Sec. 3(e) R.A. No. 3019 are indicated in the Informations. The Informations allege that while in the performance of their respective functions either as city or *barangay* officials, petitioners caused the construction of the subject structures, either without following the approved program of work and drawing plan, or worse, even without any plans and specifications; and furthermore, had given unwarranted benefits to themselves and to Edgar Amago, to the damage and prejudice of the government.

Contrary also to petitioners' assertions, the specific acts of the accused do not have to be described in detail in the information, as it is enough that the offense be described with sufficient particularity to make sure the accused fully understand what he is being charged with. The particularity must be such that a person of ordinary intelligence immediately knows what the

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

[32] *Supra* note 24 at 281-282.

charge is.[33] Moreover, reasonable certainty in the statement of the crime suffices.[34] It is often difficult to say what is a matter of evidence, as distinguished from facts necessary to be stated in order to render the information sufficiently certain to identify the offense. As a general rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred.[35] The particular acts of the accused which pertain to "matters of evidence," such as how accused city officials prepared the inspection reports despite the absence of a project plan or how the contractor was able to use substandard materials, do not have to be indicated in the information.

Petitioners also question the propriety of the guilty verdict handed down by the Sandiganbayan, alleging that the prosecution failed to prove petitioners' guilt beyond reasonable doubt. In criminal cases, an appeal throws the whole case wide open for review and the reviewing tribunal can correct errors or even reverse the trial court's decision on grounds other than those that the parties raise as errors.[36] We have examined the records of the case and find no cogent reason to disturb the factual findings of the Sandiganbayan. We find that the evidence on record amply supports the findings and conclusions of the respondent court. The elements of the offense charged have been successfully proven by the prosecution.

First, petitioners could not have committed the offense charged were it not for their official duties or functions as public officials. Their malfeasance or misfeasance in relation to their duties and functions underlies their violation of Sec. 3(e) of R.A. No. 3019. Second, the undue injury caused to the government is evident

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[33] RULES OF COURT, Rule 110, Sec. 9. *Cause of accusation*.—The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.

[34] *Balitaan v. Court of First Instance of Batangas*, 201 Phil. 311 (1982).

[35] *Id.* at 323. See also *People v. Arbois*, 222 Phil. 343, 350 (1985).

[36] *People v. Boromeo*, G.R. No. 150501, 3 June 2004, 430 SCRA 533, 541.

from the clear deviation from the material specifications indicated in the project plans such as in the case of the basketball court and elevated path walk, and in the use of substandard materials in the case of the day care center. Otherwise stated, "the People did not get the full worth of their money in terms of the benefits they will derive from the (above) sub-standard infrastructure projects."[37] Third, unwarranted benefits were accorded to Amago Construction when the three projects were not inspected and supervised during construction, allowing it to cut costs and save money by using substandard materials and deviating from the specific materials and measurements prescribed in the work programs. Moreover, Amago Construction was able to receive payments for the projects even before the processing of the disbursement vouchers, thereby preventing the government from refusing or deferring payment on account of discovered defects of the said projects. Fourth, it is clear that from the very inception of the construction of the subject projects up to their completion, petitioners had exhibited manifest partiality for Amago Construction, and acted with evident bad faith against the government and the public which they had sworn to serve.

Neither are we inclined to vacate the Sandiganbayan's finding of conspiracy among petitioners.

Jurisprudence teaches us that "proof of the agreement need not rest on direct evidence, as the agreement itself may be inferred from the conduct of the parties disclosing a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out."[38] Therefore, if it is proved that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, then a conspiracy

[37] *Rollo* (G.R. Nos. 166794-96), p. 90.

[38] *People v. Quinao, et al.*, 336 Phil. 475, 488-489 (1997).

may be inferred though no actual meeting among them to concert means is proved.[39] Conspiracy was thus properly appreciated by the Sandiganbayan because even though there was no direct proof that petitioners agreed to cause injury to the government and give unwarranted benefits to Amago Construction, their individual acts when taken together as a whole showed that they were acting in concert and cooperating to achieve the same unlawful objective. The *barangay* officials' award of the contract to Amago Construction without the benefit of specific plans and specifications, the preparation of work programs only after the constructions had been completed, the issuance and encashment of checks in favor of Amago Construction even before any request to obligate the appropriation or to issue a disbursement voucher was made, and the subsequent inspection and issuance of certificates of completion by petitioner employees despite the absence of material documents were all geared towards one purpose—to cause undue injury to the government and unduly favor Amago Construction.

**WHEREFORE,** the consolidated petitions are hereby *DISMISSED* for lack of merit. The Decision of the Sandiganbayan dated 2 September 2004 in Criminal Case Nos. 26508-10 is *AFFIRMED*.

**SO ORDERED.**

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

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[39] *People v. Layno,* 332 Phil. 612, 629 (1996).

[*] Additional member per Special Order No. 587.

**THIRD DIVISION**

[G.R. No. 167409. March 20, 2009]

**RODOLFO B. GARCIA, Retired Municipal Circuit Trial Court Judge, Calatrava-Toboso, Negros Occidental,** *petitioner, vs.* **PRIMO C. MIRO, OMBUDSMAN-VISAYAS, Cebu City; DANIEL VILLAFLOR, PROVINCIAL PROSECUTOR, Bacolod City; HON. FRANKLIN M. COBBOL, Acting Presiding Judge, MCTC, Calatrava-Toboso, Negros Occidental; and JULIETA F. ORTEGA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; COURTS; FAILURE TO OBSERVE THE RULE ON THE HIERARCHY OF COURTS; RELEVANT RULINGS, CITED.—** At the outset, it is apparent that the present petition was directly filed before this Court, in utter disregard of the rule on the hierarchy of courts which, thus warrants its outright dismissal. In *Vergara, Sr. v. Suelto*, this Court stressed that "[w]here the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented." x x x Later, we reaffirmed such policy in *People v. Cuaresma* after noting that there is "a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land." We stressed that — **[t]his Court's original jurisdiction to issue writs of *certiorari*** (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) **is not exclusive**. x x x It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals x x x. **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the**

**appropriate forum for petitions for the extraordinary writs**. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level x x x courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket**. x x x.

**2. ID.; ID.; SUPREME COURT HAS ADMINISTRATIVE SUPERVISION OVER ALL INFERIOR COURTS AND COURT PERSONNEL.—** Indeed, supervision over all inferior courts and court personnel, from the Presiding Justice of the Court of Appeals to the lowest ranked court employee, is vested by the Constitution in the Supreme Court. However, that prerogative only extends to administrative supervision. As such, the Ombudsman cannot encroach upon this Court's task to oversee judges and court personnel and take the proper administrative action against them if they commit any violation of the laws of the land.

**3. ID.; ID.; TRIAL COURTS RETAIN JURISDICTION OVER CRIMINAL ASPECT OF OFFENSES COMMITTED BY JUDGES OF THE LOWER COURTS.—** In the case at bar, the criminal case filed against petitioner was in no way related to the performance of his duties as a judge. x x x the case filed against petitioner before the MCTC is a criminal case under its own jurisdiction as prescribed by law and not an administrative case. To be sure, trial courts retain jurisdiction over the criminal aspect of offenses committed by judges of the lower courts.

## D E C I S I O N

**PERALTA, *J.*:**

This is a petition for prohibition with prayer for issuance of writ of preliminary injunction. The petition seeks to impugn

the Orders dated November 23, 2004[1] and January 26, 2005[2] issued by the Municipal Circuit Trial Court (MCTC) of Calatrava-Toboso, Negros Occidental.

The antecedents are as follows:

On January 31, 2003, Julieta F. Ortega (Julieta) filed a letter complaint[3] before the Ombudsman-Vizayas, Primo C. Miro (Miro), charging Judge Rodolfo B. Garcia, then Presiding Judge of the MCTC, Calatrava-Toboso, Negros Occidental, and Ricardo Liyage (Liyage), ambulance driver, Municipality of Calatrava, Negros Occidental, with the crime of murder and the administrative offenses of grave misconduct and abuse of authority.

The complaint arose from the death of Julieta's husband, Francisco C. Ortega, Jr., on November 12, 2002, as a result of a vehicular mishap between a Toyota Land Cruiser driven by the petitioner and the motorcycle driven by the deceased.[4]

The letter complaint was treated as two (2) separate criminal and administrative complaints docketed as OMB-V-C-03-0076-B and OMB-V-A-03-0051-B, respectively.

On February 21, 2003, Deputy Ombudsman Miro approved a Joint Evaluation Report[5] dated February 12, 2003. In said evaluation report, Graft Investigation Officer (GIO) Antonio B. Yap found the letter complaint to be sufficient in form and substance. He concluded that the offense charged is not related to the functions of petitioner as a judge and can be the subject of preliminary investigation.[6] With regard to the administrative aspect of the case, GIO Yap recommended that the case be indorsed to the Office of the Court Administrator (OCA) for appropriate action.[7]

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[1] *Rollo,* pp. 29-30

[2] *Id.* at 36.

[3] *Id.* at 15.

[4] *Id.* at 17.

[5] *Id.* at 92-93.

[6] *Id.* at 92.

[7] *Id.* at 93.

GIO Yap also received information that it would be difficult on the part of the prosecutors to conduct the investigation because they regularly appear before the *sala* of petitioner for their cases. The Provincial Prosecutor of Negros Occidental also manifested that they would inhibit if the case would be returned to them. Consequently, he deemed that it would be more appropriate if the Office of the Ombudsman would conduct the necessary investigation.[8]

Corollarilly, on March 8, 2003, petitioner compulsory retired from the service.[9]

After the preliminary investigation, GIO Yap found the existence of probable cause for the crime of Reckless Imprudence Resulting to Homicide in OMB-V-C-03-0076-B. In a Resolution[10] dated August 12, 2003, he recommended the filing of the corresponding charges against the petitioner but dismissed the charges against Liyage.[11]

On January 27, 2004, an Information[12] for Reckless Imprudence Resulting to Homicide was filed against the petitioner before the MCTC Calatrava-Toboso, Negros Occidental, which was later docketed as Criminal Case No. 5982-C.

On March 1, 2004, petitioner filed a Motion to Quash the Information[13] on the following grounds: (1) that it does not conform substantially to the prescribed form; (2) that the court trying the case has no jurisdiction over the offense charged and over his person; and, (3) that the officer who filed the information had no authority to do so.[14] Ultimately, petitioner prayed that the information be quashed and be referred to this Court for appropriate action.

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[8] *Id.* at 92.

[9] *Id.* at 14.

[10] *Id.* at 94-97.

[11] *Id.* at 97.

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

[13] *Id.* at 21-25.

[14] *Id.* at 21.

On August 25, 2004, the MCTC issued an Order[15] granting the motion and, consequently, quashing the information.

Respondents filed a motion for reconsideration, which the court granted in an Order[16] dated November 23, 2004. The court opined, among other things, that the case had nothing to do with the performance of petitioner's official functions and that an administrative complaint against him had already been filed, as such, the purpose of referring cases against judges and court personnel to the Supreme Court has already been served.[17] Accordingly, the MCTC set aside its earlier order and denied petitioner's motion to quash, the decretal portion of which reads as follows:

> WHEREFORE, in view of the foregoing considerations, the subject motion for reconsideration filed by the prosecution is granted. Accordingly, the order of this court dated August 25, 2004, granting the accused's motion to quash the information is hereby reconsidered and set aside and, therefore, the accused's motion to quash the information is denied.
>
> SO ORDERED.[18]

Petitioner then filed his Motion for Reconsideration,[19] which was denied in the Order[20] dated January 26, 2005.

Hence, the petition.

At the outset, it is apparent that the present petition was directly filed before this Court, in utter disregard of the rule on the hierarchy of courts which, thus warrants its outright dismissal. In *Vergara, Sr. v. Suelto,*[21] this Court stressed that "[w]here

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[15] *Id.* at 26-28.

[16] *Supra* note 1.

[17] *Rollo,* p. 29.

[18] *Id.* at 30.

[19] *Id.* at 31-35.

[20] *Supra* note 2.

[21] G.R. No. 74766, December 21, 1987, 156 SCRA 753.

the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented," thus:

**The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.** It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is, and should continue, to be the policy in this regard, a policy that courts and lawyers must strictly observe.**[22]

Later, we reaffirmed such policy in *People v. Cuaresma*[23] after noting that there is "a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land." We stressed that —

**[t]his Court's original jurisdiction to issue writs of *certiorari*** (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) **is not exclusive**. x x x It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals x x x. **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts.**

[22] *Id.* at. 766. (Emphasis supplied)

[23] G.R. No. 67787, April 18, 1989, 172 SCRA 415, 423-425. (Emphasis supplied); See also *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

**That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs**. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level x x x courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.** x x x.

Notwithstanding the dismissibility of the instant petition for failure to observe the doctrine on the hierarchy of courts, this Court will proceed to entertain the case grounded as it is on a pure question of law.

Petitioner argues that respondents violated this Court's pronouncements in *Caoibes, Jr. v. Ombudsman,*[24] directing the Ombudsman to refer all cases against judges and court personnel filed before his office to the Supreme Court;[25] and, in *Fuentes v. Office of the Ombudsman-Mindanao*,[26] restricting not only the Ombudsman and the prosecution arm of the government, but also other official and functionary thereof in initiating or investigating judges and court personnel.[27]

Petitioner's contentions are misplaced.

As correctly pointed out by the Solicitor General, the two cases cited by the petitioner involve the performance of administrative and professional duties of the judges that were involved. *Caoibes* concerns the judge's dealings with his fellow

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[24] 413 Phil 717 (2001).

[25] *Rollo*, p. 5.

[26] G.R. No. 124294, October 23, 2001, 368 SCRA 37.

[27] *Supra* note 24.

member of the Bench, while *Fuentes* touches on the acts of a judge in the exercise of his official functions, particularly the issuance of a writ of execution.

In *Caoibes*, two members of the judiciary got entangled in a fight within court premises over a piece of office furniture. One of the judges filed a criminal complaint before the Office of the Ombudsman and an administrative complaint before this Court over the same incident. When the Ombudsman denied the motion of Judge Caoibes to refer the case to the Supreme Court, he filed a petition for *certiorari* before this Court seeking the reversal of the order. In granting the petition, the Court held that:

> Under Section 6, Article VIII of the Constitution, it is the Supreme Court which is vested with exclusive administrative supervision over all courts and its personnel. Prescinding from this premise, the Ombudsman cannot determine for itself and by itself whether a criminal complaint against a judge, or court employee, *involves an administrative matter*. The Ombudsman is duty bound to have all cases against judges and court personnel filed before it, *referred to the Supreme Court for determination as to whether an administrative aspect is involved therein*.
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> x x x x x x x x x

*Maceda*[28] is emphatic that by virtue of its constitutional power of administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals down to the lowest municipal trial court clerk, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, and take the proper *administrative action* against them if they commit any violation thereof. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.[29]

In *Fuentes*, the issue was whether the Ombudsman may conduct an investigation over the acts of a judge in the exercise of his official functions alleged to be in violation of the Anti-Graft

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[28] *Maceda v. Vasquez*, G.R. No. 102781, April 22, 1993, 221 SCRA 464.

[29] *Caoibes, Jr. v. Ombudsman* , *supra* note 24, at 724. (Italics supplied)

and Corrupt Practices Act, in the absence of an administrative charge for the same acts before the Supreme Court.[30] According to this Court:

> Thus, the Ombudsman may not initiate or investigate a criminal or administrative complaint before his office against petitioner judge, pursuant to his power to investigate public officers. The Ombudsman must indorse the case to the Supreme Court, for appropriate action.
>
> Article VIII, Section 6 of the Constitution exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals to the lowest municipal trial court clerk.
>
> Hence, it is the Supreme Court that is tasked to oversee the judges and court personnel and take the proper *administrative action* against them if they commit any violation of the laws of the land. No other branch of government may intrude into this power, without running afoul of the independence of the judiciary and the doctrine of separation of powers.
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> Petitioner's questioned order directing the attachment of government property and issuing a writ of execution were *done in relation to his office*, well within his official functions. The order may be erroneous or void for lack or excess of jurisdiction. However, whether or not such order of execution was valid under the given circumstances, must be inquired into in the course of the judicial action only by the Supreme Court that is tasked to supervise the courts. "No other entity or official of the Government, not the prosecution or investigation service of any other branch, not any functionary thereof, has competence to review a judicial order or decision—whether final and executory or not—and pronounce it erroneous so as to lay the basis for a criminal or administrative complaint for rendering an unjust judgment or order. That prerogative belongs to the courts alone."[31]

Indeed, supervision over all inferior courts and court personnel, from the Presiding Justice of the Court of Appeals to the lowest ranked court employee, is vested by the Constitution in the

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[30] *Fuentes v. Office of the Ombudsman-Mindanao*, *supra* note 26, at 40-41.

[31] *Id.* at 42. (Italics supplied)

Supreme Court. However, that prerogative only extends to administrative supervision. As such, the Ombudsman cannot encroach upon this Court's task to oversee judges and court personnel and take the proper administrative action against them if they commit any violation of the laws of the land.

In the case at bar, the criminal case filed against petitioner was in no way related to the performance of his duties as a judge. The Information reveals:

> The undersigned Graft Investigation Officer of the Office of the Ombudsman-Visayas, accuses JUDGE RODOLFO B. GARCIA, of the crime of RECKLESS IMPRUDENCE RESULTING TO HOMICIDE, defined and penalized under ARTICLE 365 OF THE REVISED PENAL CODE, committed as follows:
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> That on or about the 12th day of November, 2002, at about 5:15 o'clock in the afternoon, at Sitio Tunga, Barangay Bantayanon, Municipality of Calatrava, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused JUDGE RODOLFO B. GARCIA, a public officer, being then the Municipal Judge of the Municipal Circuit Trial Court of Calatrava-Toboso, Negros Occidental, with Salary Grade 26, then driving a Land Cruiser Toyota bearing Plate No. FDB-193, along the road at Sitio Tunga, Barangay Bantayanon, Calatrava, Negros Occidental, a public highway, did then and there drive or operate said vehicle in a reckless, negligent and imprudent manner without taking the necessary precaution considering the grade, visibility and other conditions of the highway, nor due regard to the traffic rules and ordinances in order to prevent accident to persons or damage to property, thereby causing by such recklessness, negligence and imprudence the said vehicle to hit and bump the motorcycle driven by Francisco C. Ortega, Jr., bearing Plate No. FH-2324, with Josemarie Paghubasan as his backrider, thereby causing upon Francisco C. Ortega, Jr. the following physical injuries, to with [sic]:
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> x x x x x x x x x
>
> which injuries resulted to the death of Francisco C. Ortega, Jr.
>
> CONTRARY TO LAW.[32]

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[32] *Rollo,* pp. 17-18.

From the foregoing, the filing of the criminal charges against the petitioner before the MCTC was warranted by the above circumstances. Under Article 365 of the Revised Penal Code, the penalty for the crime of reckless imprudence resulting in homicide is *prision correccional* in its medium and maximum periods ranging from two (2) years, four (4) months and one (1) day to six (6) years. Section 32 of Batas Pambansa Blg. 129, as amended by Section 2 of Republic Act No. 7691,[33] provides as follows:

> SEC. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases.* — Except in cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the Sandiganbayan, Metropolitan Trial Courts, Municipal Trial Courts, and *Municipal Circuit Trial Courts* shall exercise:
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> (1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdiction; and
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> (2) Exclusive original jurisdiction over all offenses punishable with imprisonment *not exceeding six (6) years* irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

As such, the jurisdiction of the MCTC over the case is beyond contestation.

Moreover, contrary to petitioner's allegation, the administrative aspect of the case against him was endorsed by the Ombudsman-Visayas to the OCA for appropriate action.[34] In addition, an

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[33] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980." (Italics supplied)

[34] *Rollo*, p. 93.

administrative complaint against petitioner involving the same facts was filed by Julieta Ortega with the OCA. The case was docketed as Administrative Matter OCA IPI No. 03-1403-MTJ, and is still pending to date. Petitioner cannot feign ignorance of this fact considering that he filed a Comment and Answer to the Complaint-Affidavit of Mrs. Julieta Ortega,[35] dated March 21, 2003. Thus, the Court's mandate, as laid down in *Caoibes*, was more than satisfactorily complied with.

To reiterate, the case filed against petitioner before the MCTC is a criminal case under its own jurisdiction as prescribed by law and not an administrative case. To be sure, trial courts retain jurisdiction over the criminal aspect of offenses committed by judges of the lower courts.[36]

**IN LIGHT OF THE FOREGOING,** the petition is *DENIED*. The Municipal Circuit Trial Court of Calatrava-Toboso, Negros Occidental, is *ORDERED* to proceed with the trial of Criminal Case No. 5982-C with dispatch.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Tinga,** and *Leonardo-de Castro,** JJ.,* concur.

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[35] *Rollo* (OCA IPI No. 03-1403-MTJ), pp. 18-23.

[36] *Office of the Court Administrator v. Judge Sardido*, 449 Phil. 619, 628 (2003).

* Additional member per Special Order No. 590 dated March 17, 2009.

** Additional member per Raffle dated March 16, 2009.

**THIRD DIVISION**

[G.R. No. 167702. March 20, 2009]

**LOURDES L. ERISTINGCOL,** *petitioner, vs.* **COURT OF APPEALS and RANDOLPH C. LIMJOCO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; JURISDICTION; RULES IN DETERMINING WHICH BODY HAS JURISDICTION; APPLICATION.—** Well-settled in jurisprudence is the rule that in determining which body has jurisdiction over a case, we should consider not only the status or relationship of the parties, but also the nature of the question that is the subject of their controversy. To determine the nature of an action and which court has jurisdiction, courts must look at the averments of the complaint or petition and the essence of the relief prayed for. Thus, we examine the pertinent allegations in Eristingcol's complaint, specifically her amended complaint. x x x [W]e note that the relationship between the parties is not in dispute and is, in fact, admitted by Eristingcol in her complaint. Nonetheless, Eristingcol is adamant that the subject matter of her complaint is properly cognizable by the regular courts and need not be filed before a specialized body or commission. Eristingcol's contention is wrong. Ostensibly, Eristingcol's complaint, designated as one for declaration of nullity, falls within the regular courts' jurisdiction. However, we have, on more than one occasion, held that the caption of the complaint is not determinative of the nature of the action. A scrutiny of the allegations contained in Eristingcol's complaint reveals that the nature of the question subject of this controversy only superficially delves into the validity of UVAI's Construction Rules. The complaint actually goes into the proper interpretation and application of UVAI's by-laws, specifically its construction rules. Essentially, the conflict between the parties arose as Eristingcol, admittedly a member of UVAI, now wishes to be exempt from the application of the canopy requirement set forth in UVAI's Construction Rules. Significantly, Eristingcol does not assail the height restriction of UVAI's Construction Rules, as she has readily complied therewith.

**2. ID.; ID.; HIGC'S (NOW HLURB) JURISDICTION OVER HOMEOWNERS ASSOCIATION, DISCUSSED.—** Executive Order (E.O.) No. 535, which amended Republic Act No. 580 creating the HIGC, transferred to the HIGC the regulatory and administrative functions over homeowners' associations originally vested with the SEC. Section 2 of E.O. No. 535 provides in pertinent part: 2. In addition to the powers and functions vested under the Home Financing Act, the Corporation, shall have among others, the following additional powers: (a) x x x; and exercise all the powers, authorities and responsibilities that are vested on the Securities and Exchange Commission with respect to home owners association, the provision of Act 1459, as amended by P.D. 902-A, to the contrary notwithstanding; (b) To regulate and supervise the activities and operations of all houseowners association registered in accordance therewith. By virtue thereof, the HIGC likewise assumed the SEC's original and exclusive jurisdiction to hear and decide cases involving controversies arising from intra-corporate or partnership relations. Thereafter, with the advent of Republic Act No. 8763, the foregoing powers and responsibilities vested in the HIGC, with respect to homeowners' associations, were transferred to the HLURB.

**3. ID.; ID.; DOCTRINE IN *TIJAM VS. SIBONGHANOY* WHICH WAS BARRED BY LACHES FROM QUESTIONING THE COURT'S JURISDICTION, NOT APPLICABLE.—** [T]he invocation of the doctrine in *Tijam, et al. v. Sibonghanoy, et al.* is quite a long stretch. The factual milieu obtaining in *Tijam* and in the case at bench are worlds apart. As found by the CA, defendants' appearance before the RTC was pursuant to, and in compliance with, a subpoena issued by that court in connection with Eristingcol's application for a Temporary Restraining Order (TRO). On defendants' supposed agreement to sign the Undertaking allowing Eristingcol's workers, contractors, and suppliers to enter and exit the village, this temporary settlement cannot be equated with full acceptance of the RTC's authority, as what actually transpired in *Tijam*. The landmark case of *Tijam* is, in fact, only an exception to the general rule that an objection to the court's jurisdiction over a case may be raised at any stage of the proceedings, as the lack of jurisdiction affects the very authority of the court to take cognizance of a case. In that case, the Surety filed a Motion to Dismiss before the CA, raising the question of lack of jurisdiction for the first

time—fifteen years after the action was commenced in the Court of First Instance (CFI) of Cebu. Indeed, in several stages of the proceedings in the CFI, as well as in the CA, the Surety invoked the jurisdiction of said courts to obtain affirmative relief, and even submitted its case for a final adjudication on the merits. Consequently, it was barred by *laches* from invoking the CFI's lack of jurisdiction. To further highlight the distinction in this case, the TRO hearing was held on February 9, 1999, a day after the filing of the complaint. On even date, the parties reached a temporary settlement reflected in the Undertaking. Fifteen days thereafter, defendants, including Limjoco, filed a Motion to Dismiss. Certainly, this successive and continuous chain of events cannot be characterized as *laches* as would bar defendants from questioning the RTC's jurisdiction.

**APPEARANCES OF COUNSEL**

*Law Firm of Anacleto M. Diaz and Associates* for petitioner.
*Fornier Fornier Lagumbay & Domado* for private respondent.

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

**NACHURA, *J.*:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court which assails the Court of Appeals (CA) Decision[1] in CA-G.R. SP. No. 64642 dismissing Civil Case No. 99-297 before the Regional Trial Court (RTC) for lack of jurisdiction.

The facts, as narrated by the CA, are simple.

[Petitioner Lourdes] Eristingcol is an owner of a residential lot in Urdaneta Village (or "village"), Makati City and covered by Transfer Certificate of Title No. 208586. On the other hand, [respondent Randolph] Limjoco, [Lorenzo] Tan and [June] Vilvestre were the former president and chairman of the board of governors (or "board"), construction committee chairman and village manager of [Urdaneta

[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Ruben T. Reyes (now a retired member of this Court) and Noel G. Tijam, concurring; *rollo*, pp. 33-40.

Village Association Inc.] UVAI, respectively. UVAI is an association of homeowners at Urdaneta Village.

[Eristingcol's] action [against UVAI, Limjoco, Tan and Vilvestre] is founded on the allegations that in compliance with the National Building Code and after UVAI's approval of her building plans and acceptance of the construction bond and architect's fee, Eristingcol started constructing a house on her lot with "concrete canopy directly above the main door and highway"; that for alleged violation of its Construction Rules and Regulations (or "CRR") on "Set Back Line" *vis-a-vis* the canopy easement, UVAI imposed on her a penalty of ₱400,000.00 and barred her workers and contractors from entering the village and working on her property; that the CRR, particularly on "Set Back Line," is contrary to law; and that the penalty is unwarranted and excessive.

On February 9, 1999, or a day after the filing of the complaint, the parties reached a temporary settlement whereby UVAI, Limjoco, Tan and Vilvestre executed an undertaking which allowed Eristingcol's workers, contractors and suppliers to leave and enter the village, subject only to normal security regulations of UVAI.

On February 26, 1999, UVAI, Limjoco, Tan and Vilvestre filed a motion to dismiss on ground of lack of jurisdiction over the subject matter of the action. They argued that it is the Home Insurance Guaranty Corporation (or "HIGC")[2] which has jurisdiction over intra-corporate disputes involving homeowners associations, pursuant to Exec. Order No. 535, Series of 1979, as amended by Exec. Order No. 90, Series of 1986.

Opposing the motion, Eristingcol alleged, among others, that UVAI, Limjoco, Tan and Vilvestre did not comply with the mandatory provisions of Secs. 4 and 6, Rule 15 of the 1997 Rules of Civil Procedure and are estopped from questioning the jurisdiction of the [RTC] after they voluntarily appeared therein "and embraced its authority by agreeing to sign an Undertaking."

On May 20, 1999, Eristingcol filed an amended complaint by (i) impleading Manuel Carmona (or "Carmona") and Rene Cristobal (or "Cristobal"), UVAI's newly-elected president and chairman of the board and newly-designated construction committee chairman,

[2] Transferred to the Housing and Land Use Regulatory Board by virtue of Republic Act No. 8763.

respectively, as additional defendants and (ii) increasing her claim for moral damages against each petitioner from ₱500,000.00 to ₱1,000,000.00.

On May 25, 1999, Eristingcol filed a motion for production and inspection of documents, which UVAI, Limjoco, Tan, Vilvestre, Carmona and Cristobal opposed. The motion sought to compel [UVAI and its officers] to produce the documents used by UVAI as basis for the imposition of the ₱400,000.00 penalty on Eristingcol as well as letters and documents showing that UVAI had informed the other homeowners of their violations of the CRR.

On May 26, 1999, the [RTC] issued an order which pertinently reads:

> IN VIEW OF THE FOREGOING, for lack of merit, the defendants' Motion to Dismiss is Denied, and plaintiff's motion to declare defendants in default and for contempt are also Denied."

The [RTC] ratiocinated that [UVAI, Limjoco, Tan and Vilvestre] may not assail its jurisdiction "after they voluntarily entered their appearance, sought reliefs therein, and embraced its authority by agreeing to sign an undertaking to desist from prohibiting (Eristingcol's) workers from entering the village." In so ruling, it applied the doctrine enunciated in *Tijam v. Sibonghanoy*.

On June 7, 1999, Eristingcol filed a motion reiterating her earlier motion for production and inspection of documents.

On June 8, 1999, [UVAI, Limjoco, Tan and Vilvestre] moved for partial reconsideration of the order dated May 26, 1999. Eristingcol opposed the motion.

On March 24, 2001, the [RTC] issued an order granting Eristingcol's motion for production and inspection of documents, while on March 26, 2001, it issued an order denying [UVAI's, Limjoco's, Tan's and Vilvestre's] motion for partial reconsideration.

On May 10, 2001, [UVAI, Limjoco, Tan and Vilvestre] elevated the dispute before [the CA] *via* [a] petition for *certiorari* alleging that the [RTC] acted without jurisdiction in issuing the orders of May 26, 1999 and March 24 and 26, 2001.[3]

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[3] *Rollo*, pp. 33-36.

The CA issued the herein assailed Decision reversing the RTC Order[4] and dismissing Eristingcol's complaint for lack of jurisdiction.

Hence, this appeal positing a sole issue for our resolution:

> Whether it is the RTC or the Housing and Land Use Regulatory Board (HLURB) which has jurisdiction over the subject matter of Eristingcol's complaint.

Before anything else, we note that the instant petition impleads only Limjoco as private respondent. The rest of the defendants sued by Eristingcol before the RTC, who then collectively filed the petition for *certiorari* before the CA assailing the RTC's Order, were, curiously, not included as private respondents in this particular petition.

Eristingcol explains that only respondent Limjoco was retained in the instant petition as her discussions with UVAI and the other defendants revealed their lack of participation in the work-stoppage order which was supposedly single-handedly thought of and implemented by Limjoco.

The foregoing clarification notwithstanding, the rest of the defendants should have been impleaded as respondents in this petition considering that the complaint before the RTC, where the petition before the CA and the instant petition originated, has yet to be amended. Furthermore, the present petition maintains that it was serious error for the CA to have ruled that the RTC did not have jurisdiction over a complaint for declaration of nullity of UVAI's Construction Rules. Clearly, UVAI and the rest of the defendants should have been impleaded herein as respondents.

Section 4(a), Rule 45 of the Rules of Court, requires that the petition shall "state the full name of the appealing party as petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents." As the losing party in defendants' petition for *certiorari* before the CA, Eristingcol should have impleaded all petitioners, the winning and adverse parties therein.

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[4] *Id.* at 79-82.

On this score alone, the present petition could have been dismissed outright.[5] However, to settle the issue of jurisdiction, we have opted to dispose of this case on the merits.

Despite her having dropped UVAI, Lorenzo Tan (Tan) and June Vilvestre (Vilvestre) from this suit, Eristingcol insists that her complaint against UVAI and the defendants was properly filed before the RTC as it prays for the declaration of nullity of UVAI's Construction Rules and asks that damages be paid by Limjoco and the other UVAI officers who had inflicted injury upon her. Eristingcol asseverates that since the case before the RTC is one for declaration of nullity, the nature of the question that is the subject of controversy, not just the status or relationship of the parties, should determine which body has jurisdiction. In any event, Eristingcol submits that the RTC's jurisdiction over the case was foreclosed by the prayer of UVAI and its officers, including Limjoco, for affirmative relief from that court.

Well-settled in jurisprudence is the rule that in determining which body has jurisdiction over a case, we should consider not only the status or relationship of the parties, but also the nature of the question that is the subject of their controversy.[6] To determine the nature of an action and which court has jurisdiction, courts must look at the averments of the complaint or petition and the essence of the relief prayed for.[7] Thus, we examine the pertinent allegations in Eristingcol's complaint, specifically her amended complaint, to wit:

**Allegations Common to All Causes of Action**

3. In 1958 and upon its incorporation, [UVAI] adopted a set of By-laws and Rules and Regulations, x x x. Item 5 of [UVAI's] Construction Rules pertinently provides:

> "Set back line: All Buildings, including garage servants' quarters, or parts thereof (covered terraces, *portes cocheres*)

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[5] See RULES OF COURT, Rule 45, Sec. 5.

[6] *Viray v. Court of Appeals*, G.R. No. 92481, November 9, 1990, 191 SCRA 308, 323; *Citibank v. CA*, 359 Phil. 719 (1998).

[7] *Id.*

must be constructed at a distance of not less than *three (3) meters from the boundary fronting a street* and not less than four (4) meters fronting the drainage creek or underground culvert and two (2) meters from other boundaries of a lot. Distance will be measured from the vertical projection of the roof nearest the property line. Completely open and unroofed terraces are not included in these restrictions."

Suffice it to state that there is nothing in the same By-laws which deals explicitly with canopies or marquees which extend outward from the main building.

4. [Eristingcol] has been a resident of Urdaneta Village for eleven (11) years. In February 1997, she purchased a parcel of land in the Village, located at the corner of Urdaneta Avenue and Cerrada Street. x x x.

5. In considering the design for the house (the "Cerrada property") which she intended to construct on Cerrada Street, [Eristingcol] referred to the National Building Code of the Philippines. After assuring herself that the said law does not expressly provide any restrictions in respect thereof, and after noting that *other houses* owned by prominent families had similar structures without being cited by the Village's Construction Committee, [Eristingcol] decided that the Cerrada property would have a concrete canopy directly above the main door and driveway.

6. In compliance with [UVAI's] rules, [Eristingcol] submitted to [UVAI] copies of her building plans in respect of the Cerrada property and the building plans were duly approved by [UVAI]. x x x.

7. [Eristingcol] submitted and/or paid the "cash bond/construction bond deposit and architect's inspection fee" of ₱200,000.00 and the architect's inspection fee of ₱500.00 as required under Construction Rules x x x.

8. In the latter part of 1997, and while the construction of the Cerrada property was ongoing, [Eristingcol] received a notice from [UVAI], charging her with alleged violations of the Construction Rules, *i.e.*, those on the height restriction of eleven (11.0) meters, and the canopy extension into the easement. On 22nd January 1998, [Eristingcol] (through her representatives) met with, among others, defendant Limjoco. In said meeting, and after deliberation on the

definition of the phrase "original ground elevation" as a reference point, [Eristingcol's] representatives agreed to revise the building plan by removing what was intended to be a parapet or roof railing, and thereby reduce the height of the structure by 40 centimeters, which proposal was accepted by the Board through defendant Limjoco, Gov. Catalino Macaraig Jr. ([UVAI's] Construction Committee chairman), and the Village's Architect. However, the issue of the alleged violation in respect of the canopy/extension remained unresolved.

x x x x x x x x x

9. In compliance with the agreement reached at the 22nd January 1998 meeting, [Eristingcol] caused the revision of her building plans such that, as it now stands, the Cerrada property has a vertical height of 10.96 meters and, thus, was within the Village's allowed maximum height of 11 meters.

10. Sometime in June 1998, [Eristingcol] was surprised to receive another letter from [UVAI], this time from the Construction Committee chairman (defendant Tan), again calling her attention to alleged violations of the Construction Rules. On 15th June 1998, [UVAI] barred [Eristingcol's] construction workers from entering the Village. Thus, [Eristingcol's] Construction Manager (Mr. Jaime M. Hidalgo) wrote defendant Tan to explain her position, and attached photographs of similar "violations" by other property owners which have not merited the same scrutiny and sanction from [UVAI].

x x x x x x x x x

11. On 26th October 1998, and for reasons known only to him, defendant Vilvestre sent a letter to Mr. Geronimo delos Reyes, demanding for an "idea of how [Mr. delos Reyes] can demonstrate in concrete terms [his] good faith as a *quid pro quo* for compromise to" [UVAI's] continued insistence that [Eristingcol] had violated [UVAI's] Construction Rules. x x x.

x x x x x x x x x

12. [Eristingcol] through Mr. Hidalgo sent a letter dated 24th November 1998 to defendant Tan, copies of which were furnished defendants Limjoco, Vilvestre and the Board, reiterating that, among others: (i) the alleged height restriction violation is untrue, since the Cerrada property now has a height within the limits imposed by

[UVAI]; and (ii) the demand to reduce the canopy by ninety (90) centimeters is without basis, in light of the existence of thirty-five (35) similar "violations" of the same nature by other homeowners. [Eristingcol] through Mr. Hidalgo further mentioned that she had done nothing to deserve the crude and coercive Village letters and the Board's threats of work stoppage, and she cited instances when she dealt with [UVAI] and her fellow homeowners in good faith and goodwill such as in 1997, when she very discreetly spent substantial amounts to landscape the entire Village Park, concrete the Park track oval which was being used as a jogging path, and donate to the Association molave benches used as Park benches.

x x x x x x x x x

13. On the same date (24th November 1998), defendant Vilvestre sent another letter addressed to [Eristingcol's] construction manager Hidalgo, again threatening to enjoin all construction activity on the Cerrada property as well as ban entry of all workers and construction deliveries effective 1st December 1998 unless Mr. delos Reyes met with defendants. x x x.

x x x x x x x x x

14. On 2nd December 1998, [Eristingcol's] representatives met with defendants Limjoco, Tan, and Vilvestre. During that meeting, defendants were shown copies of the architectural plans for the Cerrada property. [Eristingcol's] representatives agreed to allow [UVAI's] Construction Committee's architect to validate the measurements given. However, on the issue of the canopy extension, the defendants informed [Eristingcol's] representatives that the Board would impose a penalty of Four Hundred Thousand Pesos (₱400,000.00) for violation of [UVAI's] "set back" or easement rule. Defendants cited the Board's imposition of similar fines to previous homeowners who had violated the same rule, and they undertook to furnish [Eristingcol] with a list of past penalties imposed and paid by homeowners found by the Board to have violated the Village's "set back" provision.

15. On 22nd December 1998, defendant Vilvestre sent [Eristingcol] a letter dated 18th December 1998 formally imposing a penalty of ₱400,000.00 for the "canopy easement violation." x x x.

16. On 29th December 1998, x x x, Vilvestre sent a letter to [Eristingcol], stating that "as far as [his] administration is concerned,

there has been no past penalties executed by [UVAI], similar to the one we are presently demanding on your on going construction. x x x

17. On 4th January 1999, [Eristingcol's] representative sent a letter to the Board, asking for a reconsideration of the imposition of the ₱400,000.00 penalty on the ground that the same is unwarranted and excessive. On 6th January 1999, [Eristingcol] herself sent a letter to the Board, expounding on the reasons for opposing the Board's action. On 18th January 1999, [Eristingcol] sent another letter in compliance with defendants' request for a breakdown of her expenditures in respect of her donations relative to the Village park.

18. On 3rd February 1999, [Eristingcol] through her lawyers sent defendants a letter, requesting that her letters of 4th and 6th January 1999 be acted upon.

19. On 4th February 1999, x x x, defendant Limjoco gave a verbal order to [UVAI's] guards to bar the entry of workers working on the Cerrada property.

20. In the morning of 5th February 1999, defendants physically barred [Eristingcol's] workers and contractors from entering the Village and working at the Cerrada property.[8]

Eristingcol then lists the following causes of action:

1. Item 5 of UVAI's Construction Rules constitutes an illegal and unwarranted intrusion upon Eristingcol's proprietary rights as it imposes a set-back or horizontal easement of 3.0 meters from the property line greater than the specification in Section 1005(b) of the Building Code that "the horizontal clearance between the outermost edge of the marquee and the curb line shall be not less than 300 millimeters." As such, Eristingcol prays for the declaration of nullity of this provision in UVAI's Construction Rules insofar as she is concerned.

2. UVAI's imposition of a ₱400,000.00 penalty on Eristingcol has no factual basis, is arbitrary, whimsical and capricious as rampant violations of the set-back rule by other homeowners in the Village were not penalized by UVAI. Eristingcol

[8] *Rollo*, pp. 65-69. (Citations omitted.)

prays to put a stop to defendants' arbitrary exercise of power pursuant to UVAI's by-laws.

3. Absent any factual or legal bases for the imposition of a ₱400,000.00 penalty, defendants and all persons working under their control should be permanently barred or restrained from imposing and/or enforcing any penalty upon Eristingcol for an alleged violation of UVAI's Construction Rules, specifically the provision on set-back.

4. Defendants Limjoco, Tan, and Vilvestre, in violation of Article 19 of the Civil Code, demonstrated bias against Eristingcol by zeroing in on her alone and her supposed violation, while other homeowners, who had likewise violated UVAI's Construction Rules, were not cited or penalized therefor. Defendants' actuations were in clear violation of their duty to give all homeowners, including Eristingcol, their due.

5. Defendants' actuations have seriously affected Eristingcol's mental disposition and have caused her to suffer sleepless nights, mental anguish and serious anxiety. Eristingcol's reputation has likewise been besmirched by UVAI's and defendants' arbitrary charge that she had violated UVAI's Construction Rules. In this regard, individual defendants should each pay Eristingcol moral damages in the amount of ₱1,000,000.00.

6. Lastly, defendants should pay Eristingcol ₱1,000.000.00 for litigation expenses she incurred in instituting this suit and for attorney's fees.

At the outset, we note that the relationship between the parties is not in dispute and is, in fact, admitted by Eristingcol in her complaint. Nonetheless, Eristingcol is adamant that the subject matter of her complaint is properly cognizable by the regular courts and need not be filed before a specialized body or commission.

Eristingcol's contention is wrong.

Ostensibly, Eristingcol's complaint, designated as one for declaration of nullity, falls within the regular courts' jurisdiction.

However, we have, on more than one occasion, held that the caption of the complaint is not determinative of the nature of the action.[9]

A scrutiny of the allegations contained in Eristingcol's complaint reveals that the nature of the question subject of this controversy only superficially delves into the validity of UVAI's Construction Rules. The complaint actually goes into the proper interpretation and application of UVAI's by-laws, specifically its construction rules. Essentially, the conflict between the parties arose as Eristingcol, admittedly a member of UVAI, now wishes to be exempt from the application of the canopy requirement set forth in UVAI's Construction Rules. Significantly, Eristingcol does not assail the height restriction of UVAI's Construction Rules, as she has readily complied therewith.

Distinctly in point is *China Banking Corp. v. Court of Appeals*,[10] which upheld the jurisdiction of the Securities and Exchange Commission (SEC) over the suit and recognized its special competence to interpret and apply Valley Golf and Country Club, Inc.'s (VGCCI's) by-laws. We ruled, thus:

> Applying the foregoing principles in the case at bar, to ascertain which tribunal has jurisdiction we have to determine therefore whether or not petitioner is a stockholder of VGCCI and whether or not the nature of the controversy between petitioner and private respondent corporation is intra-corporate.
>
> As to the first query, there is no question that the purchase of the subject share or membership certificate at public auction by petitioner (and the issuance to it of the corresponding Certificate of Sale) transferred ownership of the same to the latter and thus entitled petitioner to have the said share registered in its name as a member of VGCCI. x x x.
>
> By virtue of the aforementioned sale, petitioner became a *bona fide* stockholder of VGCCI and, therefore, the conflict that arose between petitioner and VGCCI aptly exemplifies an intra-corporate

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[9] *Bokingo v. Court of Appeals*, G.R. No. 161739, May 4, 2006, 489 SCRA 521, 530.

[10] 337 Phil. 223 (1997).

controversy between a corporation and its stockholder under Sec. 5(b) of P.D. 902-A.

An important consideration, moreover, is the nature of the controversy between petitioner and private respondent corporation. VGCCI claims a prior right over the subject share anchored mainly on Sec. 3, Art. VIII of its by-laws which provides that "after a member shall have been posted as delinquent, the Board may order his/her/its share sold to satisfy the claims of the Club…" It is pursuant to this provision that VGCCI also sold the subject share at public auction, of which it was the highest bidder. VGCCI caps its argument by asserting that its corporate by-laws should prevail. The bone of contention, thus, is the proper interpretation and application of VGCCI's aforequoted by-laws, a subject which irrefutably calls for the special competence of the SEC.

We reiterate herein the sound policy enunciated by the Court in *Abejo v. De la Cruz*:

> 6. In the fifties, the Court taking cognizance of the move to vest jurisdiction in administrative commissions and boards the power to resolve specialized disputes in the field of labor (as in corporations, public transportation and public utilities) ruled that Congress in requiring the Industrial Court's intervention in the resolution of labor-management controversies likely to cause strikes or lockouts meant such jurisdiction to be exclusive, although it did not so expressly state in the law. The Court held that under the "sense-making and expeditious doctrine of primary jurisdiction … the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, 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 a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered*.
>
> x x x x x x x x x

**In this case, the need for the SEC's technical expertise cannot be over-emphasized involving as it does the meticulous analysis and correct interpretation of a corporation's by-laws as well**

**as the applicable provisions of the Corporation Code in order to determine the validity of VGCCI's claims. The SEC, therefore, took proper cognizance of the instant case.**[11]

Likewise in point is our illuminating ruling in *Sta. Clara Homeowners' Association v. Sps. Gaston,*[12] although it ultimately held that the question of subject matter jurisdiction over the complaint of respondent- spouses Gaston for declaration of nullity of a board resolution issued by Sta. Clara Homeowners' Association (SCHA) was vested in the regular courts. In *Sta. Clara*, the main issue raised by SCHA reads: "Whether [the CA] erred in upholding the jurisdiction of the [RTC], 'to declare as null and void the resolution of the Board of SCHA, decreeing that only members [in] good standing of the said association were to be issued stickers for use in their vehicles.'" In holding that the regular courts had jurisdiction over respondent-spouses Gaston's complaint for declaration of nullity, we stressed the absence of relationship and the consequent lack of privity of contract between the parties, thus:

*Are [Respondent-Spouses Gaston] SCHA Members?*

In order to determine if the HIGC has jurisdiction over the dispute, it is necessary to resolve preliminarily—on the basis of the allegations in the Complaint—whether [respondent-spouses Gaston] are members of the SCHA.

[SCHA] contend[s] that because the Complaint arose from intra-corporate relations between the SCHA and its members, the HIGC therefore has jurisdiction over the dispute. To support their contention that [respondent-spouses Gaston] are members of the association, [SCHA] cite[s] the SCHA's Articles of Incorporation and By-laws which provide that all landowners of the Sta. Clara Subdivision are automatically members of the SCHA.

We are not persuaded. The constitutionally guaranteed freedom of association includes the freedom *not* to associate. The right to choose with whom one will associate oneself is the very foundation and essence of that partnership. It should be noted that the provision

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[11] *Id.* at 233-235. (Citations omitted, emphasis supplied.)

[12] 425 Phil. 221 (2002).

guarantees the right to form an association. It does not include the right to compel others to form or join one.

More to the point, [respondent-spouses Gaston] cannot be compelled to become members of the SCHA by the simple expedient of including them in its Articles of Incorporation and By-laws without their express or implied consent. x x x. In the present case, however, other than the said Articles of Incorporation and By-laws, there is no showing that [respondent-spouses Gaston] have agreed to be SCHA members.

x x x x x x x x x

*No privity of Contract*

Clearly then, no privity of contract exists between [SCHA] and [respondent-spouses Gaston]. As a general rule, a contract is a meeting of minds between two persons. The Civil Code upholds the spirit over the form; thus, it deems an agreement to exist, provided the essential requisites are present. x x x. From the moment there is a meeting of minds between the parties, it is perfected.

As already adverted to, there are cases in which a party who enters into a contract of sale is also bound by a lien annotated on the certificate of title. We recognized this in *Bel Air Village Association, Inc. v. Dionisio*, in which we ruled:

> There is no dispute that Transfer Certificate of Title No. 81136 covering the subject parcel of land issued in the name of the petitioner contains an *annotation* to the effect that the lot owner becomes an automatic member of the respondent Bel-Air Association and must abide by such rules and regulations laid down by the Association in the interest of the sanitation, security and the general welfare of the community. It is likewise not disputed that the provision on automatic membership was expressly annotated on the petitioner's Transfer Certificate of Title and on the title of his predecessor-in-interest.
>
> The question, therefore, boils down to whether or not the petitioner is bound by such *annotation*.
>
> Section 39 of Art. 496 (The Land Registration Act) states:
>
> Sec. 39. Every person receiving a certificate of title in pursuance of a decree of registration, and *every subsequent*

> *purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrances except those noted on said certificate* x x x. (Italics supplied)

The above ruling, however, does not apply to the case at bar. When [respondent-spouses Gaston] purchased their property in 1974 and obtained Transfer Certificates of Title Nos. T-126542 and T-127462 for Lots 11 and 12 of Block 37 along San Jose Avenue in Sta. Clara Subdivision, there was no annotation showing their automatic membership in the SCHA. Thus, no privity of contract arising from the title certificate exists between [SCHA] and [respondent-spouses Gaston].

Further, the records are bereft of any evidence that would indicate that private respondents intended to become members of the SCHA. Prior to the implementation of the aforesaid Resolution, they and the other homeowners who were not members of the association were issued non-member gate pass stickers for their vehicles. This fact has not been disputed by [SCHA]. Thus, the SCHA recognized that there were subdivision landowners who were not members thereof, notwithstanding the provisions of its Articles of Incorporation and By-laws.

*Jurisdiction Determined by Allegations in the Complaint*

It is a settled rule that jurisdiction over the subject matter is determined by the allegations in the complaint. Jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant.

The Complaint does not allege that [respondent-spouses Gaston] are members of the SCHA. In point of fact, they deny such membership. Thus, the HIGC has no jurisdiction over the dispute.[13]

In stark contrast, the relationship between the parties in the instant case is well-established. Given this admitted relationship, the privity of contract between UVAI and Eristingcol is palpable, despite the latter's deft phraseology of its primary cause of action as a declaration of nullity of UVAI's Construction Rules. In short, the crux of Eristingcol's complaint is UVAI's supposed

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[13] *Id.* at 234-238. (Citations omitted.)

arbitrary implementation of its construction rules against Eristingcol, a member thereof.

Moreover, as in *Sta. Clara* (had respondent-spouses Gaston been members of SCHA), the controversy which arose between the parties in this case partook of the nature of an intra-corporate dispute. Executive Order (E.O.) No. 535,[14] which amended Republic Act No. 580 creating the HIGC, transferred to the HIGC the regulatory and administrative functions over homeowners' associations originally vested with the SEC. Section 2 of E.O. No. 535 provides in pertinent part:

> 2. In addition to the powers and functions vested under the Home Financing Act, the Corporation, shall have among others, the following additional powers:
>
> (a) x x x; and exercise all the powers, authorities and responsibilities that are vested on the Securities and Exchange Commission with respect to home owners association, the provision of Act 1459, as amended by P.D. 902-A, to the contrary notwithstanding;
>
> (b) To regulate and supervise the activities and operations of all houseowners association registered in accordance therewith.

By virtue thereof, the HIGC likewise assumed the SEC's original and exclusive jurisdiction to hear and decide cases involving controversies arising from intra-corporate or partnership relations.[15] Thereafter, with the advent of Republic Act No. 8763, the foregoing powers and responsibilities vested in the HIGC, with respect to homeowners' associations, were transferred to the HLURB.

As regards the defendants' supposed embrace of the RTC's jurisdiction by appearing thereat and undertaking to desist from prohibiting Eristingcol's workers from entering the village, suffice

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[14] Entitled "Amending the Charter of the Home Financing Commission, renaming it as Home Financing Corporation, enlarging its powers, and for other purposes."

[15] *See* Presidential Decree 902-A, Sec. 5(b).

it to state that the invocation of the doctrine in *Tijam, et al. v. Sibonghanoy, et al.*[16] is quite a long stretch.

The factual milieu obtaining in *Tijam* and in the case at bench are worlds apart. As found by the CA, defendants' appearance before the RTC was pursuant to, and in compliance with, a subpoena issued by that court in connection with Eristingcol's application for a Temporary Restraining Order (TRO). On defendants' supposed agreement to sign the Undertaking allowing Eristingcol's workers, contractors, and suppliers to enter and exit the village, this temporary settlement cannot be equated with full acceptance of the RTC's authority, as what actually transpired in *Tijam*.

The landmark case of *Tijam* is, in fact, only an exception to the general rule that an objection to the court's jurisdiction over a case may be raised at any stage of the proceedings, as the lack of jurisdiction affects the very authority of the court to take cognizance of a case.[17] In that case, the Surety filed a Motion to Dismiss before the CA, raising the question of lack of jurisdiction for the first time—fifteen years after the action was commenced in the Court of First Instance (CFI) of Cebu. Indeed, in several stages of the proceedings in the CFI, as well as in the CA, the Surety invoked the jurisdiction of said courts to obtain affirmative relief, and even submitted its case for a final adjudication on the merits. Consequently, it was barred by *laches* from invoking the CFI's lack of jurisdiction.

To further highlight the distinction in this case, the TRO hearing was held on February 9, 1999, a day after the filing of the complaint. On even date, the parties reached a temporary settlement reflected in the Undertaking. Fifteen days thereafter, defendants, including Limjoco, filed a Motion to Dismiss. Certainly, this successive and continuous chain of events cannot be characterized as *laches* as would bar defendants from questioning the RTC's jurisdiction.

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[16] 131 Phil. 556 (1968).

[17] *Id.* at 562.

In fine, based on the allegations contained in Eristingcol's complaint, it is the HLURB, not the RTC, which has jurisdiction over this case.

**WHEREFORE,** premises considered, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP. No. 64642 is hereby *AFFIRMED*. Costs against petitioner.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Tinga,** and *Peralta, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 175829. March 20, 2009]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **DOLORICO GUILLERA *y* ALGORDO and GARY GUILLERA *y* ALGORDO,** *appellants.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.—** [W]e have consistently adhered to the rule that where the culpability or innocence of an accused hinges on the issue of the credibility of witnesses, the findings of fact of the Court of Appeals affirming those of the trial court, when duly supported by sufficient and convincing evidence, must be accorded the highest respect, even finality, by this Court and are not to be disturbed on appeal. Appellants have not shown any cogent reason why we should reverse the findings of both courts below. Their petition must, therefore, fail. This Court has no reason to doubt Geraldine's testimony. She

* Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 590 dated March 17, 2009.

recounted the details of the killing in a manner reflective of honest and unrehearsed testimony. Her candid, straightforward, firm and unwavering account was free of significant inconsistencies, unshaken despite a grueling cross-examination. That she witnessed the killing, although she was amid the trees and tall grasses 10 meters downhill from Enrique and the three men and it was then around 6:00 p.m., is undisputed. Her account of how and where Enrique was attacked was corroborated by the medico-legal report showing the injuries sustained by Enrique at his nape and other parts of his body.

**2. ID.; ID.; ID.; WITNESS' RELATIONSHIP WITH THE VICTIM DOES NOT IMPAIR CREDIBILITY.—** Neither did Geraldine's relationship with Enrique impair her credibility since it is a basic precept that relationship *per se* of a witness with the victim does not necessarily mean that the witness is biased. Close or blood relationship alone does not, by itself, impair a witness' credibility. On the contrary, it could even strengthen the witness' credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. Their natural interest in securing the conviction of the guilty would deter them from implicating a person other than the true offender.

**3. ID.; ID.; MOTIVE; ABSENCE OF ILL MOTIVE TO FALSELY TESTIFY.—** [A]ppellants failed to show that Geraldine was actuated by ill motive to testify falsely against them. When there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.

**4. ID.; ID.; ALIBI; THE ELEMENT OF PHYSICAL IMPOSSIBILITY IS ABSENT.—** Juxtaposed against the prosecution's positive identification of the malefactors, appellants' defense of alibi crumbles. As we consistently held, alibi is the weakest of all defenses because it is easy to concoct and difficult to disprove. For alibi to prevail, clear and satisfactory proof must be shown that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that he was somewhere else. In this case, the element of physical impossibility is absent. Dolorico failed to present any witness who could vouch that he never left his residence

on March 29, 2002. Thus, although the crime scene was far and required a four-hour walk from his house, his presence thereat is still quite possible. On the other hand, while Gary presented a witness who testified that he was in Mugo, Cagayan from January to October 2002, her direct testimony was deleted from the records. Even if we could consider said testimony, such witness failed to vouch for his presence in Mugo, Cagayan on March 29, 2002.

**5. CIVIL LAW; DAMAGES; IN THE ABSENCE OF PROOF OF ACTUAL DAMAGES, TEMPERATE DAMAGES IS AWARDED.—** [W]e are convinced beyond a shadow of doubt that appellants are guilty for the murder of Enrique S. Hernandez. However, we note that the claim of ₱70,000 as actual damages is supported merely by a list of expenses instead of official receipts. A list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions. Neither can the mere testimony of Geraldine on the amount she spent suffice. It is necessary for a party seeking an award for actual damages to produce competent proof or the best evidence obtainable to justify such award. Nonetheless, in the absence of substantiated and proven expenses relative to the wake and burial of Enrique, temperate damages in the amount of ₱25,000 shall be awarded to his heirs, since they clearly incurred funeral expenses.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Public Attorney's Office* for appellants.

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

**QUISUMBING, *J.*:**

On appeal is the Decision[1] of the Court of Appeals dated September 27, 2006 in CA-G.R. CR-H.C. No. 01522, affirming

[1] *Rollo*, pp. 2-16. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rebecca De Guia-Salvador and Ramon R. Garcia concurring.

with modification the Decision[2] dated June 24, 2005 of the Regional Trial Court of Malolos, Bulacan, Branch 11 in Criminal Case No. 1790-M-2002. The trial court had convicted appellants Dolorico A. Guillera and Gary A. Guillera of murder, sentenced them to suffer the penalty of *reclusion perpetua*, and ordered them to pay the heirs of Enrique S. Hernandez, ₱60,000 as civil liability, ₱50,000 as moral damages and ₱70,000 as actual damages.

In an Information[3] dated June 18, 2002, herein appellants Dolorico A. Guillera and Gary A. Guillera, together with one Francisco A. Guillera (who remains at large), were indicted as follows:

x x x x x x x x x

That on or about the 29th day of March, 2002, in the municipality of Doña Remedios Trinidad, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a jungle bolo and with intent to kill Enrique Hernandez *y* Sta. Ana, with evident premeditation and treachery, conspiring, confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab the said Enrique Hernandez *y* Sta. Ana, hitting him on the different parts of his body thereby inflicting upon him serious physical injuries which directly caused the death of the said Enrique Hernandez *y* Sta. Ana.

Contrary to law.[4]

During their arraignment, appellants pleaded not guilty. Thereafter, trial ensued.

Geraldine A. Hernandez, widow of the victim Enrique S. Hernandez, was presented as the lone witness by the prosecution.

Geraldine testified that she and her husband, Enrique, owned a farm in Sitio Pacot, Brgy. Kalawakan, Doña Remedios Trinidad, Bulacan. On March 29, 2002, at around 6:00 p.m., while they

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[2] Records, pp. 151-153. Penned by Judge Basilio R. Gabo, Jr.

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

[4] *Id.* at 2.

were walking around their garden, they saw appellants and Francisco, all armed with jungle bolos, removing the wire fence that enclosed their farm. Enrique approached the three men who were uphill while she stayed behind at a distance of about 10 meters. He then asked them why they were removing the wire fence. Dolorico replied that they would not allow the wire fence to remain there. Upon hearing this, Enrique turned his back and moved away from them. Dolorico suddenly hacked Enrique on his nape. Enrique fell face down. Then Gary hit him on his right thigh, waist and left hand, while Francisco stabbed him three times at the back.[5]

Geraldine added that she hid amid the trees and tall grasses. After assaulting her husband, the three men looked for her. Unable to find her, they fled. She then hurriedly went home and called her brother and son who accompanied her back to the crime scene. Thereafter, they returned home while her father reported the incident to the police authorities. The police authorities put up a checkpoint, leading to Dolorico's arrest that night. They recovered Enrique's body only at around 2:00 a.m. of the following day.[6]

For the defense, appellants themselves testified.

Dolorico testified that on March 29, 2002, he was in their house in Sibul Spring, San Miguel, Bulacan, taking care of his sick child. At around 9:00 p.m., he went out to buy medicine but he was arrested and brought to the police station as a suspect in the killing of Enrique.[7]

Dolorico claimed that the crime scene was far and required a four-hour walk from his house. He added that although they were adjacent lot owners, he had no boundary dispute with Enrique.[8]

Gary testified that on March 29, 2002, he was in Mugo, Cagayan. He had been working in a construction project in the

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[5] TSN, September 11, 2002, pp. 10-14; TSN, September 25, 2002, pp. 42-43.

[6] TSN, September 11, 2002, pp. 14-17.

[7] TSN, January 7, 2004, p. 49.

[8] *Id.* at 50-51.

said area for almost a year.[9] On November 11, 2002,[10] he was arrested by the police authorities while he was visiting his parents in Sibul Spring, San Miguel, Bulacan.

Gary added that it would take one and a half days to reach Sibul Spring, San Miguel, Bulacan from Mugo, Cagayan by means of public transportation and *vice versa*.[11]

In support of his defense, Gary presented Thelma Magalad, a vendor at the construction project and his neighbor in Tuau, Cagayan. Thelma testified that Gary never left the place from January to October 2002.[12] However, after giving her direct testimony, Thelma failed to appear in court for cross-examination. Consequently, the trial court ordered her direct testimony deleted from the records.

On June 24, 2005, the trial court rendered a decision finding appellants guilty as charged. It gave full faith and credit to Geraldine's account for the following reasons: *First*, her testimony that she was with Enrique before he was assaulted was uncontroverted. She was only 10 meters away when the three men assaulted Enrique, and her opportunity to witness the assault was not impugned. *Second*, she was candid, straightforward, firm and unwavering in her testimony despite the grueling cross-examination by the defense counsel.[13]

The trial court ruled that Geraldine's relationship to Enrique did not automatically impair her credibility nor did it render her testimony less worthy of credence. On the contrary, her credibility was further enhanced by the apparent lack of improper motive on her part to testify falsely against appellants. Moreover, her categorical declarations and positive identification of appellants prevail over their defense of alibi.

The trial court noted that treachery was present since Enrique was attacked from behind leaving him in no position to defend

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[9] TSN, March 10, 2004, pp. 55-56.

[10] *Rollo*, p. 5.

[11] TSN, March 10, 2004, p. 57.

[12] TSN, June 17, 2004, p. 66.

[13] Records, p. 152.

himself. There was also conspiracy as evidenced by appellants' concerted attack on Enrique one after the other, which indicated a joint purpose and concurrence of intent to kill him.

The decision disposed as follows:

> WHEREFORE, this Court finds the herein accused, Dolorico Guillera and Gary Guillera, GUILTY beyond reasonable doubt of the crime of Murder under Article 248 of the Revised [P]enal Code as amended and hereby sentences both accused to a prison term of *Reclusion Perpetua* and to pay jointly and severally the heirs of the late Enrique Hernandez the following sums of money, to wit:
>
> 1. ₱60,000.00 as civil liability;
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> 2. ₱50,000.00 as moral damages; and
>
> 3. ₱70,000.00 as actual damages.
>
> The case against Francisco Guillera is hereby ARCHIVED.
>
> SO ORDERED.[14]

On September 27, 2006, the Court of Appeals affirmed with modification the trial court's decision. It held that to be valid for purposes of exoneration from a criminal charge, the claim of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the *locus criminis* at the time of its commission since no person can be in two places at the same time. In this case, the records are bereft of any evidence that would support appellants' claim of alibi. Dolorico failed to present any witness who could have vouched for his presence at his house when the crime was committed. The least he could have done was to present his wife whom he claimed was the one who asked him to buy medicine for their sick child. On the other hand, while Gary presented Thelma Magalad, her direct testimony was deleted from the records for her failure to appear in court for cross-examination. Even if her direct testimony were considered, it still failed to account for Gary's whereabouts on March 29, 2002.

The appellate court also ruled that relationship strengthens the witnesses' credibility since it is unnatural for an aggrieved

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[14] *Id.* at 153.

relative to falsely accuse someone other than the actual culprit. Where there is no evidence and nothing to indicate that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.

The dispositive portion reads as follows:

WHEREFORE, the appealed Decision is hereby **AFFIRMED** with the **MODIFICATION** as to the award of civil liability which is hereby reduced to Fifty Thousand (Php50,000.00) Pesos.

SO ORDERED.[15]

Aggrieved, appellants elevated their case to this Court. Both appellants and the Office of the Solicitor General (OSG) dispensed with the filing of supplemental briefs. Thus, we shall review the instant case based on the following errors raised before the appellate court:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II.

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI INTERPOSED BY THE DEFENSE.[16]

Simply put, the pivotal issue is: Did the trial court err in not giving credence to appellants' defense of alibi?

Appellants fault the trial court for relying heavily on Geraldine's testimony. They allege that nothing in Geraldine's testimony would show that they had an argument with Enrique. It was thus incredible for them to attack and kill Enrique just because he inquired why they were removing the wire fence. Moreover,

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[15] *Rollo*, p. 16.

[16] CA *rollo*, p. 36.

Geraldine testified that they were uphill while she stayed behind at a distance of about 10 meters. She was also amid the trees and tall grasses in addition to the fact that it was then around 6:00 p.m. It was therefore possible that her vision had been impaired and she did not really witness the actual killing. Finally, it was unusual that Geraldine should go home to ask for assistance instead of proceeding to the place where Enrique was attacked to determine his condition.

In addition, appellants contend that Dolorico clearly established that he never left his house on March 29, 2002 since he was busy taking care of his sick child. It was only at around 9:00 p.m. when he went out to buy medicine. Besides, the crime scene was far and required a four-hour walk from his house. Meanwhile, Gary satisfactorily proved that on March 29, 2002, he was in Mugo, Cagayan. Thelma Magalad confirmed that Gary never left Mugo, Cagayan from January to October 2002.

The OSG counters that the pivotal issue presented by appellants revolved on the credibility of witnesses. It asserts that when it comes to the issue of credibility, the trial court's assessment is entitled to great weight, even considered final, conclusive and binding, if not tainted with arbitrariness or oversight of some facts or circumstances of weight and influence. In this case, the trial court gave full faith and credence to Geraldine's testimony that positively identified appellants as the perpetrators of the crime. She testified with spontaneity and consistency in a simple and straightforward manner. Appellants have not shown any circumstance to indicate that Geraldine was actuated by improper motive to testify falsely against them.

The OSG adds that Geraldine's positive assertions concerning appellants' participation in the crime far outweigh their protestations claiming an alibi. For alibi to be credible, the accused must not only prove his presence at another place at the time of the commission of the crime, but he must also demonstrate that it was physically impossible for him to be at the crime scene at the time of the alleged offense.

Needless to stress, we have consistently adhered to the rule that where the culpability or innocence of an accused hinges on

the issue of the credibility of witnesses, the findings of fact of the Court of Appeals affirming those of the trial court, when duly supported by sufficient and convincing evidence, must be accorded the highest respect, even finality, by this Court and are not to be disturbed on appeal.[17] Appellants have not shown any cogent reason why we should reverse the findings of both courts below. Their petition must, therefore, fail.

This Court has no reason to doubt Geraldine's testimony. She recounted the details of the killing in a manner reflective of honest and unrehearsed testimony. Her candid, straightforward, firm and unwavering account was free of significant inconsistencies, unshaken despite a grueling cross-examination. That she witnessed the killing, although she was amid the trees and tall grasses 10 meters downhill from Enrique and the three men and it was then around 6:00 p.m., is undisputed. Her account of how and where Enrique was attacked was corroborated by the medico-legal report[18] showing the injuries sustained by Enrique at his nape and other parts of his body.

Neither did Geraldine's relationship with Enrique impair her credibility since it is a basic precept that relationship *per se* of a witness with the victim does not necessarily mean that the witness is biased. Close or blood relationship alone does not, by itself, impair a witness' credibility.[19] On the contrary, it could even strengthen the witness' credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. Their natural interest in securing the conviction of the guilty would deter them from implicating a person other than the true offender.[20]

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[17] *Siccuan v. People*, G.R. No. 133709, April 28, 2005, 457 SCRA 458, 463-464.

[18] Records, p. 23.

[19] Cf. *Tadeja v. People*, G.R. No. 145336, July 21, 2006, 496 SCRA 157, 165.

[20] *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 667-668; *People v. Nicolas*, G.R. No. 137782, April 1, 2003, 400 SCRA 217, 224.

Moreover, appellants failed to show that Geraldine was actuated by ill motive to testify falsely against them. When there is no showing of any improper motive on the part of the prosecution witness to testify falsely against an accused, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence.[21]

Juxtaposed against the prosecution's positive identification of the malefactors, appellants' defense of alibi crumbles. As we consistently held, alibi is the weakest of all defenses because it is easy to concoct and difficult to disprove.[22] For alibi to prevail, clear and satisfactory proof must be shown that it was physically impossible for the accused to have been at the scene of the crime at the time of its commission, and not merely that he was somewhere else.[23]

In this case, the element of physical impossibility is absent.[24] Dolorico failed to present any witness who could vouch that he never left his residence on March 29, 2002. Thus, although the crime scene was far and required a four-hour walk from his house, his presence thereat is still quite possible. On the other hand, while Gary presented a witness who testified that he was in Mugo, Cagayan from January to October 2002, her direct testimony was deleted from the records. Even if we could consider said testimony, such witness failed to vouch for his presence in Mugo, Cagayan on March 29, 2002.

In sum, we are convinced beyond a shadow of doubt that appellants are guilty for the murder of Enrique S. Hernandez.

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[21] *Tadeja v. People*, *supra* at 165-166; *People v. Celis*, G.R. Nos. 125307-09, October 20, 1999, 317 SCRA 79, 92.

[22] *People v. Borbon*, G.R. No. 143085, March 10, 2004, 425 SCRA 178, 187; *People v. Caraang*, G.R. Nos. 148424-27, December 11, 2003, 418 SCRA 321, 349.

[23] *People v. Balleras*, G.R. No. 134564, June 26, 2002, 383 SCRA 439, 446; *People v. Del Valle*, G.R. No. 119616, December 14, 2001, 372 SCRA 297, 306.

[24] *People v. Tolentino*, G.R. No. 139351, February 23, 2004, 423 SCRA 448, 466; *People v. Sicad*, G.R. No. 133833, October 15, 2002, 391 SCRA 19, 32.

However, we note that the claim of ₱70,000 as actual damages is supported merely by a list of expenses instead of official receipts.[25] A list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions.[26] Neither can the mere testimony of Geraldine on the amount she spent suffice. It is necessary for a party seeking an award for actual damages to produce competent proof or the best evidence obtainable to justify such award.[27] Nonetheless, in the absence of substantiated and proven expenses relative to the wake and burial of Enrique, temperate damages in the amount of ₱25,000 shall be awarded to his heirs, since they clearly incurred funeral expenses.[28]

**WHEREFORE,** the appeal is *DISMISSED*. The Decision dated September 27, 2006, of the Court of Appeals in CA-G.R. CR-H.C. No. 01522 which affirmed with modification the Decision dated June 24, 2005, of the Regional Trial Court of Malolos, Bulacan, Branch 11 in Criminal Case No. 1790-M-2002, is *AFFIRMED* with the modification that appellants Dolorico A. Guillera and Gary A. Guillera are ordered to pay jointly and severally ₱25,000 as temperate damages instead of ₱70,000 as actual damages.

Costs *de oficio*.

**SO ORDERED.**

*Carpio Morales, Tinga, Velasco, Jr.,* and *Peralta,* JJ.,* concur.

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[25] TSN, September 25, 2002, pp. 39-41; Records, pp. 25-31.

[26] *People v. Buenavidez*, G.R. No. 141120, September 17, 2003, 411 SCRA 202, 209-210; *People v. Hate*, G.R. No. 145712, September 24, 2002, 389 SCRA 578, 586.

[27] *People v. Baño*, G.R. No. 148710, January 15, 2004, 419 SCRA 697, 707; *People v. Alfon*, G.R. No. 126028, March 14, 2003, 399 SCRA 64, 74.

[28] *People v. Baño, id.*

[*] Designated member of Second Division per Special Order No. 587 in place of Associate Justice Arturo D. Brion who is on leave.

**THIRD DIVISION**

[G.R. No. 180587. March 20, 2009]

**SIMEON CABANG, VIRGINIA CABANG and VENANCIO CABANG *ALIAS* "DONDON",** *petitioners, vs.* **MR. & MRS. GUILLERMO BASAY,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINAL AND EXECUTORY; EFFECTS OF.—** A final and executory judgment may no longer be modified in ***any*** respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court in the land. The only exceptions to this rule are the correction of (1) clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments. Well-settled is the rule that there can be no execution until and unless the judgment has become final and executory, *i.e.* the period of appeal has lapsed without an appeal having been taken, or, having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin, in which event, execution shall issue as a matter of right. In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ***ministerial*** duty.

**2. ID.; ID.; ID.; EXECUTION OF JUDGMENT; A WRIT OF EXECUTION MUST CONFORM TO THE TERMS OF THE JUDGMENT SOUGHT TO BE EXECUTED.—** [A]s a matter of settled legal principle, a writ of execution ***must adhere to every essential particulars of the judgment sought to be executed.*** An order of execution may not vary or go beyond the terms of the judgment it seeks to enforce. A writ of execution ***must conform to the judgment*** and if it is different from, goes beyond or varies the tenor of the judgment which gives it life, it is a nullity. Otherwise stated, when the order of execution and the corresponding writ issued pursuant thereto is not in harmony with and exceeds the judgment which gives it life, they have *pro tanto* no validity – to maintain otherwise

would be to ignore the constitutional provision against depriving a person of his property without due process of law.

**3. ID.; ID.; ID.; ID.; INTERPOSING EXTRANEOUS ISSUE AT THE EXECUTION STAGE OF THE PROCEEDING IS TANTAMOUNT TO VARYING THE TERMS OF THE FINAL AND EXECUTORY JUDGMENT; APPLICATION.—** As aptly pointed out by the appellate court, from the inception of Civil Case No. 99-20-127, ***it was already of judicial notice that the improvements introduced by petitioners on the litigated property are residential houses*** not family homes. Belatedly interposing such an extraneous issue at such a late stage of the proceeding is tantamount to interfering with and varying the terms of the final and executory judgment and a violation of respondents' right to due process because –As a general rule, points of law, theories and issues not brought to the attention of the trial court cannot be raised for the first time on appeal. For a contrary rule would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of if at the time of the hearing before the trial court. The refusal, therefore, of the trial court to enforce the execution on the ground that the improvements introduced on the litigated property are family homes goes beyond the pale of what it had been expressly tasked to do, *i.e.* its *ministerial* duty of executing the judgment *in accordance with its essential particulars*. The foregoing factual, legal and jurisprudential scenario reduces the raising of the issue of whether or not the improvements introduced by petitioners are family homes into a mere afterthought.

**4. ID.; ID.; ID.; ID.; TO BE EXEMPT FROM EXECUTION, THE FAMILY HOME MUST BE CONSTITUTED ON PROPERTY OWNED BY THE PERSON CONSTITUTING IT; CASE AT BAR.—** There can be no question that a family home is generally exempt from execution, provided it was duly constituted as such. It is likewise a given that the family home must be constituted on property ***owned*** by the persons constituting it. Indeed as pointed out in *Kelley, Jr. v. Planters Products, Inc*. "[T]he family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family."

In other words: ***The family home must be established on the properties of*** (a) the absolute community, or (b) the conjugal partnership, or (c) the exclusive property of either spouse with the consent of the other. ***It cannot be established on property held in co-ownership with third persons.*** However, it can be established partly on community property, or conjugal property and partly on the exclusive property of either spouse with the consent of the latter. If constituted by an unmarried head of a family, where there is no communal or conjugal property existing, it can be constituted only on his or her own property. Therein lies the fatal flaw in the postulate of petitioners. For all their arguments to the contrary, the stark and immutable fact is that the property on which their alleged family home stands is ***owned*** by ***respondents*** and the question of ownership had been long laid to rest with the finality of the appellate court's judgment in CA-G.R. CV No. 55207. Thus, petitioners' continued stay on the subject land is only by mere tolerance of respondents.

**5. ID.; ID.; ID.; EXECUTION OF JUDGMENT IS THE MOST IMPORTANT PHASE OF ANY PROCEEDING.—** The most important phase of any proceeding is the execution of judgment. Once a judgment becomes final, the prevailing party should not, through some clever maneuvers devised by an unsporting loser, be deprived of the fruits of the verdict. An unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing of justiciable controversies with finality. Furthermore, a judgment if not executed would just be an empty victory for the prevailing party because execution is the fruit and end of the suit and very aptly called the life of the law.

**6. ID.; COURTS; SUPREME COURT NOT A TRIER OF FACTS; RATIONALE.—** The issue is moreover factual and, to repeat that trite refrain, the Supreme Court is not a trier of facts. It is not the function of the Court to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Questions of fact cannot be raised in an appeal via *certiorari* before the Supreme Court and are not proper for its consideration. The rationale behind this doctrine is that a review of the findings of fact of the appellate tribunal is not a function this Court normally undertakes. The Court will not weigh the evidence all over again unless there is a showing that the findings of the lower court

are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion. Although there are recognized exceptions to this rule, none exists in this case to justify a departure therefrom.

**APPEARANCES OF COUNSEL**

*Robert P. Pagara* for petitioners.
*Alexander A. Acain* for respondents.

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

**YNARES-SANTIAGO, *J.*:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to annul and set aside the Decision of the Court of Appeals in CA-G.R. CV No. 76755[1] dated May 31, 2007[2] which reversed the Order[3] of the Regional Trial Court of Molave, Zamboanga Del Sur, Branch 23 in Civil Case No. 99-20-127 which denied respondents' motion for execution on the ground that petitioners' family home was still subsisting. Also assailed is the Resolution dated September 21, 2007 denying the motion for reconsideration.

The facts as summarized by the appellate court:

Deceased Felix Odong was the registered owner of Lot No. 7777, Ts- 222 located in Molave, Zamboanga del Sur. Said lot was covered by Original Certificate of Title No. 0-2,768 pursuant to Decree No. N-64 and issued on March 9, 1966. However, Felix Odong and his heirs never occupied nor took possession of the lot.

On June 16, 1987, plaintiff-appellants bought said real property from the heirs of Felix Odong for ₱8,000.00. Consequently, OCT

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[1] Entitled *Mr. & Mrs. Guillermo Basay v. Simeon Cabang, Virginia Cabang and Venancio Cabang @ "Dondon."*

[2] *Rollo*, pp. 17-33; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Jane Aurora C. Lantion.

[3] *Id.* at 13-15, issued by Presiding Judge Camilo E. Tamin.

No. 0-2,768 was cancelled and in its stead, Transfer Certificate of Title No. T-22,048 was issued on August 6, 1987 in the name of plaintiff-appellants. The latter also did not occupy the said property.

Defendant-appellees, on the other hand, had been in continuous, open, peaceful and adverse possession of the same parcel of land since 1956 up to the present. They were the awardees in the cadastral proceedings of Lot No. 7778 of the Molave Townsite, Ts-222. During the said cadastral proceedings, defendant-appellees claimed Lot No. 7778 on the belief that the area they were actually occupying was Lot No. 7778. As it turned out, however, when the Municipality of Molave relocated the townsite lots in the area in 1992 as a big portion of Lot No. 7778 was used by the government as a public road and as there were many discrepancies in the areas occupied, it was then discovered that defendant-appellees were actually occupying Lot No. 7777.

On June 23, 1992, plaintiff-appellants filed a Complaint docketed as Civil Case No. 92-20-127 for Recovery of Property against defendant-appellees.

On July 19, 1996, the trial court rendered its decision, the dispositive portion of which reads, thus:

> WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiff –
>
> 1. Holding that the rights of the plaintiffs to recover the land registered in their names, have been effectively barred by laches; and
>
> 2. Ordering the dismissal of the above-entitled case.
>
> No pronouncement as to cost.
>
> SO ORDERED.

Aggrieved, plaintiff-appellants filed an appeal before the Court of Appeals assailing the above-decision. Said appeal was docketed as CA-G.R. CV No. 55207.

On December 23, 1998, the Court of Appeals, through the then Second Division, rendered a Decision reversing the assailed decision and decreed as follows:

> WHEREFORE, the judgment herein appealed from is hereby REVERSED, and judgment is hereby rendered declaring the plaintiffs-appellants to be entitled to the possession of Lot No. 7777 of the Molave Townsite, subject to the rights of the defendants-appellees under Article (sic) 448, 546, 547 and 548 of the New Civil Code.
>
> The records of this case are hereby ordered remanded to the court of origin for further proceedings to determine the rights of the defendants-appellees under the aforesaid article (sic) of the New Civil Code, and to render judgment thereon in accordance with the evidence and this decision.
>
> No pronouncement as to costs.
>
> SO ORDERED.

Defendant-appellees thereafter filed a petition for review on *certiorari* under Rule 45 of the Rules of Court before the Supreme Court docketed as G.R. No. 139601. On October 18, 1999, the Supreme Court issued a Resolution denying the petition for late filing and lack of appropriate service.

Subsequently, or on February 15, 2000, the Supreme Court Resolution had become final and executory.

Consequently, the case was remanded to the court *a quo* and the latter commissioned the Municipal Assessor of Molave, Zamboanga del Sur to determine the value of the improvements introduced by the defendant-appellees.

The Commissioner's Report determined that at the time of ocular inspection, there were three (3) residential buildings constructed on the property in litigation. During the ocular inspection, plaintiff-appellants' son, Gil Basay, defendant-appellee Virginia Cabang, and one Bernardo Mendez, an occupant of the lot, were present. In the report, the following appraised value of the improvements were determined, thus:

| Owner | Lot No. | Area(sq.m.) | Improvement | Appraised Value |
|---|---|---|---|---|
| Virginia Cabang | 7777 | 32.55 | Building | ₱21,580.65 |
| Jovencio Capuno | 7777 | 15.75 | Building | 18,663.75 |

| | | | | |
|---|---|---|---|---|
| Amelito Mata | 7777 | 14.00 | Building | 5,658.10 |
| | | | Toilet | 1,500.00 |
| | | | Plants & Trees | 2,164.00 |
| | | TOTAL | | ₱49,566.50 |

Thereafter, upon verbal request of defendant-appellees, the court *a quo* in its Order declared that the tie point of the survey should be the BLLM (Bureau of Lands Location Monument) and authorized the official surveyor of the Bureau of Lands to conduct the survey of the litigated property.

Pursuant to the above Order, the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR)-Region XI designated Geodetic Engineer Diosdado L. de Guzman to [act] as the official surveyor. On March 2002, Engr. De Guzman submitted his survey report which stated, *inter alia*:

1. That on September 18, 2001, the undersigned had conducted verification survey of Lot 7777, Ts-222 and the adjacent lots for reference purposes-with both parties present on the survey;
2. That the survey was started from BLLM #34, as directed by the Order, taking sideshots of lot corners, existing concrete fence, road and going back to BLLM #34, a point of reference;
3. Considering that there was only one BLLM existing on the ground, the undersigned conducted astronomical observation on December 27, 2001 in order to check the carried Azimuth of the traverse;
4. That per result of the survey conducted, it was found out and ascertained that the area occupied by Mrs. Virginia Cabang is a portion of Lot 7777, with lot assignment to be known as Lot 7777-A with an area of 303 square meters and portion of Lot 7778 with lot assignment to be known as Lot 7778-A with an area of 76 square meters. On the same lot, portion of which is also occupied by Mr. Bernardo Mendez with lot assignment to be known as Lot 7777-B with an area of 236 square meters and Lot 7778-B with an area of 243 square meters as shown on the attached sketch for ready reference;
5. That there were three (3) houses made of light material erected inside Lot No. 7777-A, which is owned by Mrs. Virginia Cabang and also a concrete house erected both on

> portion of Lot No. 7777-B and Lot No. 7778-B, which is owned by Mr. Bernardo Mendez. x x x;
>
> 6. That the existing road had been traversing on a portion of Lot 7778 to be know (sic) as Lot 7778-CA-G.R. SP No. with an area of 116 square meters as shown on attached sketch plan.

During the hearing on May 10, 2002, plaintiff-appellants' offer to pay ₱21,000.00 for the improvement of the lot in question was rejected by defendant-appellees. The court *a quo* disclosed its difficulty in resolving whether or not the houses may be subject of an order of execution it being a family home.

On June 18, 2002, plaintiff-appellants filed their Manifestation and Motion for Execution alleging therein that defendant-appellees refused to accept payment of the improvements as determined by the court appointed Commissioner, thus, they should now be ordered to remove said improvements at their expense or if they refused, an Order of Demolition be issued.

On September 6, 2002, the court *a quo* issued the herein assailed Order denying the motion for execution.[4]

Respondents thereafter elevated their cause to the appellate court which reversed the trial court in its May 31, 2007 Decision in CA-G.R. CV No. 76755. Petitioners' Motion for Reconsideration was denied by the Court of Appeals in its Resolution[5] dated September 21, 2007.

Hence, this petition.

Petitioners insist that the property subject of the controversy is a duly constituted family home which is not subject to execution, thus, they argue that the appellate tribunal erred in reversing the judgment of the trial court.

The petition lacks merit.

It bears stressing that the purpose for which the records of the case were remanded to the court of origin was for the enforcement of the appellate court's final and executory

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[4] *Id.* at 18-23, citations omitted.

[5] *Id.* at 35-36.

judgment[6] in CA-G.R. CV No. 55207 which, among others, declared herein respondents ***entitled to the possession*** of Lot No. 7777 of the Molave Townsite subject to the provisions of Articles 448,[7] 546,[8] 547[9] and 548[10] of the Civil Code. Indeed,

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[6] Whose dispositive portion reads:

"WHEREFORE, the judgment herein appealed from is hereby REVERSED, and judgment is hereby rendered ***declaring the plaintiffs-appellants to be entitled to the possession of Lot No. 7777 of the Molave Townsite, subject to the rights of the defendants-appellees under Article[s] 448, 546 and 548 of the New Civil Code.***

The records of this case are hereby remanded to the court of origin for further proceedings ***to determine the rights of the defendants-appellees under the aforesaid article[s]*** of the New Civil Code, ***and to render judgment thereon in accordance with the evidence and this decision.***

No pronouncement as to costs.

SO ORDERED." (Emphasis and italics supplied)

[7] 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 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 case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[8] 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.

[9] ART. 547. If the useful improvement 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.

[10] ART. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby and if his successor in the possession does not prefer to refund the amount expended.

the decision explicitly decreed that the remand of the records of the case was for the court of origin "***[t]o determine the rights of the defendants-appellees under the aforesaid article[s]*** of the New Civil Code, ***and to render judgment thereon*** *in accordance with the evidence* ***and this decision***."

A final and executory judgment may no longer be modified in ***any*** respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court in the land.[11] The only exceptions to this rule are the correction of (1) clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.[12]

Well-settled is the rule that there can be no execution until and unless the judgment has become final and executory, *i.e.* the period of appeal has lapsed without an appeal having been taken, or, having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin, in which event, execution shall issue as a matter of right.[13] In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ***ministerial*** duty.[14]

Furthermore, as a matter of settled legal principle, a writ of execution ***must adhere to every essential particulars of the judgment sought to be executed.***[15] An order of execution may

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[11] *Biglang-awa v. Philippine Trust Company*, G.R. No. 158998, March 28, 2008, 550 SCRA 160, 177, citing *Collantes v. Court of Appeals*, G.R. No. 169604, March 6, 2007, 517 SCRA 561, 562.

[12] *Equitable Banking Corporation v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380; *Ramos v. Ramos*, 447 Phil. 114 (2003).

[13] *Air Materiel Wing Savings and Loan Association, Inc. v. Manay*, G.R. No. 175338, October 9, 2007, 535 SCRA 356, 370.

[14] *Government Service Insurance System v. Pacquing*, A.M. No. RTJ-04-1831, February 2, 2007, 514 SCRA 1, 11; *Mangahas v. Paredes*, G.R. No. 157866, February 14, 2007, 515 SCRA 709, 718; *Abaga v. Panes*, G.R. No. 147044, August 24, 2007, 531 SCRA 56, 63.

[15] *Florez v. UBS Marketing Corporation*, G.R. No. 169747, July 27, 2007, 528 SCRA 396, 401.

not vary or go beyond the terms of the judgment it seeks to enforce.[16] A writ of execution ***must conform to the judgment*** and if it is different from, goes beyond or varies the tenor of the judgment which gives it life, it is a nullity.[17] Otherwise stated, when the order of execution and the corresponding writ issued pursuant thereto is not in harmony with and exceeds the judgment which gives it life, they have *pro tanto* no validity[18] – to maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.[19]

As aptly pointed out by the appellate court, from the inception of Civil Case No. 99-20-127, ***it was already of judicial notice that the improvements introduced by petitioners on the litigated property are residential houses*** not family homes. Belatedly interposing such an extraneous issue at such a late stage of the proceeding is tantamount to interfering with and varying the terms of the final and executory judgment and a violation of respondents' right to due process because –

> As a general rule, points of law, theories and issues not brought to the attention of the trial court cannot be raised for the first time on appeal. For a contrary rule would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of if at the time of the hearing before the trial court.[20]

The refusal, therefore, of the trial court to enforce the execution on the ground that the improvements introduced on the litigated

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[16] *Lao v. King*, G.R. No. 160358, August 31, 2006, 500 SCRA 599, 605.

[17] *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 433.

[18] *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 522, 530; *Ingles v. Cantos*, G.R. No. 125202, January 31, 2006, 481 SCRA 140, 149.

[19] *QBE Insurance Phils., Inc. v. Laviña*, A.M. No. RTJ-06-1971, October 17, 2007, 536 SCRA 372, 386; *KKK Foundation, Inc. v. Calderon-Bargas*, G.R. No. 163785, December 27, 2007, 541 SCRA 432, 442.

[20] *Aluad v. Aluad*, G.R No. 176943, October 17, 2008.

property are family homes goes beyond the pale of what it had been expressly tasked to do, *i.e.* its *ministerial* duty of executing the judgment *in accordance with its essential particulars*. The foregoing factual, legal and jurisprudential scenario reduces the raising of the issue of whether or not the improvements introduced by petitioners are family homes into a mere afterthought.

Even squarely addressing the issue of whether or not the improvements introduced by petitioners on the subject land are family homes will not extricate them from their predicament.

As defined, "[T]he family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.[21] It is the dwelling house where the husband and wife, or an unmarried head of a family reside, including the land on which it is situated.[22] It is constituted jointly by the husband and the wife or by an unmarried head of a family."[23] Article 153 of the Family Code provides that –

> The family home is deemed constituted from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

The actual value of the family home shall not exceed, at the time of its constitution, the amount of ₱300,000.00 in urban areas and ₱200,000.00 in rural areas.[24] Under the afore-quoted provision, a family home is deemed constituted on a house and a lot from the time it is occupied as a family residence. There is no need to constitute the same judicially or extra-judicially.[25]

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[21] A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. I (1990 ed.), p. 508, citing the Code Commission of 1947, pp. 18-19, 20.

[22] CIVIL CODE, Article 152.

[23] *Patricio v. Dario III*, G.R. No. 170829, November 20, 2006, 507 SCRA 438, 444, citing Article 152, Civil Code.

[24] FAMILY CODE, Art. 157.

[25] *Manacop v. Court of Appeals*, 342 Phil. 735, 741 (1997).

There can be no question that a family home is generally exempt from execution,[26] provided it was duly constituted as such. It is likewise a given that the family home must be constituted on property ***owned*** by the persons constituting it. Indeed as pointed out in *Kelley, Jr. v. Planters Products, Inc*.[27] "[T]he family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent, or on the property of the unmarried head of the family."[28] In other words:

> ***The family home must be established on the properties of*** (a) the absolute community, or (b) the conjugal partnership, or (c) the exclusive property of either spouse with the consent of the other. ***It cannot be established on property held in co-ownership with third persons.*** However, it can be established partly on community property, or conjugal property and partly on the exclusive property of either spouse with the consent of the latter.
>
> If constituted by an unmarried head of a family, where there is no communal or conjugal property existing, it can be constituted only on his or her own property.[29] (Emphasis and italics supplied)

Therein lies the fatal flaw in the postulate of petitioners. For all their arguments to the contrary, the stark and immutable fact is that the property on which their alleged family home stands is ***owned*** by ***respondents*** and the question of ownership had been long laid to rest with the finality of the appellate court's judgment in CA-G.R. CV No. 55207. Thus, petitioners' continued stay on the subject land is only by mere tolerance of respondents.

All told, it is too late in the day for petitioners to raise this issue. Without doubt, the instant case where the family home issue has been vigorously pursued by petitioners is but a clear-cut

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[26] RULES OF COURT, Rule 39, Section 13(a).

[27] G.R. No. 172263, July 9, 2008, 557 SCRA 499, 502.

[28] *Id.*, citing FAMILY CODE, Art. 156.

[29] Pineda E.L., *The Family Code of the Philippines, Annotated*, (1999 ed.), p. 288.

ploy meant to forestall the enforcement of an otherwise final and executory decision. The execution of a final judgment is a matter of right on the part of the prevailing party whose implementation is *mandatory* and *ministerial* on the court or tribunal issuing the judgment.[30]

The most important phase of any proceeding is the execution of judgment.[31] Once a judgment becomes final, the prevailing party should not, through some clever maneuvers devised by an unsporting loser, be deprived of the fruits of the verdict.[32] An unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing of justiciable controversies with finality.[33] Furthermore, a judgment if not executed would just be an empty victory for the prevailing party because execution is the fruit and end of the suit and very aptly called the life of the law.[34]

The issue is moreover factual and, to repeat that trite refrain, the Supreme Court is not a trier of facts. It is not the function of the Court to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. Questions of fact cannot be raised in an appeal via *certiorari* before the Supreme Court and are not proper for its consideration.[35] The rationale behind this doctrine is that a review of the findings of fact of the appellate tribunal is not a function this Court normally undertakes. The Court will not weigh the evidence all over again unless there is a showing that

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[30] *Suyat v. Gonzales-Tesoro,* G.R. No. 162277, December 7, 2005, 476 SCRA 615, 623.

[31] *Bautista v. Orque, Jr.,* A.M. No. P-05-2099, October 31, 2006, 506 SCRA 309, 313.

[32] *Rigor v. Tenth Division of the Court of Appeals,* G.R. No. 167400, June 30, 2006, 494 SCRA 375, 383.

[33] *Aguilar v. Manila Banking Corporation,* G.R. No. 157911, September 19, 2006, 502 SCRA 354, 382.

[34] *Bergonia v. Gatcheco, Jr.,* A.M. No. P-05-1976, September 9, 2005, 469 SCRA 479, 484.

[35] *Buenaventura v. Pascual,* G.R. No. 168819, November 27, 2008, citing *Heirs of Simeon Borlado v. Court of Appeals,* 416 Phil. 257, 262 (2001).

the findings of the lower court are totally devoid of support or are clearly erroneous so as to constitute serious abuse of discretion.[36] Although there are recognized exceptions[37] to this rule, none exists in this case to justify a departure therefrom.

**WHEREFORE,** the petition is *DENIED*. The Decision of the Court of Appeals dated May 31, 2007 in CA-G.R. CV No. 76755 declaring respondents entitled to the writ of execution and ordering petitioners to vacate the subject property, as well as the Resolution dated September 21, 2007 denying the motion for reconsideration, are *AFFIRMED*. Costs against petitioners.

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[36] *Pacific Airways Corporation v. Tonda*, 441 Phil. 156, 162 (2002).

[37] These recognized exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record (*Marita C. Bernaldo v. The Ombudsman and the Department of Public Highways*, G.R. No. 156286, August 13, 2008); and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion (*Superlines Transportation Co., Inc. v. PNCC*, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441, citing *Insular Life Assurance Co., Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86); see also *Grand Placement and Services Corporation v. Court of Appeals*, G.R. No. 142358, January 31, 2006, 481 SCRA 189, 202, citing *Mayon Hotel & Restaurant v. Adama*, G.R. No. 157634, March 16, 2005, 458 SCRA 609, 624; *Castillo v. NLRC*, 367 Phil. 603, 619 (1999) & *The Insular Life Assurance Co. Ltd. v. CA, supra*; *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229, citing *The Insular Life Assurance Co. Ltd. v. CA, supra*, citing *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349, 1356 (2000); *Nokom v. NLRC*, 390 Phil. 1228, 1242-1243 (2000) & *Sta. Maria v. CA*, 349 Phil. 275, 282-283 (2000); *Aguirre v. Court of Appeals*, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 319; *C & S Fishfarm Corporation v. CA*, 442 Phil. 279, 278 (2002).

**SO ORDERED.**

*Austria-Martinez, Tinga,* Nachura,* and *Peralta, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 181246. March 20, 2009]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **REMEIAS BEGINO *y* GRAJO,** *appellant.*

**SYLLABUS**

**1.REMEDIAL LAW; CRIMINAL PROCEDURE; THE CIRCUMSTANCES THAT QUALIFY THE CRIME OF RAPE MUST BE BOTH ALLEGED IN THE INFORMATION AND PROVEN DURING THE TRIAL; APPLICATION. —** This Court has ruled that the circumstances that qualify a crime should be alleged and proved beyond reasonable doubt as the crime itself. These attendant circumstances alter the nature of the crime of rape and increase the penalty. As such, they are in the nature of qualifying circumstances. The age of the victim and her relationship with the offender must be both alleged in the information and proven during the trial, otherwise, the death penalty cannot be imposed. The age of the victim was sufficiently proved. AAA was undeniably below 18 years old at the time she was raped. Although she claimed she was born on 28 February 1986, her birth certificate and the Social Case Study Report showed that she was born on 28 March 1986. The rape was committed on 2 August 1994 or when AAA was eight years and four months old. However, the Information stated that appellant is the "stepfather" of AAA. A "stepfather" is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring. It presupposes a legitimate relationship between the appellant

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* In lieu of Associate Justice Minita V. Chico-Nazario, per Special Order No. 590 dated March 17, 2009.

and the victim's mother. The evidence adduced by the prosecution showed that appellant is not the stepfather of AAA but the common law spouse of BBB, mother of AAA. In fact, the trial court itself, in its decision, found that appellant and BBB were not married and therefore he is not the stepfather of AAA. During the trial, AAA, when asked why she kept calling appellant "*Tiyo*," testified that appellant is the third husband of her mother and that the name of her real father is CCC, who at that time was in Manila. She explained that her mother lived separately from CCC since she was eight months old and on 2 August 1994, her mother was living with appellant. Her birth certificate and the Social Case Study Report likewise showed that her father is CCC, not appellant. CCC was married to BBB and appellant was never married to BBB. There was no proof of marriage between BBB and appellant. Since appellant is not the stepfather of AAA, the prosecution's failure to prove the qualifying circumstance bars conviction for rape in its qualified form.

**2. ID.; ID.; ID.; EFFECT OF FAILURE TO ALLEGE IN THE INFORMATION THE QUALIFYING CIRCUMSTANCES OF RAPE. —** What the prosecution clearly proved was that appellant was the common law spouse of BBB, but such circumstance was not alleged in the Information. And as we have ruled in *People v. Garcia*, qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded. It would be a denial of the right of the accused to be informed of the charges against him and consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned. Consequently, since the qualifying circumstance of "common law spouse" was not alleged in the Information for rape against appellant, he could not be convicted of rape in the qualified form as he was not properly informed of the nature and cause of accusation against him. In a criminal prosecution, it is a fundamental rule that every element of the crime charged must be alleged in the complaint or information. The main purpose of this requirement is to enable the accused to properly prepare his defense. He is presumed to have no independent knowledge

of the facts that constitute the offense. The qualifying circumstance of relationship not having been properly pleaded, appellant should be convicted only of statutory rape under paragraph (d) of Article 266-A, for having carnal knowledge of a woman "under twelve (12) years of age." Statutory rape is punishable by *reclusion perpetua*.

**3. CRIMINAL LAW; RAPE; VICTIM IS ENTITLED TO CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES. —** As regards the award of damages and in accordance with prevailing jurisprudence, AAA should be awarded ₱50,000 as civil indemnity, in addition to the award of moral damages of ₱50,000 for the immeasurable havoc wrought upon AAA. In view of the peculiar relationship of the parties, appellant should likewise be made to pay ₱30,000 as exemplary damages.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Public Attorney's Office* for appellant.

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

**CARPIO, *J.*:**

**The Case**

This is an appeal from the Decision[1] dated 18 September 2007 of the Court of Appeals which affirmed the Decision[2] dated 13 December 2005 of the Regional Trial Court of Labo, Camarines Norte, Branch 64, (RTC-Branch 64) finding appellant Remeias Begino *y* Grajo (appellant) guilty beyond reasonable doubt of the crime of rape, with modification reducing the penalty of death to *reclusion perpetua*.

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[1] Penned by Justice Bienvenido L. Reyes, with Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring.

[2] Penned by Judge Franco T. Falcon.

**The Facts**

Appellant was formally charged on 29 January 1999 in an Information which reads, as follows:

> That sometime in the early afternoon of August 2, 1994 in Sitio WWW, Barangay XXX, YYY, ZZZ, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of private complainant AAA,[3] with lewd design, and by using force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said AAA, an 8 year old girl, against her consent, to her damage.[4]

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the offense charged.[5] Trial ensued.

The prosecution presented Dr. Virginia Barasona (Dr. Barasona), the Rural Health Officer in YYY, ZZZ, and Melinda Reyes (Melinda), the social worker of Department of Social Welfare and Development (DSWD) who conducted the social case study on AAA.

At the time she testified, AAA was 14 years old. She testified that she was born on 28 February 1986. AAA stated that in the afternoon of 2 August 1994, she and appellant were alone in their house. Appellant was sharpening his bolo while her mother, BBB, was out getting "*talapang*." She was not aware that appellant had closed the door and windows of the house. Appellant approached AAA and removed her shirt, panties and bra. Appellant removed his shorts and briefs and laid AAA down on the bamboo bench. With the bolo placed on his right side, appellant placed himself on top of AAA and inserted his penis into her vagina. AAA tried to fight back and resisted but appellant was too strong. Appellant kissed her and touched her breasts. AAA felt pain and blood oozed out of her vagina. After satisfying

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[3] The real name of the victim and the immediate family members other than the accused are withheld pursuant to this Court's Resolution dated 19 September 2006 in A.M. No. 04-11-09- SC as well as the ruling in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, p. 1

[5] Records of Criminal Case No. 99-0344, pp. 29-30.

himself, appellant warned AAA that he would kill her and her mother BBB if she would tell anybody about the incident.[6]

Sometime in November 1998, AAA mustered enough courage to narrate her ordeal to her mother. AAA claimed appellant raped her four times - when she was still eight years old, then when she was in Grade III, in Grade IV and in Grade V. BBB brought her daughter to the DSWD where AAA was interviewed and assisted in executing her sworn statement before the Philippine National Police of YYY.[7] AAA was later brought to Dr. Barazona for medical examination which revealed the following:

PHYSICAL FINDINGS:

General Survey: conscious, coherent, ambulatory, not in cardiorespiratory distress, cooperative

Pertinent findings:

- nipple is pinkish, measures .5 cm. in diameter
- areola is pinkish, 1.8 cm. in diameter
- with developing breasts
- lanugo hair is present
- with hymenal laceration (healed) at 9:00 o'clock and 6:00 o'clock position (s)
- non-parous introitus
- labia minora is not gaping
- fouchette is v-shaped
- admits tip of finger up to 1 cm. with resistance.[8]

Dr. Barasona explained that the lacerations on AAA's hymen were caused by penetrations of an erected and turgid sex organ.[9]

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[6] TSN, 18 September 2000, pp. 2-11.

[7] *Id.* at 11-15.

[8] Records of Criminal Case No. 99-0344, p. 6.

[9] TSN, 9 November 1999, pp. 12-13.

AAA testified that she stopped studying since 1998. She felt ashamed of what happened to her that she even transferred to Daet because she was scorned by people.[10]

The defense presented appellant himself, Camilo Begino (Camilo) and Reynaldo Esturas (Reynaldo) as witnesses.

Appellant denied the accusation and asserted that he treated AAA and her siblings as his own children since he started living with their mother in 1991. He claimed BBB wanted to get rid of him as she was already romantically linked with the Chief of the Department of Agrarian Reform in Daet.

Appellant further testified that from 6:00 in the morning of 2 August 1994 until 6:00 in the afternoon of the same date, he was at the coconut plantation of Apolinario Malaluan (Apolinario) together with Camilo and Reynaldo husking coconuts. The distance between his house and the coconut plantation is two kilometers, more or less, and would require a 30-minute walk. There was never a time that he left the workplace since he took his lunch and snacks there.[11]

Defense witnesses Camilo and Reynaldo substantially corroborated appellant's testimony that appellant was with them the whole day from sunrise to sunset of 2 August 1994 and that there was never a time that appellant left the workplace.[12] Camilo and appellant are first cousins, as their fathers are brothers.[13]

**The Ruling of the Trial Court**

After trial, the RTC-Branch 64 rendered judgment on 13 December 2005 finding appellant guilty beyond reasonable of the "crime of statutory rape aggravated by the fact that the victim is below eighteen (18) years old" and that the offender is the common law husband of BBB. Appellant was sentenced to suffer the penalty of death. He was likewise ordered to pay the victim ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages.

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[10] *Id.* at 18.

[11] TSN, 3 August 2004, pp. 2-15.

[12] TSN, 29 October 2001, pp 1-6; 3 September 2003, pp. 3-6.

[13] TSN, 29 October 2001, p. 7.

The trial court found inconsistencies in the testimonies of the defense witnesses. Camilo testified that he owned the coconut plantation where appellant worked but he was not certain as to the exact date appellant went to work at the coconut plantation. Reynaldo testified that appellant worked at the coconut plantation of Apolinario and not in the alleged coconut plantation of Camilo.

The trial court further rejected appellant's defense of alibi. The trial court found that it took only 30 minutes to walk going to appellant's house from the coconut plantation where he was husking. The trial court ruled that it was not physically impossible for appellant to have been at the scene of the crime at the time of its commission.

**The Ruling of the Court of Appeals**

On appeal, the Court of Appeals affirmed the judgment of conviction but reduced the penalty of death to *reclusion perpetua* in view of Republic Act No. 9346 (RA 9346) proscribing the imposition of the death penalty.

The Court of Appeals ruled that denial and alibi could not prevail over the positive identification by the victim. The Court of Appeals further ruled that the findings of the trial court on the credibility of witnesses enjoy a badge of respect as the latter is in a better position to observe the demeanor of witnesses as they testify.

**The Court's Ruling**

We agree with the findings and conclusion of the trial court, as affirmed by the appellate court, that, as the evidence undoubtedly proved, rape was committed by appellant against AAA.

The trial court found appellant guilty of "statutory rape aggravated by the fact that the victim is below eighteen (18) years old" and "the offender is the common law husband" of the mother of the victim. Thus, it imposed the death penalty pursuant to paragraph 1 of Article 266-B. The appellate court agreed with the trial court but reduced the penalty imposed from death to *reclusion perpetua.* However, we hold that appellant

could not be indicted for qualified rape and penalized under paragraph 1 of Article 266-B.

While the death penalty is no longer imposable in view of RA 9346, the technical flaw committed by the lower courts is a matter that cannot be ignored.

Article 266-A and Article 266-B provide:

ART. 266-A. *Rape, When and How Committed.* — Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority; and

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above is present;

x x x x x x x x x

ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The **death penalty** shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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**.

x x x (Emphasis supplied)

Under Article 266-B, paragraph 1, the death penalty shall be imposed if the crime of rape is committed when the victim is under 18 years old **and** the offender is a "parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third degree, or the common law spouse of the parent of the victim." This Court has ruled that the circumstances that qualify a crime should be alleged and proved beyond reasonable doubt as the crime itself. These attendant circumstances alter the nature of the crime of rape and increase the penalty. As such, they are in the nature of qualifying circumstances.[14] The age of the victim and her relationship with the offender must be both alleged in the information and proven during the trial, otherwise, the death penalty cannot be imposed.[15]

The age of the victim was sufficiently proved. AAA was undeniably below 18 years old at the time she was raped. Although she claimed she was born on 28 February 1986, her birth certificate[16] and the Social Case Study Report[17] showed that she was born on 28 March 1986. The rape was committed on 2 August 1994 or when AAA was eight years and four months old.

However, the Information stated that appellant is the "stepfather" of AAA. A "stepfather" is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring. It presupposes a legitimate relationship between the appellant and the victim's mother.[18] The evidence adduced by the prosecution showed that appellant is not the stepfather of AAA but the common law spouse of BBB, mother of AAA. In fact, the trial court itself, in its decision,[19]

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[14] *People v. Ferolino*, 386 Phil. 161 (2000).

[15] *People v. Bayya*, 384 Phil. 519 (2000); *People v. Maglente*, 366 Phil. 221 (1999); *People v. Ilao*, 357 Phil. 656 (1998); *People v. Ramos*, 357 Phil. 559 (1998).

[16] Records of Criminal Case No. 99-0344, p. 105.

[17] *Id.* at 100.

[18] *People v. Radam, Jr.*, 434 Phil. 87 (2002).

[19] *Rollo*, p. 14

found that appellant and BBB were not married and therefore he is not the stepfather of AAA. During the trial, AAA, when asked why she kept calling appellant "*Tiyo*," testified that appellant is the third husband of her mother and that the name of her real father is CCC, who at that time was in Manila. She explained that her mother lived separately from CCC since she was eight months old and on 2 August 1994, her mother was living with appellant.[20] Her birth certificate and the Social Case Study Report likewise showed that her father is CCC, not appellant. CCC was married to BBB and appellant was never married to BBB. There was no proof of marriage between BBB and appellant.

Since appellant is not the stepfather of AAA, the prosecution's failure to prove the qualifying circumstance bars conviction for rape in its qualified form.[21]

What the prosecution clearly proved was that appellant was the common law spouse of BBB, but such circumstance was not alleged in the Information. And as we have ruled in *People v. Garcia*,[22] qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded. It would be a denial of the right of the accused to be informed of the charges against him and consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned.

Consequently, since the qualifying circumstance of "common law spouse" was not alleged in the Information for rape against appellant, he could not be convicted of rape in the qualified form as he was not properly informed of the nature and cause of accusation against him. In a criminal prosecution, it is a fundamental rule that every element of the crime charged must

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[20] TSN, 18 September 2000, pp. 5-6.

[21] *Supra*.

[22] 346 Phil. 475 (1997).

be alleged in the complaint or information. The main purpose of this requirement is to enable the accused to properly prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense.[23]

The qualifying circumstance of relationship not having been properly pleaded, appellant should be convicted only of statutory rape under paragraph (d) of Article 266-A, for having carnal knowledge of a woman "under twelve (12) years of age." Statutory rape is punishable by *reclusion perpetua*.[24]

As regards the award of damages and in accordance with prevailing jurisprudence, AAA should be awarded ₱50,000 as civil indemnity, in addition to the award of moral damages of ₱50,000 for the immeasurable havoc wrought upon AAA. In view of the peculiar relationship of the parties, appellant should likewise be made to pay ₱30,000 as exemplary damages.

**WHEREFORE,** we find appellant **REMEIAS BEGINO *y* GRAJO** guilty beyond reasonable doubt of the crime of statutory rape and sentence him to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the victim ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱30,000 as exemplary damages.

**SO ORDERED.**

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

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[23] *People v. Medina*, 360 Phil. 281 (1998); *People v. Ramos*, 357 Phil. 559 (1998).

[24] *People v. Rentoria*, G.R. No. 175333, 21 September 2007, 533 SCRA 708; *People v. Tampos*, 455 Phil. 844 (2003).

* Designated member per Special Order No. 588.

**EN BANC**

[A.M. No. RTJ-06-2016. March 23, 2009]
(Formerly OCA I.P.I. No. 04-2120-RTJ)

**CORAZON R. TANJUATCO,** *complainant, vs.* **JUDGE IRENEO L. GAKO, JR., Regional Trial Court, Branch 5, Cebu City,** *respondent.*

**SYLLABUS**

**1. JUDICIAL ETHICS; JUDGES; WHEN A JUDGE'S SUGGESTION TO A PARTY LITIGANT CANNOT BE CONSIDERED AS AN ACT OF PARTIALITY.—** [T]he assailed suggestions made by respondent may be viewed as an attempt to comply with the guidelines laid down in Administrative Matter No. 03-1-09-SC, more known as the *Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Courts in the Conduct of Pre-trial and Use of Deposition-Discovery Measures*. The policy behind the pre-trial guidelines is to abbreviate court proceedings and ensure prompt disposition of cases and decongest court dockets. Pursuant to this policy, the judge is expected to determine during pre-trial if there is a need to amend the pleadings. x x x As it were, respondent judge noticed that the person who verified Vicente B.'s complaint was his attorney-in-fact, obviously leading the respondent to conclude that the verification was defective. He believed a correction was in order to prevent future complications, such as the filing of a motion to dismiss the complaint which undeniably will only prolong or delay the case. In actuality, no clear benefit redounded to Vicente B. as a result of respondent's suggestion, for the requirement on verification may be made by the party, his lawyer or **his representative** or any person who personally knows the truth of the facts alleged in the pleading.

**2. REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION OF A COMPLAINT IS ONLY A FORMAL, NOT JURISDICTIONAL REQUISITE.—** [I]t is basic that verification is only a formal, not jurisdictional, requisite. Accordingly, even if the verification is flawed or defective,

the Court may still give due course to the pleading if the circumstances warrant the relaxation of the rule in the interest of justice.

**3. ID.; ID.; INTERVENTION; NOT A MATTER OF RIGHT.—** Intervening in a case is not a matter of right but of sound discretion of the Court. Sec. 2, Rule 19 of the Rules on the subject, *Time to intervene*, specifically provides that "the motion to intervene may be filed at anytime before rendition of judgment by the trial court." Thus, intervention to unite with the plaintiffs must be filed before rendition of judgment. Thus, respondent acted within the bounds of the rules when he denied Carlos del Rosario's intervention, filed as the corresponding motion was after the assailed decision was rendered.

**4. ID.; ID.; PARTIES; IMPLEADMENT OF REAL PARTIES-IN-INTEREST AS ADDITIONAL PLAINTIFFS CANNOT BE MADE WITHOUT THEIR CONSENT.—** With respect to other real parties-in-interest as additional plaintiffs, however, the court cannot simply issue an order towards the impleadment of said parties as additional plaintiffs. These proposed plaintiffs must give their consent to their inclusion as plaintiffs. Otherwise, the addition of such parties will be useless and irregular considering they may be adverse to the idea of being parties-plaintiffs in the first place. Thus, the respondent was correct in not simply adding complainant and Carlos del Rosario as co-plaintiffs of Vicente B. since the RTC had yet to acquire jurisdiction over their persons.

**5. ID.; ID.; ID.; A CO-OWNER MAY BRING AN ACTION IN THAT CAPACITY WITHOUT THE NECESSITY OF JOINING ALL THE OTHER CO-OWNERS AS CO-PLAINTIFFS; EFFECT.—** It should be borne in mind that Pantaleon, Carlos del Rosario, and complainant, as compulsory heirs of Vicente S., are co-owners of the subject lots. And a co-owner may bring an action in that capacity without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all. When a suit is brought by one co-owner for the benefit of all, a favorable decision will benefit them but an adverse decision cannot prejudice their rights. Thus, complainant and Carlos del Rosario stood to be benefited by the suit filed by Pantaleon, as attorney-in-fact of Vicente B., as the two, as co-owners, are entitled to their pro-rata share in the monetary award to be

adjudged to Vicente B. Thus, there was really no prejudice suffered by complainant or her brother, Carlos, when respondent denied the faulty-filed motion for intervention.

**6. JUDICIAL ETHICS; JUDGES; SIMPLE MISCONDUCT; A JUDGE'S SUGGESTION TO A COUNSEL THAT THE AMENDMENT TO THE COMPLAINT SHOULD INCLUDE A CLAIM FOR RENTALS IS IMPROPER AND CONSTITUTES SIMPLE MISCONDUCT.—** While there is no evidence tending to show that respondent perverted his office for some financial benefits or for consideration less than honest, respondent to be sure did not conduct himself, in relation to Civil Case No. CEB-27334, with the exacting partiality required under the Code of Judicial Conduct. As the records show, respondent indeed suggested to Vicente B.'s counsel that the amendment to his complaint should, in relief portion, include a claim for rentals. This to us is improper and at least constitutes simple misconduct.

**BRION, *J., dissenting opinion:***

**1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; A CO-OWNER MAY NOT BRING A SUIT FOR HIS OWN BENEFIT ALONE IN DISREGARD OF HIS/HER CO-OWNERS; CASE AT BAR.—** To be sure, a co-owner may sue without the necessity of joining all the other co-owners as co-plaintiffs because the suit is presumed to have been filed to benefit his co-owners. *Adlawan v. Adlawan* echoes this doctrinal rule. However, where the suit is for the benefit of the plaintiff alone in disregard of his or her co-owners, the action should be dismissed. Arturo M. Tolentino, explained the rule as follows: A co-owner may bring such an action, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all. **If the action is for the benefit of the plaintiff alone,** such that he claims possession for himself and not for the co-ownership, **the action will not prosper**. The respondent judge disregarded this rule although in his mind Pantaleon, rather that Vicente B, was the real plaintiff as reflected in his Comment dated March 8, 2005 where he referred to Pantaleon, not Vicente B, as the plaintiff and owner of the half of the lots disputed with Cebu City. The *ponencia* itself appeared at a loss about the parties' relationship in the rescission and the partition cases as shown by its ruling x x x. The *ponencia* clearly

overlooked that the rescission complaint was not filed by a co-owner *in his capacity as a co-owner.* More importantly, *it was not even brought by a co-owner but by the son of a co-owner,* co-owner Pantaleon pointedly avoided being a direct party to the rescission case, and even withdrew his verification at the instance of the respondent judge. *Thus, the award of the rentals to Vicente B was not an award to a co-owner — a circumstance that will vastly complicate the partition case if an attempt is made to bring in this award as part of the estate.* The *ponencia,* too, devoted a lengthy discussion on the issue of joinder of parties, on both the plaintiff and the defendant sides. It, however, forgot that the respondent did not make any ruling on the intervention that Carlos del Rosario — the brother of Pantaleon and a co-heir — sought: as already mentioned, his motion for intervention, according to the respondent judge, simply "skipped the attention of the court."

**2. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CASE AGAINTS JUDGES; WHEN A JUDGE'S SUGGESTION TO A COUNSEL ON A MATTER OF VERIFICATION AND ON AMENDMENT OF THE COMPLAINT CONSTITUTES GROSS PARTIALITY AND PLAIN INJUSTICE.—** [I]t may well now be asked *for purposes of evaluating the import of the suggestion of the respondent judge to Vicente B:* why did Pantaleon not bring the rescission case himself and even went to the extent of withdrawing his verification at the direct suggestion of the respondent judge? In fact, were the suggestions of the respondent judge — on the matter of verification and on the amendment of the complaint to reflect that the amount in escrow should be paid to Vicente B as plaintiff — simply matters of procedure intended to expedite the proceedings? To recall the basic facts narrated above, the parties in interest on the part of the del Rosarios in the contract with Cebu City were father and son, Vicente S and Pantaleon. Thus, in the rescission case, it was Pantaleon's interest that was at stake, not Vicente B's. By undertaking the verification (which by the way, is a substantive change, not simply a matter of form as the verifier swears to his personal knowledge of the facts stated), Vicente was effectively reinforcing the idea that his was the direct interest to protect. At the same time, Pantaleon, the direct co-owner in the estate of Vicente S. was dissociating himself from the rescission case as he was already a party to the partition case then already pending; his presence in both

cases could raise forum-shopping issues as the Investigating Justice directly implied when she said that "the respondent judge should have dismissed the case outright as provided under Section 5 of Rule 7 of the Rules of Court." The whole intent of the change in the verification becomes apparent with the respondent judge's second suggestion — to allege in the amended complaint that the amount deposited in escrow be paid to the plaintiff (who is Vicente B) by way of rentals. These companion moves ensured the objective of securing for Vicente B — a non-party to the partition case — the funds in escrow. Under this view, the respondent judge directly paved the way in securing the objective, firstly by the out-of-bounds suggestions described above. His help was also indispensable because he overlooked in his decision Vicente B's lack of interest and personality to bring the rescission suit, while at the same time making sure that none of the other heirs in Vicente S' estate intervened. The respondent judge further helped by granting the motion for execution pending appeal despite live issues that would have alerted a fair and conscientious judge that something was amiss. From this perspective, the *ponencia's* cited Guidelines loses relevance even if it had been invoked by the respondent judge, while the other grounds the *ponencia* raised are mere technical grounds that do not detract from the conclusion that the respodent grossly violated his judicial duties and did not simply commit simple misconduct. The way the Investigating Justice put it is particularly apt: "what the respondent committed in this case is not sheer ignorance of the law but a blatant miscarriage of justice and betrayal of his sacred oath as a judge." It is interesting to note that while the *ponencia* does not completely exonerate the respondent judge, it did its utmost to lighten his liability. x x x This Dissent posits that under the given facts, what the respodent judge did cannot be characterized as simple misconduct. As an intervention, it was beyond being "improper" as it was effectively the presiding judge lawyering for one of the parties. This is gross partiality and plain injustice to those affected by the decision in the rescission case.

**3. ID.; ID.; GROSS MISCONDUCT; A FINDING OF "FINANCIAL BENEFIT" OR "CONSIDERATIONS LESS THAN HONEST" IS NOT NECESSARY TO CONCLUDE THAT A GROSS MISCONDUCT IS COMMITTED.—** This Court does not likewise need a finding of "financial benefits" or "considerations less than honest" in order to conclude that

what the respondent judge did was gross misconduct in the performance of duties. Had these benefits and considerations been found, they would have simply been grounds, not only for the administrative charge of gross misconduct, but for a criminal charge for bribery at the very least. What appears clear to this Dissent, again as the Investigating Justice phrased it, is that the respondent judge had the "deliberate intent to do injustice to the complainant and other heirs" that brought the respondent judge in conflict with Canons 2 and 3 of the Code of Judicial Conduct x x x. As stressed in the foregoing discussions, the respondent went beyond due bounds and committed improprieties in the performance of his duties when he maliciously intervened, through suggestions from the bench to a party, in order to influence the outcome of the case before him. He was also manifestly unfair, using his skewed reading of the law, in continuing to entertain the rescission complaint despite its obvious defects, despite the pendency of the partition case, and despite the prejudicial effects of his ruling on the other heirs of Vicente S. To be sure, what he did in the case were not mere isolated acts of improprieties but gross and unmistakable violations that, following a pattern, were geared towards the objective of favoring a chosen party.

**4. ID.; ID.; DISMISSAL; TWO COMPELLING REASONS WHY THE ULTIMATE ADMINISTRATIVE PENALTY SHOULD BE IMPOSED; CASE AT BAR.—** The Dissent is driven by two compelling reasons in taking this position. **First is the respondent judge's record of violations while in the service**. He is not a first-time offender and had been repeatedly warned in the past that more severe penalties awaited him should he commit the same or similar offenses. He remained incorrigible, however, and showed a propensity to violate his duties and the trust reposed in him as a judge. This is evident from the cases filed against him, charging him with and finding him guilty of various offenses committed in relation to his duties as a judge. x x x At this point, the respondent has already mocked this Court by continuing his violations and his perverse ways, and getting away with it. He will continue to mock this Court when he reads that all that we can do is **fine him another ₱100,000.00** that the majority found sufficient and appropriate for his **SIXTH** offense. Unfortunately for the Court, this time we can no longer serve him a warning as he is now beyond such warning. A **second reason** why this Dissent believes that the respondent merits the ultimate administrative penalty is this Court's record of dismissing other members of

the judiciary for less than the record of offenses that the respondent judge committed in his years of service, as well as the message we are communicating to the public who will surely learn of how the majority has been unusually lenient with the respondent judge. We shall be disturbing existing jurisprudence and starting a jurisprudential trend that may prove detrimental to the administration of justice in the long run. Given the penalty the majority imposed on the respondent judge, the members of the Judiciary who had earlier been dismissed as well as the public would cry "foul" when they learn of the Gako record of surviving his sixth major offense.

**APPEARANCES OF COUNSEL**

*Law Firm of Tanjuatco and Partners* for complainant.

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

**VELASCO, JR., *J.*:**

This administrative case stemmed from the sworn-complaint[1] dated September 24, 2004 of Corazon R. Tanjuatco filed with this Court, charging Regional Trial Court (RTC) Judge Ireneo L. Gako, Jr., now retired, with Knowingly Rendering Unjust Judgment, Gross Partiality and/or Gross Ignorance in connection with a contract rescission case filed with respondent's court.

By Resolution dated August 9, 2006, the Court resolved to refer the administrative complaint, which was earlier redocketed as a regular administrative matter, to Court of Appeals (CA) Associate Justice Josefina Guevarra-Salonga for investigation, recommendation, and report.[2]

From the complaint, respondent's comment thereon, with their respective annexes, and other documents on record, the Court gathers the following material facts:

Complainant's father, Vicente S. del Rosario (Vicente S.), and her brother, Pantaleon, co-owned eight (8) parcels of land

[1] *Rollo,* pp. 3-13.

[2] *Id.* at 160.

located in Alumnus, Basak-San Nicolas, Cebu City, with an aggregate area of 21,000 square meters. Via a "Contract to Buy and Sell" dated August 23, 1985,[3] Vicente S. and Pantaleon, for PhP 2,156,040, sold the property to the City of Cebu, for the latter's abattoir project. As agreed upon, the purchase price was to be deposited and to remain in escrow with the Philippine National Bank (PNB) until lot titles shall have been delivered to the city. Following the 1986 Edsa event, however, the newly-designated OIC-Mayor of Cebu City, John H. Osmeña, unilaterally stopped the construction of the abattoir.

On May 7, 1987, Vicente S. died, leaving behind the following heirs: his wife, Ceferina Urguiaga, and their eight (8) children, among whom are complainant, Pantaleon, and Carlos del Rosario.

Later developments saw Vicente S.'s heirs filing a petition for the partition of his estate. Docketed as Civil Case No. CEB-17236 of the RTC of Cebu City, the petition, after several transfers, eventually landed in Branch 5 of the court, then presided by respondent judge. According to the respondent, he held "preliminary conferences among the heirs of Vicente S. x x x for the purpose of settling the case amicably."[4] The complainant, on the other hand, narrated that the respondent held several meetings in his chambers during the preliminary conferences.[5] Upon the heirs' motion, the respondent subsequently inhibited himself from handling the case.

At about the same time and based on the above narrated facts, Vicente B. del Rosario (Vicente B.), represented by his father, Pantaleon, filed a case against the City of Cebu for the rescission of the "Contract to Buy and Sell" covering the eight (8) lots adverted to. Docketed as Civil Case No. CEB-27334 and entitled *Vicente B. del Rosario, represented by his Attorney-in-Fact, Pantaleon U. del Rosario v. City of Cebu*, the complaint, with attachments, was raffled to the respondent's Branch 5. The complaint originally carried the *Verification/Certification*

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[3] *Id.* at 33-35.

[4] *Id.* at 93. Respondent's Comment.

[5] *Id.* at 181. Direct Testimony of Corazon R. Tanjuatco by way of Judicial Affidavit.

*of Non- Forum Shopping* signed by Pantaleon. The verification was subsequently replaced by another executed by Vicente B., the plaintiff, based on plaintiff's motion for leave to amend complaint. This motion recited that:

> during the hearing [on] x x x July 3, 2002, this Honorable Court told this representation to amend the complaint because the verification/certification of non-forum shopping x x x should have been executed by plaintiff Vicente B. del Rosario who is the real party in interest x x x and to allege that the amount deposited in escrow inclusive of interest accrued should be paid to plaintiff by way of rentals.[6]

On February 26, 2003, Isidro and Michael Alain Reyes de Leon, heirs of Teresita de Leon, who in turn was Virgilio S.'s niece, moved to intervene in Civil Case No. CEB-27334, but the court denied the motion.[7]

By decision dated May 28, 2004, respondent rescinded the contract in question and awarded the whole purchase price as rentals to Vicente B. The following events then transpired: (1) Carlos del Rosario interposed his own motion for intervention; (2) on August 13, 2004, the city of Cebu filed a notice of appeal with the RTC;[8] and (3) on September 8, 2004, Vicente B. moved for execution pending appeal, which the court granted conditioned upon his posting of a bond.[9]

It is against the foregoing state of things that the complainant filed her complaint alleging, in gist, the following:

> 1. During the rescission case hearing on July 3, 2002, the respondent instructed Pantaleon's counsel to amend the complaint and to attach instead the verification of his son Vicente B., and to allege that the amount deposited on the escrow, exclusive of the interest accrued, should be paid to Vicente B. by way of rentals. Vicente B. was, therefore, made to appear as the plaintiff. By these

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[6] *Id.* at 38.

[7] *Id.* at 94.

[8] *Id.* at 101-103.

[9] *Id.* at 87-88.

actuations, the respondent was no longer acting as an impartial trier of facts. He was in fact lawyering for Pantaleon.

2. The respondent admitted the Amended Complaint despite the fact that Vicente B. failed to pay the appropriate filing fee for the additional relief sought in the complaint.

3. On May 28, 2004, the respondent rendered judgment ordering contract rescission and awarding the purchase price therefor in escrow to Vicente B. as rentals, despite his knowledge that one-half of the subject property belongs to the estate of the deceased Vicente S. and was already within the jurisdiction and custody of the court handling the partition case.

4. The respondent issued an Order allowing execution pending appeal while the motion for intervention filed by Carlos del Rosario remained unresolved.

In his Comment,[10] respondent, *inter alia*, alleged that: his May 28, 2004 decision, far from being unjust, was based on the law and evidence and was in fact beneficial to complainant, Cebu City being ordered to return the eight (8) lots subject of the case; Carlos del Rosario's motion to intervene was filed only after the decision was rendered; he was not aware that four of the eight lots involved in Civil Case No. CEB-27334 were included in Civil Case No. CEN-17236 for partition; there was no need to implead the complainant as she and the other heirs could very well be represented by Pantaleon who owned four of the lots in question and is a co-owner of the other four; no damage was done to the complainant because the case is on appeal with the CA; the complainant did not move for intervention in the rescission case as an indispensable party; and the matter of plaintiff Virgilio B.'s non-payment of the filing fees was not brought to the court's attention. Apropos the allegation about his having instructed the plaintiff's counsel on what to do in the case, respondent counterSed that it is the court's duty, in the course of a hearing, to suggest to litigants and their counsels to follow the proper procedures so that cases be speedily resolved.

On September 20, 2006, respondent judge reached the compulsory retirement age of 70. The Court, however, ordered

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

that the release of his retirement benefits be held in abeyance until the resolution of this administrative case and to hold these benefits available to answer for any monetary penalty that may be imposed.

Following due hearings, the Investigating Justice submitted on December 6, 2006 an investigation report. In it, she recommended that respondent judge be adjudged guilty of knowingly rendering an unjust judgment and grave misconduct in the performance of his duties and be meted the penalty of dismissal. She predicated her recommendation on the guilt of respondents on three (3) main premises, to wit: (1) respondent proceeded with the rescission case without impleading indispensable parties; (2) he "lawyered" for the plaintiff, thus betraying his partiality towards a party in a case; and (3) he denied and/or refused to act on the motion to intervene of an indispensable party. Here are some excerpts of the investigation report:

> Admittedly, respondent presided over the Partition Case, having held preliminary conferences x x x. The fact that he conducted conferences among the heirs of the deceased Vicente coupled by the fact that the Partition Case was filed by one of the heirs in defiance to the position of the other heirs respecting the settlement of the vast estate, would sufficiently serve notice to him that there is a severe conflict of interests among said heirs. Respondent judge may very well insist that he did not have the opportunity to read the voluminous case records as well as the Rescission Case [which] would have alerted him of the need to implead all the heirs of the deceased Vicente.
>
> Besides, respondent x x x cannot simply feign ignorance of the Partition Case. Before he had rendered his now assailed Decision, [he] was even reminded by plaintiff Vicente of the pendency of the Partition Case when the latter filed his opposition to the motion of intervenors De Leon.
>
> So viewed, respondent judge need not wait for the complainant or the other heirs to intervene in the Rescission Case, since it is his duty as a judge to ensure that all indispensable parties are impleaded before resolving a case. Law and jurisprudence clearly and explicitly dictate compulsory joinder of indispensable parties. The absence

of an indispensable party in a case renders ineffectual all the proceedings subsequent to the fling of the complaint including the judgment.

Parenthetically, when an action involves reconveyance of property x x x owners of property over which reconveyance is asserted are indispensable parties x x x.

x x x x x x x x x

Still and all respondent judge opted x x x to exclude the complainant and the other heirs of the deceased Vicente based on the bare supposition that since Pantaleon owns the remaining half of the subject lots and that Pantaleon is also an heir of the deceased, there is no longer any need to implead the other heirs. x x x

Clearly, this manifests the bias and partiality of the respondent judge in favor of Pantaleon. At this point, it bears to stress that respondent judge is at a complete loss as to what capacity Pantaleon stands in the Rescission Case. In his Comment dated March 8, 2005, respondent judge refers to Pantaleon, and not plaintiff Vicente, as the plaintiff in the Rescission Case and the supposed owner of half of the subject lots.

x x x Whether the Rescission Case was resolved speedily is of no moment x x x. What remains is the fact that respondent judge favored Pantaleon and disposed of the Rescission Case to the detriment of the other heirs of the deceased Vicente. x x x

Worse, respondent judge had inexcusably failed to act on a motion to intervene filed by one of the heirs of the deceased Vicente. While said motion to intervene was filed after the assailed Decision had been rendered, respondent judge should have prudently acted on it especially so since the motion itself had raised the issue of non-joinder of indispensable parties. x x x

Needless to state, whenever it appears to the court in the course of a proceeding that an indispensable party has not been joined, it is the duty of the court to stop the trial and order the inclusion of such party. Such an order is unavoidable, for it is precisely "when an indispensable party is not before the court (that) the action should be dismissed."

What further reflects respondent judge's utter betrayal of his duties and responsibilities as a judge is his admission that he had in fact taught Pantaleon what to do in the case. x x x

Certainly, the fact that respondent judge instructed Pantaleon to withdraw the verification and certification of non-forum shopping and replace it with one executed by plaintiff Vicente is blatantly partial, irregular and in direct violation of procedural rules. Respondent judge should have dismissed the complaint outright as provided under Section 5 of Rule 7 of the Rules of Court. x x x

x x x x x x x x x

All the foregoing are telling proofs that the act of the respondent judge knowingly rendering the assailed Decision is indisputably unlawful, anomalous and is totally inconsistent with any claim of good faith in the performance of his judicial functions. The evidence on record proves that the respondent judge committed acts amounting to grave misconduct.

The Court is unable to fully agree with the recommendation and the premises and arguments holding it together.

We start off with the role of the respondent in the matter of the amendment of the complaint. As complainant claims, respondent judge instructed Pantaleon's counsel to amend the complaint in Civil Case No. CEB-27334 and to attach to the amended complaint the verification of his son, Vicente B., and to allege that the amount deposited in escrow, exclusive of the interest accrued, should be paid to Vicente B. by way of rentals.

Agreeing with the complainant, the Investigating Justice stated the observation that said actuations of respondent judge is "partial, irregular and in direct violation of procedural rules," adding that the original complaint should have been dismissed outright pursuant to Section 5, Rule 7 of the Rules of Court.

We are not persuaded.

Contrary to complainant's posture, the assailed suggestions made by respondent may be viewed as an attempt to comply with the guidelines laid down in Administrative Matter No. 03-1-09-SC, more known as the *Rule on Guidelines to be Observed*

*by Trial Court Judges and Clerks of Courts in the Conduct of Pre-trial and Use of Deposition-Discovery Measures*. The policy behind the pre-trial guidelines is to abbreviate court proceedings and ensure prompt disposition of cases and decongest court dockets. Pursuant to this policy, the judge is expected to determine during pre-trial if there is a need to amend the pleadings.

Sec. 5 of the pre-trial guidelines reads:

5. If all efforts to settle fail, the trial judge shall:

a. Adopt the minutes of preliminary conference as part of the pre-trial proceedings and confirm markings of exhibits or substituted photocopies and admissions on the genuineness and due execution of documents;

b. Inquire if there are cases arising out of the same facts pending before other courts and order its consolidation if warranted;

c. Inquire if the pleadings are in order. If not, order the amendments if necessary;

d. Inquire if interlocutory issues are involved and resolve the same;

e. Consider the adding or dropping of parties.

As it were, respondent judge noticed that the person who verified Vicente B.'s complaint was his attorney-in-fact, obviously leading the respondent to conclude that the verification was defective. He believed a correction was in order to prevent future complications, such as the filing of a motion to dismiss the complaint which undeniably will only prolong or delay the case.

In actuality, no clear benefit redounded to Vicente B. as a result of respondent's suggestion, for the requirement on verification may be made by the party, his lawyer or **his representative** or any person who personally knows the truth of the facts alleged in the pleading.[11]

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[11] 1 Regalado, *REMEDIAL LAW COMPENDIUM* 145; citing *Arambulo v. Perez*, 78 Phil. 387; *Matel v. Rosal*, 96 Phil. 984; *Cajeje v. Fernandez*, 109 Phil. 743.

Thus, Pantaleon's verification accompanying the original complaint would have had sufficed.

Complainant's assertion that respondent made it appear that Pantaleon was the plaintiff is a bit specious. The title of the case, no less, clearly indicated that Vicente B. is the plaintiff, not Pantaleon.

The Investigating Justice erred too when she concluded that the complaint should have been dismissed outright under Sec. 5, Rule 7 of the Rules of Court. Sec. 5, Rule 7 refers to certification against forum shopping. The correct and applicable rule is the preceding Sec. 4 of Rule 7 which deals with verification.

Even if the Investigator cited the correct Rule (Sec. 4, Rule 7), she would still be incorrect in her conclusion that the complaint should be dismissed, for it is basic that verification is only a formal, not jurisdictional, requisite.[12] Accordingly, even if the verification is flawed or defective, the Court may still give due course to the pleading if the circumstances warrant the relaxation of the rule in the interest of justice.[13]

On another point, the Investigating Justice faulted the respondent for not impleading complainant and her brother, Carlos del Rosario, as parties-plaintiffs. She reasoned that respondent need not wait for complainant and the other heirs to intervene, it being the court's duty to implead all indispensable parties before resolving the case.

To a certain extent, the Investigating Justice is correct.

While it is true that the pre-trial guidelines (A.M. No. 03-1-09-SC) obliges the judge, if proper, to add or drop parties to the case, the inclusion of parties-plaintiffs is a different situation.

Intervening in a case is not a matter of right but of sound discretion of the Court. Sec. 2, Rule 19 of the Rules on the subject, *Time to intervene*, specifically provides that "the motion to intervene may be filed at anytime before rendition of judgment by the trial court." Thus, intervention to unite with the plaintiffs

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[12] *Buenaventura v. Uy, et al.*, No. L-28156, March 31, 1982.

[13] *Oshita v. Republic*, No. L-21180, March 31, 1967.

must be filed before rendition of judgment. Thus, respondent acted within the bounds of the rules when he denied Carlos del Rosario's intervention, filed as the corresponding motion was after the assailed decision was rendered.

The investigation report stated that it is the "duty of the judge to ensure that all indispensable parties are impleaded before resolving the case." This may be true with respect to the joinder of defendants as jurisdiction over their persons can be acquired by means of service of summons. With respect to other real parties-in-interest as additional plaintiffs, however, the court cannot simply issue an order towards the impleadment of said parties as additional plaintiffs. These proposed plaintiffs must give their consent to their inclusion as plaintiffs. Otherwise, the addition of such parties will be useless and irregular considering they may be adverse to the idea of being parties-plaintiffs in the first place. Thus, the respondent was correct in not simply adding complainant and Carlos del Rosario as co-plaintiffs of Vicente B. since the RTC had yet to acquire jurisdiction over their persons. As a matter of fact, they filed a motion to intervene but was rejected because it was filed after the decision was promulgated.

To be sure, the Investigating Justice was mistaken in her belief that Pantaleon, the attorney-in-fact of plaintiff Vicente B., cannot represent the other interested heirs like complainant and Carlos del Rosario even without the joinder of the latter as co-plaintiffs.

It should be borne in mind that Pantaleon, Carlos del Rosario, and complainant, as compulsory heirs of Vicente S., are co-owners of the subject lots. And a co-owner may bring an action in that capacity without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all.[14] When a suit is brought by one co-owner for the benefit of all, a favorable decision will benefit them but an adverse decision cannot prejudice their rights.[15]

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[14] 2 Tolentino, *CIVIL CODE OF THE PHILIPPINES* 170.

[15] *Id*.

Thus, complainant and Carlos del Rosario stood to be benefited by the suit filed by Pantaleon, as attorney-in-fact of Vicente B., as the two, as co-owners, are entitled to their pro-rata share in the monetary award to be adjudged to Vicente B. Thus, there was really no prejudice suffered by complainant or her brother, Carlos, when respondent denied the faulty-filed motion for intervention.

No one called upon to try the facts or interpret the law in the process of dispensing justice can be infallible.[16] To hold judges for every erroneous ruling or order issued, assuming they have erred, would be nothing short of downright harassment and would make the judge's position untolerable.[17] To dismiss a judge for what may be considered as serious offenses under the Code of Judicial Conduct, there must, ideally, reliable evidence to show that the judicial acts complained of were ill-motivated, corrupt or inspired by a persistent disregard of well-known rules.

While there is no evidence tending to show that respondent perverted his office for some financial benefits or for consideration less than honest, respondent to be sure did not conduct himself, in relation to Civil Case No. CEB-27334, with the exacting partiality required under the Code of Judicial Conduct. As the records show, respondent indeed suggested to Vicente B.'s counsel that the amendment to his complaint should, in relief portion, include a claim for rentals. This to us is improper and at least constitutes simple misconduct.

Simple misconduct is punishable under Rule 140 as follows:

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

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[16] *Vda. De Zabala v. Pamaran*, 39 SCRA 430-431 (1971).

[17] *Barroso v. Arche*, Adm. Case No. 216-CFI, 67 SCRA 161.

Since respondent has already retired,[18] only a maximum fine of PhP 20,000 can be imposed under said rule. Since he, however, had previously been adjudged guilty of and penalized for various infractions in more than a few cases,[19] with repeated warnings of more severe sanction in case of repetition, a fine of PhP 100,000 is appropriate.

**WHEREFORE,** the Court adjudges former Judge Ireneo Lee Gako, Jr. of the RTC, Branch 5 in Cebu City *GUILTY* of Simple Misconduct. He is hereby meted the penalty of *FINE* in the amount of one hundred thousand pesos (PhP 100,000) to be deducted from his retirement benefits.

The Office of the Court Administrator is hereby ordered to facilitate the processing of the retirement papers of retired Judge Gako for the speedy release of his retirement benefits.

**SO ORDERED.**

*Quisumbing, Azcuna, Tinga, Chico-Nazario, Nachura, Leonardo-de Castro,* and *Peralta, JJ.,* concur.

*Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona,* and *Carpio Morales, JJ.,* join the dissent of Justice Brion.

*Brion, J.,* see dissenting opinion.

## DISSENTING OPINION

**BRION, *J.*:**

I dissent from the majority opinion and conclusion. I do not agree with the unusual sympathy and consideration that the

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[18] The retirement of judges does not render moot the administrative cases against them for acts committed while in the service. See *Lagcao v. Gako, Jr.*, A.M. No. RTJ-04-1840, August 2, 2007, 529 SCRA 55, 69-70; *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*, A.M. No. 05-2-101-RTC, April 26, 2005, 457 SCRA 1, 11.

[19] *Office of the Court Administrator v. Gako, Jr.*, A.M. No. RTJ-07-2074, October 24, 2008; *City of Cebu v. Gako, Jr.*, A.M. No. RTJ-08-2207, May 7, 2008; *Lagcao, supra*; *Zamora v. Gako, Jr.*, A.M. No. RTJ-99-1484, October 24, 2000, 344 SCRA 178; *Rallos v. Gako, Jr.*, A.M. No. RTJ-99-1484 (A), March 17, 2000, 328 SCRA 324.

*ponencia* has demonstrated towards the respondent judge who – by the measure of what he did in this case, his record of past transgressions and past warnings from this Court, and our governing precedents – should be held liable for more than simple misconduct and be penalized accordingly. I say this with emphasis as I fear that this *en banc* decision will set a dangerous precedent that will shield members of the Judiciary who have soiled the judicial robe on many occasions and who continue to commit violations that put the whole judiciary to shame.

Two essential facts must be appreciated at the outset in considering the case. The **first,** a matter of record, is that the rescission complaint that gave rise to the present administrative matter involved a contract between Vicente S and his son, Pantaleon, on the one hand, and the City of Cebu, on the other. Interestingly, Pantaleon did not frontally sue on this contract; it was his son, Vicente B who did and Pantaleon only acted as Vicente B's attorney-in-fact. The **second** essential and undisputed fact is that Vicente S had died at the time Vicente B sued for rescission. As a result of Vicente S' death, the heirs of Vicente S (among whom was Pantaleon) had an active case for partition that for one year was pending before the respondent Judge until he was compelled to inhibit himself at the instance of the parties. Half of the property subject of the rescission case belonged to Vicente S and, hence, is part of his undivided estate.

**In the course of the rescission case, the respondent Judge advised the petitioner that the complaint be amended so that the verification shall be made by Vicente B instead of Pantaleon, and that the purchase price paid by Cebu City and held in escrow shall, upon rescission of the contract, be paid as rentals, not to the parties to the rescinded contract, but to Vicente B, the direct petitioner.**

The *ponencia* points out that the suggestions made by respondent judge to Vicente B., represented by Pantaleon, may be viewed as an attempt to comply with the guidelines laid down in Administrative Matter 03-1-09-SC, otherwise known as the Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial and Use of

Discovery Deposition Measures (*Guidelines*); the purpose of the Guidelines is to abbreviate court proceedings, ensure prompt disposition of cases, and decongest court dockets. The *ponencia* suggested that the respondent might have noticed that the person who verified the complaint was Pantaleon (the attorney-in-fact) and possibly concluded that the verification was defective and should be addressed to prevent future complications, such as the filing of a possible motion to dismiss; and that there was really no need for a new verification because the attorney-in-fact is allowed to verify. The *ponencia* also points out that the Investigating Justice erred when she concluded that the complaint should be dismissed outright under Section 5, Rule 7 of the Rules of Court (the rule on certification against Forum Shopping), and when she faulted the respondent for not impleading complainant Tanjuatco and Carlos del Rosario as parties-plaintiffs.

I find the *ponencia's* statements highly unusual. **First**, the Guidelines were nowhere cited by the respondent Judge as basis for his actions. The justification was provided purely by the *ponencia*, not by the respondent judge. **Second**, the respondent judge's advice to Vicente B went beyond matters of form that were legitimate for a court to bring up at the earliest possible time in order to expedite proceedings and avoid unnecessary delay. A closer look at the rescission case shows that the complaint, on its face, raised a lot of questions on who the real party in interest from the plaintiff side really was. The actionable document, attached to the rescission complaint, was the contract between Cebu City, and Vicente S and Pantaleon. Yet, Vicente B stood as the direct petitioner with Pantaleon being a mere attorney-in-fact. It was Pantaleon who initially verified the complaint, and this was changed at the suggestion of the respondent Judge, so that Vicente B made the verification. The other amendment the respondent judge suggested certainly cannot but lead to raised eyebrows: to allege in the amended complaint that the amount deposited in escrow inclusive of interest should be paid to plaintiff (Vicente B) by way of rentals. These were the basic facts that underlie the *ponencia's* conclusion that the respondent judge merely committed a simple misconduct.

A companion development in the case that makes matters "curiouser and curiouser" (as *Alice in Wonderland* puts it) is that the respondent judge was not a stranger at all to the del Rosario family; members of the family had appeared before the respondent judge as heirs in the partition of the estate of their patriarch, the late Vicente S. del Rosario. As reflected in the Report of Investigating Justice, the heirs/co-owners of the estate of Vicente S appeared at the pre-trial of the partition of estate case before the respondent judge, although the latter was subsequently compelled to withdraw from the case at the instance of the heirs who, in the judge's words, "misunderstood" him. As the Report puts it, "[t]he fact that he conducted conferences among the heirs of the deceased [Vicente S] coupled by the fact that the Partition Case was filed by one of the heirs in defiance to the position of the other heirs respecting the settlement of a vast estate, would sufficiently serve notice to him that there is a severe conflict of interests among said heirs."

Thus, the respondent judge who presided over the rescission case knew, not only of the partition case, but also of the conflicting claims by the heirs of Vicente S who were then effectively co-owners pending partition of the estate. Yet, the respondent judge simply went ahead and decided the rescission case, adjudicating the whole amount held in escrow to Vicente B as rentals, without any acknowledgment in his decision of the co-ownership status of part of the award to Vicente B. Significantly, one of the heirs (Carlos del Rosario) moved to be allowed to intervene in the case although the motion was filed after the issuance of the decision in the case but prior to its finality. The respondent judge, in defense, simply said that he did not act on the motion to intervene because *it "skipped from the attention of the court"* – a most uncommon explanation indeed.

Knowledge of the pending partition case (and necessarily of the co-ownership among the heirs) should have alerted the respondent judge that the partition case would impact on the rescission case as the part of the land, subject of the disputed contract, and part of the amount held in escrow belonged to Vicente S and therefore to his estate after his death and, pending partition, to his heirs in co-ownership. Thus, the personality of

the plaintiff and the nature of the property in dispute should have been live issues in the rescission case. To be sure, a co-owner may sue without the necessity of joining all the other co-owners as co-plaintiffs because the suit is presumed to have been filed to benefit his co-owners. *Adlawan v. Adlawan*[1] echoes this doctrinal rule. However, where the suit is for the benefit of the plaintiff alone in disregard of his or her co-owners, the action should be dismissed. Arturo M. Tolentino,[2] explained the rule as follows:

> A co-owner may bring such an action, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all. **If the action is for the benefit of the plaintiff alone**, such that he claims possession for himself and not for the co-ownership, **the action will not prosper**. (Emphasis supplied.)

The respondent judge disregarded this rule although in his mind Pantaleon, rather that Vicente B, was the real plaintiff as reflected in his Comment dated March 8, 2005 where he referred to Pantaleon, not Vicente B, as the plaintiff and owner of the half of the lots disputed with Cebu City. The *ponencia* itself appeared at a loss about the parties' relationships in the rescission and the partition cases as shown by its ruling that:

> It should be borne in mind that Pantaleon, Carlos del Rosario, and complainant, as compulsory heirs of Vicente S, are co-owners of the subject lots. And a co-owner may bring an action in that capacity without the necessity of joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all. When a suit is brought by one co-owner for the benefit of all, a favorable decision will benefit them but an adverse decision cannot prejudice their rights. Thus, complainant and Carlos del Rosario stood to be benefited by the suit filed by Pantaleon, as attorney-in-fact of Vicente B, as the two, as co-owners, are entitled to their pro-rata share in the monetary award to be adjudged to Vicente B. Thus, there was really no prejudice suffered by complainant or her brother, when the respondent denied the faulty-filed motion for intervention.

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[1] G.R. No. 161916, January 20, 2006, 479 SCRA 275.

[2] Tolentino, *Civil Code of the Philippines*, Vol. II, 1983 Edition, p. 157.

The *ponencia* clearly overlooked that the rescission complaint was not filed by a co-owner *in his capacity as a co-owner*. More importantly, *it was not even brought by a co-owner but by the son of a co-owner*; co-owner Pantaleon pointedly avoided being a direct party to the rescission case, and even withdrew his verification at the instance of the respondent judge. *Thus, the award of the rentals to Vicente B was not an award to a co-owner – a circumstance that will vastly complicate the partition case if an attempt is made to bring in this award as part of the estate.* The *ponencia,* too, devoted a lengthy discussion on the issue of joinder of parties, on both the plaintiff and the defendant sides. It, however, forgot that the respondent did not make any ruling on the intervention that Carlos del Rosario – the brother of Pantaleon and a co-heir – sought; as already mentioned, his motion for intervention, according to the respondent judge, simply "skipped the attention of the court."

Given these observations, it may well now be asked *for purposes of evaluating the import of the suggestion of the respondent judge to Vicente B*: why did Pantaleon not bring the rescission case himself and even went to the extent of withdrawing his verification at the direct suggestion of the respondent judge? In fact, were the suggestions of the respondent judge – on the matter of verification and on the amendment of the complaint to reflect that the amount in escrow should be paid to Vicente B as plaintiff – simply matters of procedure intended to expedite the proceedings?

To recall the basic facts narrated above, the parties in interest on the part of the del Rosarios in the contract with Cebu City were father and son, Vicente S and Pantaleon. Thus, in the rescission case, it was Pantaleon's interest that was at stake, not Vicente B's. By undertaking the verification (which by the way, is a substantive change, not simply a matter of form as the verifier swears to his personal knowledge of the facts stated), Vicente was effectively reinforcing the idea that his was the direct interest to protect. At the same time, Pantaleon, the direct co-owner in the estate of Vicente S, was dissociating himself from the rescission case as he was already a party to the partition case then already pending; his presence in both cases could

raise forum-shopping issues as the Investigating Justice directly implied when she said that "the respondent judge should have dismissed the case outright as provided under Section 5 of Rule 7 of the Rules of Court." The whole intent of the change in the verification becomes apparent with the respondent judge's second suggestion – to allege in the amended complaint that the amount deposited in escrow be paid to the plaintiff (who is Vicente B) by way of rentals. These companion moves ensured the objective of securing for Vicente B – a non-party to the partition case – the funds in escrow.

Under this view, the respondent judge directly paved the way in securing the objective, firstly by the out-of-bounds suggestions described above. His help was also indispensable because he overlooked in his decision Vicente B's lack of interest and personality to bring the rescission suit, while at the same time making sure that none of the other heirs in Vicente S' estate intervened. The respondent judge further helped by granting the motion for execution pending appeal despite live issues that would have alerted a fair and conscientious judge that something was amiss. From this perspective, the *ponencia's* cited Guidelines loses relevance even if it had been invoked by the respondent judge, while the other grounds the *ponencia* raised are mere technical grounds that do not detract from the conclusion that the respondent grossly violated his judicial duties and did not simply commit simple misconduct. The way the Investigating Justice put it is particularly apt: "what the respondent committed in this case is not sheer ignorance of the law but a blatant miscarriage of justice and betrayal of his sacred oath as a judge."

It is interesting to note that while the *ponencia* does not completely exonerate the respondent judge, it did its utmost to lighten his liability. This is particularly apparent when it said:

> While there is no evidence tending to show that the respondent perverted his office for some financial benefits or for consideration less than honest, respondent to be sure did not conduct himself, in relation to [the rescission case], with the exacting partiality required under the Code of Judicial Conduct. As the records show, respondent indeed suggested to Vicente B.'s counsel that the amendment to his complaint should, in relief portion, include a claim for rentals. This

to us is improper and at least constitutes **simple misconduct**. (Emphasis supplied.)

This Dissent posits that under the given facts, what the respondent judge did cannot be characterized as simple misconduct. As an intervention, it was beyond being "improper" as it was effectively the presiding judge lawyering for one of the parties. This is gross partiality and plain injustice to those affected by the decision in the rescission case.

This Court does not likewise need a finding of "financial benefits" or "considerations less than honest" in order to conclude that what the respondent judge did was gross misconduct in the performance of duties. Had these benefits and considerations been found, they would have simply been grounds, not only for the administrative charge of gross misconduct, but for a criminal charge for bribery at the very least. What appears clear to this Dissent, again as the Investigating Justice phrased it, is that the respondent judge had the "deliberate intent to do injustice to the complainant and other heirs" that brought the respondent judge in conflict with Canons 2 and 3 of the Code of Judicial Conduct which read:

**Canon 2**

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

**Canon 3**

A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY AND WITH IMPARTIALITY AND DILIGENCE

As stressed in the foregoing discussions, the respondent went beyond due bounds and committed improprieties in the performance of his duties when he maliciously intervened, through suggestions from the bench to a party, in order to influence the outcome of the case before him. He was also manifestly unfair, using his skewed reading of the law, in continuing to entertain the rescission complaint despite its obvious defects, despite the pendency of the partition case, and despite the prejudicial effects

of his ruling on the other heirs of Vicente S. To be sure, what he did in the case were not mere isolated acts of improprieties but gross and unmistakable violations that, following a pattern, were geared towards the objective of favoring a chosen party.

Investigating Justice Guevarra-Salonga recommended that the respondent, who then was still in the service, be dismissed from the service for knowingly rendering an unjust judgment and for grave misconduct in the performance of his duties. **This Dissent fully agrees with this recommendation and with its counterpart – the complete forfeiture of the respondent judge's benefit – now that the respondent judge has retired from the service.**

The Dissent is driven by two compelling reasons in taking this position. **First is the respondent judge's record of violations while in the service.** He is not a first-time offender and had been repeatedly warned in the past that more severe penalties awaited him should he commit the same or similar offenses. He remained incorrigible, however, and showed a propensity to violate his duties and the trust reposed in him as a judge. This is evident from the cases filed against him, charging him with and finding him guilty of various offenses committed in relation to his duties as a judge.

In ***Rallos v. Gako, Jr.,***[3] this Court found the respondent guilty of **grave abuse of authority, partiality and dishonesty** when he made it appear that the complainants, who were petitioners in an intestate estate proceedings before his court, were present during a hearing of their petition when in fact they had not attended because the respondent changed the date of hearing without notifying them. **We fined him ₱10,000.00 and warned him that a commission of similar acts in the future would be dealt with more severely.**

In ***Zamora v. Gako, Jr.,***[4] then Executive Secretary Ronaldo B. Zamora charged the respondent with **ignorance of the law and grave abuse of authority** for having ordered the release

[3] A.M. No. RTJ-99-1484 (A), March 17, 2000, 328 SCRA 324.

[4] A.M. No. RTJ-99-1484, October 24, 2000, 344 SCRA 178.

of 25,000 sacks of smuggled rice to the claimants, notwithstanding the pendency of seizure and forfeiture proceedings with the Bureau of Customs, the office with exclusive jurisdiction over seizure and forfeiture proceedings. **We found him guilty of gross ignorance of the law and suspended him for three (3) months without pay, with the stern warning that the commission of similar acts in the future would be dealt with more severely.**

In ***Lagkao v. Gako, Jr.,***[5] we found the respondent guilty of **grave abuse of authority** for issuing a temporary restraining order in defiance of the decision of a higher court setting aside an injunctive writ he had issued. **We fined him ₱20,000 and sternly warned him.**

In ***City of Cebu v. Gako, Jr.,***[6] we found the respondent guilty of **undue delay in rendering a decision** in a civil case. We imposed **a fine of ₱40,000.00 and our usual warning.**

In ***Office of the Court Administrator v. Gako, Jr.,***[7] the respondent and some of his court employees were found to have violated pertinent circulars and orders on the procedure for raffling of cases. The respondent judge acted on 518 petitions for voluntary confinement and rehabilitation of drug dependents filed from 1998 to 2006; these petitions had not been raffled as required and had instead been brought directly to the respondent's sala, in clear violation of Section 2, Rule 20 of the 1997 Rules of Civil Procedure. **We fined him ₱40,000 with the ever-present warning that the next offense would merit a sterner penalty.**

At this point, the respondent has already mocked this Court by continuing his violations and his perverse ways, and getting away with it. He will continue to mock this Court when he reads that all that we can do is **fine him another ₱100,000.00** that the majority found sufficient and appropriate for his **SIXTH** offense. Unfortunately for the Court, this time we can no longer serve him a warning as he is now beyond such warning.

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[5] A.M. No. RTJ-04-1840, August 2, 2007, 529 SCRA 55.

[6] A.M. No. RTJ-08-2207, promulgated on May 7, 2008.

[7] A.M. No. RTJ-07-2074, promulgated on October 24, 2008.

A **second reason** why this Dissent believes that the respondent merits the ultimate administrative penalty is this Court's record of dismissing other members of the judiciary for less than the record of offenses that the respondent judge committed in his years of service, as well as the message we are communicating to the public who will surely learn of how the majority has been unusually lenient with the respondent judge. We shall be disturbing existing jurisprudence and starting a jurisprudential trend that may prove detrimental to the administration of justice in the long run.

Given the penalty the majority imposed on the respondent judge, the members of the Judiciary who had earlier been dismissed as well as the public would cry "foul" when they learn of the Gako record of surviving his sixth major offense. To name some, this Court since 1992 has dismissed:

Judge Florante Madrono;[8] Judge Angelito C. Teh;[9] Judge Eduardo F. Cartagena;[10] Judge Bienvenido M. Rebosura;[11] Judge Walerico Butalid;[12] Judge Estanislao S. Belan;[13] Judge Rica H. Lacson;[14]

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[8] A.M. No. MTJ-90-486, October 20, 1992, 214 SCRA 740. The Court held that the penalty against a judge found guilty of several violations is dismissal from the service with forfeiture of all salaries, benefits and leave credits to which he may be entitled and with prejudice to reemployment in the government service, including government-owned or controlled corporations.

[9] A.M. No. RTJ-97-1375, October 16, 1997, 280 SCRA 623. Judge Teh was dismissed for gross ignorance of the law.

[10] A.M. No. 95-9-98-MCTC, December 4, 1997, 282 SCRA 370. Judge Cartagena was dismissed for gross incompetence, ignorance of the law, and misconduct.

[11] A.M. No. MTJ-95-1069, January 28, 1998, 285 SCRA 109. Judge Rebosura was dismissed for gross misconduct.

[12] A.M. No. 97-8-242-RTC, August 5, 1998, 293 SCRA 589. The Court dismissed Judge Butalid for dishonesty.

[13] A.M. No. MTJ-95-1059, August 7, 1998, 294 SCRA 1. Judge Belan was dismissed for conduct prejudicial to the best interest of the service and for dishonesty.

[14] A.M. No. MTJ-93-881, August 3, 1998, 293 SCRA 524. For violations of Canon 3 of the Code of Judicial Conduct and Memorandum Circular No. 30 of the Civil Service Commission, Judge Lacson was dismissed from service.

Judge Abelardo H. Santos;[15] Judge Melchor E. Bonilla;[16] Judge Erna Falloran-Aliposa;[17] Judge Salih Musa;[18] Judge Galdino B. Jardin, Sr.;[19] and Judge Fabian M. Bautista.[20] In recent memory, we dismissed no less than three Justices of the Court of Appeals: Justices Demetrio Demetria for violating Rule 2.04 of the Code of Judicial Conduct in A.M. No. 00-7-09-CA;[21] Justice Elvi John Asuncion for gross ignorance of the law in A.M. No. 06-44-CA-J;[22] and very recently, Justice Vicente Roxas for multiple violations of the canons of the Code of Judicial Conduct, grave misconduct, dishonesty, undue interest and conduct prejudicial to the best interest of the service in A.M. No. 08-8-11-CA,[23] his second offense.

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[15] A.M. No. MTJ-99-1197, May 26, 1999, 307 SCRA 582. Judge Santos was dismissed for transgressing Rule 2.01 of the Code of Judicial Conduct.

[16] A.M. Nos. MTJ-94-923 and MTJ-95-11-125-MCTC, September 10, 1999, 314 SCRA 141. Judge Bonilla was dismissed for falsification of public document, graft and corruption, dishonesty, gross misconduct, grave abuse of authority and immorality.

[17] A.M. No. RTJ-99-1446, March 9, 2000, 327 SCRA 427. Judge Falloran-Aliposa was dismissed for serious misconduct and for failure to measure up to the exacting standards of conduct and morality expected of members of the judiciary.

[18] A.M. No. SCC-00-5, November 29, 2000, 346 SCRA 240. The Court dismissed Judge Musa for offensive conduct, a violation of the Code of Judicial Conduct.

[19] A.M. No. RTJ-99-1448, April 6, 2000, 330 SCRA 79. Judge Jardin, Sr. was dismissed for impropriety and failure to measure up to stringent judicial standards under the Code of Judicial Conduct.

[20] A.M. No. MTJ-99-1188, July 2, 2001, 360 SCRA 489. Judge Bautista was dismissed for grave misconduct.

[21] *In Re: Derogatory News Items Charging Court of Appeals Associate Justice Demetrio Demetria with Interference On Behalf of a Suspected Drug Queen*, March 27, 2001, 355 SCRA 366.

[22] *Padilla vs. Associate Justice Elvi John S. Asuncion, Court of Appeals*, March 20, 2007, 518 SCRA 512.

[23] *Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 [Antonio Rosete, et al. v. Securities and Exchange Commission, et al.]*, September 9, 2008.

Why Judge Ireneo Gako has been differently treated will be a question that many will ask. Many will even wonder why, after finding the respondent judge liable and fining him ₱100,000.00, the majority is even directing the Office of the Court Administrator to "facilitate the processing of the retirement papers of [respondent judge] for the speedy release of his retirement benefits."

The Dissent reiterates that respondent Judge Ireneo Gako should be found guilty of gross misconduct for knowingly rendering an unjust judgment, gross partiality, and gross ignorance of the law. He should be imposed the penalty of forfeiture of all benefits, except only for already earned leave credits, and perpetually disqualified from appointment to any branch, instrumentality or agency of the government, including government-owned and –controlled corporations. Only by such measures and by consistency in our penalties can we effectively relay the message that we are serious and we mean business when we say that we shall cleanse the courts, *including our own ranks,* of hoodlums in robes and scalawags who bring the administration of justice to disrepute.

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**SECOND DIVISION**

[G.R. No. 123650. March 23, 2009]

**WESTMONT BANK (formerly ASSOCIATED CITIZENS BANK and now UNITED OVERSEAS BANK, PHILS.) and THE PROVINCIAL SHERIFF OF RIZAL,** *petitioners, vs.* **INLAND CONSTRUCTION AND DEVELOPMENT CORP.,** *respondent.*

[G.R. No. 123822. March 23, 2009]

**WESTMONT BANK (formerly ASSOCIATED CITIZENS BANK and now UNITED OVERSEAS BANK, PHILS.),** *petitioner, vs.* **COURT OF APPEALS and INLAND CONSTRUCTION AND DEVELOPMENT CORP.,** *respondents.*

**SYLLABUS**

**1. COMMERCIAL LAW; CORPORATION BY ESTOPPEL; OFFICERS; IF A CORPORATION ALLOWED ITS OFFICER TO ACT WITHIN THE SCOPE OF AN APPARENT AUTHORITY, IT IS ESTOPPED FROM DENYING SUCH OFFICER'S AUTHORITY; APPLICATION.—** The general rule remains that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. If a corporation, however, consciously lets one of its officers, or any other agent, to act within the scope of an apparent authority, it will be estopped from denying such officer's authority. The records show that Calo was the one assigned to transact on petitioner's behalf respecting the loan transactions and arrangements of Inland as well as those of Hanil-Gonzales and Abrantes. Since it conducted business through Calo, who is an Account Officer, it is presumed that he had authority to sign for the bank in the Deed of Assignment.

**2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; A CORPORATION SHOULD FIRST PROVE THAT ITS OFFICER IS NOT AUTHORIZED TO ACT ON ITS BEHALF BEFORE THE BURDEN OF EVIDENCE SHIFTS TO THE OTHER PARTY TO PROVE OTHERWISE; CASE AT BAR.—** [T]he Court's directive in *Yao Ka Sin Trading* is that a corporation should *first* prove by clear evidence that its corporate officer is **not** in fact authorized to act on its behalf ***before*** the burden of evidence shifts to the other party to prove, by previous specific acts, that an officer was clothed by the corporation with apparent authority. It bears noting that in *Westmont Bank v. Pronstroller*, the therein petitioner Westmont Bank, through a management committee, proved that it rejected the letter-agreement entered into by its assistant

vice-president. Consequently, the therein respondent had to prove by citing *other instances* of the said officer's apparent authority to bind the bank-therein petitioner. In the present petitions, petitioner-bank failed to discharge its primary burden of proving that Calo was not authorized to bind it, as it did not present proof that Calo was unauthorized. It did not present, much less cite, any Resolution from its Board of Directors or its Charter or By-laws from which the Court could reasonably infer that he indeed had no authority to sign in its behalf or bind it in the Deed of Assignment. The May 20, 1985 inter-office memorandum stating that Calo had "no signing authority" remains self-serving as it does not even form part of petitioner's body of evidence. Thus, the assertion that the petitioner cannot be faulted for its delay in repudiating the apparent authority of Calo is similarly flawed, there being no evidence on record that it had actually repudiated such apparent authority.

**BRION, *J., dissenting opinion:***

**1. COMMERCIAL LAW; CORPORATION BY ESTOPPEL; DOCTRINE OF APPARENT AUTHORITY, EXPLAINED; APPLICATION. —** Under the doctrine of apparent authority, the principal is liable only as to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none has been given. Significantly, there was no reference in the *ponencia* to past acts of the bank sufficient to create the impression that Calo was clothed with apparent authority, *i.e.*, specific instances in the past showing that the bank allowed Calo, as a bank officer, to act with authority to bind the corporation, and that he did so without the bank's objection. Such apparent authority may be established by proof of *the course of business*, the *usages and practices* of the bank and by the *knowledge* which the board of directors had, or must be *presumed* to have, of acts of Calo in and about the bank's affairs. Interestingly, the *ponencia* could only name Calo as the officer in charge of the accounts of Inland and Hanil-Gonzales with the bank, and point out that he signed the deed of assignment. Thus, the inevitable question was: what was the extent of Calo's duties as an account officer? If these involve merely the ordinary, routine administrative aspects of handling the accounts of the bank's clients (as opposed to managerial and discretionary transactions), then there is no basis to recognize in Calo the authority to consent a substitution

of debtors that would novate Inland's and the bank's loan and accessory security agreements. What this authority really was, the local courts and the *ponencia* did not say.

**2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN THE ABSENCE OF PROOF OF APPARENT AUTHORITY, NO BURDEN OF EVIDENCE SHIFTS TO A CORPORATION TO PROVE ANYTHING.—** [I]n the absence of proof of the bank's consent given through an officer expressly or impliedly and adduced at the first instance by Inland to support its plea to restrain the bank from foreclosing on the mortgage given, then no burden of evidence shifts to the bank to prove anything, particularly the fact that Calo was not authorized to sign for the bank and bind the bank. Apparently, the lower courts duly recognized that no evidentiary basis existed to recognize Calo's binding authority; hence, the lower courts simply relied on evidence that the bank ratified the assignment Inland made, thus freeing Inland from the obligation to pay the bank.

**3. ID.; ID.; ABSENCE OF EVIDENCE OF RATIFICATION OF ANY AGREEMENT.—** [T]here exists no evidence that there had been ratification of any agreement substituting Hanil-Gonzales as the new debtor bound to pay for Inland's obligation to the bank. x x x It may well be asked – what is there to ratify when the parties to the loan agreement themselves showed that they recognized the loan to be subsisting at the time of the foreclosure and of the filing of the complaint for injunction? The act of ratification that the lower courts pointed to and which the *ponencia* itself recognized was the alleged approval by the bank's Executive Committee of the re-structuring of the loans of Hanil-Gonzales that included Inland's loan of ₱880,000.00. I find the recognition of ratification questionable for several reasons. The cited Executive Board action came only in 1982, or way after the foreclosure transpired (in December 1979). Thus, it was not a defense that could have been available at the time the foreclosure was made. The alleged ratification, too, was only a part of the re-structuring of the loans of Liberty Construction and Development Corporation and its sister-company, Hanil-Gonzales Construction and Development Corporation. It mentioned only that *"*[*t*]*his includes the account of Inland Construction & Development Corporation which had been assumed by HGCDC."* In other words, it was not a transaction between the bank, on the one

hand, and HGCDC and Inland, on the other, relating specifically to Inland's loan and security obligations. The only legitimate conclusion that may be derived from these facts is that HGCDC undertook to pay the indebtedness of Inland. There was no reference in any way to the Deed of Assignment that was allegedly being ratified. No statement indicated the terms, as between HGCDC and Inland, of the assumption of liability. Specifically, there was no indication that the Executive Committee was accepting that HGCDC was henceforth the debtor in substitution of Inland, and that the latter's accessory mortgage obligation had been waived by the bank. *The plain reality that spoke for itself, even at that time, was that there was no such substitution and no waiver of the mortgage that Inland constituted over its properties; otherwise, the present case which was then pending would have already been settled.* Thus, I could not avoid concluding that the lower courts' and the *ponencia's* conclusion that there had been ratification was propped up by very meager evidentiary support and that, if at all, the *ponencia* drew the wrong conclusions from the given facts.

**4. CIVIL LAW; OBLIGATIONS; NOVATION; WAYS AND REQUISITES TO EFFECT A VALID NOVATION, EXPLAINED.—** There are two ways to effect novation: expressly, when it is explicitly stated and declared in unequivocal terms, or impliedly, when the two obligations are incompatible on every point. The Court declared in *Ajax Marketing and Development Corporation v. Court of Appeals*: [T]o effect a subjective novation by a change in the person of the debtor, **it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation.** There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety. xxx Novation arising from a purported change in the person of the debtor must be clear and express xxx. Taking the above principles and Article 1293 of the Civil Code together, two things must thus exist for there to be a valid novation by substitution of the debtor: clear and express release of the original debtor from the obligation upon the assumption by the new debtor of the obligation, and the consent of the creditor thereto.

**5. ID.; ID.; ID.; THERE WAS NEITHER EXPRESS NOR IMPLIED NOVATION IN CASE AT BAR.—** In this case, the deed of assignment cannot be considered as expressly novating Inland's

promissory note. Although the terms of the deed declare that Hanil-Gonzales assumes full and complete liability to pay the loan obligation of Inland under its promissory note, there was no effective consent by the creditor to the substitution of the debtor. Calo's authority to bind the Bank – the issue presented before the Court for adjudication – has been discredited by the failure to show Calo's authority, or at the very least, to attribute prior conduct by the bank holding out Calo's authority to sign and bind the bank. Neither can it be convincingly declared that implied novation took place when the bank agreed to restructure Hanil-Gonzales' loan that included Inland's. There is no irreconcilable incompatibility between the obligation of Inland under its promissory note and that of Hanil-Gonzales' under the loan restructuring agreement. That a creditor agrees to accept payment by a third person of the debt does not constitute an implied acceptance of the substitution of the debtor, absent any agreement expressly releasing the original debtor; the creditor may still enforce the obligation against the original debtor. Nothing in the agreement to restructure the loan declared that Inland was released from its obligation under its promissory notes; in fact, as earlier mentioned, the prior foreclosure proceedings instituted by the bank precluded this inference. Although the bank clearly consented to the restructuring of the loan, this cannot be presumed to include the consent to release the original debtor from the obligation. Without such release, there is no novation; the third person who assumed the obligation of the debtor merely becomes either a co-debtor or a surety – *depending on the circumstances*: if there is no agreement as to solidarity, the first and the new debtors are considered obligated jointly.

**APPEARANCES OF COUNSEL**

*Villanueva Caña and Associates Law Offices* and *Agulto Hilao & Associates* for Westmont Bank.

*Honesto L. Cueva* for Inland Construction and Dev't. Corp.

## D E C I S I O N

**CARPIO MORALES, *J.*:**

Inland Construction and Development Corp. (Inland) obtained various loans and other credit accommodations from petitioner, then known as Associated Citizens Bank ([the bank] which later became United Overseas Bank, Phils., and still later Westmont Bank) in 1977.

To secure the payment of its obligations, Inland executed real estate mortgages over three real properties in Pasig City covered by Transfer Certificates of Title Nos. 4820, 4821 and 4822.[1]

Inland likewise issued promissory notes in favor of the bank, *viz*:

> Promissory Note No. BD-2739-77
> Amount: ₱155,000.00
> Due Date: January 2, 1978[2]
>
> **Promissory Note No. BD-2884-77**
> **Amount: ₱880,000.00**
> **Due Date: February 23, 1978[3]**
>
> Promissory Note No. BD-2997
> Amount: ₱60,000.00
> Due Date: March 22, 1978[4] (Emphasis supplied)

When the first and second promissory notes fell due, Inland defaulted in its payments. It, however, authorized the bank to debit ₱350,000 from its savings account to partially satisfy its obligations.[5]

It appears that by a Deed of Assignment, Conveyance and Release dated May 2, 1978, Felix Aranda, President of Inland,

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[1] Records, pp. 2-3.

[2] *Id.* at 248; Exhibit "B".

[3] *Id.* at 250; Exhibit "C".

[4] *Id.* at 252; Exhibit "D".

[5] *Id.* at 256.

assigned and conveyed all his rights and interests at Hanil-Gonzales Construction & Development (Phils.) Corporation (Hanil-Gonzales Corporation) in favor of Horacio Abrantes (Abrantes), Executive Vice-President and General Manager of Hanil-Gonzales Corporation. Under the same Deed of Assignment, it appears that Abrantes assumed, among other obligations of Inland and Aranda, **Promissory Note No. BD-2884-77** in the amount of ₱800,000 as shown in the May 26, 1978 Deed of Assignment of Obligation in which Aranda and Inland, on one hand, and Abrantes and Hanil-Gonzales Corporation, on the other, forged as follows:

x x x x x x x x x.

WHEREAS, among the obligations **assumed** by Mr. HORACIO C. ABRANTES [in the May 2, 1978 Deed] is the account of the FIRST PARTY (Aranda and Inland) in favor of the ASSOCIATED CITIZENS BANK as evidenced by **Promissory Note No. BD-2884-77** in the amount of EIGHT HUNDRED EIGHTY THOUSAND (₱880,000.00) PESOS, x x x;

WHEREAS, **the parties herein have agreed to obtain the conformity of the ASSOCIATED CITIZENS BANK to the foregoing arrangement** x x x;

NOW, THEREFORE, the herein parties have mutually agreed that the SECOND PARTY (Abrantes and Hanil-Gonzalez) shall assume full and complete liability and responsibility for the payment to ASSOCIATED CITIZENS BANK Promissory Note No. BD-2884-77 x x x.

THE SECOND PARTY shall make such necessary arrangements with the ASSOCIATED CITIZENS BANK for the full liquidation of said account, x x x.

x x x. (Emphasis and underscoring supplied)

The bank's Account Officer, Lionel Calo Jr. (Calo), signed for its conformity to the deed.[6]

On December 14, 1979, Inland was served a Notice of Sheriff's Sale foreclosing the real estate mortgages over its real properties,

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[6] *Ibid.* at 260; Exhibit "O-1".

prompting it to file a complaint for injunction against the bank and the Provincial Sheriff of Rizal at the Regional Trial Court (RTC) of Pasig City.[7] This complaint was later amended.[8]

Answering the amended complaint, the bank underscored that it "had no knowledge, much less did it give its conformity to the alleged assignment of the obligation covered by PN# BD-2884 [-77]."[9]

The trial court found that the bank ratified the act of its account officer Calo, thus:

> x x x. Culled from the evidence on record, the Court finds that **the defendant Bank ratified the act of Calo when its Executive Committee *failed to repudiate* the assignment within a reasonable time and even approved the request for a restructuring of Liberty Const. & Dev. Corp./Hanil-Gonzales Construction & Development Corp.'s obligations, which included the ₱880,000.00 loan** (Exhibit "U" to "X", and its submarkings). Clearly, the assumption of the loan was very well known to the defendant Bank and the latter posed no objection to it. In fact, the positive act on the part of the defendant in restructuring the loan of the assignee attest to its consent in the said transaction. The evidence on record conveys the fact that the Hanil-Gonzales Const. and Development Corp. assumed the obligation of the plaintiff on the SECOND NOTE. Later, it asked the defendant for a restructuring of its loan, including the ₱880,000.00 loan. *Thereafter, payments were made by the assignee to the defendant Bank*. The preponderance of evidence tilts heavily in favor of the plaintiff claiming that a case of delegacion occurs.[10] (Emphasis and italics supplied; Underscoring in the original)

It accordingly rendered judgment in favor of Inland by Decision[11] of March 31, 1992, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, permanently, perpetually and forever

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[7] *Id.* at 2-8.

[8] *Id.* at 237-247.

[9] *Id.* at 307-308.

[10] *Id.* at 568-569.

[11] *Id.* at 562-577.

**restraining and enjoining** the defendants Associated Citizens Bank and the Sheriff of this Court **from proceeding with the foreclosure of and conducting an auction sale** on the real estate covered by and embraced in Transfer Certificates of Title Nos. 4820, 4821 and 4822 of the Register of Deeds of Rizal (now Pasig, Metro Manila) and to refund to plaintiff the amount of ₱8,866.89, with legal interest thereon from the filing of the complaint until full payment, with costs.

SO ORDERED. (Emphasis and underscoring supplied)

The bank appealed the trial court's decision to the Court of Appeals which, by Decision[12] of May 31, 1995, modified the same, disposing as follows:[13]

WHEREFORE, the decision appealed from is hereby *AFFIRMED* only insofar as it finds appellant Associated Bank to have ratified the Deed of Assignment (Exhibit "O"), but *REVERSED* in all other respects, and judgment is accordingly rendered ordering the plaintiff-appellee Inland Construction and Development Corporation to pay defendant-appellant Associated Bank the sum of One Hundred Eighty Six Thousand Two Hundred Forty One Pesos and Eighty Six Centavos (₱186,241.86) with legal interest thereon computed from December 21, 1979 until the same is fully paid.

No pronouncement as to costs.

SO ORDERED. (Underscoring supplied)

In affirming the observation of the trial court that the bank ratified the assignment of Inland's Promissory Note No. BD-2884-77, the appellate court discoursed as follows:

In the instant case, both the assignors (Aranda and Inland) and assignees (Abrantes and Hanil-Gonzales) in the subject deed of assignment have been major clients of Associated Bank for several years with accounts amounting to millions of pesos. **For several years, Associated Bank had, either intentionally or negligently, been habitually clothing Calo with the apparent powers to perform acts in behalf of the bank.** x x x.

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[12] *Rollo* (G.R. No. 123650), pp. 29-54.

[13] Penned by Associate Justice Cancio C. Garcia and concurred in by Associate Justices Arturo B. Buena and Delilah V. Magtolis.

x x x x x x x x x.

Calo signed the subject deed of assignment on or about May 26, 1978. The principal obligation covered by the deed involved a hefty sum of eight hundred eighty thousand pesos (₱880,000.00). Despite the enormity of the amount involved, **Associated Bank never made any attempt to repudiate the act of Calo until almost seven (7) years later**, when Mitos C. Olivares, Manager of the Cash Department of Associated Bank, issued an INTER-OFFICE MEMORANDUM dated May 20, 1985 which pertinently reads:

"2) Conforme of Associated Bank signed by Lionel Calo Jr. has no bearing since he has no authority to sign for the bank as he was only an account officer with no signing authority;

x x x x x x x x x.

5) I suggest, Mr. Calo be asked to be present at court hearings to explain why he signed for the bank, knowing his limitations"

**The abovequoted inter-office memorandum is addressed internally to the other offices within Associated Bank. It is not addressed to Inland or any outsider for that matter. Worse, it was not even offered in evidence by Associated Bank to give Inland the opportunity to object to or comment on the said document**, but was merely attached as one of the annexes to the bank's MEMORANDUM FOR DEFENDANTS. Obviously, no evidentiary weight may be attached to said inter-office memorandum, which is even self serving. In fact, it ought not to be considered at all. (Emphasis and underscoring supplied)

The appellate court, however, specifically mentioned that the "lower court erred when it rendered a decision which 'permanently, perpetually and forever' restrains the sheriff from proceeding with the threatened foreclosure auction sale of the subject mortgage properties."[14]

The bank moved for partial reconsideration of the appellate court's decision on the aspect of its ratification of the Deed of Assignment but the same was denied by Resolution[15] of January 24, 1996.

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[14] *Rollo* (G.R. No. 123822), p. 68.

[15] *Rollo* (G.R. No. 123650), p. 55.

The bank, via two different counsels,[16] filed before this Court separate petitions for review, G.R. No. 123650, *Associated Citizens Bank, et al. v. Court of Appeals, et al;* and G.R. No. 123822, *Westmont Bank (formerly Associated Bank) v. Inland Construction & Development Corp.*, assailing the same appellate court's decision. Owing to a series of oversight,[17] the petition in G.R. 123650 was initially dismissed but was later reinstated by Resolution of June 21, 1999.

The records[18] show that Inland failed to file its comment and memorandum on the petitions.

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[16] Agulto Hilao and Associates in G.R. No. 123650 and Villanueva Ebora & Caña Law Offices in G.R. No. 123822.

[17] *Rollo* (G.R. No. 123822), pp. 288-289; In the Status Report of August 18, 2005 by Atty. Enriqueta Esguerra-Vidal, First Division clerk of court, it was stated that "The motion for extension of time to file petition was denied in G.R. No. 123650 for failure to submit proof of service. The motion for extension of time in G.R. No. 123822 was granted.

However, the petition for review intended for G.R. No. 123822 was attached to G.R. No. 123650. This was eventually dismissed in the resolution of June 17, 1996 in G.R. No. 123650 for non-compliance with the statement of material dates and for late filing. On August 1, 1996, the entry of judgment was issued in G.R. No. 123650. Respondent Inland Construction and Development Corporation, through its counsel, Atty. Honesto Cueva filed a motion to remand case to the court of origin.

Owing to this confusion, counsel for G.R. No. 123822 filed a motion for clarification with prayer that the petition in G.R. No. 123650 be admitted as part of the records of G.R. No. 123822. Several other pleadings were filed to seek correction of this mistake such as the motion to resolve another motion for clarification and motion for reconsideration. Eventually, on June 21, 1999, the Court granted the reconsideration, reinstated the petition and required the respondent corporation to comment.

[18] *Ibid.*; Mrs. Corazon Aranda, wife of Felix Aranda, President of respondent corporation filed a letter informing the court of the formal withdrawal of the respondent corporation's counsel and of the death of her husband and requesting for time to look for another lawyer. In the resolution September 8, 1999, the Court required respondent corporation to submit the name and address of lawyer. This resolution was served on Mrs. Aranda but unserved on respondent corporation.

Petitioner was required to submit the new address of respondent corporation but submitted the same address as before.

Both petitions for review impute error on the part of the appellate court in

…AFFIRMING THE FINDING OF THE TRIAL COURT THAT PETITIONER HAVE [*SIC*] RATIFIED THE DEED OF ASSIGNMENT (EXH. "O").

The bank, which had, as reflected early on, become known as Westmont Bank (petitioner), maintains that Calo had no authority to bind it in the Deed of Assignment and that a single, isolated unauthorized act of its agent is not sufficient to establish that it clothed him with apparent authority. Petitioner adds that the records fail to disclose evidence of similar acts of Calo executed either in its favor or in favor of other parties.[19] Moreover, petitioner reasserts that the unauthorized act of Calo never came to its knowledge, hence, it is not estopped from repudiating the Deed of Assignment.[20]

The petitions fail.

The general rule remains that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.[21] If a corporation, however, consciously lets one of its officers, or any other agent, to act within the scope of an apparent authority, it will be estopped from denying such officer's authority.[22]

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Despite the lack of comment on the petition, the case was given due course and the parties were required to file memoranda on August 2, 2000. The due course resolution mentioned of a comment being considered but the Division Clerk of Court explained that this was merely an inadvertence as the format due course resolution was used.

Petitioner filed its memorandum but respondent corporation has no memorandum up to this date for the reason that resolutions sent to it have all returned unserved.

[19] *Rollo* (G.R. No. 123822), p. 221.

[20] *Id.* at 222-223.

[21] *Premium Marble Resources v. Court of Appeals*, G.R. No. 96551, 264 SCRA 11, 18 citing *Visayan v. NLRC*, G.R. No. 69999, April 30, 1991, 196 SCRA 410.

[22] *People's Aircargo and Warehousing Co. v. Court of Appeals*, G.R. No. 117847, October 7, 1998, 297 SCRA 170, 184-185 citing *Francisco v. GSIS*, 7 SCRA 577, 583 (1963).

The records show that Calo was the one assigned to transact on petitioner's behalf respecting the loan transactions and arrangements of Inland as well as those of Hanil-Gonzales and Abrantes. Since it conducted business through Calo, who is an Account Officer, it is presumed that he had authority to sign for the bank in the Deed of Assignment.

Petitioner cannot feign ignorance of the May 26, 1978 Deed of Assignment, the pertinent portion of which was quoted above. Notably, assignee Abrantes notified petitioner about his assumption of Inland's obligation. Thus, in his July 26, 1979 letter to petitioner, he wrote:

> This refers to the accounts of Liberty Construction and Development Corporation (LCDC) and our sister-company, Hanil-Gonzalez Construction & Development Corporation (HGCDC) which as of July 31, 1979 was computed at ₱1,814,442.40, inclusive of interest, penalties and fees, net of marginal deposits. **This includes the account of Inland Construction & Development Corporation which had been assumed by HGCDC**.[23] (Emphasis and underscoring supplied)

That petitioner sent the following reply-letter, dated November 29, 1982, to the above-quoted letter to it of assignee Abrantes indicates that it had full and complete knowledge of the assumption by Abrantes of Inland's obligation:

> We are pleased to advise you that our Executive Committee in its meeting last November 25, 1982, has approved your request for the restructuring of your outstanding obligations x x x.[24] (Underscoring supplied)

Respecting this reply-letter of the bank granting Hanil-Gonzales' request to restructure its loans, petitioner, as a banking institution, is expected to have exercised the highest degree of diligence and meticulousness in the conduct of its business. When it received the loan restructuring request, with specific mention of Inland's Promissory Note No. BD-2884-77, petitioner-bank was under obligation to fastidiously scrutinize such loan account. And since

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[23] *Rollo* (G.R. No. 123822), pp. 17-18.

[24] *Ibid.* at 17.

it clearly approved the request for restructuring, any "uncertainty" that its reply-letter approving such request may not thus work to prejudice Hanil-Gonzales or Inland.

Petitioner relies heavily, however, on the Court's pronouncement in *Yao Ka Sin Trading* that it was incumbent upon, in this case, Inland to prove that petitioner had clothed its account officer with apparent power to conform to the Deed of Assignment.[25]

Petitioner's simplistic reading of *Yao Ka Sin Trading v. Court of Appeals*[26] does not impress. In *Yao Ka Sin Trading*, the therein respondent cement company had shown by clear and convincing evidence that its president was not authorized to undertake a particular transaction. It presented its by-laws stating that only its board of directors has the power to enter into an agreement or contract of any kind. The company's board of directors even forthwith issued a resolution to repudiate the contract. Thus, it was only after the company successfully discharged its burden that the other party, the therein petitioner Yao Ka Sin Trading, had to prove that indeed the cement company had clothed its president with the apparent power to execute the contract by evidence of similar acts executed in its favor or in favor of other parties.

Unmistakably, the Court's directive in *Yao Ka Sin Trading* is that a corporation should *first* prove by clear evidence that its corporate officer is **not** in fact authorized to act on its behalf ***before*** the burden of evidence shifts to the other party to prove, by previous specific acts, that an officer was clothed by the corporation with apparent authority.

It bears noting that in *Westmont Bank v. Pronstroller*,[27] the therein petitioner Westmont Bank, through a management committee, proved that it rejected the letter-agreement entered

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[25] *Id.* at 784.

[26] G.R. No. 53820, June 15, 1992, 209 SCRA 763.

[27] G.R. No. 148444, July 14, 2008.

into by its assistant vice-president. Consequently, the therein respondent had to prove by citing *other instances* of the said officer's apparent authority to bind the bank-therein petitioner.

In the present petitions, petitioner-bank failed to discharge its primary burden of proving that Calo was not authorized to bind it, as it did not present proof that Calo was unauthorized. It did not present, much less cite, any Resolution from its Board of Directors or its Charter or By-laws from which the Court could reasonably infer that he indeed had no authority to sign in its behalf or bind it in the Deed of Assignment. The May 20, 1985 inter-office memorandum[28] stating that Calo had "no signing authority" remains self-serving as it does not even form part of petitioner's body of evidence.

Thus, the assertion that the petitioner cannot be faulted for its delay in repudiating the apparent authority of Calo is similarly flawed, there being no evidence on record that it had actually repudiated such apparent authority. It should be noted that it was the bank which pleaded that defense in the first place. What is extant in the records is a reasonable certainty that the bank had ratified the Deed of Assignment.

The assumption that a ruling on the issue of ratification would affect any and all foreclosure proceedings on the mortgaged properties remains unfounded. For the challenged appellate court's Decision[29] still mentioned the possibility of foreclosing on the mortgaged properties as Inland was still indebted to the bank in the amount of ₱186, 241.86 covering the other two promissory

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[28] Records, p. 557.

[29] Part of the CA Decision reads:

x x x x x x x x x.

It is uncontroverted that Inland obtained numerous and separate credit accommodations from [Westmont Bank]. The obligation under Promissory Note No. BD-2884-77 is only the tip-of-the-iceberg of Inland's numerous obligations to [Westmont Bank]. If Inland fails to pay the obligations incurred under Promissory Note No. BD-2884-77, [Westmont Bank] may not foreclose the subject mortgaged properties on that ground alone. However, if Inland defaults on its other obligations to [Westmont Bank], the latter is justified in foreclosing the subject mortgaged properties, x x x.

notes (No. BD-2739-77 and No. BD-2997) and other obligations that Inland was not able to satisfy upon maturity.

Both the trial court's and the appellate court's inferences and conclusion that petitioner ratified its account officer's act are thus rationally based on evidence and circumstances duly highlighted in their respective decisions. Absent any serious abuse or evident lack of basis or capriciousness of any kind, the lower courts' findings of fact are conclusive upon this Court.[30]

**WHEREFORE,** the petitions are *DENIED*. The decision of the Court of Appeals in CA-G.R. CV No. 39634 is *AFFIRMED*.

Costs against petitioner.

**SO ORDERED.**

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

*Brion, J.,* dissents.

## DISSENTING OPINION

**BRION, *J.*:**

I dissent based on three points. ***First***, the *ponencia* misappreciated the rule on burden of proof and burden of evidence by blaming the bank for the failure to prove that Calo had the authority to bind it. ***Second***, as the lower courts did, the *ponencia* glossed over evidence on record that would lead to a contrary conclusion. ***Third***, on very thin evidentiary support, the *ponencia* rushed to the conclusion that there was a novation that resulted in the substitution of debtor in the petitioner's loan agreement with respondent.

The present case is rooted in the complaint for injunction filed by Inland against the bank when the latter foreclosed on the real estate mortgage that the former had constituted on its

[30] *Cang v. Court of Appeals*, G.R. No. 105308, 357 Phil. 129, 146 (1998) citing *Del Mundo v. Court of Appeals*, 327 Phil. 463, 471 (1996).

[*] Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga who is on official leave.

properties to secure the payment of its loan from the bank. Among others, Inland based its complaint on a Deed of Assignment (dated May 26, 1978) of its loan of ₱880,000.00 to Hanil-Gonzales and Abrantes (collectively referred to as *Hanil-Gonzales*). The trial court concluded that the –

> … defendant bank ratified the act of Calo when its Executive Committee failed to repudiate the assignment within a reasonable time and even approved the request for a restructuring of Liberty Construction / Hanil-Gonzales Construction & Development Corp.'s obligation which included the ₱880,000.00 loan.

The Court of Appeals (*CA*) decision practically parroted this line when it noted that *"[f]or several years Associated Bank had, either intentionally or negligently, been habitually clothing Calo with apparent powers to perform acts in behalf of the bank,"* and that *"Associated Bank never made any attempt to repudiate the act of Calo, until seven (7) years later,"* citing an internal bank memorandum that it ironically observed *"was not even offered in evidence by Associated Bank."* The *ponencia*, on the other hand, maintained the position that the Deed of Assignment is valid and binding on the bank based on its finding that (a) Calo, as the bank's representative, had the required authority to enter into the transaction; and (b) the bank's subsequent acts showed its knowledge and conformity with the subject assignment when it agreed to restructure Hanil-Gonzales' loan obligations with the bank.

On my first point, Inland's case for injunction was anchored on the Deed of Assignment, the actionable document it cited and attached to its amended complaint for injunction. *The ultimate issue for Inland was whether there was basis to prevent the bank for foreclosing on the mortgage. It claimed that no basis exists because it had been freed from the obligation to pay because Hanil-Gonzales assumed the obligation under a Deed of Assignment and* ***that the bank consented to the substitution of debtor***. In its answer, the bank immediately and properly denied that it was a party to the Deed; it expressly stated that its alleged consent was given by Calo, an officer who did not have the authority to sign for and bind the bank.

Under this situation, it was for Inland to convince the trier of facts that indeed the Deed of Assignment exists and that the bank gave its consent to this deed; thus it had been freed from the obligation to pay the loan it secured from the bank. Under this claim, Calo's authority to act in behalf of the bank was an affirmative allegation on the part of Inland; it therefore had the burden to present clear and convincing evidence to prove that the bank gave its consent because Calo had the necessary authority to bind the bank.[1] *If Inland fails to discharge this burden, the bank need not even present refuting evidence.*

I note that the Deed of Assignment was essentially a bi-partite agreement between the assignor (Aranda and Inland) and the assignee (Abrantes and Hanil-Gonzales) who agreed "to obtain the conformity of the ASSOCIATED CITIZENS BANK to the foregoing arrangement."[2] The Deed was duly notarized with the parties, other than Calo, signing the notarial acknowledgment. Notably, Calo merely signed to give conformity; he was not a direct party to the deed, and he did not likewise indicate or attache proof of his authority to sign for the bank. Thus, on the face of this Deed, Inland had the burden to prove that there was valid consent by the bank so that it (Inland) could be freed of liability, *i.e.*, by proving that Calo had the authority to sign and bind the bank. This is highlighted by the fact that the bank placed its binding participation in the Deed in issue. In the absence of any direct evidence of such authority, Inland could have proven this authority only by proof that the bank had given Calo apparent authority. Under the doctrine of apparent authority, the principal is liable only as to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none has been given.

Significantly, there was no reference in the *ponencia* to past acts of the bank sufficient to create the impression that Calo was clothed with apparent authority, *i.e.*, specific instances in

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[1] See: *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, G.R. No. 129459, September 29, 1998, 296 SCRA 631.

[2] *Ponencia*, p. 3.

the past showing that the bank allowed Calo, as a bank officer, to act with authority to bind the corporation, and that he did so without the bank's objection. Such apparent authority may be established by proof of *the course of business*, the *usages and practices* of the bank and by the *knowledge* which the board of directors had, or must be *presumed* to have, of acts of Calo in and about the bank's affairs.[3]

Interestingly, the *ponencia* could only name Calo as the officer in charge of the accounts of Inland and Hanil-Gonzales with the bank, and point out that he signed the deed of assignment. Thus, the inevitable question was: what was the extent of Calo's duties as an account officer? If these involve merely the ordinary, routine administrative aspects of handling the accounts of the bank's clients (as opposed to managerial and discretionary transactions), then there is no basis to recognize in Calo the authority to consent a substitution of debtors that would novate Inland's and the bank's loan and accessory security agreements. What this authority really was, the local courts and the *ponencia* did not say.

To reiterate, in the absence of proof of the bank's consent given through an officer expressly or impliedly and adduced at the first instance by Inland to support its plea to restrain the bank from foreclosing on the mortgage given, then no burden of evidence shifts to the bank to prove anything, particularly the fact that Calo was not authorized to sign for the bank and bind the bank. Apparently, the lower courts duly recognized that no evidentiary basis existed to recognize Calo's binding authority; hence, the lower courts simply relied on evidence that the bank ratified the assignment Inland made, thus freeing Inland from the obligation to pay the bank.

The issue of ratification brings me to my second point that there exists no evidence that there had been ratification of any agreement substituting Hanil-Gonzales as the new debtor bound to pay for Inland's obligation to the bank. In the first place, it is not correct to say that the bank did not immediately repudiate

[3] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia*, G.R. No. 137686, February 8, 2000, 235 SCRA 901.

the Deed of Assignment and Calo's consent. To arrive at the point of repudiating the assignment, it must be first shown that the deed officially came to the knowledge of the bank. Other than Calo's alleged participation, I see no proof in the record or one cited in the *ponencia* to show that there had been official notice to the bank. *On the contrary, the evidence on record shows that after the Deed of Assignment on May 26, 1978, Inland was still paying its indebtedness to the bank. In fact, the Amended Complaint itself acknowledges that as of December 29, 1978, Inland still paid the bank ₱104,000.68, evidenced by an attached photocopy of the receipt the bank issued; and on November 7, 1979, Inland paid and was duly receipted for ₱100,000.00. The foreclosure came only in December 1979.* Under these facts, admitted no less by Inland, can it be concluded that there was effective notice on the bank that Inland was no longer liable? It may well be asked – what is there to ratify when the parties to the loan agreement themselves showed that they recognized the loan to be subsisting at the time of the foreclosure and of the filing of the complaint for injunction?

The act of ratification that the lower courts pointed to and which the *ponencia* itself recognized was the alleged approval by the bank's Executive Committee of the re-structuring of the loans of Hanil-Gonzales that included Inland's loan of ₱880,000.00. I find the recognition of ratification questionable for several reasons. The cited Executive Board action came only in 1982,[4] or way after the foreclosure transpired (in December 1979). Thus, it was not a defense that could have been available at the time the foreclosure was made. The alleged ratification, too, was only a part of the re-structuring of the loans of Liberty Construction and Development Corporation and its sister-company, Hanil-Gonzales Construction and Development Corporation. It mentioned only that "[*t*]*his includes the account of Inland Construction & Development Corporation which had been assumed by HGCDC.*" In other words, it was not a transaction between the bank, on the one hand, and HGCDC and Inland, on the other, relating specifically to Inland's loan and security obligations.

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[4] See: *ponencia*, pp. 8-9.

The only legitimate conclusion that may be derived from these facts is that HGCDC undertook to pay the indebtedness of Inland. There was no reference in any way to the Deed of Assignment that was allegedly being ratified. No statement indicated the terms, as between HGCDC and Inland, of the assumption of liability. Specifically, there was no indication that the Executive Committee was accepting that HGCDC was henceforth the debtor in substitution of Inland, and that the latter's accessory mortgage obligation had been waived by the bank. *The plain reality that spoke for itself, even at that time, was that there was no such substitution and no waiver of the mortgage that Inland constituted over its properties; otherwise, the present case which was then pending would have already been settled.* Thus, I could not avoid concluding that the lower courts' and the *ponencia's* conclusion that there had been ratification was propped up by very meager evidentiary support and that, if at all, the *ponencia* drew the wrong conclusions from the given facts.

My last cause for dissent is a legal point relating to novation or the substitution of debtors in a loan transaction. There are two ways to effect novation: expressly, when it is explicitly stated and declared in unequivocal terms, or impliedly, when the two obligations are incompatible on every point.[5] The Court declared in *Ajax Marketing and Development Corporation v. Court of Appeals*:[6]

> [T]o effect a subjective novation by a change in the person of the debtor, **it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation.** There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety. xxx Novation arising from a purported change in the person of the debtor must be clear and express xxx.

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[5] *National Power Corporation v. Dayrit*, G.R. Nos. 62845 to 46, November 26, 1983, 125 SCRA 849; *California Bus Lines, Inc. v. State Investment House, Inc.*, G.R. No. 147950, December 11, 2003, 418 SCRA 297.

[6] G.R. No. 118585, September 14, 1995, 248 SCRA 223.

Taking the above principles and Article 1293 of the Civil Code[7] together, two things must thus exist for there to be a valid novation by substitution of the debtor: clear and express release of the original debtor from the obligation upon the assumption by the new debtor of the obligation, and the consent of the creditor thereto.

In this case, the deed of assignment cannot be considered as expressly novating Inland's promissory note. Although the terms of the deed declare that Hanil-Gonzales assumes full and complete liability to pay the loan obligation of Inland under its promissory note, there was no effective consent by the creditor to the substitution of the debtor. Calo's authority to bind the Bank – the issue presented before the Court for adjudication – has been discredited by the failure to show Calo's authority, or at the very least, to attribute prior conduct by the bank holding out Calo's authority to sign and bind the bank.

Neither can it be convincingly declared that implied novation took place when the bank agreed to restructure Hanil-Gonzales' loan that included Inland's. There is no irreconcilable incompatibility between the obligation of Inland under its promissory note and that of Hanil-Gonzales' under the loan restructuring agreement. That a creditor agrees to accept payment by a third person of the debt does not constitute an implied acceptance of the substitution of the debtor, absent any agreement expressly releasing the original debtor; the creditor may still enforce the obligation against the original debtor.[8] Nothing in the agreement to restructure the loan declared that Inland was released from its obligation under its promissory notes; in fact, as earlier mentioned, the prior foreclosure proceedings instituted by the bank precluded this inference. Although the bank clearly consented to the restructuring of the loan, this cannot be presumed

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[7] Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, **but not without the consent of the creditor** xxx. [Emphasis supplied].

[8] *Magdalena Estates, Inc. v. Rodriguez*, 125 Phil. 151 (1966), citing *Pacific Commercial Company v. Sotto*, 34 Phil. 237 (1916); *Quinto v. People*, G.R. No. 126712, April 14, 1999, 305 SCRA 708.

to include the consent to release the original debtor from the obligation. Without such release, there is no novation; the third person who assumed the obligation of the debtor merely becomes either a co-debtor or a surety – *depending on the circumstances*: if there is no agreement as to solidarity, the first and the new debtors are considered obligated jointly.[9]

I rest my dissent on these considerations of facts and law.

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**EN BANC**

[G.R. No. 167614. March 24, 2009]

**ANTONIO M. SERRANO,** *petitioner, vs.* **GALLANT MARITIME SERVICES, INC. and MARLOW NAVIGATION CO., INC.,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; JUDICIAL REVIEW; CONDITIONS FOR THE COURT'S EXERCISE OF THE POWER OF JUDICIAL REVIEW OF THE ACT OF CONGRESS, PRESENT.—** When the Court is called upon to exercise its power of judicial review of the acts of its co-equals, such as the Congress, it does so only when these conditions obtain: (1) that there is an actual case or controversy involving a conflict of rights susceptible of judicial determination; (2) that the constitutional question is raised by a proper party and at the earliest opportunity; and (3) that the constitutional question is the very *lis mota* of the case, otherwise the Court will dismiss the case or decide the same on some other ground. Without a doubt, there exists in this case an actual controversy directly involving petitioner who is personally aggrieved that the labor tribunals and the

[9] *Servicewide Specialists v. Intermediate Appellate Court*, G.R. No. 74553, June 8, 1989, 174 SCRA 80.

CA computed his monetary award based on the salary period of three months only as provided under the subject clause. The constitutional challenge is also timely. It should be borne in mind that the requirement that a constitutional issue be raised at the earliest opportunity entails the interposition of the issue in the pleadings before a ***competent court***, such that, if the issue is not raised in the pleadings before that competent court, it cannot be considered at the trial and, if not considered in the trial, it cannot be considered on appeal. Records disclose that the issue on the constitutionality of the subject clause was first raised, not in petitioner's appeal with the NLRC, but in his Motion for Partial Reconsideration with said labor tribunal, and reiterated in his Petition for *Certiorari* before the CA. Nonetheless, the issue is deemed seasonably raised because it is not the NLRC but the CA which has the competence to resolve the constitutional issue. The NLRC is a labor tribunal that merely performs a quasi-judicial function – its function in the present case is limited to determining questions of fact to which the legislative policy of R.A. No. 8042 is to be applied and to resolving such questions in accordance with the standards laid down by the law itself; thus, its foremost function is to administer and enforce R.A. No. 8042, and not to inquire into the validity of its provisions. The CA, on the other hand, is vested with the power of judicial review or the power to declare unconstitutional a law or a provision thereof, such as the subject clause. Petitioner's interposition of the constitutional issue before the CA was undoubtedly seasonable. The CA was therefore remiss in failing to take up the issue in its decision. The third condition that the constitutional issue be critical to the resolution of the case likewise obtains because the monetary claim of petitioner to his lump-sum salary for the entire unexpired portion of his 12-month employment contract, and not just for a period of three months, strikes at the very core of the subject clause.

**2. ID.; ID.; CONSTITUTIONALITY OF STATUTES; SECTION 10 (5), REPUBLIC ACT NO. 8042 (THE SUBJECT CLAUSE) DOES NOT VIOLATE THE CONSTITUTIONAL PROVISION ON NON-IMPAIRMENT OF CONTRACTS.—** The prohibition is aligned with the general principle that laws newly enacted have only a prospective operation, and cannot affect acts or contracts already perfected; however, as to laws already in existence, their provisions are read into contracts

and deemed a part thereof. Thus, the non-impairment clause under Section 10, Article II is limited in application to laws about to be enacted that would in any way derogate from existing acts or contracts by enlarging, abridging or in any manner changing the intention of the parties thereto. As aptly observed by the OSG, the enactment of R.A. No. 8042 in 1995 preceded the execution of the employment contract between petitioner and respondents in 1998. Hence, it cannot be argued that R.A. No. 8042, particularly the subject clause, impaired the employment contract of the parties. Rather, when the parties executed their 1998 employment contract, they were deemed to have incorporated into it all the provisions of R.A. No. 8042. But even if the Court were to disregard the timeline, the subject clause may not be declared unconstitutional on the ground that it impinges on the impairment clause, for the law was enacted in the exercise of the police power of the State to regulate a business, profession or calling, particularly the recruitment and deployment of OFWs, with the noble end in view of ensuring respect for the dignity and well-being of OFWs wherever they may be employed. Police power legislations adopted by the State to promote the health, morals, peace, education, good order, safety, and general welfare of the people are generally applicable not only to future contracts but even to those already in existence, for all private contracts must yield to the superior and legitimate measures taken by the State to promote public welfare.

**3. ID.; ID.; JUDICIARY; JUDICIAL REVIEW; THREE LEVELS OF SCRUTINY AT WHICH THE COURT REVIEWS THE CONSTITUTIONALITY OF A CLASSIFICATION EMBODIED IN A LAW.—** There are three levels of scrutiny at which the Court reviews the constitutionality of a classification embodied in a law: a) the deferential or rational basis scrutiny in which the challenged classification needs only be shown to be rationally related to serving a legitimate state interest; b) the middle-tier or intermediate scrutiny in which the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest; and c) strict judicial scrutiny in which a legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class is presumed unconstitutional, and the burden is upon the

government to prove that the classification is necessary to achieve a ***compelling state interest*** and that it is the ***least restrictive means*** to protect such interest.

**4. ID.; ID.; ID.; ID.; ID.; STRICT JUDICIAL SCRUTINY AND ITS JUDICIAL PHILOSOPHY, DISCUSSED.—** In *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* the constitutionality of a provision in the charter of the *Bangko Sentral ng Pilipinas* (BSP), a government financial institution (GFI), was challenged for maintaining its rank-and-file employees under the Salary Standardization Law (SSL), even when the rank-and-file employees of other GFIs had been exempted from the SSL by their respective charters. Finding that the disputed provision contained a suspect classification based on salary grade, the Court deliberately employed the standard of strict judicial scrutiny in its review of the constitutionality of said provision. More significantly, it was in this case that the Court revealed the broad outlines of its judicial philosophy, to wit: Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. The deference stops where the classification violates a fundamental right, or ***prejudices persons accorded special protection by the Constitution***. When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, and require a stricter and more exacting adherence to constitutional limitations. Rational basis should not suffice. ***Admittedly, the view that prejudice to persons accorded special protection by the Constitution requires a stricter judicial scrutiny finds no support in American or English jurisprudence. Nevertheless, these foreign decisions and authorities are not per se controlling in this jurisdiction.*** At best, they are persuasive and have been used to support many of our decisions. We should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. x x x ***Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the***

***working class on the humane justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.*** x x x Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment. But if the challenge to the statute is premised on the denial of a fundamental right, or ***the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.*** A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

**5. ID.; ID.; ID.; ID.; STRICT JUDICIAL SCRUTINY APPLIED IN REVIEWING A STATUTE; THE SUBJECT CLAUSE CREATES A DISPARITY OF TREATMENT BETWEEN OFWs WITH EMPLOYMENT CONTRACTS OF LESS THAN ONE YEAR AND OFWs WITH EMPLOYMENT CONTRACTS OF ONE YEAR OR MORE.—** [T]he subject clause classifies OFWs into two categories. The first category includes OFWs with fixed-period employment contracts of less than one year; in case of illegal dismissal, they are entitled to their salaries for the entire unexpired portion of their contract. The second category consists of OFWs with fixed-period employment contracts of one year or more; in case of illegal dismissal, they are entitled to monetary award equivalent to only 3 months of the unexpired portion of their contracts. The disparity in the treatment of these two groups cannot be discounted. In *Skippers*, the respondent OFW worked for only 2 months out of his 6-month contract, but was awarded his salaries for the remaining 4 months. In contrast, the respondent

OFWs in *Oriental* and *PCL* who had also worked for about 2 months out of their 12-month contracts were awarded their salaries for only 3 months of the unexpired portion of their contracts. Even the OFWs involved in *Talidano* and *Univan* who had worked for a longer period of 3 months out of their 12-month contracts before being illegally dismissed were awarded their salaries for only 3 months. To illustrate the disparity even more vividly, the Court assumes a hypothetical OFW-A with an employment contract of 10 months at a monthly salary rate of US$1,000.00 and a hypothetical OFW-B with an employment contract of 15 months with the same monthly salary rate of US$1,000.00. Both commenced work on the same day and under the same employer, and were illegally dismissed after one month of work. Under the subject clause, OFW-A will be entitled to US$9,000.00, equivalent to his salaries for the remaining 9 months of his contract, whereas OFW-B will be entitled to only US$3,000.00, equivalent to his salaries for 3 months of the unexpired portion of his contract, instead of US$14,000.00 for the unexpired portion of 14 months of his contract, as the US$3,000.00 is the lesser amount. The disparity becomes more aggravating when the Court takes into account jurisprudence that, ***prior to the effectivity of R.A. No. 8042 on July 14, 1995,*** illegally dismissed OFWs, no matter how long the period of their employment contracts, were entitled to their salaries for the entire unexpired portions of their contracts. x x x *It is plain that prior to R.A. No. 8042, all OFWs, regardless of contract periods or the unexpired portions thereof, were treated alike in terms of the computation of their monetary benefits in case of illegal dismissal. Their claims were subjected to a uniform rule of computation: their basic salaries multiplied by the entire unexpired portion of their employment contracts.* The enactment of the subject clause in R.A. No. 8042 introduced a differentiated rule of computation of the money claims of illegally dismissed OFWs based on their employment periods, in the process ***singling out*** one category whose contracts have an unexpired portion of one year or more and subjecting them to the peculiar disadvantage of having their monetary awards limited to their salaries for 3 months or for the unexpired portion thereof, whichever is less, but all the while sparing the other category from such prejudice, simply because the latter's unexpired contracts fall short of one year.

**6. ID.; ID.; ID.; ID.; ID.; ID.; THE SUBJECT CLAUSE CREATES A SUB-LAYER OF DISCRIMINATION AMONG OFWs WHOSE CONTRACT PERIODS ARE FOR MORE THAN ONE YEAR.—** The Court notes that the subject clause "or for three (3) months for every year of the unexpired term, whichever is less" contains the qualifying phrases "every year" and "unexpired term." By its ordinary meaning, the word "term" means a limited or definite extent of time. Corollarily, that "every year" is but part of an "unexpired term" is significant in many ways: first, the unexpired term must be at least one year, *for if it were any shorter, there would be no occasion for such unexpired term to be measured by every year*; and second, the original term must be more than one year, for otherwise, whatever would be the unexpired term thereof will not reach even a year. Consequently, the more decisive factor in the determination of when the subject clause "for three (3) months for every year of the unexpired term, whichever is less" shall apply is not the length of the original contract period as held in *Marsaman,* but the length of the unexpired portion of the contract period — the subject clause applies in cases when the unexpired portion of the contract period is at least one year, which arithmetically requires that the original contract period be more than one year. Viewed in that light, the subject clause creates a sub-layer of discrimination among OFWs whose contract periods are for more than one year: those who are illegally dismissed with less than one year left in their contracts shall be entitled to their salaries for the entire unexpired portion thereof, while those who are illegally dismissed with one year or more remaining in their contracts shall be covered by the subject clause, and their monetary benefits limited to their salaries for three months only. To concretely illustrate the application of the foregoing interpretation of the subject clause, the Court assumes hypothetical OFW-C and OFW-D, who each have a 24-month contract at a salary rate of US$1,000.00 per month. OFW-C is illegally dismissed on the 12th month, and OFW-D, on the 13th month. Considering that there is at least 12 months remaining in the contract period of OFW-C, the subject clause applies to the computation of the latter's monetary benefits. Thus, OFW-C will be entitled, not to US$12,000.00 or the latter's total salaries for the 12 months unexpired portion of the contract, but to the lesser amount of US$3,000.00 or the latter's salaries for 3 months out of the 12-month unexpired

term of the contract. On the other hand, OFW-D is spared from the effects of the subject clause, for there are only 11 months left in the latter's contract period. Thus, OFW-D will be entitled to US$11,000.00, which is equivalent to his/her total salaries for the entire 11-month unexpired portion.

**7. ID.; ID.; ID.; ID.; ID.; ID.; THE SUBJECT CLAUSE RESULTS IN VARIED TREATMENT BETWEEN OFWs AND LOCAL WORKERS WITH FIXED-PERIOD EMPLOYMENT.—** [*P*]*rior to R.A. No. 8042, OFWs and local workers with fixed-term employment who were illegally discharged were treated alike in terms of the computation of their money claims: they were uniformly entitled to their salaries for the entire unexpired portions of their contracts.* But with the enactment of R.A. No. 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a 3-month cap, whereas no such limitation is imposed on local workers with fixed-term employment. ***The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.***

**8. ID.; ID.; ID.; ID.; ID.; ID.; WHAT CONSTITUTES COMPELLING STATE INTEREST; ABSENCE THEREOF IN CASE AT BAR.—** What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history. It is akin to the paramount interest of the state for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards, or in maintaining access to information on matters of public concern. In the present case, the Court dug deep into the records but found no compelling state interest that the subject clause may possibly serve. x x x The Court examined the rationale of the subject clause in the transcripts of the "Bicameral Conference Committee (Conference Committee) Meetings on the Magna Carta on

OCWs (Disagreeing Provisions of Senate Bill No. 2077 and House Bill No. 14314)." However, the Court finds no discernible state interest, let alone a compelling one, that is sought to be protected or advanced by the adoption of the subject clause. In fine, the Government has failed to discharge its burden of proving the existence of a compelling state interest that would justify the perpetuation of the discrimination against OFWs under the subject clause. Assuming that, as advanced by the OSG, the purpose of the subject clause is to protect the employment of OFWs by mitigating the solidary liability of placement agencies, such callous and cavalier rationale will have to be rejected. There can never be a justification for any form of government action that alleviates the burden of one sector, but imposes the same burden on another sector, especially when the favored sector is composed of private businesses such as placement agencies, while the disadvantaged sector is composed of OFWs whose protection no less than the Constitution commands. The idea that private business interest can be elevated to the level of a compelling state interest is odious.

**9. ID.; ID.; UNCONSTITUTIONALITY OF STATUTES; THE SUBJECT CLAUSE IS VIOLATIVE OF THE RIGHT OF THE OFWs TO EQUAL PROTECTION.—** [E]ven if the purpose of the subject clause is to lessen the solidary liability of placement agencies *vis-a-vis* their foreign principals, there are mechanisms already in place that can be employed to achieve that purpose without infringing on the constitutional rights of OFWs. The POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, dated February 4, 2002, imposes administrative disciplinary measures on erring foreign employers who default on their contractual obligations to migrant workers and/or their Philippine agents. These disciplinary measures range from temporary disqualification to preventive suspension. The POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, dated May 23, 2003, contains similar administrative disciplinary measures against erring foreign employers. Resort to these administrative measures is undoubtedly the less restrictive means of aiding local placement agencies in enforcing the solidary liability of their foreign principals. Thus, the subject clause in the 5th paragraph of Section 10 of R.A.

No. 8042 is violative of the right of petitioner and other OFWs to equal protection.

**10. ID.; ID.; ID.; ID.; THE SUBJECT CLAUSE CANNOT BE DECLARED UNCONSTITUTIONAL FROM THE LONE PERSPECTIVE THAT IT VIOLATES STATE POLICY ON LABOR UNDER SECTION 3, ARTICLE XIII OF THE CONSTITUTION; REASON.—** [T]here would be certain misgivings if one is to approach the declaration of the unconstitutionality of the subject clause from the lone perspective that the clause directly violates state policy on labor under Section 3, Article XIII of the Constitution. While all the provisions of the 1987 Constitution are presumed self-executing,' there are some which this Court has declared ***not judicially enforceable***, Article XIII being one, particularly Section 3 thereof, the nature of which, this Court, in *Agabon v. National Labor Relations Commission,* has described to be not self-actuating: x x x Thus, Section 3, Article XIII cannot be treated as a principal source of direct enforceable rights, for the violation of which the questioned clause may be declared unconstitutional. It may unwittingly risk opening the floodgates of litigation to every worker or union over every conceivable violation of so broad a concept as social justice for labor. It must be stressed that Section 3, Article XIII does not directly bestow on the working class any actual enforceable right, but merely clothes it with the status of a sector for whom the Constitution urges protection through executive or legislative action and ***judicial recognition***. Its utility is best limited to being an impetus not just for the executive and legislative departments, but for the judiciary as well, to protect the welfare of the working class. And it was in fact consistent with that constitutional agenda that the Court in *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* penned by then Associate Justice now Chief Justice Reynato S. Puno, formulated the judicial precept that when the challenge to a statute is premised on the perpetuation of prejudice against persons favored by the Constitution with special protection — such as the working class or a section thereof — the Court may recognize the existence of a suspect classification and subject the same to strict judicial scrutiny. The view that the concepts of suspect classification and strict judicial scrutiny formulated in *Central Bank Employees Association* exaggerate the significance of

Section 3, Article XIII is a groundless apprehension. *Central Bank* applied Article XIII in conjunction with the equal protection clause. Article XIII, by itself, without the application of the equal protection clause, has no life or force of its own as elucidated in *Agabon.*

**11. ID.; ID.; ID.; ID.; THE SUBJECT CLAUSE VIOLATES THE RIGHT TO SUBSTANTIVE DUE PROCESS.—** [T]he Court further holds that the subject clause violates petitioner's right to substantive due process, for it deprives him of property, consisting of monetary benefits, without any existing valid governmental purpose. The argument of the Solicitor General, that the actual purpose of the subject clause of limiting the entitlement of OFWs to their three-month salary in case of illegal dismissal, is to give them a better chance of getting hired by foreign employers. This is plain speculation. As earlier discussed, there is nothing in the text of the law or the records of the deliberations leading to its enactment or the pleadings of respondent that would indicate that there is an existing governmental purpose for the subject clause, or even just a pretext of one. The subject clause does not state or imply any definitive governmental purpose; and it is for that precise reason that the clause violates not just petitioner's right to equal protection, but also her right to substantive due process under Section 1, Article III of the Constitution.

**12. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; SALARY DEFINED AND DISTINGUISHED FROM OVERTIME PAY AND HOLIDAY PAY.—** The word *salaries* in Section 10(5) does not include overtime and leave pay. For seafarers like petitioner, DOLE Department Order No. 33, series 1996, provides a Standard Employment Contract of Seafarers, in which salary is understood as the basic wage, exclusive of overtime, leave pay and other bonuses; whereas overtime pay is compensation for all work "performed" in excess of the regular eight hours, and holiday pay is compensation for any work "performed" on designated rest days and holidays. By the foregoing definition alone, there is no basis for the automatic inclusion of overtime and holiday pay in the computation of petitioner's monetary award, unless there is evidence that he performed work during those periods.

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

**1. POLITICAL LAW; CONSTITUTIONAL LAW; UNCONSTITUTIONALITY OF STATUTES; SECTION 10 (5) REPUBLIC ACT NO. 8042 (THE SUBJECT CLAUSE) VIOLATES THE PROHIBITION AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW.—** I concur that the provision "or for three (3) months for every year of the unexpired term, whichever is less" in Section 10, paragraph 5, of Republic Act (RA) No. 8042 is unconstitutional, but on a different ground. The provision violates the prohibition against deprivation of property without due process of law. It is an invalid exercise of police power. Section 1, Article III, of the Constitution states that **no person shall be deprived of property without due process of law**. Protected property includes the right to work and the right to earn a living. x x x The right to work and the right to earn a living necessarily includes the right to bargain for better terms in an employment contract and the right to enforce those terms. If protected property does not include these rights, then the right to work and the right to earn a living would become empty civil liberties — the State can deprive persons of their right to work and their right to earn a living by depriving them of the right to negotiate for better terms and the right to enforce those terms. The assailed provision prevents the OFWs from bargaining for payment of more than three months' salary in case the employer wrongfully terminates the employment. The law may set a minimum amount that the employee can recover, but it cannot set a ceiling because this unreasonably curtails the employee's right to bargain for better terms of employment. The right to bargain for better terms of employment is a constitutional right that cannot be unreasonably curtailed by the State. Here, no compelling State interest has been advanced why the employee's right to bargain should be curtailed. The claim that the three-month salary cap provides an incentive to service contractors and manning agencies is specious because such incentive is at the expense of a protected and disadvantaged class — the OFWs. The right to property is not absolute — the prohibition against deprivation of property is qualified by the phrase "without due process of law." Thus, the State may deprive persons of property through the exercise of police power. However, the deprivation must be done with due process. **Substantive due process requires that the means employed**

**in depriving persons of property must not be unduly oppressive**.

**2. ID.; ID.; ID.; THE SUBJECT CLAUSE UNDERMINES THE MANDATE ON FULL PROTECTION TO LABOR UNDER SECTION 3, ARTICLE XIII AND SECTION 18, ARTICLE II, OF THE CONSTITUTION AND THE DECLARED POLICY OF R.A. NO. 8042.— The assailed provision is unduly oppressive, unreasonable, and repugnant to the Constitution**. It undermines the mandate of the Constitution to protect the rights of overseas workers and to promote their welfare. Section 3, Article XIII, of the Constitution states that the State shall (1) afford full protection to overseas labor, (2) promote full employment and equality of employment opportunities for all, and (3) guarantee the rights of all workers to security of tenure, humane conditions of work, and a living wage. Section 18, Article II, of the Constitution states that, "The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare." The assailed provision also undermines the declared policies of RA No. 8042. Section 2 of RA No. 8042 states that (1) the State shall, at all times, uphold the dignity of Filipino migrant workers; (2) the State shall afford full protection to overseas labor and promote full employment opportunities for all; (3) the existence of overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of Filipinos shall not, at any time, be compromised or violated; and (4) it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed Filipino migrant workers are adequately protected and safeguarded. The assailed provision is the reverse of the constitutional mandate and the declared policies of RA No. 8042: (1) instead of protecting the rights and promoting the welfare of OFWs, it unreasonably curtails their freedom to enter into employment contracts; (2) instead of empowering OFWs, it prevents them from bargaining for better terms; (3) instead of setting the minimum amount that OFWs are entitled to in case they are terminated without just, valid or authorized cause, it provides a ceiling; (4) instead of allowing OFWs who have been terminated without just, valid or authorized cause to recover what is rightfully due, it arbitrarily sets the recoverable amount to their three-month salary. x x x With the inclusion of the assailed provision in RA No. 8042, the OFWs, whom

the Constitution and the law particularly seek to protect, end up even more oppressed.

**3. ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE, NOT APPLICABLE.—** In her *ponencia*, Justice Ma. Alicia Austria-Martinez held that the assailed provision violated the equal protection clause. The application of the equal protection clause is improper because **local workers and OFWs are differently situated**. Local workers who perform activities which are usually necessary or desirable in the usual business or trade of the employer are deemed regular after six months of service. This is true even if the workers are for a fixed term.

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

**1. POLITICAL LAW; CONSTITUTIONAL LAW; UNCONSTITUTIONALITY OF STATUTES; SECTION 10 (5) REPUBLIC ACT NO. 8042 (THE SUBJECT CLAUSE) SHOULD BE STRUCK DOWN FOR VIOLATIONS OF THE CONSTITUTIONAL PROVISIONS IN FAVOR OF LABOR; REASONS, DISCUSSED.—** I concur with the *ponencia's* conclusion that Section 10 of Republic Act No. 8042, or the Migrant Workers and Overseas Filipinos Act (*R.A. No. 8042*), is unconstitutional. x x x My conclusion, however, proceeds from a different reason and constitutional basis. I believe that this provision should be struck down for violations of the constitutional provisions in favor of labor x x x. I begin by reading the assailed provision – Section 10, R.A. No. 8042 – in its constitutional context. Section 18, Article II of the Constitution declares it a state policy to affirm labor as a primary social economic force and to protect the rights of workers and promote their welfare. This policy is emphatically given more life and vitality under Article XIII, Section 3 of the Constitution. x x x Congress enacted R.A. No. 8042 "**to establish a higher standard of protection and promotion of the welfare of migrant workers, their families and of overseas Filipinos in distress**." The express policy declarations of R.A. No. 8042 show that its purposes are reiterations of the very same policies enshrined in the Constitution. x x x These declared purposes patently characterize R.A. No. 8042 as a direct implementation of the constitutional objectives on Filipino overseas work so that it must be read and understood in terms of these policy objectives. Under this interpretative guide, any provision in

R.A. No. 8042 inimical to the interest of an overseas Filipino worker (*OFW*) cannot have any place in the law. Further examination of the law shows that while it acknowledges that the State shall "*promote full employment,*" it states at the same time that "*the State does not promote overseas employment as a means to sustain economic growth and national development. The existence of overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of Filipino citizens shall not, at any time, be compromised or violated.*" In blunter terms, the overseas employment program exists only for OFW protection. Having said all these, the law concludes its Declaration of Policies with a statement the lawmakers may have perceived as an exception to the law's previously declared policies, by stating – "*[**n**]**onetheless**, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them.*" Thus, in express terms, the law recognizes that there can be "incentives" to service contractors and manning agencies in the spirit of encouraging greater deployment efforts. No mention at all, however, was made of incentives to the contractors' and agencies' principals, *i.e.*, the foreign employers in whose behalf the contractors and agencies recruit OFWs. The matter of money claims – the immediate subject of the present case – is governed by Section 10 of the law. This section grants the National Labor Relations Commission (*NLRC*) jurisdiction over OFW money claims. x x x [T]he law protects the OFW as against the employer and the recruitment agency in case of illegal termination of service, but limits this liability to the reimbursement of the placement fee and interest, and the payment of "*his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.*" After earlier declaring the principal/employer and the contractor/recruitment agency jointly and solidarily liable, the limitation of liability appears to be a step backward that can only be justified, under the terms of the law, if it is an "appropriate incentive." To be "appropriate," the incentive must necessarily relate to the law's purpose with reasonable expectation that it would serve this purpose; it must also accrue to its intended beneficiaries (the recruitment/placement agencies), and not to parties to whom

the reason for the grant does not apply. These considerations bring us to the question – can the disputed portion of Section 10 stand constitutional scrutiny? I submit that it cannot as it violates the constitutional provisions in favor of labor, as well as the requirements of substantive due process. The best indicator of the effect of the disputed portion of Section 10 on OFWs can be seen from the results of the pre-R.A. No. 8042 rulings of this Court that the *ponencia* painstakingly arranged in tabular form. The *ponencia's* table shows that by our own past rulings, **before R.A. No. 8042,** all illegal dismissals merited the payment of the salaries that the OFWs would have received for the unexpired portion of their contracts. **After R.A. No. 8042**, our rulings vary on the computation of what should be paid to illegally dismissed OFWs, but in all cases the principal's/ agency's adjudged liability was for less than the unexpired portion of the OFW's contract. **Anyway viewed, the situation of illegally dismissed OFWs changed for the worse after R.A. No. 8042**. In this sense, the disputed portion of Section 10 is one that goes against the interests of labor, based on R.A. No. 8042's own declared purposes and, more importantly, on constitutional standards. **Section 10 diminished rather than enhanced the protection the Constitution envisions for OFWs**.

**2. ID.; ID.; ID.; THE SUBJECT CLAUSE FAILS TO MEET THE SUBSTANTIVE DUE PROCESS REQUIREMENTS OF THE CONSTITUTION; REASONS, EXPLAINED.—** The more significant violation, however, that the disputed portion of Section 10 spawns relates to its character as a police power measure, and its failure to meet the substantive due process requirements of Article III, Section 1 of the Constitution. By the Office of the Solicitor General's (*OSG*) own representations, the disputed Section 10 is a police power measure adopted to mitigate the solidary liability of placement agencies. It "redounds to the benefit of the migrant workers whose welfare the government seeks to promote. The survival of legitimate placement agencies helps [assure] the government that migrant workers are properly deployed and are employed under decent and humane conditions." To constitutionally test the validity of this measure, substantive due process requires that there be: (1) a lawful purpose; and (2) lawful means or method to achieve the lawful purpose. I see nothing inherently unconstitutional in providing incentives to local service

contractors and manning agencies; they are significant stakeholders in the overseas employment program and providing them with encouragement – as R.A. No. 8042 apparently envisions in its Declaration of Policies – will ultimately redound to the benefit of the OFWs they recruit and deploy for overseas work. The Constitution itself also expressly recognizes "*the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.*" As entities acting for the principals/employers in the overseas employment program, the recruitment/manning agencies deserve no less. Viewed from this perspective, the purpose of encouraging greater efforts at securing work for OFWs cannot but be constitutionally valid. Thus, the issue before us in considering substantive due process is reduced to whether the means taken to achieve the purpose of encouraging recruitment efforts (***i.e.*, the incentive granted limiting the liability of recruitment/ manning agencies for illegal dismissals**) is reasonable. The first significant consideration in examining this issue is the question of liability – who is liable when a foreign principal/ employer illegally terminates the services of an OFW? Under Philippine law, the employer, as the contracting party who violated the terms of the contract, is primarily liable. In the overseas employment situation, the protective measures adopted under the law and the Philippine Overseas Employment Administration (*POEA*) rules to protect the OFW in his or her overseas contract best tell us how we regard liability under this contract. *First*, POEA Rules require, as a condition precedent to an OFW deployment, the execution of a master contract signed by a foreign principal/employer before it can be accredited by the POEA as an entity who can source its manpower needs from the Philippines under its overseas employment program. The master contract contains the terms and conditions the foreign principal/employer binds itself to in its employment relationship with the OFWs it will employ. *Second*, signed individual contracts of employment between the foreign principal/employer or its agent and the OFW, drawn in accordance with the master contract, are required as well. *Third*, the foreign aspects or incidents of these contracts are submitted to the Philippine labor attachés for verification at site. This is a protective measure to ensure the existence and financial capability of the foreign principal/employer. Labor

attaches verify as well the individual employment contracts signed by foreign principals/employers overseas. *Fourth*, the POEA Rules require the issuance by the foreign principal-employer of a special power of attorney authorizing the recruitment/manning agency to sign for and its behalf, and allowing itself to sue or be sued on the employment contracts in the Philippines through its authorized recruitment/manning agency. *Fifth*, R.A. No. 8042 itself and its predecessor laws have always provided that the liability between the principal and its agent (the recruitment/manning agency) is joint and solidary, thus ensuring that either the principal or the agent can be held liable for obligations due to OFWs. *Finally*, OFWs themselves can sue at the host countries with the assistance of Philippine embassies and labor offices. These measures collectively protect OFWs by ensuring the integrity of their contracts; by establishing the responsible parties; and by providing the mechanisms for their enforcement. In all these, the primary recourse is with the foreign principal employer who has direct and primary responsibility under the employment contract. Section 10 of R.A. No. 8042 affects these well-laid rules and measures, and in fact provides a hidden twist affecting the principal/employer's liability. While intended as an incentive accruing to recruitment/manning agencies, *the law, as worded, simply limits the OFWs' recovery in wrongful dismissal situations. Thus, it redounds to the benefit of whoever may be liable, including the principal/employer – the direct employer primarily liable for the wrongful dismissal.* In this sense, Section 10 – read as a grant of incentives to recruitment/manning agencies – oversteps what it aims to do by effectively limiting what is otherwise the full liability of the foreign principals/employers. *Section 10, in short, really operates to benefit the wrong party and allows that party, without justifiable reason, to mitigate its liability for wrongful dismissals.* Because of this hidden twist, the limitation of liability under Section 10 cannot be an "appropriate" incentive, to borrow the term that R.A. No. 8042 itself uses to describe the incentive it envisions under its purpose clause. What worsens the situation is the chosen mode of granting the incentive: instead of a grant that, to encourage greater efforts at recruitment, is directly related to extra efforts undertaken, the law simply limits their liability for the wrongful dismissals of already deployed OFWs. This is effectively a

legally-imposed partial condonation of their liability to OFWs, justified solely by the law's intent to encourage greater deployment efforts. Thus, the incentive, from a more practical and realistic view, is really part of a scheme to sell Filipino overseas labor *at a bargain* for purposes solely of attracting the market. Ironically, the OSG unabashedly confirmed this view in its Comment when it represented that *"[b]y limiting the liability to three months, Filipino seafarers have better chance of getting hired by foreign employees."* The so-called incentive is rendered particularly odious by its effect on the OFWs — *the benefits accruing to the recruitment/manning agencies and their principals are taken from the pockets of the OFWs* to whom the full salaries for the unexpired portion of the contract rightfully belong. Thus, the principals/employers and the recruitment/manning agencies even profit from their violation of the security of tenure that an employment contract embodies. Conversely, lesser protection is afforded the OFW, not only because of the lessened recovery afforded him or her by operation of law, but also because this same lessened recovery renders a wrongful dismissal easier and less onerous to undertake; the lesser cost of dismissing a Filipino will always be a consideration a foreign employer will take into account in termination of employment decisions. This reality, unfortunately, is one that we cannot simply wish away with the disputed Section 10 in place. Thus, this inherently oppressive, arbitrary, confiscatory and inimical provision should be struck down for its conflict with the substantive aspect of the constitutional due process guarantee. Specifically, *the phrase "***for three (3) months for every year of the unexpired terms, whichever is less***" in the fifth and final paragraph of Section 10 of R.A. 8042 should be declared unconstitutional.*

**3. ID.; ID.; JUDICIARY; JUDICIAL REVIEW; THE APPLICATION OF STRICT SCRUTINY STANDARD IS MISPLACED; REASONS, ELUCIDATED.—** *First*, I believe that the *ponencia's* use of the strict scrutiny standard of review – on the premise that the assailed clause established a *suspect classification* – is misplaced. *Second*, I do not see the present case as an occasion to further expand the use of the strict scrutiny standard which the Court first expanded in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*. A suspect classification is one where distinctions are made based on the most invidious bases for classification that violate

the most basic human rights, *i.e.*, on the basis of race, national origin, alien status, religious affiliation, and to a certain extent, sex and sexual orientation. With a suspect classification, the scrutiny of the classification is raised to its highest level: the ordinary presumption of constitutionality is reversed and government carries the burden of proving that its challenged policy is constitutional. To withstand strict scrutiny, the government must show that its policy is necessary to achieve a compelling state interest; if this is proven, the state must then demonstrate that the legislation is narrowly tailored to achieve the intended result. In the present case, I do not see the slightest indication that Congress actually intended to classify OFWs – between and among themselves, and in relation with local workers – when it adopted the disputed portion of Section 10. The congressional intent was to merely grant recruitment and manning agencies an incentive and thereby encourage them into greater deployment efforts, although, as discussed above, the incentive really works for the foreign principals' benefit at the expense of the OFWs. Even assuming that a classification resulted from the law, the classification should not immediately be characterized as a suspect classification that would invite the application of the strict scrutiny standard. *The disputed portion of Section 10 does not, on its face, restrict or curtail the civil and human rights of any single group of OFWs. At best, the disputed portion limits the monetary award for wrongful termination of employment – a tort situation affecting an OFW's economic interest.* This characterization and the *unintended* classification that unwittingly results from the incentive scheme under Section 10, to my mind, render a strict scrutiny disproportionate to the circumstances to which it is applied. I believe, too, that we should tread lightly in further expanding the concept of suspect classification after we have done so in *Central Bank*, where we held that ***classifications that result in prejudice to persons accorded special protection by the Constitution*** requires a stricter judicial scrutiny. The use of a suspect classification label cannot depend solely on whether the Constitution has accorded special protection to a specified sector. While the Constitution specially mentions labor as a sector that needs special protection, the involvement of or relationship to labor, by itself, cannot automatically trigger a suspect classification and the accompanying strict scrutiny;

much should depend on the circumstances of the case, on the impact of the illegal differential treatment on the sector involved, on the needed protection, and on the impact of recognizing a suspect classification on future situations. In other words, we should carefully calibrate our moves when faced with an equal protection situation so that we do not *misappreciate* the essence of what a suspect classification is, and thereby lessen its jurisprudential impact and value. Reserving this approach to the worst cases of unacceptable classification and discrimination highlights the importance of striking at these types of unequal treatment and is a lesson that will not be lost on all concerned, particularly the larger public. There is the added reason, too, that the reverse onus that a strict scrutiny brings directly strikes, in the most glaring manner, at the regularity of the performance of functions of a co-equal branch of government; inter-government harmony and courtesy demand that we reserve this type of treatment to the worst violations of the Constitution. Incidentally, I believe that we can arrive at the same conclusion and similarly strike down the disputed Section 10 by using the lowest level of scrutiny, thereby rendering the use of the strict scrutiny unnecessary. Given the OSG's positions, the resulting differential treatment the law fosters between Philippine-based workers and OFWs in illegal dismissal situations does not rest on substantial distinctions that are germane to the purpose of the law. No reasonable basis for classification exists since the distinctions the OSG pointed out do not justify the different treatment of OFWs and Philippine-based workers, specifically, why one class should be excepted from the consequences of illegal termination under the Labor Code, while the other is not. To be sure, the difference in work locations and working conditions that the OSG pointed out are not valid grounds for distinctions that should matter in the enforcement of employment contracts. Whether in the Philippines or elsewhere, the integrity of contracts – be they labor, commercial or political – is a zealously guarded value that we in the Philippines should not demean by allowing a breach of OFW contracts easy to undertake. This is true whatever may be the duration or character of employment; employment contracts, whatever their term and conditions may be subject only to their consistency with the law, must be respected during the whole contracted term and under the conditions agreed upon.

Significantly, the OSG could not even point to any reason other than the protection of recruitment agencies and the expansion of the Philippine overseas program as justification for the limitation of liability that has effectively distinguished OFWs from locally-based workers. These reasons, unfortunately, are not on the same plane as protection to labor in our constitutional hierarchy of values. Even RA 8042 repeats that *"the State does not promote overseas employment as a means to sustain economic growth and national development."* Under RA 8042's own terms, the overseas employment program exists only for OFW protection. Thus viewed, the expansion of the Philippine overseas deployment program and the need for incentives to achieve results are simply not valid reasons to justify a classification, particularly when the incentive is in the form of oppressive and confiscatory limitation of liability detrimental to labor. No valid basis for classification thus exists to justify the differential treatment that resulted from the disputed Section 10.

**APPEARANCES OF COUNSEL**

*Ceballos Law Firm* for petitioner.
*Apolinario N. Lomabao, Jr.* for respondents.

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

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

For decades, the toil of solitary migrants has helped lift entire families and communities out of poverty. Their earnings have built houses, provided health care, equipped schools and planted the seeds of businesses. They have woven together the world by transmitting ideas and knowledge from country to country. They have provided the dynamic human link between cultures, societies and economies. ***Yet, only recently have we begun to understand not only how much international migration impacts development, but how smart public policies can magnify this effect***.

United Nations Secretary-General Ban Ki-Moon
Global Forum on Migration and Development
Brussels, July 10, 2007[1]

[1] http://www.un.org/News/Press/docs/2007/sgsm11084.doc.htm.

For Antonio Serrano (petitioner), a Filipino seafarer, the last clause in the 5th paragraph of Section 10, Republic Act (R.A.) No. 8042,[2] to wit:

> Sec. 10. *Money Claims*. — x x x In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract ***or for three (3) months for every year of the unexpired term, whichever is less.***
>
> x x x (Emphasis and underscoring supplied)

does not magnify the contributions of overseas Filipino workers (OFWs) to national development, but exacerbates the hardships borne by them by unduly limiting their entitlement in case of illegal dismissal to their lump-sum salary either for the unexpired portion of their employment contract "or for three months for every year of the unexpired term, whichever is less" (subject clause). Petitioner claims that the last clause violates the OFWs' constitutional rights in that it impairs the terms of their contract, deprives them of equal protection and denies them due process.

By way of Petition for Review under Rule 45 of the Rules of Court, petitioner assails the December 8, 2004 Decision[3] and April 1, 2005 Resolution[4] of the Court of Appeals (CA), which applied the subject clause, entreating this Court to declare the subject clause unconstitutional.

Petitioner was hired by Gallant Maritime Services, Inc. and Marlow Navigation Co., Ltd. (respondents) under a Philippine

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[2] Migrant Workers and Overseas Filipinos Act of 1995, effective July 15, 1995.

[3] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo; *rollo*, p. 231.

[4] *Id.* at 248.

Overseas Employment Administration (POEA)-approved Contract of Employment with the following terms and conditions:

| | |
|---|---|
| Duration of contract | 12 months |
| Position | Chief Officer |
| Basic monthly salary | US$1,400.00 |
| Hours of work | 48.0 hours per week |
| Overtime | US$700.00 per month |
| Vacation leave with pay | 7.00 days per month[5] |

On March 19, 1998, the date of his departure, petitioner was constrained to accept a downgraded employment contract for the position of Second Officer with a monthly salary of US$1,000.00, upon the assurance and representation of respondents that he would be made Chief Officer by the end of April 1998.[6]

Respondents did not deliver on their promise to make petitioner Chief Officer.[7] Hence, petitioner refused to stay on as Second Officer and was repatriated to the Philippines on May 26, 1998.[8]

Petitioner's employment contract was for a period of 12 months or from March 19, 1998 up to March 19, 1999, but at the time of his repatriation on May 26, 1998, he had served only two (2) months and seven (7) days of his contract, leaving an unexpired portion of nine (9) months and twenty-three (23) days.

Petitioner filed with the Labor Arbiter (LA) a Complaint[9] against respondents for constructive dismissal and for payment of his money claims in the total amount of US$26,442.73, broken down as follows:

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[5] *Rollo*, p. 57.

[6] *Id.* at 58.

[7] *Id.* at 59.

[8] *Id.* at 48.

[9] *Id.* at 55.

| | |
|---|---|
| May 27/31, 1998 (5 days) incl. Leave pay | US$413.90 |
| June 01/30, 1998 | 2,590.00 |
| July 01/31, 1998 | 2,590.00 |
| August 01/31, 1998 | 2,590.00 |
| Sept. 01/30, 1998 | 2,590.00 |
| Oct. 01/31, 1998 | 2,590.00 |
| Nov. 01/30, 1998 | 2,590.00 |
| Dec. 01/31, 1998 | 2,590.00 |
| Jan. 01/31, 1999 | 2,590.00 |
| Feb. 01/28, 1999 | 2,590.00 |
| Mar. 1/19, 1999 (19 days) incl. leave pay | 1,640.00 |
| | 25,382.23 (sic) |
| Amount adjusted to chief mate's salary (March 19/31, 1998 to April 1/30, 1998)+ | 1,060.50[10] |
| TOTAL CLAIM | US$ 26,442.73[11] (sic) |

as well as moral and exemplary damages and attorney's fees.

The LA rendered a Decision dated July 15, 1999, declaring the dismissal of petitioner illegal and awarding him monetary benefits, to wit:

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[10] According to petitioner, this amount represents the pro-rated difference between the salary of US$2,590.00 per month which he was supposed to receive as Chief Officer from March 19, 1998 to April 30, 1998 and the salary of US$1,850.00 per month which he was actually paid as Second Officer for the same period. See LA Decision, *rollo*, pp. 107 and 112.

[11] Position Paper, *id.* at 53-54.

WHEREFORE, premises considered, judgment is hereby rendered declaring that the dismissal of the complainant (petitioner) by the respondents in the above-entitled case was illegal and the respondents are hereby ordered to pay the complainant [petitioner], jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of payment, the amount of ***EIGHT THOUSAND SEVEN HUNDRED SEVENTY U.S. DOLLARS (US $8,770.00), representing the complainant's salary for three (3) months of the unexpired portion of the aforesaid contract of employment***.

The respondents are likewise ordered to pay the complainant [petitioner], jointly and severally, in Philippine Currency, based on the rate of exchange prevailing at the time of payment, the amount of FORTY FIVE U.S. DOLLARS (US$ 45.00),[12] representing the complainant's claim for a salary differential. In addition, the respondents are hereby ordered to pay the complainant, jointly and severally, in Philippine Currency, at the exchange rate prevailing at the time of payment, the complainant's (petitioner's) claim for attorney's fees equivalent to ten percent (10%) of the total amount awarded to the aforesaid employee under this Decision.

The claims of the complainant for moral and exemplary damages are hereby DISMISSED for lack of merit.

All other claims are hereby DISMISSED.

SO ORDERED.[13] (Emphasis supplied)

In awarding petitioner a lump-sum salary of US$8,770.00, the LA based his computation on the salary period of three months only — rather than the entire unexpired portion of nine months and 23 days of petitioner's employment contract - applying the subject clause. However, the LA applied the salary rate of US$2,590.00, consisting of petitioner's "[b]asic salary, US$1,400.00/month + US$700.00/ month, fixed overtime pay, + US$490.00/month, vacation leave pay = US$2,590.00/compensation per month."[14]

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[12] The LA awarded petitioner US$45.00 out of the US$1,480.00 salary differential to which petitioner is entitled in view of his having received from respondents US$1,435.00 as evidenced by receipts marked as Annexes "F", "G" and "H", *id.* at 319-321.

[13] *Id.* at 114.

[14] *Rollo*, pp. 111-112.

Respondents appealed[15] to the National Labor Relations Commission (NLRC) to question the finding of the LA that petitioner was illegally dismissed.

Petitioner also appealed[16] to the NLRC on the sole issue that the LA erred in not applying the ruling of the Court in *Triple Integrated Services, Inc. v. National Labor Relations Commission*[17] that in case of illegal dismissal, OFWs are entitled to their salaries for the unexpired portion of their contracts.[18]

In a Decision dated June 15, 2000, the NLRC modified the LA Decision, to wit:

WHEREFORE, the Decision dated 15 July 1999 is MODIFIED. Respondents are hereby ordered to pay complainant, jointly and severally, in Philippine currency, at the prevailing rate of exchange at the time of payment the following:

| | | |
|---|---|---|
| 1. | Three (3) months salary<br>$1,400 x 3 | US$4,200.00 |
| 2. | Salary differential<br>US$4,245.00 | 45.00 |
| 3. | 10% Attorney's fees | 424.50 |
| | TOTAL | US$4,669.50 |

The other findings are affirmed.

SO ORDERED.[19]

The NLRC corrected the LA's computation of the lump-sum salary awarded to petitioner by reducing the applicable salary rate from US$2,590.00 to US$1,400.00 because R.A. No. 8042

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[15] *Id.* at 124.

[16] *Id.* at 115.

[17] G.R. No. 129584, December 3, 1998, 299 SCRA 608.

[18] Appeal Memorandum, *rollo*, p. 121.

[19] *Id.* at 134.

"does not provide for the award of overtime pay, which should be proven to have been actually performed, and for vacation leave pay."[20]

Petitioner filed a Motion for Partial Reconsideration, but this time he questioned the constitutionality of the subject clause.[21] The NLRC denied the motion.[22]

Petitioner filed a Petition for *Certiorari*[23] with the CA, reiterating the constitutional challenge against the subject clause.[24] After initially dismissing the petition on a technicality, the CA eventually gave due course to it, as directed by this Court in its Resolution dated August 7, 2003 which granted the petition for *certiorari*, docketed as G.R. No. 151833, filed by petitioner.

In a Decision dated December 8, 2004, the CA affirmed the NLRC ruling on the reduction of the applicable salary rate; however, the CA skirted the constitutional issue raised by petitioner.[25]

His Motion for Reconsideration[26] having been denied by the CA,[27] petitioner brings his cause to this Court on the following grounds:

I

The Court of Appeals and the labor tribunals have decided the case in a way not in accord with applicable decision of the Supreme Court involving similar issue of granting unto the migrant worker back wages equal to the unexpired portion of his contract of employment instead of limiting it to three (3) months.

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[20] NLRC Decision, *rollo*, p. 140.

[21] *Id.* at 146-150.

[22] *Id.* at 153.

[23] *Id.* at 155.

[24] *Id.* at 166-177.

[25] CA Decision, *id.* at 239-241.

[26] *Id.* at 242.

[27] *Id.* at 248.

II

In the alternative that the Court of Appeals and the Labor Tribunals were merely applying their interpretation of Section 10 of Republic Act No. 8042, it is submitted that the Court of Appeals gravely erred in law when it failed to discharge its judicial duty to decide questions of substance not theretofore determined by the Honorable Supreme Court, particularly, the constitutional issues raised by the petitioner on the constitutionality of said law, which unreasonably, unfairly and arbitrarily limits payment of the award for back wages of overseas workers to three (3) months.

III

Even without considering the constitutional limitations [of] Sec. 10 of Republic Act No. 8042, the Court of Appeals gravely erred in law in excluding from petitioner's award the overtime pay and vacation pay provided in his contract since under the contract they form part of his salary.[28]

On February 26, 2008, petitioner wrote the Court to withdraw his petition as he is already old and sickly, and he intends to make use of the monetary award for his medical treatment and medication.[29] Required to comment, counsel for petitioner filed a motion, urging the court to allow partial execution of the undisputed monetary award and, at the same time, praying that the constitutional question be resolved.[30]

Considering that the parties have filed their respective memoranda, the Court now takes up the full merit of the petition mindful of the extreme importance of the constitutional question raised therein.

***On the first and second issues***

The unanimous finding of the LA, NLRC and CA that the dismissal of petitioner was illegal is not disputed. Likewise not disputed is the salary differential of US$45.00 awarded to petitioner in all three fora. What remains disputed is only the computation

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[28] Petition, *rollo*, p. 28.

[29] *Id.* at 787.

[30] *Id.* at 799.

of the lump-sum salary to be awarded to petitioner by reason of his illegal dismissal.

Applying the subject clause, the NLRC and the CA computed the lump-sum salary of petitioner at the monthly rate of US$1,400.00 covering the period of three months out of the unexpired portion of nine months and 23 days of his employment contract or a total of US$4,200.00.

Impugning the constitutionality of the subject clause, petitioner contends that, in addition to the US$4,200.00 awarded by the NLRC and the CA, he is entitled to US$21,182.23 more or a total of US$25,382.23, equivalent to his salaries for the entire nine months and 23 days left of his employment contract, computed at the monthly rate of US$2,590.00.[31]

**The Arguments of Petitioner**

Petitioner contends that the subject clause is unconstitutional because it unduly impairs the freedom of OFWs to negotiate for and stipulate in their overseas employment contracts a determinate employment period and a fixed salary package.[32] It also impinges on the equal protection clause, for it treats OFWs differently from local Filipino workers (local workers) by putting a cap on the amount of lump-sum salary to which OFWs are entitled in case of illegal dismissal, while setting no limit to the same monetary award for local workers when their dismissal is declared illegal; that the disparate treatment is not reasonable as there is no substantial distinction between the two groups;[33] and that it defeats Section 18,[34] Article II of the Constitution which guarantees the protection of the rights and welfare of all Filipino workers, whether deployed locally or overseas.[35]

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[31] *Rollo*, p. 282

[32] Memorandum for Petitioner, *id.* at 741-742.

[33] *Id.* at 746-753.

[34] Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[35] *Rollo*, pp. 763-766.

Moreover, petitioner argues that the decisions of the CA and the labor tribunals are not in line with existing jurisprudence on the issue of money claims of illegally dismissed OFWs. Though there are conflicting rulings on this, petitioner urges the Court to sort them out for the guidance of affected OFWs.[36]

Petitioner further underscores that the insertion of the subject clause into R.A. No. 8042 serves no other purpose but to benefit local placement agencies. He marks the statement made by the Solicitor General in his Memorandum, *viz*.:

> Often, placement agencies, their liability being solidary, shoulder the payment of money claims in the event that jurisdiction over the foreign employer is not acquired by the court or if the foreign employer reneges on its obligation. Hence, placement agencies that are in good faith and which fulfill their obligations are unnecessarily penalized for the acts of the foreign employer. ***To protect them and to promote their continued helpful contribution in deploying Filipino migrant workers, liability for money claims was reduced under Section 10 of R.A. No. 8042.***[37] (Emphasis supplied)

Petitioner argues that in mitigating the solidary liability of placement agencies, the subject clause sacrifices the well-being of OFWs. Not only that, the provision makes foreign employers better off than local employers because in cases involving the illegal dismissal of employees, foreign employers are liable for salaries covering a maximum of only three months of the unexpired employment contract while local employers are liable for the full lump-sum salaries of their employees. As petitioner puts it:

> In terms of practical application, the local employers are not limited to the amount of backwages they have to give their employees they have illegally dismissed, following well-entrenched and unequivocal jurisprudence on the matter. On the other hand, foreign employers will only be limited to giving the illegally dismissed migrant workers the maximum of three (3) months unpaid salaries notwithstanding

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[36] Petition, *id.* at 735.

[37] Memorandum of the Solicitor General, *rollo*, p. 680.

the unexpired term of the contract that can be more than three (3) months.[38]

Lastly, petitioner claims that the subject clause violates the due process clause, for it deprives him of the salaries and other emoluments he is entitled to under his fixed-period employment contract.[39]

**The Arguments of Respondents**

In their Comment and Memorandum, respondents contend that the constitutional issue should not be entertained, for this was belatedly interposed by petitioner in his appeal before the CA, and not at the earliest opportunity, which was when he filed an appeal before the NLRC.[40]

**The Arguments of the Solicitor General**

The Solicitor General (OSG)[41] points out that as R.A. No. 8042 took effect on July 15, 1995, its provisions could not have impaired petitioner's 1998 employment contract. Rather, R.A. No. 8042 having preceded petitioner's contract, the provisions thereof are deemed part of the minimum terms of petitioner's employment, especially on the matter of money claims, as this was not stipulated upon by the parties.[42]

Moreover, the OSG emphasizes that OFWs and local workers differ in terms of the nature of their employment, such that their rights to monetary benefits must necessarily be treated differently. The OSG enumerates the essential elements that distinguish OFWs from local workers: first, while local workers perform their jobs within Philippine territory, OFWs perform their jobs for foreign employers, over whom it is difficult for

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[38] Memorandum for Petitioner, *id.* at 755.

[39] *Id.* at 761-763.

[40] *Rollo*, pp. 645-646 and 512-513.

[41] Alfredo L. Benipayo was Solicitor General at the time the Comment was filed. Antonio Eduardo B. Nachura (now an Associate Justice of the Supreme Court) was Solicitor General when the Memorandum was filed.

[42] Memorandum of the Solicitor General, *id.* at 662-665.

our courts to acquire jurisdiction, or against whom it is almost impossible to enforce judgment; and second, as held in *Coyoca v. National Labor Relations Commission*[43] and *Millares v. National Labor Relations Commission*,[44] OFWs are contractual employees who can never acquire regular employment status, unlike local workers who are or can become regular employees. Hence, the OSG posits that there are rights and privileges exclusive to local workers, but not available to OFWs; that these peculiarities make for a reasonable and valid basis for the differentiated treatment under the subject clause of the money claims of OFWs who are illegally dismissed. Thus, the provision does not violate the equal protection clause nor Section 18, Article II of the Constitution.[45]

Lastly, the OSG defends the rationale behind the subject clause as a police power measure adopted to mitigate the solidary liability of placement agencies for this "redounds to the benefit of the migrant workers whose welfare the government seeks to promote. The survival of legitimate placement agencies helps [assure] the government that migrant workers are properly deployed and are employed under decent and humane conditions."[46]

**The Court's Ruling**

The Court sustains petitioner on the first and second issues.

When the Court is called upon to exercise its power of judicial review of the acts of its co-equals, such as the Congress, it does so only when these conditions obtain: (1) that there is an actual case or controversy involving a conflict of rights susceptible of judicial determination;[47] (2) that the constitutional question

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[43] G.R. No. 113658, March 31, 1995, 243 SCRA 190.

[44] G.R. No. 110524, July 29, 2002, 385 SCRA 306.

[45] Memorandum of the Solicitor General, *rollo*, pp. 668-678.

[46] *Id.* at 682.

[47] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. No. 183591, October 14, 2008.

is raised by a proper party[48] and at the earliest opportunity;[49] and (3) that the constitutional question is the very *lis mota* of the case,[50] otherwise the Court will dismiss the case or decide the same on some other ground.[51]

Without a doubt, there exists in this case an actual controversy directly involving petitioner who is personally aggrieved that the labor tribunals and the CA computed his monetary award based on the salary period of three months only as provided under the subject clause.

The constitutional challenge is also timely. It should be borne in mind that the requirement that a constitutional issue be raised at the earliest opportunity entails the interposition of the issue in the pleadings before a ***competent court***, such that, if the issue is not raised in the pleadings before that competent court, it cannot be considered at the trial and, if not considered in the trial, it cannot be considered on appeal.[52] Records disclose that the issue on the constitutionality of the subject clause was first raised, not in petitioner's appeal with the NLRC, but in his Motion for Partial Reconsideration with said labor tribunal,[53] and reiterated in his Petition for *Certiorari* before the CA.[54] Nonetheless, the issue is deemed seasonably raised because it is not the NLRC but the CA which has the competence to resolve the constitutional issue. The NLRC is a labor tribunal that merely performs a quasi-judicial function – its function in the present

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[48] *Automotive Industry Workers Alliance v. Romulo*, G.R. No. 157509, January 18, 2005, 449 SCRA 1.

[49] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[50] *Arceta v. Mangrobang*, G.R. No. 152895, June 15, 2004, 432 SCRA 136.

[51] *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board*, G.R. No. 149719, June 21, 2007, 525 SCRA 198; *Marasigan v. Marasigan*, G.R. No. 156078, March 14, 2008, 548 SCRA 409.

[52] *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002, 380 SCRA 49.

[53] *Rollo*, p. 145.

[54] *Id.* at 166.

case is limited to determining questions of fact to which the legislative policy of R.A. No. 8042 is to be applied and to resolving such questions in accordance with the standards laid down by the law itself;[55] thus, its foremost function is to administer and enforce R.A. No. 8042, and not to inquire into the validity of its provisions. The CA, on the other hand, is vested with the power of judicial review or the power to declare unconstitutional a law or a provision thereof, such as the subject clause.[56] Petitioner's interposition of the constitutional issue before the CA was undoubtedly seasonable. The CA was therefore remiss in failing to take up the issue in its decision.

The third condition that the constitutional issue be critical to the resolution of the case likewise obtains because the monetary claim of petitioner to his lump-sum salary for the entire unexpired portion of his 12-month employment contract, and not just for a period of three months, strikes at the very core of the subject clause.

Thus, the stage is all set for the determination of the constitutionality of the subject clause.

*Does the subject clause violate Section 10, Article III of the Constitution on non-impairment of contracts?*

The answer is in the negative.

Petitioner's claim that the subject clause unduly interferes with the stipulations in his contract on the term of his employment and the fixed salary package he will receive[57] is not tenable

Section 10, Article III of the Constitution provides:

No law impairing the obligation of contracts shall be passed.

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[55] *Smart Communications, Inc. v. National Telecommunications Commission*, G.R. No. 151908, August 12, 2003, 408 SCRA 678.

[56] *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, G.R. No. 152214, September 19, 2006, 502 SCRA 295.

[57] Memorandum for Petitioner, *rollo*, pp. 741-742.

The prohibition is aligned with the general principle that laws newly enacted have only a prospective operation,[58] and cannot affect acts or contracts already perfected;[59] however, as to laws already in existence, their provisions are read into contracts and deemed a part thereof.[60] Thus, the non-impairment clause under Section 10, Article II is limited in application to laws about to be enacted that would in any way derogate from existing acts or contracts by enlarging, abridging or in any manner changing the intention of the parties thereto.

As aptly observed by the OSG, the enactment of R.A. No. 8042 in 1995 preceded the execution of the employment contract between petitioner and respondents in 1998. Hence, it cannot be argued that R.A. No. 8042, particularly the subject clause, impaired the employment contract of the parties. Rather, when the parties executed their 1998 employment contract, they were deemed to have incorporated into it all the provisions of R.A. No. 8042.

But even if the Court were to disregard the timeline, the subject clause may not be declared unconstitutional on the ground that it impinges on the impairment clause, for the law was enacted in the exercise of the police power of the State to regulate a business, profession or calling, particularly the recruitment and deployment of OFWs, with the noble end in view of ensuring respect for the dignity and well-being of OFWs wherever they may be employed.[61] Police power legislations adopted by the State to promote the health, morals, peace, education, good order, safety, and general welfare of the people are generally

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[58] *Ortigas & Co., Ltd. v. Court of Appeals*, G.R. No. 126102, December 4, 2000, 346 SCRA 748.

[59] *Picop Resources, Inc. v. Base Metals Mineral Resources Corporation*, G.R. No. 163509, December 6, 2006, 510 SCRA 400.

[60] *Walker v. Whitehead*, 83 U.S. 314 (1873); *Wood v. Lovett*, 313 U.S. 362, 370 (1941); *Intrata-Assurance Corporation v. Republic of the Philippines*, G.R. No. 156571, July 9, 2008; *Smart Communications, Inc. v. City of Davao*, G.R. No. 155491, September 16, 2008.

[61] *Executive Secretary v. Court of Appeals*, G.R. No. 131719, May 25, 2004, 429 SCRA 81, citing *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319.

applicable not only to future contracts but even to those already in existence, for all private contracts must yield to the superior and legitimate measures taken by the State to promote public welfare.[62]

*Does the subject clause violate Section 1, Article III of the Constitution, and Section 18, Article II and Section 3, Article XIII on labor as a protected sector?*

The answer is in the affirmative.

Section 1, Article III of the Constitution guarantees:

> No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

Section 18,[63] Article II and Section 3,[64] Article XIII accord all members of the labor sector, without distinction as to place of deployment, full protection of their rights and welfare.

To Filipino workers, the rights guaranteed under the foregoing constitutional provisions translate to economic security and parity: all monetary benefits should be equally enjoyed by workers of similar category, while all monetary obligations should be borne by them in equal degree; none should be denied the protection of the laws which is enjoyed by, or spared the burden imposed on, others in like circumstances.[65]

Such rights are not absolute but subject to the inherent power of Congress to incorporate, when it sees fit, a system of classification into its legislation; however, to be valid, the classification must comply with these requirements: 1) it is based

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[62] *Ortigas & Co., Ltd. v. Court of Appeals, supra* note 58.

[63] Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

[64] Section 3, The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

[65] See *City of Manila v. Laguio*, G.R. No. 118127, April 12, 2005, 455 SCRA 308; *Pimentel III v. Commission on Elections*, G.R. No. 178413, March 13, 2008, 548 SCRA 169.

on substantial distinctions; 2) it is germane to the purposes of the law; 3) it is not limited to existing conditions only; and 4) it applies equally to all members of the class.[66]

There are three levels of scrutiny at which the Court reviews the constitutionality of a classification embodied in a law: a) the deferential or rational basis scrutiny in which the challenged classification needs only be shown to be rationally related to serving a legitimate state interest;[67] b) the middle-tier or intermediate scrutiny in which the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest;[68] and c) strict judicial scrutiny[69] in which a legislative classification which impermissibly interferes with the exercise of a fundamental right[70] or operates to the peculiar disadvantage of a suspect class[71] is presumed unconstitutional, and the burden is upon the government to prove that the classification is necessary to achieve a ***compelling state interest*** and that it is the ***least restrictive means*** to protect such interest.[72]

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[66] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, November 18, 2008; *Beltran v. Secretary of Health*, G.R. No. 139147, November 25, 2005, 476 SCRA 168.

[67] *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343.

[68] *Los Angeles v. Almeda Books, Inc*., 535 U.S. 425 (2002); *Craig v. Boren*, 429 US 190 (1976).

[69] There is also the "heightened scrutiny" standard of review which is less demanding than "strict scrutiny" but more demanding than the standard rational relation test. Heightened scrutiny has generally been applied to cases that involve discriminatory classifications based on sex or illegitimacy, such as in *Plyler v. Doe*, 457 U.S. 202, where a heightened scrutiny standard was used to invalidate a State's denial to the children of illegal aliens of the free public education that it made available to other residents.

[70] *America v. Dale*, 530 U.S. 640 (2000); *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S.(2007); http://www.supremecourtus.gov/opinions/06pdf/05-908.pdf.

[71] *Adarand Constructors, Inc. v. Peña*, 515 US 230 (1995).

[72] *Grutter v. Bollinger*, 539 US 306 (2003); *Bernal v. Fainter*, 467 US 216 (1984).

Under American jurisprudence, strict judicial scrutiny is triggered by suspect classifications[73] based on race[74] or gender[75] but not when the classification is drawn along income categories.[76]

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[73] The concept of suspect classification first emerged in the famous footnote in the opinion of Justice Harlan Stone in *U.S. v. Carolene Products Co.*, 304 U.S. 144 (1938), the full text of which footnote is reproduced below:

> ***There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution***, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See *Stromberg v. California*, 283 U.S. 359, 369-370; *Lovell v. Griffin*, 303 U.S. 444, 452.
>
> It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. On restrictions upon the right to vote, see *Nixon v. Herndon*, 273 U.S. 536; *Nixon v. Condon*, 286 U.S. 73; on restraints upon the dissemination of information, see *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713-714, 718-720, 722; *Grosjean v. American Press Co.*, 297 U.S. 233; *Lovell v. Griffin*, *supra*; on interferences with political organizations, see *Stromberg v. California*, *supra*, 369; *Fiske v. Kansas*, 274 U.S. 380; *Whitney v. California*, 274 U.S. 357, 373-378; *Herndon v. Lowry*, 301 U.S. 242, and see *Holmes, J., in Gitlow v. New York*, 268 U.S. 652, 673; as to prohibition of peaceable assembly, see *De Jonge v. Oregon*, 299 U.S. 353, 365.
>
> Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, *Pierce v. Society of Sisters*, 268 U.S. 510, or national, *Meyer v. Nebraska*, 262 U.S. 390; *Bartels v. Iowa*, 262 U.S. 404; *Farrington v. Tokushige*, 273 U.S. 284, or racial minorities, *Nixon v. Herndon*, *supra*; Nixon v. Condon, *supra*: whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry. Compare *McCulloch v. Maryland*, 4 Wheat. 316, 428; *South Carolina v. Barnwell Bros.*, 303 U.S. 177, 184, n 2, and cases cited.

[74] *Korematsu v. United States*, 323 U.S. 214 (1944); *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

[75] *Frontiero v. Richardson*, 411 U.S. 677 (1973); *U.S. v. Virginia*, 518 U.S. 515 (1996).

[76] *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

It is different in the Philippine setting. In *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas,*[77] the constitutionality of a provision in the charter of the *Bangko Sentral ng Pilipinas* (BSP), a government financial institution (GFI), was challenged for maintaining its rank-and-file employees under the Salary Standardization Law (SSL), even when the rank-and-file employees of other GFIs had been exempted from the SSL by their respective charters. Finding that the disputed provision contained a suspect classification based on salary grade, the Court deliberately employed the standard of strict judicial scrutiny in its review of the constitutionality of said provision. More significantly, it was in this case that the Court revealed the broad outlines of its judicial philosophy, to wit:

> Congress retains its wide discretion in providing for a valid classification, and its policies should be accorded recognition and respect by the courts of justice except when they run afoul of the Constitution. The deference stops where the classification violates a fundamental right, or ***prejudices persons accorded special protection by the Constitution***. When these violations arise, this Court must discharge its primary role as the vanguard of constitutional guaranties, and require a stricter and more exacting adherence to constitutional limitations. Rational basis should not suffice.
>
> ***Admittedly, the view that prejudice to persons accorded special protection by the Constitution requires a stricter judicial scrutiny finds no support in American or English jurisprudence. Nevertheless, these foreign decisions and authorities are not per se controlling in this jurisdiction.*** At best, they are persuasive and have been used to support many of our decisions. We should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice. Our laws must be construed in accordance with the intention of our own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation

[77] G.R. No. 148208, December 15, 2004, 446 SCRA 299.

related thereto. More importantly, they must be construed to serve our own public interest which is the be-all and the end-all of all our laws. And it need not be stressed that our public interest is distinct and different from others.

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Further, the quest for a better and more "equal" world calls for the use of equal protection as a tool of effective judicial intervention.

Equality is one ideal which cries out for bold attention and action in the Constitution. The Preamble proclaims "equality" as an ideal precisely in protest against crushing inequities in Philippine society. The command to promote social justice in Article II, Section 10, in "all phases of national development," further explicitated in Article XIII, are clear commands to the State to take affirmative action in the direction of greater equality. x x x [T]here is thus in the Philippine Constitution no lack of doctrinal support for a more vigorous state effort towards achieving a reasonable measure of equality.

***Our present Constitution has gone further in guaranteeing vital social and economic rights to marginalized groups of society, including labor. Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice calls for the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.***

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Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.

But if the challenge to the statute is premised on the denial of a fundamental right, or ***the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny***

***ought to be more strict.*** A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

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In the case at bar, the challenged *proviso* operates on the basis of the salary grade or officer-employee status. ***It is akin to a distinction based on economic class and status, with the higher grades as recipients of a benefit specifically withheld from the lower grades.*** Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank - possessing higher and better education and opportunities for career advancement - are given higher compensation packages to entice them to stay. ***Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they - and not the officers - who have the real economic and financial need for the adjustment***. This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all." ***Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster.*** (Emphasis supplied)

Imbued with the same sense of "obligation to afford protection to labor," the Court in the present case also employs the standard of strict judicial scrutiny, for it perceives in the subject clause a suspect classification prejudicial to OFWs.

Upon cursory reading, the subject clause appears facially neutral, for it applies to all OFWs. However, a closer examination reveals that the subject clause has a discriminatory intent against, and an invidious impact on, OFWs at two levels:

First, OFWs with employment contracts of less than one year *vis-à-vis* OFWs with employment contracts of one year or more;

Second, among OFWs with employment contracts of more than one year; and

Third, OFWs *vis-à-vis* local workers with fixed-period employment;

**OFWs with employment contracts of less than one year *vis-à-vis* OFWs with employment contracts of one year or more**

As pointed out by petitioner,[78] it was in *Marsaman Manning Agency, Inc. v. National Labor Relations Commission*[79] (Second Division, 1999) that the Court laid down the following rules on the application of the periods prescribed under Section 10(5) of R.A. No. 804, to wit:

> ***A plain reading of Sec. 10 clearly reveals that the choice of which amount to award an illegally dismissed overseas contract worker, i.e., whether his salaries for the unexpired portion of his employment contract or three (3) months' salary for every year of the unexpired term, whichever is less, comes into play only when the employment contract concerned has a term of at least one (1) year or more. This is evident from the words "for every year of the unexpired term" which follows the words "salaries x x x for three months."*** To follow petitioners' thinking that private respondent is entitled to three (3) months salary only simply because it is the lesser amount is to completely disregard and overlook some words used in the statute while giving effect to some. This is contrary to the well-established rule in legal hermeneutics that in interpreting a statute, care should be taken that every part or word thereof be given effect since the law-making body is presumed to know the meaning of the words employed in the statue and to have used them advisedly. *Ut res magis valeat quam pereat*.[80] (Emphasis supplied)

In *Marsaman*, the OFW involved was illegally dismissed two months into his 10-month contract, but was awarded his salaries for the remaining 8 months and 6 days of his contract.

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[78] *Rollo*, pp. 727 and 735.

[79] 371 Phil. 827 (1999).

[80] *Id.* at 840-841.

Prior to *Marsaman,* however, there were two cases in which the Court made conflicting rulings on Section 10(5). One was *Asian Center for Career and Employment System and Services v. National Labor Relations Commission* (Second Division, October 1998),[81] which involved an OFW who was awarded a two-year employment contract, but was dismissed after working for one year and two months. The LA declared his dismissal illegal and awarded him SR13,600.00 as lump-sum salary covering eight months, the unexpired portion of his contract. On appeal, the Court reduced the award to SR3,600.00 equivalent to his three months' salary, this being the lesser value, to wit:

> Under Section 10 of R.A. No. 8042, a worker dismissed from overseas employment without just, valid or authorized cause is entitled to his salary for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.
>
> In the case at bar, the unexpired portion of private respondent's employment contract is eight (8) months. Private respondent should therefore be paid his basic salary corresponding to three (3) months or a total of SR3,600.[82]

Another was *Triple-Eight Integrated Services, Inc. v. National Labor Relations Commission* (Third Division, December 1998),[83] which involved an OFW (therein respondent Erlinda Osdana) who was originally granted a 12-month contract, which was deemed renewed for another 12 months. After serving for one year and seven-and-a-half months, respondent Osdana was illegally dismissed, and the Court awarded her salaries for the entire unexpired portion of four and one-half months of her contract.

The *Marsaman* interpretation of Section 10(5) has since been adopted in the following cases:

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[81] G.R. No. 131656, October 20, 1998, 297 SCRA 727.

[82] *Id*.

[83] *Supra* note 17.

| Case Title | Contract Period | Period of Service | Unexpired Period | Period Applied in the Computation of the Monetary Award |
|---|---|---|---|---|
| *Skippers v. Maguad*[84] | 6 months | **2 months** | 4 months | **4 months** |
| *Bahia Shipping v. Reynaldo Chua*[85] | 9 months | **8 months** | 4 months | **4 months** |
| *Centennial Transmarine v. dela Cruz I*[86] | 9 months | **4 months** | 5 months | **5 months** |
| *Talidano v. Falcon*[87] | 12 months | **3 months** | 9 months | **3 months** |
| *Univan v. CA*[88] | 12 months | **3 months** | 9 months | **3 months** |
| *Oriental v. CA*[89] | 12 months | **more than 2 months** | 10 months | **3 months** |
| *PCL v. NLRC*[90] | 12 months | **more than 2 months** | more or less 9 months | **3 months** |
| *Olarte v. Nayona*[91] | 12 months | **21 days** | 11 months and 9 days | **3 months** |
| *JSS v. Ferrer*[92] | 12 months | **16 days** | 11 months and 24 days | **3 months** |
| *Pentagon v. Adelantar*[93] | 12 months | **9 months and 7 days** | 2 months and 23 days | **2 months and 23 days** |

[84] G.R. No. 166363, August 15, 2006, 498 SCRA 639.

[85] G.R. No. 162195, April 8, 2008, 550 SCRA 600.

[86] G.R. No. 180719, August 22, 2008.

[87] G.R. No. 172031, July 14, 2008, 558 SCRA 279.

[88] G.R. No. 157534, June 18, 2003 (Resolution).

[89] G.R. No. 153750, January 25, 2006, 480 SCRA 100.

[90] G.R. No. 148418, July 28, 2005, 464 SCRA 314.

[91] G.R. No. 148407, November 12, 2003, 415 SCRA 720.

[92] G.R. No. 156381, October 14, 2005, 473 SCRA 120.

[93] G.R. No. 157373, July 27, 2004, 435 SCRA 342.

| | | | | |
|---|---|---|---|---|
| *Phil. Employ v. Paramio, et al.*[94] | 12 months | **10 months** | 2 months | **Unexpired portion** |
| *Flourish Maritime v. Almanzor*[95] | 2 years | **26 days** | 23 months and 4 days | **6 months or 3 months for each year of contract** |
| *Athenna Manpower v. Villanos*[96] | 1 year, 10 months and 28 days | **1 month** | 1 year, 9 months and 28 days | **6 months or 3 months for each year of contract** |

As the foregoing matrix readily shows, the subject clause classifies OFWs into two categories. The first category includes OFWs with fixed-period employment contracts of less than one year; in case of illegal dismissal, they are entitled to their salaries for the entire unexpired portion of their contract. The second category consists of OFWs with fixed-period employment contracts of one year or more; in case of illegal dismissal, they are entitled to monetary award equivalent to only 3 months of the unexpired portion of their contracts.

The disparity in the treatment of these two groups cannot be discounted. In *Skippers*, the respondent OFW worked for only 2 months out of his 6-month contract, but was awarded his salaries for the remaining 4 months. In contrast, the respondent OFWs in *Oriental* and *PCL* who had also worked for about 2 months out of their 12-month contracts were awarded their salaries for only 3 months of the unexpired portion of their contracts. Even the OFWs involved in *Talidano* and *Univan* who had worked for a longer period of 3 months out of their 12-month contracts before being illegally dismissed were awarded their salaries for only 3 months.

To illustrate the disparity even more vividly, the Court assumes a hypothetical OFW-A with an employment contract of 10 months at a monthly salary rate of US$1,000.00 and a hypothetical

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[94] G.R. No. 144786, April 15, 2004, 427 SCRA 732.

[95] G.R. No. 177948, March 14, 2008, 548 SCRA 712.

[96] G.R. No. 151303, April 15, 2005, 456 SCRA 313.

OFW-B with an employment contract of 15 months with the same monthly salary rate of US$1,000.00. Both commenced work on the same day and under the same employer, and were illegally dismissed after one month of work. Under the subject clause, OFW-A will be entitled to US$9,000.00, equivalent to his salaries for the remaining 9 months of his contract, whereas OFW-B will be entitled to only US$3,000.00, equivalent to his salaries for 3 months of the unexpired portion of his contract, instead of US$14,000.00 for the unexpired portion of 14 months of his contract, as the US$3,000.00 is the lesser amount.

The disparity becomes more aggravating when the Court takes into account jurisprudence that, ***prior to the effectivity of R.A. No. 8042 on July 14, 1995,***[97] illegally dismissed OFWs, no matter how long the period of their employment contracts, were entitled to their salaries for the entire unexpired portions of their contracts. The matrix below speaks for itself:

| **Case Title** | **Contract Period** | **Period of Service** | **Unexpired Period** | **Period Applied in the Computation of the Monetary Award** |
|---|---|---|---|---|
| *ATCI v. CA, et al.*[98] | *2 years* | ***2 months*** | *22 months* | ***22 months*** |
| *Phil. Integrated v. NLRC*[99] | 2 years | **7 days** | 23 months and 23 days | **23 months and 23 days** |
| *JGB v. NLC*[100] | 2 years | **9 months** | 15 months | **15 months** |
| *Agoy v. NLRC*[101] | 2 years | **2 months** | 22 months | **22 months** |
| *EDI v. NLRC, et al.*[102] | 2 years | **5 months** | 19 months | **19 months** |

[97] *Asian Center v. National Labor Relations Commission, supra* note 81.

[98] G.R. No. 143949, August 9, 2001, 362 SCRA 571.

[99] G.R. No. 123354, November 19, 1996, 264 SCRA 418.

[100] G.R. No. 109390, March 7, 1996, 254 SCRA 457.

[101] G.R. No. 112096, January 30, 1996, 252 SCRA 588.

[102] G.R. No. 145587, October 26, 2007, 537 SCRA 409.

| | | | | |
|---|---|---|---|---|
| *Barros v. NLRC, et al.*[103] | 12 months | **4 months** | 8 months | **8 months** |
| *Philippine Transmarine v. Carilla*[104] | 12 months | **6 months and 22 days** | 5 months and 18 days | **5 months and 18 days** |

*It is plain that prior to R.A. No. 8042, all OFWs, regardless of contract periods or the unexpired portions thereof, were treated alike in terms of the computation of their monetary benefits in case of illegal dismissal. Their claims were subjected to a uniform rule of computation: their basic salaries multiplied by the entire unexpired portion of their employment contracts.*

The enactment of the subject clause in R.A. No. 8042 introduced a differentiated rule of computation of the money claims of illegally dismissed OFWs based on their employment periods, in the process ***singling out*** one category whose contracts have an unexpired portion of one year or more and subjecting them to the peculiar disadvantage of having their monetary awards limited to their salaries for 3 months or for the unexpired portion thereof, whichever is less, but all the while sparing the other category from such prejudice, simply because the latter's unexpired contracts fall short of one year.

**Among OFWs With Employment Contracts of More Than One Year**

Upon closer examination of the terminology employed in the subject clause, the Court now has misgivings on the accuracy of the *Marsaman* interpretation.

The Court notes that the subject clause "or for three (3) months for every year of the unexpired term, whichever is less" contains the qualifying phrases "every year" and "unexpired term." By its ordinary meaning, the word "term" means a limited

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[103] G.R. No. 123901, September 22, 1999, 315 SCRA 23.

[104] G.R. No. 157975, June 26, 2007, 525 SCRA 586.

or definite extent of time.[105] Corollarily, that "every year" is but part of an "unexpired term" is significant in many ways: first, the unexpired term must be at least one year, *for if it were any shorter, there would be no occasion for such unexpired term to be measured by every year*; and second, the original term must be more than one year, for otherwise, whatever would be the unexpired term thereof will not reach even a year. Consequently, the more decisive factor in the determination of when the subject clause "for three (3) months for every year of the unexpired term, whichever is less" shall apply is not the length of the original contract period as held in *Marsaman*,[106] but the length of the unexpired portion of the contract period — the subject clause applies in cases when the unexpired portion of the contract period is at least one year, which arithmetically requires that the original contract period be more than one year.

Viewed in that light, the subject clause creates a sub-layer of discrimination among OFWs whose contract periods are for more than one year: those who are illegally dismissed with less than one year left in their contracts shall be entitled to their salaries for the entire unexpired portion thereof, while those who are illegally dismissed with one year or more remaining in their contracts shall be covered by the subject clause, and their monetary benefits limited to their salaries for three months only.

To concretely illustrate the application of the foregoing interpretation of the subject clause, the Court assumes hypothetical OFW-C and OFW-D, who each have a 24-month contract at a salary rate of US$1,000.00 per month. OFW-C is illegally dismissed on the 12th month, and OFW-D, on the 13th month. Considering that there is at least 12 months remaining in the contract period of OFW-C, the subject clause applies to the computation of the latter's monetary benefits. Thus, OFW-C will be entitled, not to US$12,000.00 or the latter's total salaries for the 12 months unexpired portion of the contract, but to the lesser amount of US$3,000.00 or the latter's salaries for 3 months

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[105] www.merriam-webster.com/dictionary visited on November 22, 2008 at 3:09.

[106] See also *Flourish*, *supra* note 95; and *Athena*, *supra* note 96.

out of the 12-month unexpired term of the contract. On the other hand, OFW-D is spared from the effects of the subject clause, for there are only 11 months left in the latter's contract period. Thus, OFW-D will be entitled to US$11,000.00, which is equivalent to his/her total salaries for the entire 11-month unexpired portion.

**OFWs *vis-à-vis* Local Workers With Fixed-Period Employment**

As discussed earlier, prior to R.A. No. 8042, a uniform system of computation of the monetary awards of illegally dismissed OFWs was in place. This uniform system was applicable even to local workers with fixed-term employment.[107]

The earliest rule prescribing a uniform system of computation was actually Article 299 of the Code of Commerce (1888),[108] to wit:

> Article 299. ***If the contracts between the merchants and their shop clerks and employees should have been made of a fixed period, none of the contracting parties, without the consent of the other, may withdraw from the fulfillment of said contract until the termination of the period agreed upon***.
>
> Persons violating this clause shall be subject to indemnify the loss and damage suffered, with the exception of the provisions contained in the following articles.

In *Reyes v. The Compañia Maritima*,[109] the Court applied the foregoing provision to determine the liability of a shipping company for the illegal discharge of its managers prior to the expiration of their fixed-term employment. The Court therein

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[107] It is noted that both petitioner and the OSG drew comparisons between OFWs in general and local workers in general. However, the Court finds that the more relevant comparison is between OFWs whose employment is necessarily subject to a fixed term and local workers whose employment is also subject to a fixed term.

[108] Promulgated on August 6, 1888 by Queen Maria Cristina of Spain and extended to the Philippines by Royal Decree of August 8, 1888. It took effect on December 1, 1888.

[109] No. 1133, March 29, 1904, 3 SCRA 519.

held the shipping company liable for the salaries of its managers for the remainder of their fixed-term employment.

There is a more specific rule as far as seafarers are concerned: Article 605 of the Code of Commerce which provides:

> Article 605. If the contracts of the captain and members of the crew with the agent should be for a definite period or voyage, they cannot be discharged until the fulfillment of their contracts, except for reasons of insubordination in serious matters, robbery, theft, habitual drunkenness, and damage caused to the vessel or to its cargo by malice or manifest or proven negligence.

Article 605 was applied to *Madrigal Shipping Company, Inc. v. Ogilvie,*[110] in which the Court held the shipping company liable for the salaries and subsistence allowance of its illegally dismissed employees for the entire unexpired portion of their employment contracts.

While Article 605 has remained good law up to the present,[111] Article 299 of the Code of Commerce was replaced by Art. 1586 of the Civil Code of 1889, to wit:

> Article 1586. Field hands, mechanics, artisans, and other ***laborers hired for a certain time and for a certain work*** cannot leave or be dismissed without sufficient cause, before the fulfillment of the contract. (Emphasis supplied.)

Citing *Manresa*, the Court in *Lemoine v. Alkan*[112] read the disjunctive "or" in Article 1586 as a conjunctive "and" so as to apply the provision to local workers who are employed for a time certain although for no particular skill. This interpretation of Article 1586 was reiterated in *Garcia Palomar v. Hotel de France Company*.[113] And in both *Lemoine* and *Palomar*, the Court adopted the general principle that in actions for wrongful

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[110] No. L-8431, October 30, 1958, 104 SCRA 748.

[111] See also *Wallem Philippines Shipping, Inc. v. Hon. Minister of Labor,* Nos. 50734-37, February 20, 1981, 102 SCRA 835, where *Madrigal Shipping Company, Inc. v. Ogilvie* is cited.

[112] No. L-10422, January 11, 1916, 33 SCRA 162.

[113] No. L-15878, January 11, 1922, 42 SCRA 660.

discharge founded on Article 1586, local workers are entitled to recover damages to the extent of the amount stipulated to be paid to them by the terms of their contract. On the computation of the amount of such damages, the Court in *Aldaz v. Gay*[114] held:

> The doctrine is well-established in American jurisprudence, and nothing has been brought to our attention to the contrary under Spanish jurisprudence, that when an employee is wrongfully discharged it is his duty to seek other employment of the same kind in the same community, for the purpose of reducing the damages resulting from such wrongful discharge. However, while this is the general rule, the burden of showing that he failed to make an effort to secure other employment of a like nature, and that other employment of a like nature was obtainable, is upon the defendant. ***When an employee is wrongfully discharged under a contract of employment his prima facie damage is the amount which he would be entitled to had he continued in such employment until the termination of the period***. (*Howard vs. Daly*, 61 N. Y., 362; *Allen vs. Whitlark*, 99 Mich., 492; *Farrell vs. School District No. 2*, 98 Mich., 43.)[115] (Emphasis supplied)

On August 30, 1950, the New Civil Code took effect with new provisions on fixed-term employment: Section 2 (Obligations with a Period), Chapter 3, Title I, and Sections 2 (Contract of Labor) and 3 (Contract for a Piece of Work), Chapter 3, Title VIII, Book IV.[116] Much like Article 1586 of the Civil Code of 1889, the new provisions of the Civil Code do not expressly provide for the remedies available to a fixed-term worker who is illegally discharged. However, it is noted that in *Mackay Radio & Telegraph Co., Inc. v. Rich*,[117] the Court carried over the principles on the payment of damages underlying Article 1586 of the Civil Code of 1889 and applied the same to a case involving the illegal discharge of a local worker whose fixed-period employment contract was entered into in 1952, when the new Civil Code was already in effect.[118]

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[114] 7 Phil. 268 (1907).

[115] See also *Knust v. Morse*, 41 Phil. 184 (1920).

[116] *Brent School, Inc. v. Zamora*, No. L-48494, February 5, 1990, 181 SCRA 702.

[117] No. L-22608, June 30, 1969, 28 SCRA 699.

[118] The Labor Code itself does not contain a specific provision for local

More significantly, the same principles were applied to cases involving overseas Filipino workers whose fixed-term employment contracts were illegally terminated, such as in *First Asian Trans & Shipping Agency, Inc. v. Ople*,[119] involving seafarers who were illegally discharged. In *Teknika Skills and Trade Services, Inc. v. National Labor Relations Commission*,[120] an OFW who was illegally dismissed prior to the expiration of her fixed-period employment contract as a baby sitter, was awarded salaries corresponding to the unexpired portion of her contract. The Court arrived at the same ruling in *Anderson v. National Labor Relations Commission*,[121] which involved a foreman hired in 1988 in Saudi Arabia for a fixed term of two years, but who was illegally dismissed after only nine months on the job — the Court awarded him salaries corresponding to 15 months, the unexpired portion of his contract. In *Asia World Recruitment, Inc. v. National Labor Relations Commission*,[122] a Filipino working as a security officer in 1989 in Angola was awarded his salaries for the remaining period of his 12-month contract after he was wrongfully discharged. Finally, in *Vinta Maritime Co., Inc. v. National Labor Relations Commission*,[123] an OFW whose 12-month contract was illegally cut short in the second month was declared entitled to his salaries for the remaining 10 months of his contract.

*In sum, prior to R.A. No. 8042, OFWs and local workers with fixed-term employment who were illegally discharged were treated alike in terms of the computation of their money claims: they were uniformly entitled to their salaries for the entire*

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workers with fixed-term employment contracts. As the Court observed in *Brent School, Inc.*, the concept of fixed-term employment has slowly faded away from our labor laws, such that reference to our labor laws is of limited use in determining the monetary benefits to be awarded to fixed-term workers who are illegally dismissed.

[119] No. 65545, July 9, 1986., 142 SCRA 542.

[120] G.R. No. 100399, August 4, 1992, 212 SCRA 132.

[121] G.R. No. 111212, January 22, 1996, 252 SCRA 116.

[122] G.R. No. 113363, August 24, 1999, 313 SCRA 1.

[123] G.R. No. 113911, January 23, 1998, 284 SCRA 656.

*unexpired portions of their contracts.* But with the enactment of R.A. No. 8042, specifically the adoption of the subject clause, illegally dismissed OFWs with an unexpired portion of one year or more in their employment contract have since been differently treated in that their money claims are subject to a 3-month cap, whereas no such limitation is imposed on local workers with fixed-term employment.

***The Court concludes that the subject clause contains a suspect classification in that, in the computation of the monetary benefits of fixed-term employees who are illegally discharged, it imposes a 3-month cap on the claim of OFWs with an unexpired portion of one year or more in their contracts, but none on the claims of other OFWs or local workers with fixed-term employment. The subject clause singles out one classification of OFWs and burdens it with a peculiar disadvantage.***

There being a suspect classification involving a vulnerable sector protected by the Constitution, the Court now subjects the classification to a strict judicial scrutiny, and determines whether it serves a compelling state interest through the least restrictive means.

What constitutes compelling state interest is measured by the scale of rights and powers arrayed in the Constitution and calibrated by history.[124] It is akin to the paramount interest of the state[125] for which some individual liberties must give way, such as the public interest in safeguarding health or maintaining medical standards,[126] or in maintaining access to information on matters of public concern.[127]

In the present case, the Court dug deep into the records but found no compelling state interest that the subject clause may possibly serve.

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[124] See *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003, 408 SCRA 1.

[125] *Id*.

[126] *Roe v. Wade*, 410 U.S. 113 (1971); see also *Carey v. Population Service International*, 431 U.S. 678 (1977).

[127] *Sabio v. Gordon*, G.R. Nos. 174340, 174318, 174177, October 16, 2006, 504 SCRA 704.

The OSG defends the subject clause as a police power measure "designed to protect the employment of Filipino seafarers overseas x x x. By limiting the liability to three months [sic], Filipino seafarers have better chance of getting hired by foreign employers." The limitation also protects the interest of local placement agencies, which otherwise may be made to shoulder millions of pesos in "termination pay."[128]

The OSG explained further:

> Often, placement agencies, their liability being solidary, shoulder the payment of money claims in the event that jurisdiction over the foreign employer is not acquired by the court or if the foreign employer reneges on its obligation. Hence, placement agencies that are in good faith and which fulfill their obligations are unnecessarily penalized for the acts of the foreign employer. ***To protect them and to promote their continued helpful contribution in deploying Filipino migrant workers, liability for money are reduced under Section 10 of RA 8042.***
>
> This measure redounds to the benefit of the migrant workers whose welfare the government seeks to promote. The survival of legitimate placement agencies helps [assure] the government that migrant workers are properly deployed and are employed under decent and humane conditions.[129] (Emphasis supplied)

However, nowhere in the Comment or Memorandum does the OSG cite the source of its perception of the state interest sought to be served by the subject clause.

The OSG locates the purpose of R.A. No. 8042 in the speech of Rep. Bonifacio Gallego in sponsorship of House Bill No. 14314 (HB 14314), from which the law originated;[130] but the speech makes no reference to the underlying reason for the adoption of the subject clause. That is only natural for none of the 29 provisions in HB 14314 resembles the subject clause.

On the other hand, Senate Bill No. 2077 (SB 2077) contains a provision on money claims, to wit:

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[128] Comment, *rollo*, p. 555.

[129] Memorandum of the Solicitor General, *id.* at 682-683.

[130] *Id.* at p. 693.

Sec. 10. *Money Claims*. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of the complaint, the claim arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal and the recruitment/placement agency or any and all claims under this Section shall be joint and several.

Any compromise/amicable settlement or voluntary agreement on any money claims exclusive of damages under this Section shall not be less than fifty percent (50%) of such money claims: *Provided*, That any installment payments, if applicable, to satisfy any such compromise or voluntary settlement shall not be more than two (2) months. Any compromise/voluntary agreement in violation of this paragraph shall be null and void.

Non-compliance with the mandatory period for resolutions of cases provided under this Section shall subject the responsible officials to any or all of the following penalties:

(1) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;

(2) Suspension for not more than ninety (90) days; or

(3) Dismissal from the service with disqualification to hold any appointive public office for five (5) years.

Provided, however, That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.

But significantly, Section 10 of SB 2077 does not provide for any rule on the computation of money claims.

A rule on the computation of money claims containing the subject clause was inserted and eventually adopted as the 5th

paragraph of Section 10 of R.A. No. 8042. The Court examined the rationale of the subject clause in the transcripts of the "Bicameral Conference Committee (Conference Committee) Meetings on the Magna Carta on OCWs (Disagreeing Provisions of Senate Bill No. 2077 and House Bill No. 14314)." However, the Court finds no discernible state interest, let alone a compelling one, that is sought to be protected or advanced by the adoption of the subject clause.

In fine, the Government has failed to discharge its burden of proving the existence of a compelling state interest that would justify the perpetuation of the discrimination against OFWs under the subject clause.

Assuming that, as advanced by the OSG, the purpose of the subject clause is to protect the employment of OFWs by mitigating the solidary liability of placement agencies, such callous and cavalier rationale will have to be rejected. There can never be a justification for any form of government action that alleviates the burden of one sector, but imposes the same burden on another sector, especially when the favored sector is composed of private businesses such as placement agencies, while the disadvantaged sector is composed of OFWs whose protection no less than the Constitution commands. The idea that private business interest can be elevated to the level of a compelling state interest is odious.

Moreover, even if the purpose of the subject clause is to lessen the solidary liability of placement agencies *vis-a-vis* their foreign principals, there are mechanisms already in place that can be employed to achieve that purpose without infringing on the constitutional rights of OFWs.

The POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, dated February 4, 2002, imposes administrative disciplinary measures on erring foreign employers who default on their contractual obligations to migrant workers and/or their Philippine agents. These disciplinary measures range from temporary disqualification to preventive suspension. The POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, dated

May 23, 2003, contains similar administrative disciplinary measures against erring foreign employers.

Resort to these administrative measures is undoubtedly the less restrictive means of aiding local placement agencies in enforcing the solidary liability of their foreign principals.

Thus, the subject clause in the 5th paragraph of Section 10 of R.A. No. 8042 is violative of the right of petitioner and other OFWs to equal protection.

Further, there would be certain misgivings if one is to approach the declaration of the unconstitutionality of the subject clause from the lone perspective that the clause directly violates state policy on labor under Section 3,[131] Article XIII of the Constitution.

While all the provisions of the 1987 Constitution are presumed self-executing,[132] there are some which this Court has declared ***not judicially enforceable***, Article XIII being one,[133] particularly Section 3 thereof, the nature of which, this Court, in *Agabon*

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[131] Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

[132] *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997, 267 SCRA 408.

[133] *Basco v. Philippine Amusement and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

*v. National Labor Relations Commission,*[134] has described to be not self-actuating:

> Thus, the constitutional mandates of protection to labor and security of tenure may be deemed as self-executing in the sense that these are automatically acknowledged and observed without need for any enabling legislation. However, to declare that the constitutional provisions are enough to guarantee the full exercise of the rights embodied therein, and the realization of ideals therein expressed, would be impractical, if not unrealistic. The espousal of such view presents the dangerous tendency of being overbroad and exaggerated. The guarantees of "full protection to labor" and "security of tenure", when examined in isolation, are facially unqualified, and the broadest interpretation possible suggests a blanket shield in favor of labor against any form of removal regardless of circumstance. This interpretation implies an unimpeachable right to continued employment-a utopian notion, doubtless-but still hardly within the contemplation of the framers. Subsequent legislation is still needed to define the parameters of these guaranteed rights to ensure the protection and promotion, not only the rights of the labor sector, but of the employers' as well. Without specific and pertinent legislation, judicial bodies will be at a loss, formulating their own conclusion to approximate at least the aims of the Constitution.
>
> ***Ultimately, therefore, Section 3 of Article XIII cannot, on its own, be a source of a positive enforceable right*** to stave off the dismissal of an employee for just cause owing to the failure to serve proper notice or hearing. As manifested by several framers of the 1987 Constitution, the provisions on social justice require legislative enactments for their enforceability.[135] (Emphasis added)

Thus, Section 3, Article XIII cannot be treated as a principal source of direct enforceable rights, for the violation of which the questioned clause may be declared unconstitutional. It may unwittingly risk opening the floodgates of litigation to every worker or union over every conceivable violation of so broad a concept as social justice for labor.

It must be stressed that Section 3, Article XIII does not directly bestow on the working class any actual enforceable right, but

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[134] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[135] *Agabon v. National Labor Relations Commission*, *supra* note 134, at 686.

merely clothes it with the status of a sector for whom the Constitution urges protection through executive or legislative action and ***judicial recognition***. Its utility is best limited to being an impetus not just for the executive and legislative departments, but for the judiciary as well, to protect the welfare of the working class**.** And it was in fact consistent with that constitutional agenda that the Court in *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* penned by then Associate Justice now Chief Justice Reynato S. Puno, formulated the judicial precept that when the challenge to a statute is premised on the perpetuation of prejudice against persons favored by the Constitution with special protection — such as the working class or a section thereof — the Court may recognize the existence of a suspect classification and subject the same to strict judicial scrutiny.

The view that the concepts of suspect classification and strict judicial scrutiny formulated in *Central Bank Employees Association* exaggerate the significance of Section 3, Article XIII is a groundless apprehension. *Central Bank* applied Article XIII in conjunction with the equal protection clause. Article XIII, by itself, without the application of the equal protection clause, has no life or force of its own as elucidated in *Agabon.*

Along the same line of reasoning, the Court further holds that the subject clause violates petitioner's right to substantive due process, for it deprives him of property, consisting of monetary benefits, without any existing valid governmental purpose.[136]

The argument of the Solicitor General, that the actual purpose of the subject clause of limiting the entitlement of OFWs to their three-month salary in case of illegal dismissal, is to give them a better chance of getting hired by foreign employers. This is plain speculation. As earlier discussed, there is nothing in the text of the law or the records of the deliberations leading to its enactment or the pleadings of respondent that would indicate that there is an existing governmental purpose for the subject clause, or even just a pretext of one.

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[136] *Associated Communications and Wireless Services, Ltd. v. Dumlao*, G. R. No. 136762, November 21, 2002, 392 SCRA 269.

The subject clause does not state or imply any definitive governmental purpose; and it is for that precise reason that the clause violates not just petitioner's right to equal protection, but also her right to substantive due process under Section 1,[137] Article III of the Constitution.

The subject clause being unconstitutional, petitioner is entitled to his salaries for the entire unexpired period of nine months and 23 days of his employment contract, pursuant to law and jurisprudence prior to the enactment of R.A. No. 8042.

***On the Third Issue***

Petitioner contends that his overtime and leave pay should form part of the salary basis in the computation of his monetary award, because these are fixed benefits that have been stipulated into his contract.

Petitioner is mistaken.

The word *salaries* in Section 10(5) does not include overtime and leave pay. For seafarers like petitioner, DOLE Department Order No. 33, series 1996, provides a Standard Employment Contract of Seafarers, in which salary is understood as the basic wage, exclusive of overtime, leave pay and other bonuses; whereas overtime pay is compensation for all work "performed" in excess of the regular eight hours, and holiday pay is compensation for any work "performed" on designated rest days and holidays.

By the foregoing definition alone, there is no basis for the automatic inclusion of overtime and holiday pay in the computation of petitioner's monetary award, unless there is evidence that he performed work during those periods. As the Court held in *Centennial Transmarine, Inc. v. Dela Cruz,*[138]

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

[138] G.R. No. 180719, August 22, 2008. See also *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*. G.R. No. 153031, December 14, 2006, 511 SCRA 44.

However, the payment of overtime pay and leave pay should be disallowed in light of our ruling in *Cagampan v. National Labor Relations Commission*, to wit:

> The rendition of overtime work and the submission of sufficient proof that said was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short, the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established.
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> In the same vein, the claim for the day's leave pay for the unexpired portion of the contract is unwarranted since the same is given during the actual service of the seamen.

**WHEREFORE,** the Court *GRANTS* the Petition. The subject clause "or for three months for every year of the unexpired term, whichever is less" in the 5th paragraph of Section 10 of Republic Act No. 8042 is *DECLARED UNCONSTITUTIONAL*; and the December 8, 2004 Decision and April 1, 2005 Resolution of the Court of Appeals are *MODIFIED* to the effect that petitioner is *AWARDED* his salaries for the entire unexpired portion of his employment contract consisting of nine months and 23 days computed at the rate of US$1,400.00 per month.

No costs.

**SO ORDERED.**

*Puno, C.J., Ynares-Santiago, Corona, Carpio Morales, Tinga, Velasco, Jr., Nachura, Leonardo-de Castro,* and *Peralta, JJ.,* concur.

*Quisumbing, J.,* joins *J.* Carpio's opinion.

*Carpio and Brion, JJ.,* see separate concurring opinions.

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

## SEPARATE CONCURRING OPINION

**CARPIO, *J.*:**

I concur that the provision "or for three (3) months for every year of the unexpired term, whichever is less" in Section 10, paragraph 5,[1] of Republic Act (RA) No. 8042[2] is unconstitutional, but on a different ground. The provision violates the prohibition against deprivation of property without due process of law. It is an invalid exercise of police power.

Section 1, Article III, of the Constitution states that **no person shall be deprived of property without due process of law**. Protected property includes the right to work and the right to earn a living. In *JMM Promotion and Management, Inc. v. Court of Appeals*,[3] the Court held that:

> **A profession, trade or calling is a property right within the meaning of our constitutional guarantees**. **One cannot be deprived of the right to work and the right to make a living because these rights are property rights**, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong. (Emphasis supplied)

The right to work and the right to earn a living necessarily includes the right to bargain for better terms in an employment contract and the right to enforce those terms. If protected property does not include these rights, then the right to work and the right to earn a living would become empty civil liberties — the State can deprive persons of their right to work and their right to earn a living by depriving them of the right to negotiate for better terms and the right to enforce those terms.

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[1] Section 10, paragraph 5, of RA No. 8042 provides:

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) *per annum*, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

[2] Otherwise known as "Migrant Workers and Overseas Filipinos Act of 1995."

[3] G.R. No. 120095, 5 August 1996, 260 SCRA 319, 330.

The assailed provision prevents the OFWs from bargaining for payment of more than three months' salary in case the employer wrongfully terminates the employment. The law may set a minimum amount that the employee can recover, but it cannot set a ceiling because this unreasonably curtails the employee's right to bargain for better terms of employment. The right to bargain for better terms of employment is a constitutional right that cannot be unreasonably curtailed by the State. Here, no compelling State interest has been advanced why the employee's right to bargain should be curtailed. The claim that that the three-month salary cap provides an incentive to service contractors and manning agencies is specious because such incentive is at the expense of a protected and disadvantaged class — the OFWs.

The right to property is not absolute — the prohibition against deprivation of property is qualified by the phrase "without due process of law." Thus, the State may deprive persons of property through the exercise of police power.[4] However, the deprivation must be done with due process. **Substantive due process requires that the means employed in depriving persons of property must not be unduly oppressive**. In *Social Justice Society v. Atienza, Jr.*,[5] the Court held that:

> [**T**]**he State** x x x **may be considered as having properly exercised [its] police power only if the following requisites are met:** (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise and (2) **the means employed are** reasonably necessary for the accomplishment of the purpose and **not unduly oppressive upon individuals**. In short, there must be a concurrence of a lawful subject and a lawful method. (Emphasis supplied)

Moreover, the exercise of police power, to be valid, must be reasonable and not repugnant to the Constitution.[6] In *Philippine*

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[4] *Philippine Association of Service Exporters, Inc. v. Drilon*, No. 81958, 30 June 1988, 163 SCRA 386, 390.

[5] G.R. No. 156052, 13 February 2008, 545 SCRA 92, 138.

[6] *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, G.R. No. 170656, 15 August 2007, 530 SCRA 341, 362.

*Association of Service Exporters, Inc. v. Drilon*,[7] the Court held that:

> Notwithstanding its extensive sweep, **police power** is not without its own limitations. For all its awesome consequences, it **may not be exercised arbitrarily or unreasonably**. Otherwise, and in that event, it defeats the purpose for which it is exercised, that is, to advance the public good. (Emphasis supplied)

**The assailed provision is unduly oppressive, unreasonable, and repugnant to the Constitution**. It undermines the mandate of the Constitution to protect the rights of overseas workers and to promote their welfare. Section 3, Article XIII, of the Constitution states that the State shall (1) afford full protection to overseas labor, (2) promote full employment and equality of employment opportunities for all, and (3) guarantee the rights of all workers to security of tenure, humane conditions of work, and a living wage. Section 18, Article II, of the Constitution states that, "The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare."

The assailed provision also undermines the declared policies of RA No. 8042. Section 2 of RA No. 8042 states that (1) the State shall, at all times, uphold the dignity of Filipino migrant workers; (2) the State shall afford full protection to overseas labor and promote full employment opportunities for all; (3) the existence of overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of Filipinos shall not, at any time, be compromised or violated; and (4) it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed Filipino migrant workers are adequately protected and safeguarded.

The assailed provision is the reverse of the constitutional mandate and the declared policies of RA No. 8042: (1) instead of protecting the rights and promoting the welfare of OFWs, it unreasonably curtails their freedom to enter into employment contracts; (2) instead of empowering OFWs, it prevents them from bargaining for better terms; (3) instead of setting the minimum

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[7] *Supra* note 4 at 391.

amount that OFWs are entitled to in case they are terminated without just, valid or authorized cause, it provides a ceiling; (4) instead of allowing OFWs who have been terminated without just, valid or authorized cause to recover what is rightfully due, it arbitrarily sets the recoverable amount to their three-month salary.

OFWs belong to a disadvantaged class, are oppressed, and need protection. In *Olarte v. Nayona*,[8] the Court held that:

> **Our overseas workers belong to a disadvantaged class**. Most of them come from the poorest sector of our society. Their profile shows they live in suffocating slums, trapped in an environment of crimes. Hardly literate and in ill health, their only hope lies in jobs they find with difficulty in our country. **Their unfortunate circumstance makes them easy prey to avaricious employers**. They will climb mountains, cross the seas, endure slave treatment in foreign lands just to survive. Out of despondence, they will work under sub-human conditions and accept salaries below the minimum. **The least we can do is to protect them in our laws**. (Emphasis supplied)

In *Philippine Association of Service Exporters, Inc.*,[9] the Court held that:

> What concerns the Constitution more paramountly is that x x x employment be above all, decent, just, and humane. **It is bad enough that the country has to send its sons and daughters to strange lands because it cannot satisfy their employment needs at home. Under these circumstances, the Government is duty-bound to insure that our toiling expatriates have adequate protection**, personally and economically, while away from home. (Emphasis supplied)

With the inclusion of the assailed provision in RA No. 8042, the OFWs, whom the Constitution and the law particularly seek to protect, end up even more oppressed.

In her *ponencia*, Justice Ma. Alicia Austria-Martinez held that the assailed provision violated the equal protection clause.

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[8] 461 Phil. 429, 431 (2003).

[9] *Supra* note 4 at 397.

The application of the equal protection clause is improper because **local workers and OFWs are differently situated.** Local workers who perform activities which are usually necessary or desirable in the usual business or trade of the employer are deemed regular after six months of service. This is true even if the workers are for a fixed term. In *Glory Philippines, Inc. v. Vergara*,[10] the Court held that:

> [**W**]**e cannot give credence to petitioner's claim that respondents were fixed term employees**. x x x In the instant case, **respondents' original employment contracts were renewed four times**. x x x
>
> In *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, we held that **such a continuing need for respondents' services is sufficient evidence of the necessity and indispensability of their services to petitioner's business. Consequently, we find that respondents were regular employees** defined under Article 280 of the Labor Code as those who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of petitioner. (Emphasis supplied)

On the other hand, OFWs are never deemed regular. In *Brent School, Inc. v. Zamora*,[11] the Court held that:

> Some familiar examples may be cited of employment contracts which may be neither for seasonal work nor for specific projects, but to which a fixed term is an essential and natural appurtenance: **overseas employment contracts**, for one, **to which, whatever the nature of the engagement, the concept of regular employment with all that it implies does not appear ever to have been applied**, Article 280 of the Labor Code notwithstanding. (Emphasis supplied)

Accordingly, I vote to declare the provision "or for three (3) months for every year of the unexpired term, whichever is less" in Section 10, paragraph 5, of Republic Act No. 8042 as unconstitutional for violation of the due process clause.

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[10] G.R. No. 176627, 24 August 2007, 531 SCRA 253, 262.

[11] G.R. No. 48494, 5 February 1990, 181 SCRA 702, 714.

## CONCURRING OPINION

**BRION, *J.*:**

I concur with the *ponencia's* conclusion that Section 10 of Republic Act No. 8042, or the Migrant Workers and Overseas Filipinos Act (*R.A. No. 8042*), is unconstitutional insofar as it provides that –

> **In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to** the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus **his salaries for the unexpired portion of his employment contract *or for three (3) months for every year of the unexpired term, whichever is less***.

My conclusion, however, proceeds from a different reason and constitutional basis. I believe that this provision should be struck down for violations of the constitutional provisions in favor of labor[1] and of the substantive aspect of the due process clause.[2] Given these bases, I see no necessity in invoking the equal protection clause. Underlying this restraint in invoking the equal protection clause is my hesitation to join the *ponencia* in declaring a classification as "suspect" and in using the strict scrutiny standard without clearly defined parameters on when this approach applies.

I begin by reading the assailed provision – Section 10, R.A. No. 8042 – in its constitutional context. Section 18, Article II of the Constitution declares it a state policy to affirm labor as a primary social economic force and to protect the rights of workers and promote their welfare. This policy is emphatically given more life and vitality under Article XIII, Section 3 of the Constitution which reads:

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[1] CONSTITUTION, Article II, Section 18 and Article XIII, Section 3; see p. 2 of this Concurring opinion.

[2] *Id.;* Article III, Section 1 contains both the due process and equal protection clauses of the Constitution, as follows: **Section 1.** No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

On June 7, 1995, Congress enacted R.A. No. 8042 "**to establish a higher standard of protection and promotion of the welfare of migrant workers, their families and of overseas Filipinos in distress**."[3] The express policy declarations of R.A. No. 8042 show that its purposes are reiterations of the very same policies enshrined in the Constitution. R.A. No. 8042, among others, recites that:

(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.[4]

x x x x x x x x x

[3] Long title of R.A. No. 8042. Its short title is *"Migrant Workers and Overseas Filipinos Act of 1995."* The law came soon after the Gancayco Commission rendered its report on the situation of overseas Filipino workers. The Commission was convened following the execution of Flor Contemplacion, a Filipino domestic helper executed in Singapore on March 17, 1995.

[4] See and compare with Section 3, Article XIII of the Constitution.

(e) Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interests of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.

These declared purposes patently characterize R.A. No. 8042 as a direct implementation of the constitutional objectives on Filipino overseas work so that it must be read and understood in terms of these policy objectives. Under this interpretative guide, any provision in R.A. No. 8042 inimical to the interest of an overseas Filipino worker (*OFW*) cannot have any place in the law.

Further examination of the law shows that while it acknowledges that the State shall *"promote full employment,"* it states at the same time that *"the State does not promote overseas employment as a means to sustain economic growth and national development. The existence of overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of Filipino citizens shall not, at any time, be compromised or violated."* In blunter terms, the overseas employment program exists only for OFW protection.

Having said all these, the law concludes its Declaration of Policies with a statement the lawmakers may have perceived as an exception to the law's previously declared policies, by stating – *"[**n**]**onetheless**, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them."* Thus, in express terms, the law recognizes that there can be "incentives" to service contractors and manning agencies in the spirit of encouraging greater deployment efforts. No mention at all, however, was made of incentives to the contractors' and agencies' principals, *i.e.*, the foreign employers in whose behalf the contractors and agencies recruit OFWs.

The matter of money claims – the immediate subject of the present case – is governed by Section 10 of the law. This section

grants the National Labor Relations Commission (*NLRC*) jurisdiction over OFW money claims. On liability for money claims, the sections states:

> SECTION 10. Money Claims. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.
>
> The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.
>
> Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.
>
> Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.
>
> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

Under these terms, the law protects the OFW as against the employer and the recruitment agency in case of illegal termination

of service, but limits this liability to the reimbursement of the placement fee and interest, and the payment of "*his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.*" After earlier declaring the principal/employer and the contractor/recruitment agency jointly and solidarily liable, the limitation of liability appears to be a step backward that can only be justified, under the terms of the law, if it is an "appropriate incentive." To be "appropriate," the incentive must necessarily relate to the law's purpose with reasonable expectation that it would serve this purpose; it must also accrue to its intended beneficiaries (the recruitment/placement agencies), and not to parties to whom the reason for the grant does not apply.

These considerations bring us to the question – can the disputed portion of Section 10 stand constitutional scrutiny?

I submit that it cannot as it violates the constitutional provisions in favor of labor, as well as the requirements of substantive due process.

The best indicator of the effect of the disputed portion of Section 10 on OFWs can be seen from the results of the pre-R.A. No. 8042 rulings of this Court that the *ponencia* painstakingly arranged in tabular form. The *ponencia's* table shows that by our own past rulings, **before R.A. No. 8042**, all illegal dismissals merited the payment of the salaries that the OFWs would have received for the unexpired portion of their contracts.[5] **After R.A. No. 8042**, our rulings vary on the computation of what should be paid to illegally dismissed OFWs, but in all cases the principal's/agency's adjudged liability was for less than the unexpired portion of the OFW's contract.[6]

**Anyway viewed, the situation of illegally dismissed OFWs changed for the worse after R.A. No. 8042.** In this sense, the disputed portion of Section 10 is one that goes against the interests of labor, based on R.A. No. 8042's own declared purposes and, more importantly, on constitutional standards. **Section 10**

[5] See: *Ponencia*, p. 23.

[6] *Ibid.*, pp. 21-22.

**diminished rather than enhanced the protection the Constitution envisions for OFWs.**

The more significant violation, however, that the disputed portion of Section 10 spawns relates to its character as a police power measure, and its failure to meet the substantive due process requirements of Article III, Section 1 of the Constitution.

By the Office of the Solicitor General's (*OSG*) own representations, the disputed Section 10 is a police power measure adopted to mitigate the solidary liability of placement agencies. It "redounds to the benefit of the migrant workers whose welfare the government seeks to promote. The survival of legitimate placement agencies helps [assure] the government that migrant workers are properly deployed and are employed under decent and humane conditions."[7] To constitutionally test the validity of this measure, substantive due process requires that there be: (1) a lawful purpose; and (2) lawful means or method to achieve the lawful purpose.[8]

I see nothing inherently unconstitutional in providing incentives to local service contractors and manning agencies; they are significant stakeholders in the overseas employment program and providing them with encouragement – as R.A. No. 8042 apparently envisions in its Declaration of Policies – will ultimately redound to the benefit of the OFWs they recruit and deploy for overseas work. The Constitution itself also expressly recognizes *"the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth."*[9] As entities acting for the principals/employers in the overseas employment program, the recruitment/manning agencies deserve no less. Viewed from this perspective, the purpose of encouraging greater efforts at securing work for OFWs cannot but be constitutionally valid. Thus, the issue before us in considering substantive due process

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[7] OSG Memorandum, *rollo*, pp. 668-678; cited in the *ponencia*, p. 11.

[8] See: *City of Manila v. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308; *Planters Committee v. Arroyo*, G.R. Nos. 79310 and 79744, July 14, 1989, 175 SCRA 343; *Balacuit v. CFI of Agusan del Norte*, G.R. No. L-38429, June 30, 1998, 163 SCRA 182.

[9] CONSTITUTION, Article XIII, Section 3.

is reduced to whether the means taken to achieve the purpose of encouraging recruitment efforts (***i.e.*, the incentive granted limiting the liability of recruitment/manning agencies for illegal dismissals)** is reasonable.

The first significant consideration in examining this issue is the question of liability – who is liable when a foreign principal/employer illegally terminates the services of an OFW? Under Philippine law, the employer, as the contracting party who violated the terms of the contract, is primarily liable.[10] In the overseas employment situation, the protective measures adopted under the law and the Philippine Overseas Employment Administration (*POEA*) rules to protect the OFW in his or her overseas contract best tell us how we regard liability under this contract.

*First*, POEA Rules require, as a condition precedent to an OFW deployment, the execution of a master contract signed by a foreign principal/employer before it can be accredited by the POEA as an entity who can source its manpower needs from the Philippines under its overseas employment program.[11] The master contract contains the terms and conditions the foreign principal/employer binds itself to in its employment relationship with the OFWs it will employ. *Second*, signed individual contracts of employment between the foreign principal/employer or its agent and the OFW, drawn in accordance with the master contract, are required as well.[12] *Third*, the foreign aspects or incidents of these contracts are submitted to the Philippine labor attachés for verification at site.[13] This is a protective measure to ensure

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[10] LABOR CODE, Article 279; *Vinta Maritime Co., Inc and Elkano Ship Management, Inc. v. NLRC, et al*., G.R. No. 113911, January 23, 1998; *Tierra International Construction, et al. v. NLRC*, G.R. No. 101825, April 2, 1996.

[11] POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Workers (*POEA Rules for Land-Based Workers*), Part III, Rule 1, Sections 1 to 4; Rule 2, Section 2.

[12] POEA Rules for Land-Based Workers, Part V, Rile I, Sections 1 to 4; POEA Rules and Regulations Governing Recruitment and Employment of Seafarers (*POEA Rules for Seafarers*), Part IV, Rule I, Sections 1 and 2.

[13] POEA Rules for Land-Based Workers, Part III, Rule 1, Section 1; POEA Rules for Seafarers, Part III, Rule 1, Sections 1 to 4.

the existence and financial capability of the foreign principal/employer. Labor attaches verify as well the individual employment contracts signed by foreign principals/employers overseas. *Fourth*, the POEA Rules require the issuance by the foreign principal-employer of a special power of attorney authorizing the recruitment/manning agency to sign for and its behalf, and allowing itself to sue or be sued on the employment contracts in the Philippines through its authorized recruitment/manning agency.[14] *Fifth*, R.A. No. 8042 itself and its predecessor laws have always provided that the liability between the principal and its agent (the recruitment/manning agency) is joint and solidary,[15] thus ensuring that either the principal or the agent can be held liable for obligations due to OFWs. *Finally*, OFWs themselves can sue at the host countries with the assistance of Philippine embassies and labor offices.[16]

These measures collectively protect OFWs by ensuring the integrity of their contracts; by establishing the responsible parties; and by providing the mechanisms for their enforcement. In all these, the primary recourse is with the foreign principal employer who has direct and primary responsibility under the employment contract.

Section 10 of R.A. No. 8042 affects these well-laid rules and measures, and in fact provides a hidden twist affecting the

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[14] POEA Rules for Land-Based Workers, Part III, Rule 1, Sections 2 (a) to 3, and Rule 2, Section 2 (a); POEA Rules for Seafarers, Part III, Rule 1, Sections 2 (b) and 4, and Rule 2, Section 2(a).

[15] POEA Rules for Land-Based Workers, Part II, Rule 2, Section 1 (f) (3); POEA Rules for Seafarers, Part II, Rule 2, Section 1 (e) (8); *Datuman v. First Cosmopolitan Manpower and Promotion Services*, G.R. No. 156029, November 14, 2008; See: Implementing Rules and Regulations of the Labor Code (1976), Book I, Rule V, Section 10; See also: *Catan v. NLRC*, G.R. No. 77279, April 15, 1988, 160 SCRA 691, and *Royal Crown International v. NLRC*, G.R. No. 78085, October 16, 1989, 178 SCRA 569.

[16] Assistance is provided by Labor Attaches who report to the DOLE functionally and to the Philippine Ambassador at the foreign post. Assisting him are welfare officers of the Overseas Workers Welfare Administration (OWWA) and the POEA representatives, all of them functionally reporting to the DOLE.

principal/employer's liability. While intended as an incentive accruing to recruitment/manning agencies, *the law, as worded, simply limits the OFWs' recovery in wrongful dismissal situations. Thus, it redounds to the benefit of whoever may be liable, including the principal/employer – the direct employer primarily liable for the wrongful dismissal.* In this sense, Section 10 – read as a grant of incentives to recruitment/manning agencies – oversteps what it aims to do by effectively limiting what is otherwise the full liability of the foreign principals/ employers. *Section 10, in short, really operates to benefit the wrong party and allows that party, without justifiable reason, to mitigate its liability for wrongful dismissals.* Because of this hidden twist, the limitation of liability under Section 10 cannot be an "appropriate" incentive, to borrow the term that R.A. No. 8042 itself uses to describe the incentive it envisions under its purpose clause.

What worsens the situation is the chosen mode of granting the incentive: instead of a grant that, to encourage greater efforts at recruitment, is directly related to extra efforts undertaken, the law simply limits their liability for the wrongful dismissals of already deployed OFWs. This is effectively a legally-imposed partial condonation of their liability to OFWs, justified solely by the law's intent to encourage greater deployment efforts. Thus, the incentive, from a more practical and realistic view, is really part of a scheme to sell Filipino overseas labor *at a bargain* for purposes solely of attracting the market. Ironically, the OSG unabashedly confirmed this view in its Comment when it represented that *"[b]y limiting the liability to three months, Filipino seafarers have better chance of getting hired by foreign employees."*[17]

The so-called incentive is rendered particularly odious by its effect on the OFWs — *the benefits accruing to the recruitment/ manning agencies and their principals are taken from the pockets of the OFWs* to whom the full salaries for the unexpired portion of the contract rightfully belong. Thus, the principals/employers and the recruitment/manning agencies even profit from their violation of the security of tenure that an employment contract

[17] OSG Comment; *rollo*, p. 555.

embodies. Conversely, lesser protection is afforded the OFW, not only because of the lessened recovery afforded him or her by operation of law, but also because this same lessened recovery renders a wrongful dismissal easier and less onerous to undertake; the lesser cost of dismissing a Filipino will always be a consideration a foreign employer will take into account in termination of employment decisions. This reality, unfortunately, is one that we cannot simply wish away with the disputed Section 10 in place. Thus, this inherently oppressive, arbitrary, confiscatory and inimical provision should be struck down for its conflict with the substantive aspect of the constitutional due process guarantee. Specifically, *the phrase* **"for three (3) months for every year of the unexpired terms, whichever is less"** *in the fifth and final paragraph of Section 10 of R.A. 8042 should be declared unconstitutional.*

With these conclusions, I see no need to further test the validity of the assailed clause under the equal protection guarantee. My restraint in this regard rests on two reasons.

*First*, I believe that the *ponencia's* use of the strict scrutiny standard of review – on the premise that the assailed clause established a *suspect classification* – is misplaced. *Second*, I do not see the present case as an occasion to further expand the use of the strict scrutiny standard which the Court first expanded in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*.[18]

A suspect classification is one where distinctions are made based on the most invidious bases for classification that violate the most basic human rights, *i.e.*, on the basis of race, national origin, alien status, religious affiliation, and to a certain extent, sex and sexual orientation.[19] With a suspect classification, the scrutiny of the classification is raised to its highest level: the ordinary presumption of constitutionality is reversed and government carries the burden of proving that its challenged policy is constitutional. To withstand strict scrutiny, the

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[18] G.R. No. 148208, December 15, 2004, 446 SCRA 299.

[19] *City of Cleburn, Texas v. Cleburne Living Center*, 413 U.S. 432 (1985); *Loving v. Commonwealth of Virginia*, 388 U.S. 1 (1967).

government must show that its policy is necessary to achieve a compelling state interest; if this is proven, the state must then demonstrate that the legislation is narrowly tailored to achieve the intended result.[20]

In the present case, I do not see the slightest indication that Congress actually intended to classify OFWs – between and among themselves, and in relation with local workers – when it adopted the disputed portion of Section 10. The congressional intent was to merely grant recruitment and manning agencies an incentive and thereby encourage them into greater deployment efforts, although, as discussed above, the incentive really works for the foreign principals' benefit at the expense of the OFWs.

Even assuming that a classification resulted from the law, the classification should not immediately be characterized as a suspect classification that would invite the application of the strict scrutiny standard. *The disputed portion of Section 10 does not, on its face, restrict or curtail the civil and human rights of any single group of OFWs. At best, the disputed portion limits the monetary award for wrongful termination of employment – a tort situation affecting an OFW's economic interest.* This characterization and the *unintended* classification that unwittingly results from the incentive scheme under Section 10, to my mind, render a strict scrutiny disproportionate to the circumstances to which it is applied.

I believe, too, that we should tread lightly in further expanding the concept of suspect classification after we have done so in *Central Bank*,[21] where we held that ***classifications that result in prejudice to persons accorded special protection by the Constitution***[22] requires a stricter judicial scrutiny. The use of a suspect classification label cannot depend solely on whether the Constitution has accorded special protection to a specified

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[20] *Grutter v. Bollinger*, 539 U.S. 306 (2003).

[21] *Supra* note 18.

[22] In the Central Bank case, the classification was based on salary grade or officer-employee status. In the words of the decision, "It is akin to a distinction based on economic class and status, with the higher grades as recipients of a benefit specifically withheld from the lower grades."

sector. While the Constitution specially mentions labor as a sector that needs special protection, the involvement of or relationship to labor, by itself, cannot automatically trigger a suspect classification and the accompanying strict scrutiny; much should depend on the circumstances of the case, on the impact of the illegal differential treatment on the sector involved, on the needed protection, and on the impact of recognizing a suspect classification on future situations. In other words, we should carefully calibrate our moves when faced with an equal protection situation so that we do not *misappreciate* the essence of what a suspect classification is, and thereby lessen its jurisprudential impact and value. Reserving this approach to the worst cases of unacceptable classification and discrimination highlights the importance of striking at these types of unequal treatment and is a lesson that will not be lost on all concerned, particularly the larger public. There is the added reason, too, that the reverse onus that a strict scrutiny brings directly strikes, in the most glaring manner, at the regularity of the performance of functions of a co-equal branch of government; inter-government harmony and courtesy demand that we reserve this type of treatment to the worst violations of the Constitution.

Incidentally, I believe that we can arrive at the same conclusion and similarly strike down the disputed Section 10 by using the lowest level of scrutiny, thereby rendering the use of the strict scrutiny unnecessary. Given the OSG's positions, the resulting differential treatment the law fosters between Philippine-based workers and OFWs in illegal dismissal situations does not rest on substantial distinctions that are germane to the purpose of the law. No reasonable basis for classification exists since the distinctions the OSG pointed out do not justify the different treatment of OFWs and Philippine-based workers, specifically, why one class should be excepted from the consequences of illegal termination under the Labor Code, while the other is not.

To be sure, the difference in work locations and working conditions that the OSG pointed out are not valid grounds for distinctions that should matter in the enforcement of employment contracts. Whether in the Philippines or elsewhere, the integrity

of contracts – be they labor, commercial or political – is a zealously guarded value that we in the Philippines should not demean by allowing a breach of OFW contracts easy to undertake. This is true whatever may be the duration or character of employment; employment contracts, whatever their term and conditions may be subject only to their consistency with the law, must be respected during the whole contracted term and under the conditions agreed upon.

Significantly, the OSG could not even point to any reason other than the protection of recruitment agencies and the expansion of the Philippine overseas program as justification for the limitation of liability that has effectively distinguished OFWs from locally-based workers. These reasons, unfortunately, are not on the same plane as protection to labor in our constitutional hierarchy of values. Even RA 8042 repeats that "*the State does not promote overseas employment as a means to sustain economic growth and national development.*" Under RA 8042's own terms, the overseas employment program exists only for OFW protection. Thus viewed, the expansion of the Philippine overseas deployment program and the need for incentives to achieve results are simply not valid reasons to justify a classification, particularly when the incentive is in the form of oppressive and confiscatory limitation of liability detrimental to labor. No valid basis for classification thus exists to justify the differential treatment that resulted from the disputed Section 10.

In light of all these, I vote to strike down the disputed portion of Section 10 of R.A. No. 8042.

**SECOND DIVISION**

[A.M. No. MTJ-08-1708. March 25, 2009]
(formerly A.M. No. 08-5-149-MTC)
(Re: Judicial Audit of the MTCC, Br. 2, Roxas City, Capiz)

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **PRESIDING JUDGE FILPIA D. DEL CASTILLO, MTC, MAAYON, CAPIZ,** *respondent.*

**SYLLABUS**

**1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; ATTENDANT CIRCUMSTANCES NEGATING LIABILITY FOR GROSS IGNORANCE OF THE LAW.—** While this is gross ignorance of the law punishable as a serious offense, we do not believe that we should hold Judge Del Castillo liable for this offense because of the attendant circumstances of this case. *Her ignorance is a breach she commonly shared with, and was reinforced by the actions of, Judge Conlu who retired on April 27, 2008 and who is now beyond the reach of this Court. Judge Conlu can even be said to have the greater share of the blame since the case was assigned to his branch and he had direct responsibility over it. Under the circumstances and out of fairness, we cannot now hold Judge del Castillo liable while simply admitting that we can no longer similarly penalize Judge Conlu.* The option more consistent with basic fairness is to simply consider her share of ignorance an aggravating factor in imposing the appropriate penalty for her. For, to be sure, she must be held liable and penalized for unreasonably and unjustifiably holding on to the case for 4 years – from 2004 to 2008 – without doing anything about it. To her credit, she finally decided the case in June 2008, although her ruling makes us wonder why she had to hold on to the case for so long. The length of time she held on to it and the tenor of her ruling, however, at least tell us that no ulterior design motivated her to keep the case with her.

**2. ID.; ID.; ID.; A CONTINUED OMISSION TO DO ANYTHING ABOUT THE CASE CONSTITUTES SIMPLE MISCONDUCT; MAXIMUM FINE IMPOSED IN VIEW OF ATTENDANT CIRCUMSTANCES.— What is Judge Del Castillo's liability under the circumstances?** We cannot hold her liable for delay in rendering a decision; the subject criminal case belonged to another branch and paucity of facts prevents us from concluding that she had the obligation to decide the case. That she finally decided the case is in no way indicative of whether she had the obligation to decide the case. Nor can we hold her liable for undue delay in transmitting the records of the case; what she failed to do was beyond the act of "*transmitting*" which also does not appear to be the exact task she had to undertake. What she is undoubtedly guilty of was her continued omission to do anything about the case, either in terms of deciding it or clarifying its status with the MTCC branch to which it rightfully belonged. This lapse, to our mind, is best classified under the Classification of Charges (*provided under Rule 140, Section 7 of the Rules of Court)* as a simple misconduct – a less serious offense similar to undue delay in rendering a decision in gravity, but one which more accurately depicts what she had done. Lest this ruling be misunderstood, we are not taking Judge Del Castillo's gross inaction lightly. By what she did or failed to do, she exhibited gross insensitivity to her role and duties as a judge and dispenser of justice, resulting partly from her ignorance of the law. As she openly manifested, the case left her in a "*quandary*." She also forgot that a judge must administer justice without delay and be punctual in the performance of his or her judicial duties. Delay not only results in undermining the people's faith in the judiciary; it also reinforces in the mind of the litigants the impression that the wheels of justice grind ever so slowly, and worse, it invites suspicion of ulterior motives on the part of the judge and casts doubt on the integrity of the members of the judiciary. Under Section 11(B), Rule 140 of the Rules of Court, as amended, simple misconduct, as a less serious charge, carries the penalty of suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In light of the attendant ignorance of the law that we noted above and the delay involved in the handling of the case, we

deem it appropriate to impose the maximum fine of ₱20,000.00 on Judge Del Castillo.

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

**BRION, *J.*:**

We pass upon this administrative case that the Office of the Court Administrator (*OCA*) of this Court filed against Presiding Judge Filpia D. Del Castillo (*Judge Del Castillo*), MTC, Maayon, Capiz. The case arose from the judicial audit of the MTCC, Branch 2, Roxas City, Maayon Capiz (with the Hon. Elias A. Conlu, now retired, then presiding) and involves a case she handled while she was Acting Presiding Judge of the branch.

**The Antecedents**

On July 14, 2008, the Court issued a Resolution with the following directives: *"(1) Docket the matter as a regular administrative case insofar as Presiding Judge Filpia D. Del Castillo, MTC, Maayon, Capiz, is concerned; (2) Require the parties to manifest whether they are willing to submit the matter for resolution on the basis of the pleadings filed, within ten (10) days from notice; and (3) Direct Judge Del Castillo to decide Criminal Case No. 97-10140 and to submit to the Court, through the Office of the Court Administrator, a certified true copy of her decision thereon with utmost dispatch."*[1]

The Resolution originated from the judicial audit conducted on March 18, 2008 of the MTCC, Branch 2, Roxas City, Capiz, with Judge Elias A. Conlu (*Judge Conlu*) then presiding. In the course of the audit, the status of the Criminal Case No. 97-10140[2] (*subject criminal case*), came to the attention of the audit team who reported that it could not audit the case because the records were not with the court. To quote from the Audit Report:[3]

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[1] Through the Second Division.

[2] Reckless Imprudence Resulting to Serious Physical Injuries and Damage to Property.

[3] Quoted from the OCA Memorandum of May 19, 2008, p. 1.

*. . .The team leader was informed that the aforementioned case was "borrowed" by* ***Judge Filpia D. Del Castillo,*** *Presiding Judge, MTC, Maayon, Capiz, apparently once an Acting Presiding Judge in the court, "and brought to the MTC, Maayon, Capiz. A demand was made on the Judge to return the records of the case but, as of the time of the audit, it did not "materialize." These (sic) fact is reported in the July to December 2007 Docket Inventory of the court as the "Judge to whom the case is assigned."*

The Audit Report referred to *"data supplied by a previous audit team who audited the court sometime in 2006, (that) the trial of the case was handled by various Judges until 20 February 2003 when Judge Del Castillo 'handled the case'."* The Audit Report then narrated that Judge Del Castillo, while still the Acting Presiding Judge of MTCC, Branch 2, appears to have issued an Order that reads:[4]

*x x x for non-compliance of defense to formally offer their exhibits, the same (was) deemed waived; (and) Prosecution was given 15 days from receipt to submit their Memorandum afterwhich (sic) the case was deemed submitted for decision, as soon as TSN (was) completed.*

The OCA, in a Memorandum[5] dated April 2, 2008, required Judge Del Castillo *"to inform the Office, within ten (10) days from notice, whether the Guidelines in Mabunay*[6] *were observed by her, with respect to Criminal Case No. 97-10140, which is allegedly in her possession, belonging to the docket of the MTCC, Br. 2, Roxas City, Capiz, apparently submitted for decision (SFD) during the time that she was Acting Presiding Judge thereof."*

In her letter-compliance dated April 21, 2008, Judge Del Castillo stated that —

When the incumbent judge [*referring to Judge Elias A. Conlu*] assumed as the newly appointed Presiding Judge of MTCC, Branch 2, in Roxas City, Capiz, the undersigned presumed that he conducted

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[4] As quoted from the OCA Memorandum, p. 4.

[5] Issued by Deputy Court Administrator Reuben P. dela Cruz.

[6] *Re: Cases Left Undecided by Judge Sergio D. Mabunay, RTC, Br. 24, Manila*; A.M. No. 98-3-114-RTC, July 22, 1998, 292 SCRA 694.

the required inventory of all cases of said court. The case record of Criminal Case No. 97-10140-10 was forwarded to the undersigned for proper disposition, presumably for the issuance of its decision.

During the conduct of a Judicial Audit of the said Court by the Judicial Audit Team coming from the Supreme Court last 2006, the questioned criminal case record was turned over to the said Court by the undersigned.

Again, the undersigned presumed that its incumbent judge had again gone over the record of the said case, knowing fully well that he assumes full responsibility for all the records of cases belonging in his Court and that any case record coming out from his Court must be with his personal knowledge and consent.

After the said Judicial Audit, the said case record was given back to the undersigned, presumably with the knowledge and consent of its incumbent judge, supposedly for decision.

With all sincerity, the undersigned was still in a quandary whether the said case is actually submitted for decision before the undersigned, considering that the mandatory submission of the required memorandum has not been complied with and whether or not the Mabunay Case still rules under the present circumstances, considering its several amendments thereto *(sic)* in subsequent rulings laid down by the Supreme Court.

Judge Elias A. Conlu, in his letter of April 25, 2008 regarding the Judicial Audit of MTCC Branch 2, had this to say when asked to comment by the OCA:

As regards Crim. Case No. 97-10140 entitled *People of the Philippine vs. Lorenzo Cabantug y Alayon* for Reckless Imprudence Resulting in Physical Injuries and Damage to Property, the record has just been turned over to this Court by Judge Filpia del Castillo, without any action thereon since her last Order dated February 3, 2004. It appears that the good Judge does not know what to do with this case shown by her reply dated April 21, 2008 (copy attached for ready reference).

Judge Del Castillo submitted the administrative case on the basis of her submissions to the OCA.

**The OCA Evaluation and Recommendation**

In its Memorandum to the Court dated May 19, 2008, the OCA opined that Judge Del Castillo should be held liable for delay in deciding the criminal case.[7] The OCA noted that the case was ordered submitted for decision in an order issued by Judge Del Castillo herself on February 3, 2004 when she was still Acting Presiding Judge of MTCC, Branch 2, of Roxas City, Capiz.

The case, according to the OCA, was still governed by the ordinary procedure so that Judge Castillo had 90 days from February 15, 2004 (the date the case was effectively deemed submitted for decision) to decide; at the most, the case should have been decided by April 15, 2004 (the end of the 90-day period); pursuant to *Mabunay*,[8] Judge Conlu, who was appointed on February 9, 2004 and who took his oath of office on February 23, 2004, "*could not be expected to decide the case unless the parties decides (sic) otherwise since. . .he cannot still (sic) exercise his judicial functions at that time, but only his administrative functions*." After assumption to office, a new judge cannot exercise his judicial functions until he has undergone an orientation seminar-workshop and an immersion program in accordance with the Court *En Banc*'s Resolution dated July 20, 1999 in A.M. No. 99-7-07-SC, which provides:

> E. Before undertaking the orientation seminar-workshop and while undergoing the immersion program, new and original appointees to the judiciary, although they have already taken his oath of office, cannot perform judicial functions. However, they may act on administrative matters.

The OCA's verification of Judge Conlu's 201 file showed that the judge finished his orientation seminar-workshop on March 12, 2004 and his immersion on April 23, 2004. Thus, OCA took the view that Judge Del Castillo still retained the obligation to decide the case. When she failed to decide within the reglementary period (*i.e.*, up to April 15, 2004), she was already

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[7] Signed by Court Administrator Zenaida N. Elepaño, Deputy Court Administrator Reuben P. dela Cruz, and Judicial Supervisor Artemio A. Nuñez III.

[8] *Supra* note 6.

liable for delay in rendering a decision on the case. She could not, at that point, invoke *Mabunay* and toss back the case to Judge Conlu for his decision, "*since the period within which she should have decided the cases had already elapsed (when Judge Conlu) assumed office*."

The OCA recommended that the matter be docketed as a regular administrative case; that Judge Del Castillo be adjudged administratively liable and fined ₱10,000.00 for gross inefficiency; and that she be directed to decide Criminal Case No. 97-10140 with utmost dispatch.

**Compliance with the Court's Resolution Issued on July 14, 2008**

Judge Del Castillo complied with the July 14, 2008 Resolution of the Court through a Manifestation dated September 1, 2008 advising the Court that:

> THAT with regards to Crim. Case No. 97-10140-10 pending before MTCC-Br. 2 in Roxas City, the same had already been ordered DISMISSED last 12 June 2008 when the undersigned assumed as Acting Presiding Judge of that Court, certified copy of which is hereto attached as ANNEX "A" for your perusal;
>
> THAT said order dated 12 June 2008 was furnished the herein parties and counsels, as per Return made and attached hereto as "Annex "B";
>
> That no reconsideration to the said order was made, the same having become final and executory;
>
> That the said order dated 12 June 2008 was released even before the Honorable Second Division issued the subject Resolution.

Judge Del Castillo prayed that the manifestation be considered as sufficient compliance with the Court's Resolution.

**The Court's Ruling**

For lack of material facts sufficient to conclude that Judge Del Castillo was in delay in deciding the subject criminal case, we can only find her liable for simple misconduct.

An undisputed fact in this case is that Judge Del Castillo acted on the subject criminal case on February 3, 2004. What

she ordered is not in dispute and from this, the OCA concluded that the subject criminal case was deemed submitted for decision by February 15, 2004. In the interim, a new judge – Judge Conlu – was appointed on February 9, 2004 and took his oath of office on February 23, 2004. What remains unclear in the records is when Judge Conlu actually assumed office. The OCA assumed that he only did so after April 23, 2004 after he concluded his orientation seminar workshop and his orientation program. By that time, the subject criminal case, deemed submitted on February 15, 2004, should have been decided by Judge Del Castillo, given the 90-day period from submission for decision then given to judges to decide the cases before them. Thus, the OCA concluded that Judge Del Castillo was already in delay when Judge Conlu "*assumed*" office after April 23, 2004.

Basic in the OCA's thinking in making this conclusion is that Judge Conlu only assumed office when he had already finished his orientation-immersion programs when he could already perform his "*judicial*" functions. Lost to the OCA, however, is that A.M. No. 99-7-07-SC also provides that a new judge can already act on "*administrative matters*" even while undergoing the orientation-immersion programs. Had Judge Conlu done so, then he would have effectively assumed office when he began performing the duties of his office, even though they might only have been administrative in character. Without this piece of evidence, we cannot conclude that Judge Del Castillo had been in delay since the obligation to decide the case would no longer be hers when she ceased acting as judge of MTCC Branch 2. To state the obvious, a branch cannot have two incumbent presiding judges at the same time.

The *Mabunay* ruling cited by the OCA and the judicial auditors provide in its material portions:[9]

> Basically, a case once raffled to a branch belongs to that branch unless reraffled or otherwise transferred to another branch in accordance with established procedure. When the Presiding Judge

[9] *Supra* note 6; see also: Resolution dated 8 June 2004 in A.M. No. 04-5-19-SC entitled "Providing Guidelines in the Inventory and Adjudication of Cases Assigned to Judges who are Promoted or Transferred to other Branches in the Same Court of the Judicial Hierarchy."

of that branch to which a case has been raffled or assigned is transferred to another station, he leaves behind all the cases he tried with the branch to which they belong. He does not take these cases with him even if he tried them and the same were submitted to him for decision. The judge who takes over this branch inherits all these cases and assumes full responsibility for them. He may decide them as they are his cases, unless any of the parties moves that his case be decided by the judge who substantially heard the evidence and before whom the case was submitted for decision. If a party therefore so desires, he may simply address his request or motion to the incumbent Presiding Judge who shall then endorse the request to the Office of the Court Administrator so that the latter may in turn endorse the matter to the judge who substantially heard the evidence and before whom the case was submitted for decision. This will avoid the "*renvoir*" of records and the possibility of an irritant between the judges concerned, as one may question the authority of the other to transfer the case to the former. If coursed through the Office of the Court Administrator, the judge who is asked to decide the case is not expected to complain, otherwise, he may be liable for insubordination and his judicial profile may be adversely affected. Upon direction of the Court Administrator, or any of his Deputy Court Administrators acting in his behalf, the judge before whom a particular case was earlier submitted for decision may be compelled to decide the case accordingly.

We take this opportunity to remind trial judges that once they act as presiding judges or otherwise designated as acting/assisting judges in branches other than their own, cases substantially heard by them and submitted to them for decision, unless they are promoted to higher positions in the judicial ladder, may be decided by them wherever they may be if so requested by any of the parties and endorsed by the incumbent Presiding Judges through the Office of the Court Administrator. The following procedure may be followed: First, the Judge who takes over the branch must immediately make an inventory of the cases submitted for decision left behind by the previous judge (*unless the latter has in the meantime been promoted to a higher court*). Second, the succeeding judge must then inform the parties that the previous judge who heard the case, at least substantially, and before whom it was submitted for decision, may be required to decide the case. In this event, and upon request of any of the parties, the succeeding judge may request the Court Administrator to formally endorse the case for decision to the judge

before whom it was previously submitted for decision. Third, after the judge who previously heard the case is through with his decision, he should send back the records together with his decision to the branch to which the case properly belongs, by registered mail or by personal delivery, whichever is more feasible, for recording and promulgation, with notice of such fact to the Court Administrator.

Since the primary responsibility over a case belongs to the presiding judge of the branch to which it has been raffled or assigned, he may also decide the case to the exclusion of any other judge provided that all the parties agree in writing that the incumbent presiding judge should decide the same, or unless the judge who substantially heard the case and before whom it was submitted for decision has in the meantime died, retired or for any reason has left the service, or has become disabled, disqualified, or otherwise incapacitated to decide the case.

The Presiding Judge who has been transferred to another station cannot, on his own, take with him to his new station any case submitted for decision without first securing formal authority from the Court Administrator. This is to minimize, if not totally avoid, a situation of "*case-grabbing*." In the same vein, when the Presiding Judge before whom a case was submitted for decision has already retired from the service, the judge assigned to the branch to take over the case submitted for decision must automatically assume the responsibility of deciding the case.

This ruling laid out in loud and clear terms the responsibility for assigned cases, the conditions for the transfer of that responsibility, and the primacy that the presiding judge of the assigned court has over a case assigned to his sala.

Given the *Mabunay* guidelines, another missing basic piece of evidence is the inventory of cases that Judge Conlu presumably prepared when he assumed office. Neither the OCA Memorandum nor the Audit Report mentions this document, yet it is of critical importance to find out how Judge Conlu regarded the subject criminal case and what he did with this case. Significantly, neither judges made any reference to the inventory. Judge Del Castillo only mentioned that she "*assumed*" that an inventory had been made, resulting in the forwarding of the records of the subject criminal case to her for decision.[10] Judge Conlu could only say

[10] Letter-compliance of Judge Castillo dated April 21, 2008.

that there was no action on the subject criminal case since Judge Del Castillo acted on it on February 3, 2004.[11] Yet an Audit Team already noted in the 2006 audit that the case was with the branch and even the July to December 2007 Docket Inventory of the branch noted that the records were with the "judge to whom the case is assigned."[12]

What both judges completely missed under the *Mabunay* ruling is that the subject criminal case was a MTCC Branch 2 case and that Judge Conlu, as the presiding judge of MTCC Branch 2, had the primary responsibility over the case. He could not have passed on the case to another judge, even if it had been submitted for decision when Judge Del Castillo was there and even if Judge Del Castillo had already been in delay when he (Judge Conlu) assumed office, without the documentation that the *Mabunay* guidelines require.

That nothing in the records before us indicates how Judge Del Castillo happened to have the records of the case is a big evidentiary gap. While MTCC Branch 2 stated that the case was *"borrowed"* by Judge Del Castillo,[13] the latter, on the other hand, said that the records of the case were forwarded to her for disposition.[14] What the truth really is, is lost to us at this point, although Judge Del Castillo's version is more believable; the records of the case, submitted to the 2006 audit team, were again sent to her after the audit, indicating that the case was regarded to be hers to decide.[15]

Under the circumstances, it appears to us that the judges, when they communicated with the OCA, were less than candid and were trying to pass on the blame to each other with an eye on mitigating their potential liabilities. Judge Conlu's explanation clearly pointed to his desire to be absolved of wrongdoing in

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[11] Letter dated April 25, 2008 of Judge Conlu.

[12] *Supra* note 4, as quoted from the OCA recommendation, p. 1.

[13] *Id*., p.1.

[14] *Supra* note 10, paragraph 2.

[15] *Id*., paragraph 5.

light of his coming retirement. **What appears certain, though, is that the terms of *Mabunay* were lost on both of them.** While this is gross ignorance of the law punishable as a serious offense, we do not believe that we should hold Judge Del Castillo liable for this offense because of the attendant circumstances of this case. *Her ignorance is a breach she commonly shared with, and was reinforced by the actions of, Judge Conlu who retired on April 27, 2008 and who is now beyond the reach of this Court. Judge Conlu can even be said to have the greater share of the blame since the case was assigned to his branch and he had direct responsibility over it. Under the circumstances and out of fairness, we cannot now hold Judge del Castillo liable while simply admitting that we can no longer similarly penalize Judge Conlu.* The option more consistent with basic fairness is to simply consider her share of ignorance an aggravating factor in imposing the appropriate penalty for her. For, to be sure, she must be held liable and penalized for unreasonably and unjustifiably holding on to the case for 4 years – from 2004 to 2008 – without doing anything about it. To her credit, she finally decided the case in June 2008, although her ruling makes us wonder why she had to hold on to the case for so long. The length of time she held on to it and the tenor of her ruling, however, at least tell us that no ulterior design motivated her to keep the case with her.

**What is Judge Del Castillo's liability under the circumstances?** We cannot hold her liable for delay in rendering a decision; the subject criminal case belonged to another branch and paucity of facts prevents us from concluding that she had the obligation to decide the case. That she finally decided the case is in no way indicative of whether she had the obligation to decide the case. Nor can we hold her liable for undue delay in transmitting the records of the case; what she failed to do was beyond the act of "*transmitting*" which also does not appear to be the exact task she had to undertake. What she is undoubtedly guilty of was her continued omission to do anything about the case, either in terms of deciding it or clarifying its status with the MTCC branch to which it rightfully belonged. This lapse, to our mind, is best classified under the Classification of Charges

(*provided under Rule 140, Section 7 of the Rules of Court)* as a simple misconduct – a less serious offense similar to undue delay in rendering a decision in gravity, but one which more accurately depicts what she had done.

Lest this ruling be misunderstood, we are not taking Judge Del Castillo's gross inaction lightly. By what she did or failed to do, she exhibited gross insensitivity to her role and duties as a judge and dispenser of justice, resulting partly from her ignorance of the law. As she openly manifested, the case left her in a "*quandary*." She also forgot that a judge must administer justice without delay[16] and be punctual in the performance of his or her judicial duties.[17] Delay not only results in undermining the people's faith in the judiciary; it also reinforces in the mind of the litigants the impression that the wheels of justice grind ever so slowly, and worse, it invites suspicion of ulterior motives on the part of the judge and casts doubt on the integrity of the members of the judiciary.[18]

Under Section 11(B), Rule 140 of the Rules of Court, as amended, simple misconduct, as a less serious charge, carries the penalty of suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In light of the attendant ignorance of the law that we noted above and the delay involved in the handling of the case, we deem it appropriate to impose the maximum fine of ₱20,000.00 on Judge Del Castillo.

**WHEREFORE,** premises considered, Judge **FILPIA D. DEL CASTILLO**, MTC, Maayon, Capiz, is hereby declared guilty of simple misconduct in her handling of Criminal Case No. 97-10140. We hereby impose the *MAXIMUM FINE of ₱20,000.00* with a *STERN WARNING* that a repetition of the same or similar acts in the future will be dealt with more severely.

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[16] Code of Judicial Conduct, Canon 1, Rule 1.02.

[17] *Id.*, Canon 3, Rule 3.05.

[18] *Office of the Court Administrator v. Judge James Go, et al.*, A.M. No. MTJ-07-1667, September 27, 007, 534 SCRA 156.

**SO ORDERED.**

*Tinga,* Austria-Martinez, Corona,* and *Velasco, Jr., JJ.,* concur.

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**FIRST DIVISION**

[A.M. No. P-04-1795. March 25, 2009]
(Formerly OCA I.P.I. No. 02-1447-P)

**ROQUE R. MARTINEZ, MARIA ELENA M. FELIPE, ROBERT R. MIÑANO, ROSALINDA G. MACASA and CIRIACO D. MARIVELES, JR.,** *complainants, vs.* **NORVELL R. LIM, Sheriff III, Regional Trial Court of Romblon, Romblon, Branch 81,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT EMPLOYEES; MISCONDUCT.—** Misconduct implies wrongful intention and not a mere error of judgment; an act that is corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules.

**2. ID.; ID.; ID.; ID.; NOT PRESENT WHEN RESPONDENT ADMINISTRATIVE OFFICER-IN-CHARGE OF THE HALL OF JUSTICE OF ROMBLON REMINDED IN A LETTER CO-EMPLOYEES TO ATTEND THE FLAG CEREMONY.—** Flag ceremonies inspire patriotism and evoke the finest sentiments of love of country and people. Section 18 of RA 8491 provides: Section 18. All government offices and educational institutions shall henceforth observe the flag-raising

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* Designated Acting Chairperson of the Second Division per Special Order No. 592 dated March 19, 2009.

ceremony every Monday morning and the flag lowering ceremony every Friday afternoon. The ceremony shall be simple and dignified and shall include the playing or singing of the Philippine National Anthem. Pursuant to this mandate, Supreme Court Circular No. 62-2001 (dated September 21, 2001) provides: All Executive Judges shall supervise the holding of the flag raising and flag lowering ceremonies in their respective Hall of Justice buildings or courthouses and shall ensure the attendance of all judges and court personnel in the rites. In deference to these mandates, the Chief State Prosecutor directed the personnel of the OPP to attend the flag ceremony. Consequently, as administrative officer-in-charge of the Hall of Justice of Romblon, respondent was duty-bound to remind the employees to attend the flag ceremony. Furthermore, the March 11, 2002 letter (quoted above) was courteously written. Respondent neither used offensive language nor insinuated that complainants were unpatriotic. Thus, there was no misconduct on the part of respondent.

**3. ID.; ID.; ID.; PD 26 ON FRANKING PRIVILEGE; VIOLATION IN CASE AT BAR WARRANTS ₱500 FINE.—** In *Bernadez v. Montejar*, we held that the franking privilege granted by PD 26 extended only to judges and referred to official communications and papers directly connected with the conduct of judicial proceedings. Respondent was not a judge nor was the mailed matter related to the discharge of judicial functions. Thus, respondent violated PD 26 for which a fine of ₱500 should be imposed on him. Considering that respondent compulsorily retired on September 7, 2003, the fine of ₱500 shall be deducted from his retirement benefits.

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

**CORONA, *J.*:**

This complaint involves two interrelated administrative charges against respondent Norvell R. Lim, Sheriff III of the Regional Trial Court of Romblon, Romblon, Branch 81.

On March 11, 2002, respondent sent a letter to Arsenio R.M. Almaddin, officer-in-charge of the Office of the Provincial Prosecutor (OPP) of Romblon stating:

I wish to inform you that today, Monday, March 11, 2002, at 8 a.m., and for the month of March 2002, [it] is the turn of the [OPP] to lead the flag ceremony.

However, this morning, this was not done because none of the personnel of your office was present.

We hope that we would be able to look forward to seeing all the personnel of [the OPP] in the Hall of Justice, Romblon, Romblon, participate in [the flag ceremony] every Monday morning and Friday afternoon.[1]

On May 16, 2002 complainants Roque R. Martinez, Maria Elena M. Felipe, Robert R. Miñano, Rosalinda G. Macasa and Ciriaco D. Mariveles, Jr., all employees of the OPP, filed an administrative complaint for grave misconduct against respondent in the Office of the Ombudsman.[2] They asserted that respondent's March 11, 2002 letter portrayed them as unpatriotic Filipinos, tarnished their reputation as public officers and cast dishonor, disrepute and contempt on their persons.

Respondent explained that, in the absence of the presiding judge, he was the administrative officer-in-charge of the Hall of Justice. As such, it was his duty to require complainants to attend the flag ceremony. Thus, he wrote Almaddin to remind him that the OPP had been assigned to lead the flag ceremony for the month of March 2002 and to inform him that no one from his office attended the ceremony that morning. Respondent denied ill-will against complainants.

Subsequently, complainants filed another complaint against respondent charging him of violation of PD[3] 26[4] which provides:

(1) **Judges of the Courts of First Instance, Circuit Criminal Courts, Juvenile and Domestic Relations Courts, Courts of Agrarian Relations, Court of Industrial Relations, Military Tribunals and City and Municipal Courts, may**

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[1] *Rollo*, p. 22.

[2] Docketed as Case No. OMB-L-A-02-0253-E. *Id.*, pp. 5-7.

[3] Presidential Decree.

[4] Docketed as Case No. OMB-L-A-02-0531-H.

**transmit in the mail**, **free of charge**, **all official communications and papers directly connected with the conduct of judicial proceedings**.

(2) The envelope or wrapper of the privileged mail matter shall bear on the left upper corner the name, official designation and station of the official sending such mail matter and on the right upper corner, the words: "**Private or unauthorized use to avoid payment of postage is penalized by fine or imprisonment or both**." (emphasis supplied)

Complainants stated that respondent did not pay for postage stamps when he mailed copies of his counter-affidavit to them. Since the mailed matter neither involved a court process nor was in any way connected to the conduct of judicial proceedings, he was guilty of violating the said decree.

Respondent asserted that the allegations against him were baseless. In fact, the Ombudsman dismissed for lack of probable cause the complaint for violation of PD 26.[5]

But the Ombudsman referred the administrative aspect of the complaints against respondent to the Office of the Court Administrator (OCA).[6]

With regard to the complaint for grave misconduct, the OCA found that respondent bore no malice when he sent the March 11, 2002 letter. It noted:

There is nothing in the letter that is suggestive of complainants' lack of patriotism as to impute bad faith on the part of respondent. Respondent was merely expressing his concern so that any similar incident may not happen again mindful of everyone's bounden duty to express and manifest their patriotism and love of country and respect for the flag.

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[5] Resolution penned by Graft Investigator Officer II Ma. Viviane Cacho-Calicdan and approved by Director Emilio A. Gonzales III. Dated December 9, 2002. *Rollo,* pp. 48-52.

[6] Resolutions in Case No. OMB-L-A-02-0253-E, penned by Graft Investigator Officer I Ma. Hazelina Tujan-Militante and approved by Director Emilio A. Gonzales III, dated June 10, 2002 and in Case No. OMB-L-A-02-0531-H penned by Graft Investigator Officer II Ma. Viviane Cacho-Calicdan and approved by Director Emilio A. Gonzales III, dated September 24, 2002. *Id*., pp. 2-4 and 38-40 respectively.

Thus, it recommended the dismissal of the complaint for lack of merit.

With regard to the complaint for violation of PD 26, the OCA found that respondent mailed his counter-affidavit in the previous complaint (for grave misconduct) using envelopes intended for free postage. Inasmuch as the mailed matter was not an official communication related to the conduct of judicial proceedings, respondent was guilty of violating the law. Hence, it recommended that complainant be fined ₱1,000.

We adopt the findings of the OCA with a modification of the penalty.

Misconduct implies wrongful intention and not a mere error of judgment; an act that is corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules.[7]

Flag ceremonies inspire patriotism and evoke the finest sentiments of love of country and people.[8] Section 18 of RA[9] 8491 provides:

> Section 18. All government offices and educational institutions shall henceforth observe the flag-raising ceremony every Monday morning and the flag lowering ceremony every Friday afternoon. The ceremony shall be simple and dignified and shall include the playing or singing of the Philippine National Anthem.

Pursuant to this mandate, Supreme Court Circular No. 62-2001 (dated September 21, 2001) provides:

> All Executive Judges shall supervise the holding of the flag raising and flag lowering ceremonies in their respective Hall of Justice buildings or courthouses and shall ensure the attendance of all judges and court personnel in the rites.

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[7] *Cacatian v. Judge Liwanag*, 463 Phil. 1, 11 (2003).

[8] Separate opinion of Justice Padilla. *Ebralinag v. The Division Superintendent of Schools of Cebu*, G.R. Nos. 95770 and 95887, 1 March 1993, 219 SCRA 256, 276-277.

[9] Republic Act.

In deference to these mandates, the Chief State Prosecutor directed the personnel of the OPP to attend the flag ceremony.[10]

Consequently, as administrative officer-in-charge of the Hall of Justice of Romblon, respondent was duty-bound to remind the employees to attend the flag ceremony. Furthermore, the March 11, 2002 letter (quoted above) was courteously written. Respondent neither used offensive language nor insinuated that complainants were unpatriotic. Thus, there was no misconduct on the part of respondent.

Nonetheless, we agree that respondent violated PD 26. In *Bernadez v. Montejar*,[11] we held that the franking privilege granted by PD 26 extended only to judges and referred to official communications and papers directly connected with the conduct of judicial proceedings.[12] Respondent was not a judge nor was the mailed matter related to the discharge of judicial functions. Thus, respondent violated PD 26 for which a fine of ₱500 should be imposed on him. Considering that respondent compulsorily retired on September 7, 2003, the fine of ₱500 shall be deducted from his retirement benefits.

**WHEREFORE,** the complaint for grave misconduct against Sheriff Norvell R. Lim is hereby dismissed for lack of merit. But he is found guilty of violating Presidential Decree No. 26 and is hereby fined ₱500 which shall be deducted from his retirement benefits.

**SO ORDERED.**

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

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[10] Letter of chief state prosecutor Jovencito R. Zuño to Almaddin. Dated May 10, 2002. *Rollo,* p. 13.

[11] 428 Phil. 605 (2002).

[12] *Id.*, pp. 609-610. *See also Cacatian v. Judge Liwanag, supra* note 8.

* Per Special Order No. 588 dated March 16, 2009.

**EN BANC**

[A.M. No. P-06-2190. March 25, 2009]
(Formerly A.M. No. 01-11-291-MTC)

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **ARTURO BATONGBACAL, former Clerk of Court and REMEDIOS I. ROXAS, Court Stenographer I, Metropolitan Trial Court, Pulilan, Bulacan,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; SC CIRCULAR NOS. 13-92 AND 50-95 ON GUIDELINES FOR THE PROPER ADMINISTRATION OF THE COURT'S FIDUCIARY FUNDS; DEPOSITS AND WITHDRAWALS THEREOF, EXPLAINED.—** Supreme Court (SC) Circular Nos. 13-92 and 50-95 furnish the guidelines for the proper administration of the court's fiduciary funds. The third paragraph of SC Circular No. 13-92 commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Section B(4) of SC Circular No. 50-95 is more emphatic and particular as it requires that the deposit be made, within 24 hours upon receipt thereof, with the Land Bank of the Philippines. Section B(2) of SC Circular No. 50-95 also provides that no withdrawals from the court's fiduciary funds shall be allowed unless there is a lawful order from the Court that has jurisdiction over the subject matter involved. The fifth paragraph of SC Circular No. 13-92 contains substantially the same provisions.

**2. ID.; ID.; SC CIRCULAR NO. 32-93 AND ADM. CIRCULAR NO. 5-93 ON THE REQUIRED MONTHLY REPORTS OF COLLECTION FOR COURT FUNDS.—** In addition, SC Circular No. 32-93 provides that all clerks of court or accountable officers are required to submit to the Supreme Court not later than the 10th day of each succeeding month a monthly report of collection for all funds. With respect to Judiciary Development Funds (JDF) in particular, Section 3, in relation to Section 5, of Administrative Circular No. 5-93 requires that clerks of court, officers-in-charge or their duly

authorized representatives shall receive the JDF collections, issue the proper receipt therefor, deposit such collections **and render the proper Monthly Report of Collections** for said Fund.

**3. CRIMINAL LAW; MALVERSATION; ELEMENTS.—** Roxas failed to turn over funds in her custody upon the Court's demand as well as to justify her withdrawals of cash bonds. This constitutes malversation. Indeed, failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use. All that is necessary to prove malversation are the following: (a) that the defendant received in his possession public funds or property; (b) that he could not account for them and did not have them in his possession when audited; and (c) that he could not give a satisfactory or reasonable excuse for the disappearance of said funds or property. All of these elements are present in the instant case.

**4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; ACTING CLERK OF COURT; GROSS NEGLECT OF DUTY, DISHONESTY, GRAVE MISCONDUCT AND MALVERSATION, COMMITTED IN CASE AT BAR; PROPER PENALTY IS DISMISSAL.—** The Court finds that Roxas's failure to comply with the Court's circulars, rules and directives which are designed to promote full accountability for public funds, more particularly her failure to turn over money deposited with her, to account for the shortage in the funds she was handling, to explain and present evidence to support the validity and authenticity of the withdrawals she made as well as her failure to deposit her collections on time and to file a monthly report thereon for a period spanning over two years constitute gross neglect of duty, dishonesty, grave misconduct and malversation. These offenses all carry the penalty of dismissal even for the first offense. While Roxas performed her functions as an officer-in-charge only in an acting capacity, still the expectation for her to perform all the duties and responsibilities of an accountable officer is not diminished. The fact that she performed her functions in a temporary capacity will not absolve her from liability. Thus, the Court finds Roxas guilty of gross

neglect of duty, dishonesty, grave misconduct and malversation, for which she should be dismissed from the service.

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

***PER CURIAM*:**

On August 13-17, 2001, a team from the Court Management Office (CMO) of the Office of the Court Administrator (OCA) conducted an on-the-spot audit of the books of accounts of the Municipal Trial Court (MTC) of Pulilan, Bulacan. The audit team found that former clerk of court Tomas E. Ocampo (Ocampo) and the then incumbent clerk of court, herein respondent, Arturo S. Batongbacal (Batongbacal) incurred shortages in their corresponding accounts.

On January 14, 2002, the Court issued a Resolution directing Ocampo and Batongbacal to remit or restitute their respective shortages. Ocampo complied with the Court's directive. Batongbacal did not.[1]

In its Resolution dated December 9, 2002, the Court, upon recommendation of the OCA, considered the administrative matter involving Ocampo closed and terminated.[2]

Subsequently, in a Resolution dated July 7, 2004, the Court *en banc* found Batongbacal guilty of gross dishonesty, gross misconduct and malversation of public funds. He was dismissed from the service and his withheld salaries were applied to his accountabilities. He was also disqualified from re-employment in any branch of the government or in any government-owned or controlled corporation.[3]

On July 30, 2004, Batongbacal filed a Motion for Reconsideration praying that instead of being dismissed from the service, he be admonished and made to pay a fine; that in the event that he is not reinstated to his former position, the

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[1] *Rollo*, p. 10.

[2] *Id.* at 58.

[3] *Id.* at 66-77.

penalty of disqualification from re-employment in any branch of government or in any government-owned or controlled corporation be lifted, and that, after applying the proceeds of his withheld salaries and allowances to his accountabilities, the balance thereof be given to him. Batongbacal came up with a computation refuting the findings of the Court that he incurred shortages in the funds in his custody. To support his contentions, he attached documents which he did not previously submit.[4]

In its Resolution dated August 17, 2004, the Court referred Batongbacal's Motion for Reconsideration to the OCA for evaluation, report and recommendation.[5]

In a subsequent letter dated August 19, 2004, Batongbacal reiterated his prayer that the portion of the July 7, 2004 Resolution of the Court which disqualifies him from re-employment in the government or in any government-owned and controlled corporation be lifted.[6] The Court also referred the above-mentioned letter to the OCA for evaluation, report and recommendation.[7]

In its Memorandum dated October 29, 2004 addressed to then Chief Justice Hilario G. Davide, Jr., the OCA indicated the need to conduct a comprehensive audit of the cash and accounts of Batongbacal in order to assess the validity of the new documents which he attached to his motion for reconsideration. With this end in view, the OCA requested that it be given a chance to complete its audit before submitting its report and recommendation to the Court.[8] The Court granted the request of the OCA in its Resolution issued on November 23, 2004.[9]

On April 24, 2006, the audit team from the OCA submitted a Memorandum to then Senior Deputy Court Administrator

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[4] *Id.* at 80.

[5] *Id.* at 207.

[6] *Rollo*, p. 211.

[7] *Id.* at 213.

[8] *Id.* at 214.

[9] *Id.* at. 217.

Zenaida N. Elepaño containing the team's findings and recommendations. As part of the comprehensive audit conducted, a financial audit was also conducted on the books of accounts of herein respondent Remedios I. Roxas (Roxas), the officer-in-charge who took over when Batongbacal was relieved of his position.

The audit team found that both Batongbacal and Roxas were remiss in the performance of their duties and that there were massive shortages in the court's funds under their custody. The audit team also noted that the salary of Roxas was withheld by the Financial Management Office of the OCA because of her failure to submit her Monthly Reports of Collections and Deposits on time.[10]

In a Memorandum received by the *En Banc* through the Clerk of Court on May 3, 2006, the OCA adopted the recommendation of the audit team and recommended approval thereof.[11]

Accordingly, on June 13, 2006, the Court issued a Resolution, pertinent portions of which read as follows:

(a) DIRECT Mr. Arturo S. Batongbacal, former Clerk of Court, MTC, Pulilan, Bulacan, to

( i) **IMMEDIATELY RESTITUTE** his incurred shortages on General Fund, Judiciary Development Fund and Fiduciary Fund amounting to Twenty-Six Thousand Nine Hundred Nineteen Pesos (₱26,919.00). Fifty-Seven Thousand Four Hundred Six-Seven Pesos (₱57,467.00) and Two Hundred Ninety-Eight Thousand One Hundred Seventy-Nine Pesos (₱298,179.00), respectively, in their respective fund bank account, through Ms. Froctosa I. Ceñidoza, the incumbent Clerk of Court, copy furnished the Fiscal Monitoring Division, Court Management Office, with the machine validated deposit slip/s as proof of compliance; and

(ii) **TRANSMIT** to this Court, through the Fiscal Monitoring Division, Court Management Office, all the documents (marked x) to support the validity and authenticity of the withdrawals/ refund of the following cashbonds:

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[10] *Id.* at 233.

[11] *Rollo*, p. 227.

| COLLECTIONS | | | | | WITHDRAWALS | |
|---|---|---|---|---|---|---|
| Date of Collections | OR No. | CASE NO. | NAME OF LITIGANTS | AMOUNTS | CO | AR |
| 7-Jul-97 | 7050572 | 1197-M-97(97-5913) | JENNY MENDOZA | 20,000.00 | 1/9/98 | X |
| 8-Dec-97 | 7050713 | 97-6308 | RED MENDOZA | 20,000.00 | 1/26/98 | X |
| 16-Dec-97 | 7050715 | 97-6316-20 | JOSE L. TECSON/ R. DE GUZMAN | 6,000.00 | Apr-98 | X |
| 22-Apr-97 | 5383948 | 97-5742 | R. ESTRELLA | 10,000.00 | 5/20/98 | X |
| 16-Feb-98 | 7050713 | 98-6462 | CORNELIO BAUTISTA | 1,200.00 | 6/18/98 | X |
| 4-May-98 | 7050745 | 97-5764 & 68 97-5770 & 72 | SHIRLEY PAGUIO | 20,000.00 | 6/24/98 | X |
| 15-Jul-98 | 9404013 | 98-6645 | CESAR DIMLA | 2,000.00 | 6/30/98 | X |
| 22-Aug-97 | 7050589 | 97-6019 | T. JAYME | 25,000.00 | 7/9/98 | X |
| 23-Mar-98 | 7050739 | 98-6499 | E. PAVO | 15,000.00 | 7/16/98 | X |
| 21-Apr-98 | 7050742 | 98-6512 | GILBERT MENDOZA/ V. FAVIAN | 6,000.00 | X | 07/18/98 |
| 5-May-98 | 7050746 | 98-6542 | ELISCO MANAHAN | 10,000.00 | 6/3/98 | X |
| 21-May-98 | 7050750 | 98-6516 | CLARITA GOJO CRUZ | 2,000.00 | 7/10/98 | X |
| 27-Jun-97 | 7050568 | 13117 | JOSELITO ROBLES | 6,000.00 | X | 08/06/98 |
| 6-Oct-97 | 7050596 | 487-97 | EDNA BRILLANTE | 11,000.00 | X | 08/11/98 |
| 20-Jan-99 | 9404047 | 98-6764 | SOFRONIO DE JESUS | 1,000.00 | X | 02/18/99 |
| 7-Oct-98 | 9404030 | 12123-98 (12343 W) | MERLYN CAMZA | 2,000.00 | X | X |
| 19-Dec-97 | 7050722 | 97-6323-24 | ALLAN LOMBOSON (L. ARCEO) | 1,000.00 | 7/29/99 | X |
| 8-Mar-99 | 9404460 | 98-6649 | RANDY REYES/ RESURRECION | 5,000.00 | Jul-99 | X |
| 21-Jun-99 | 9404473 | 99-7014-15 | JOSE DELA PENA | 7,000.00 | 7/26/99 | X |
| 12-Aug-96 | 5383742 | | L. ALEJO | 5,000.00 | 8/11/99 | X |
| 23-Jan-98 | 7050728 | 98-6362 | ALEXANDER VILLENO | 7,000.00 | X | 09/16/99 |
| 9-Jul-98 | 9404009 | 98-6598 | FELICIANO SAMSON | 2,000.00 | 8/18/99 | X |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2-Oct-98 | 9404029 | 98-6753-62 | RUEL T. CRUZ | 50,000.00 | X | 09/28/99 |
| 27-May-97 | 7050557 | 97-5820 | TIMOTEO MANUEL PABLO | 10,000.00 | 9/15/99 | X |
| 13-Jan-00 | 9404493 | 00-7290 | ROSALINA SANTIAGO | 1,000.00 | X | 02/09/00 |
| 24-Jan-00 | 9404496 | 00-1306 | ROSALINA SANTIAGO | 2,500.00 | 2/16/00 | X |
| 28-Jan-00 | 9404498 | 00-7307 | ELIZABETH CRUZ | 1,000.00 | 2/16/00 | X |
| 2-Feb-00 | 9404499 | 00-7311 | JULIA C. SANTOS | 12,000.00 | X | 02/07/00 |
| 7-Jul-98 | 9404008 | 98-6635 | ERNESTO LAGSA | 15,000.00 | 3/22/00 | X |
| 2-Feb-00 | 9404500 | 00-7314 | CELSO CRUZ | 2,100.00 | 3/1/00 | X |
| 13-Jan-00 | 9404495 | 00-7291 | JOSEPHINE GINERO | 4,000.00 | 4/12/00 | X |
| 19-Apr-00 | 10969518 | 00-7503 | MARTINIANO SANTOS | 10,000.00 | X | May-00 |
| 22-Sep-99 | 9404478 | 99-7081 | CYNTHIA PADO | 6,000.00 | X | Jun-00 |
| | 10969534 | 00-7666 | REMEDIOS DELA CRUZ | 5,000.00 | 8/23/00 | X |
| | 10969535 | 00-7668 | SANTOS | 5,000.00 | 8/23/00 | X |
| 28-Jan-99 | 9404050 | 99-6891 | AMAD MANGULAGNAN/ S. RIVERA | 30,000.00 | 9/11/00 | X |
| 17-Oct-00 | 10969540 | 00-7721 | PRIMITIVA REYES | 3,000.00 | X | 10/17/00 |
| 22-Jan-98 | 7050727 | 98-6350-54 | SERGIO RODRIGUEZ | 35,000.00 | 12/19/00 | X |
| 12-Dec-00 | 10969555 | 00-7787 | ANTONIO CASAS/ EMMANUEL CRUZ | 10,000.00 | 12/13/00 | X |
| 31-Jan-97 | 5383927 | 17661 | NEIL SOYANGCO | 15,000.00 | X | 01/18/01 |
| 1-Sep-00 | 10969534 | 00-7685 | ANTONIO CASAS | 20,000.00 | 1/24/01 | X |
| 15-Jan-01 | 10969558 | 00-7823 | ERIC CAPULONG/ EFREN FELIFE | 10,000.00 | 1/24/01 | X |
| 19-Jan-01 | 10969559 | 00-7825 | ROLANDO T. GOLGOTA / RAFAEL G. | 10,000.00 | X | 02/05/01 |
| 20-Jan-01 | 10969560 | 00-7831 | GERRY FELIPE | 5,000.00 | 3/14/01 | X |
| 12-Feb-01 | 10969562 | 00-7729 | LEONARDO CRUZ | 5,500.00 | 3/5/01 | X |
| 5-Mar-01 | 10969564 | 2189631 | MARINA SALONGA/ M. LOPEZ | 15,000.00 | 3/7/01 | X |

| | | | | | | |
|---|---|---|---|---|---|---|
| 8-Mar-01 | 10969566 | 01-7903 | VICTORIA DALISAY/W. BULATAO | 4,000.00 | 3/21/01 | X |
| 19-Mar-01 | 10969568 | 01-7863 | MINERVA ORALLIO | 5,000.00 | 4/18/01 | X |
| 15-Mar-99 | 9404461 | 99-6914 | TEOFILO JAYME/ A. JAYME | 20,000.00 | 6/18/01 | X |
| 10-May-01 | 10969574 | 01-7969 | MARIBEL GONZALES | 20,000.00 | X | 06/15/01 |
| 11-Jun-01 | 10969577 | 01-7990 | ANTONIO CASAS/ W. BAYLON | 5,000.00 | 6/13/01 | X |
| 12-Dec-00 | 10969553 | 00-7786 | HERMINIO SALVADOR/A. RAMIREZ | 3,000.00 | 8/22/01 | X |
| 7-Aug-01 | 10969589 | 01-8048 | ALBERTO CABRAL *ET AL.*/ A. CASAS | 15,000.00 | 8/8/01 | X |
| 5-Jan-00 | 9404491 | 00-7282 | WILFREDO BELONIO | 6,000.00 | 9/19/01 | X |
| 11-Sep-01 | 10969592 | 01-8078 | GERRY SANCHEZ | 10,000.00 | 9/12/01 | X |
| 4-Apr-01 | 10969571 | 01-7919-21 | ZENAIDA SULIT-ALFONSO/EFREN S. | 6,000.00 | X | 10/04/01 |
| 23-Apr-01 | 10969573 | 01-7821 | DOLORES BERSANO/F. AUSTIN | 1,500.00 | X | 10/10/01 |
| 18-May-98 | 7050749 | 98-6527 | RUFINO DE JESUS | 10,000.00 | X | 11/19/01 |
| 28-Sep-01 | 10969594 | 01-8029 | RICARDO V. FLORES/ TONY CASAS | 5,000.00 | 11/21/01 | X |
| 27-Oct-01 | 13565003 | 01-8120 & 8121 | LEONARA MARAGUINOT | 4,000.00 | X | 11/26/01 |
| 28-Nov-01 | 13565010 | 01-8152 | ANTONIO CASAS | 5,000.00 | 12/5/01 | X |
| 10-Dec-01 | 13565012 | 01-8162 | TONY CASAS | 15,000.00 | 12/12/01 | X |
| **Grand Total** | | | | **600,800.00** | | |

[Should Mr. Batongbacal fail to provide this Court with the documents (marked x) needed to support the withdrawals of the above-presented cashbonds, the same shall be considered outstanding and unwithdrawn, and Mr. Batongbacal should restitute the amount of Six Hundred Thousand Eight Hundred Pesos (₱600,800.00).];

(b) **DEFER ACTION** on the Motion for Reconsideration of the resolution of July 7, 2004 and Letter dated August 19, 2004, both filed by Mr. Batongbacal, until he complies with the foregoing directives;

(c) **DIRECT** Ms. Remedios I. Roxas, former Officer-in-Charge, to

(i) **EXPLAIN** why she should not be administratively sanctioned for failure to deposit her collections on time and **RESTITUTE** the following shortages to their respective bank accounts, within fifteen (15) days from notice hereof, through Ms. Froctosa I. Ceñidoza, the incumbent Clerk of Court:

(1) Clerk of Court General Fund shortage amounting to Two Thousand Five Hundred Thirty-Three Pesos and 20/100 (₱2,533.20);

(2) Philippine Mediation Center Trust shortage amounting to One Thousand Pesos (₱1,000.00); and

(3) Fiduciary Fund shortage amounting to Two Hundred Seventy-Six Thousand Pesos (₱276,000.00);

(ii) **FURNISH** the Fiscal Monitoring Division, Court Management Office, with the duly validated machine copies of the General Fund, Philippine Mediation Center Trust Fund and Fiduciary Fund deposit slips or clear certified true copy of the validated deposit slips and certified true copy of the Fiduciary Fund LBP Savings Account No. 0101-2064-59 as evidence of compliance;

(iii) **EXPLAIN** the reasons behind the following:

(1) Setting aside of Official Receipts Nos. 16304300 and 16304412 which were allegedly reserved for transactions that did not materialize, and subsequently cancelled only on December 1 and 2, 2004;

(2) Cancellation of Official Receipts Nos. 16304404, 16304447 and 16304522 under dubious circumstances;

(3) Official Receipt No. 16304436 amounting to ₱6,000.00 which is blank but had corresponding court order and acknowledgment receipt; and

(4) Double use of Official Receipts Nos. 16304252 and 16304432 for different dates/cases/payors/amounts, to wit:

d-1 OR No. 16304252

| DATE | CASE NO | Litigant/Bondsman | AMOUNT |
|---|---|---|---|
| 7May02 | 02-8261 | Yolando Enriquez | ₱ 2,000.00 |
| | | (source OR triplicate) | |
| 22May02 | 02-8329 | Antonio Casas | ₱ 15,000.00 |
| | | CO none AR6/29/02 | |
| | | (source AR6/29/02) | |

d-2 OR No. 16304432

| DATE | CASE NO | Litigant/Bondsman | AMOUNT |
|---|---|---|---|
| 3Jul03 | 4-9074-9075 | Edilberto Santos | ₱30,000.00 |
| | | CO4/29-04 AR5/6/04 | |
| | | (source AR5/6/04) | |
| 3Jul03 | 3-8805 | Edilberto Santos | ₱30,000.00 |
| | | CO none AR none | |
| | | (source OR triplicate) | |

(iv) **EXPLAIN** and **ACCOUNT** for the following Official Receipts (Ors) booklets/sheets that have remained unaccounted to date:

| **INCLUSIVE SERIAL NUMBERS** | **QUANTITY BOOKLET/S** | **QUANTITY SHEET/S** |
|---|---|---|
| 13565101-135615150 | 1 | |
| 19782401-19782450 | 1 | |
| 19782651-19782700 | 1 | |
| 13565201-13565203 GF | | 3 |
| 16304496 | | 1 |

(v) **TRANSMIT** to the Court, through the Fiscal Monitoring Division, Court Management Office, the documents needed to support the validity of the cashbonds withdrawals with lacking/ incomplete documents, amounting to Four Hundred Ninety-Nine Thousand Five Hundred Pesos (₱499,500.00), as presented below:

| DATE OF COLLEC-TION | OR NO. | CASE NO. | NAME OF PAYOR | COLLEC-TIONS | WITHDRAWALS | | AUDIT OBSERVATIONS/ REMARKS |
|---|---|---|---|---|---|---|---|
| | | | | | CO | AR | |
| 22-Sep-97 | 7050594 | 97-6051/ 02-1165M | ERLINDA GRANDE | 12,000.00 | 11/20/03 | NO DATE | No Acknowledgment Receipt |
| 13-May-98 | 7050747 | 98-6543 | ALICIA ORBE | 50,000.00 | NONE | 6/25/03 | No Court Order |
| 28-Jun-99 | 10989974 | 03-1157 | PRIMITIVO IGNACIO | 30,000.00 | NONE | 5/7/03 | No Court Order |
| 5-Feb-00 | 13564810 | 7237 | Can not be deciphered | 30,000.00 | NONE | 2/15/02 | No Court Order |
| 7-Mar-00 | 13564812 | 03-1157 | REYNALDO CASTILLO | 50,000.00 | NONE | 5/7/03 | No Court Order |
| 21-Jul-00 | 10969528 | 00-7465 | REGINA REYES GO | 4,000.00 | NONE | 9/19/02 | No Court Order |
| 7-Sep-00 | 10969945 | | REYNALDO CASTILLO | 50,000.00 | NONE | 5/7/03 | No Court Order |
| 18-Jul-01 | 10969583 | 01-7937-38 | FELY V. SAN ANDRES | 3,000.00 | NONE | 9/4/02 | No Court Order |
| 19-Sep-01 | 10969593 | 01-8085 | PAUL TANJUTCO | 15,000.00 | NONE | 1/21/02 | No Court Order |
| No date | 10969596 | 01-8082 | EUGENIO Q. CRUZ | 5,000.00 | NONE | 7/12/02 | No Court Order |
| 8-Oct-01 | 10969597 | 01-8082 | RENATO DE LA CRUZ | 5,000.00 | NONE | 7/12/02 | No Court Order |
| 8-Oct-01 | 10969598 | 01-8082 | SUSANA B. SANTOS | 5,000.00 | NONE | 7/12/02 | No Court Order |
| 13-Oct-01 | 13565001 | 01-8083 | BERNARDO SANTOS | 3,000.00 | NONE | 4/4/02 | No Court Order |
| 13-Oct-01 | 13565001 | 01-8083 | LEOVEGILDO SABANDEJA | 3,000.00 | NONE | 7/12/02 | No Court Order |
| 14-Nov-01 | 13565004 | 01-8139 | TONY CASAS | 5,000.00 | NONE | 3/13/02 | No Court Order |
| 27-Nov-01 | 13565008 | 01-8082 | Can not be deciphered | 5,000.00 | NONE | 7/12/02 | No Court Order |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 12-Dec-01 | 13565014 | 01-8171 | Can not be deciphered | 15,000.00 | NONE | 11/29/02 | No Court Order |
| 30-Jan-02 | 13565022 | 01-8221 | TERESITA D. REYES | 5,000.00 | NONE | 3/12/02 | No Court Order |
| 31-Jan-02 | 13565023 | 02-88825 | D.L. SANTOS | 5,000.00 | NONE | 2/15/02 | No Court Order |
| 4-Feb-02 | 13660243 | 02-8228-29 | VICENTE B. ESGUERRA | 12,000.00 | NONE | 11/20/02 | No Court Order |
| 15-Feb-02 | 13565029 | 02-8237 | RENATO V. PERALTA | 10,000.00 | NONE | 03/18/02 | No Court Order |
| 1-Apr-02 | 13565035 | 02-8282 | ALEJANDRO FELIPE | 6,000.00 | NONE | 07/12/02 | No Court Order |
| 22-Apr-02 | 13565047 | 02/8280 | SUSANA B. SANTOS | 5,000.00 | NONE | 07/31/02 | No Court Order |
| 29-Apr-02 | 13565049 | 02/8312 | TONY CASAS | 10,000.00 | NONE | 05/08/02 | No Court Order |
| 10-Jun-02 | 16304256 | 02/8349 | ROBERTO SEGUNDA M. FERRIOLS | 15,000.00 | NONE | 07/12/02 | No Court Order |
| 19-Jun-02 | 16304257 | 02-8322 | ARIS T. ABANTE | 15,000.00 | 10/6/03 | NONE | No Acknowledgment Receipt |
| 1-Jul-02 | 16304259 | 02-8380 | JOEL ROMERO | 5,000.00 | NONE | 05/03/03 | No Court Order |
| 2-Sep-02 | 16304263 | 02-8440 | TONY CASAS | 8,000.00 | NONE | 09/18/02 | No Court Order |
| 2-Jan-03 | 16304286 | 03-8586 | JESUS BUENCAMINO | 28,000.00 | NONE | 06/08/03 | No Court Order |
| 17-Feb-03 | 16304296 | 03-8624 | PAUL MADRIGAL | 8,000.00 | 2/26/03 | 02/26/06 | EXPLAIN COCrim03-8624 ARCrim03-8634 |
| 5-Mar-03 | 16304401 | 03-8655 | ANTONIO CASAS(jueteng) | 24,000.00 | NONE | 03/25/03 | No Court Order |
| 25-Mar-03 | 16304406 | 03-8692 | MANUEL RONO(jueteng) | 4,000.00 | NONE | 06/18/03 | No Court Order |
| 7-May03 | 16304416 | 03-8757 | ANTONIO CASAS | 12,000.00 | NONE | 05/20/03 | No Court Order |
| 11-Jul-03 | 16304434 | 02-8294 | YOLANDA BALONZO | 2,000.00 | NONE | 11/03/04 | No Court Order |
| 30-Jul-03 | 16304436 | 03-8830 | TEODORO SANTOS | 6,000.00 | 7/30/03 | NONE | No Acknowledgment Receipt |
| 7-Aug-03 | 16304438 | 02-8206 | THERESA CAYASAO | 5,000.00 | NONE | 09/30/03 | No Court Order |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 15-Aug-03 | 16304440 | 02-8397 | CRISPIN DALANGIN | 4,000.00 | 9/10/03 | NONE | No Acknowledgment Receipt |
| 15-Aug-03 | 16304441 | 02-8396 | CRISPIN DALANGIN | 3,000.00 | 9/10/03 | NONE | No Acknowledgment Receipt |
| 13-Nov-03 | 16304504 | 03-8960 | ROLANDO M. SANTOS | 5,000.00 | 11/20/04 | NONE | No Acknowledgment Receipt |
| 13-Nov-03 | 16304505 | 03-8960 | ROLANDO M. SANTOS | 10,000.00 | 11/20/04 | NONE | No Acknowledgment Receipt |
| 12-Feb-04 | 16304509 | 04-9029 | MILYN MARCELO | 2,500.00 | 3/11/04 | NO DATE | No Acknowledgment Receipt |
| | | | TOTAL | Php499,500.00 | | | |

[Should Ms. Roxas fail to provide this Court with the lacking documents needed to support the withdrawals of the above-presented cashbonds, the same shall be considered outstanding and unwithdrawn, and Ms. Roxas should restitute the amount of Four Hundred Ninety-Nine Thousand Five Hundred Pesos (~~₱~~499,500.00).];

(d) **DOCKET** the subject report as a regular administrative complaint and include Ms. Remedios I. Roxas as a respondent therein, thus: A.M. No. P-06-2190 (*Office of the Court Administrator vs. Arturo S. Batongbacal, former Clerk of Court, and Remedios I. Roxas, Court Stenographer I, MTC, Pulilan, Bulacan*).[12]

Batongbacal did not comply with the directives of the above-mentioned Resolution.

On the other hand, in Compliance with the same Resolution, Roxas submitted letters dated October 5, 2006[13] and November 2, 2006,[14] a sworn statement[15] and various documents. Roxas denied liability contending that she was just a victim of circumstances and that it was then Presiding Judge Horacio T.

[12] *Rollo*, pp. 232-C to 232-G.

[13] *Id.* at 299.

[14] *Id.* at 301.

[15] *Id.* at 302.

Viola and Batongbacal who were the ones who appropriated the missing court funds. In her letter of November 2, 2006, Roxas requested that her salaries and other allowances which were withheld be released in her favor so that she could use the same to answer for her shortages. She also claimed that she could not file her monthly report of collections because the documents to prove the collections and deposits she made were missing and that she is still in the process of looking for them. Moreover, she requested that she be given clearance to enable her to obtain loans from the Supreme Court Savings and Loan Association (SCSLA), the Government Service and Insurance System (GSIS) and the PAG-IBIG to further enable her to answer for her accountabilities. These were all referred by the Court to the OCA in a Resolution dated November 21, 2006.[16]

In the meantime, the OCA submitted a Memorandum to former Chief Justice Panganiban dated August 22, 2006, indicating that it could not yet submit a report and recommendation on Batongbacal's Motion for Reconsideration in view of the fact that he had not yet complied with the directives of the Court contained in the Resolution of June 13, 2006.[17]

On June 5, 2007, the Court issued a Resolution denying Roxas's requests, as contained in her letter of November 2, 2006, pending full compliance with the directives of the Court in its Resolution dated June 13, 2006.[18]

On September 26, 2007, Roxas filed a Motion for Reconsideration of the June 5, 2007 Resolution of the Court.[19] The Court referred the said Motion to the OCA for evaluation, report and recommendation.[20]

On November 22, 2007, Roxas filed a Motion for the Release of Salaries for More Than Three Years reiterating that she was

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[16] *Rollo*, p. 507.

[17] *Id.* at 296.

[18] *Id.* at 519.

[19] *Id.* at 523.

[20] *Id.* at 527.

not responsible for the shortages of court funds in her custody but that, in any case, she be allowed to receive her withheld salaries to enable her to comply with the Court's directive for her to restitute said shortages.[21] In subsequent letters dated December 14, 2007,[22] and July 8, 2008[23] and motions dated January 13, 2008,[24] February 8, 2008,[25] and August 1, 2008,[26] Roxas reiterated her contentions in her previous motions, specially her request that her withheld salaries be released to answer for the shortages of court funds in her custody. She also filed a Motion to Accept Documentary Evidence dated October 8, 2007.[27] All these letters and motions were also referred to the OCA.

On February 9, 2009, the OCA submitted a Memorandum addressed to Chief Justice Reynato S. Puno with the finding that Roxas failed to restitute or account for the shortage of court funds in her custody amounting to a total of ₱768,500.00 broken down as follows: (1) Philippine Mediation Center Trust Fund shortage amounting to ₱1,000.00; (2) undeposited Fiduciary Fund collections and undocumented bank withdrawals amounting to ₱276,000.00; and, (3) Fiduciary Fund shortage amounting to ₱491,500.00 brought about by unauthorized withdrawals of cash bonds due to insufficient supporting documents. The OCA also found that Roxas failed to transmit to the Court the documents needed to support the validity of the cash bond withdrawals which were made during her term. Accordingly, the OCA made the following recommendations:

1. The Motion for Reconsideration [filed on September 26, 2007]of respondent Remedios I. Roxas, Court Stenographer I, MTC-Pulilan, Bulacan **BE DENIED** for lack of merit;

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[21] *Rollo*, p. 583.

[22] *Id.* at 614.

[23] *Id.* at 704.

[24] *Id.* at 689.

[25] *Id.* at 652.

[26] *Id.* at 709.

[27] *Id.* at 529.

2. Respondent Roxas **BE DISMISSED** from the service for Malversation of Funds, with forfeiture of her entire retirement benefits including her withheld salaries and the monetary value of her earned leave credits as well as disqualification from re-employment in any branch of the government or in any government-owned or controlled corporation; and the OCA **BE DIRECTED** to file the corresponding criminal case against her before the appropriate prosecution office and court;

3. Respondent Roxas' withheld salaries from September 2004 to August 2008 amounting to ₱164,609.64 and her earned leave credits with the money value of ₱202,073.08 as of June 30, 2008 **BE FORFEITED** and **REMITTED** to the Fiduciary Account of the MTC-Pulilan, Bulacan;

4. Respondent Roxas **BE DIRECTED** to **RESTITUTE** the balance of ₱401,817.28. Of this amount, ₱400,817.28 shall be deposited to the Fiduciary Fund of MTC-Pulilan, Bulacan and the remaining amount to the Philippine Mediation Trust Fund of MTC-Pulilan, Bulacan and to **SUBMIT PROOF** of such remittance to the FMD, CMO, OCA; and

5. The Financial Management Office, OCA **BE DIRECTED** to facilitate the remittance of the withheld salaries of respondent Roxas covering the period September 2004 to August 2008 amounting to ₱164,609.64 and her earned leave credits with the money value of ₱202,073.08 as of June 30, 2008 to the Fiduciary Account of the MTC-Pulilan, Bulacan; and the FMO, OCA be **FURTHER DIRECTED** to **FURNISH** the Fiscal Monitoring Division, CMO, OCA of the machine-validated deposit slip as proof of such remittance.[28]

The Court adopts with modifications the recommendations of the OCA.

While the OCA found that Roxas was able to account for the official receipts enumerated in the June 13, 2006 Resolution of this Court and to satisfactorily explain the setting aside and cancellation of some official receipts in her custody, it nonetheless established that Roxas failed to restitute her shortages in the Philippine Mediation Center Trust Fund and the Fiduciary Fund, as well as to transmit to the Court the documents needed to support the validity of the cash bond withdrawals which were made during her term.

[28] *Rollo*, pp. 724-725.

As custodian of court funds and revenues, Roxas's duties have been defined by circulars issued by this Court.

Supreme Court (SC) Circular Nos. 13-92 and 50-95 furnish the guidelines for the proper administration of the court's fiduciary funds.

The third paragraph of SC Circular No. 13-92 commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Section B(4) of SC Circular No. 50-95 is more emphatic and particular as it requires that the deposit be made, within 24 hours upon receipt thereof, with the Land Bank of the Philippines.

Section B(2) of SC Circular No. 50-95 also provides that no withdrawals from the court's fiduciary funds shall be allowed unless there is a lawful order from the Court that has jurisdiction over the subject matter involved. The fifth paragraph of SC Circular No. 13-92 contains substantially the same provisions.

In addition, SC Circular No. 32-93 provides that all clerks of court or accountable officers are required to submit to the Supreme Court not later than the 10th day of each succeeding month a monthly report of collection for all funds. With respect to Judiciary Development Funds (JDF) in particular, Section 3, in relation to Section 5, of Administrative Circular No. 5-93 requires that clerks of court, officers-in-charge or their duly authorized representatives shall receive the JDF collections, issue the proper receipt therefor, deposit such collections and **render the proper Monthly Report of Collections** for said Fund.

In the instant case, Roxas failed to deposit her collections on time. The audit team found that as early as October 2002 she incurred delay in depositing most of her collections, without any excuse. Moreover, from August 2004 until November of the same year, Roxas failed to deposit all of her Fiduciary Fund collections without any justifiable cause. As of July 2004, Roxas had undeposited collections of ₱168,500.00 for the court's Fiduciary Fund. For the succeeding four months, she collected an additional sum of ₱129,000.00, but she also failed to deposit

these amounts. For failure to deposit her collections on time, Roxas violated the provisions of SC Circular No. 13-92 and Section B(4) of SC Circular No. 50-95.

Roxas also withdrew cash bonds, which form part of the court's fiduciary funds, without the necessary court orders and/or acknowledgment receipts. This is again a gross violation of SC Circular No. 50-95.

Worse, Roxas failed to turn over funds in her custody upon the Court's demand as well as to justify her withdrawals of cash bonds. This constitutes malversation. Indeed, failure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use.[29] All that is necessary to prove malversation are the following: (a) that the defendant received in his possession public funds or property; (b) that he could not account for them and did not have them in his possession when audited; and (c) that he could not give a satisfactory or reasonable excuse for the disappearance of said funds or property.[30] All of these elements are present in the instant case.

Furthermore, Roxas herself admitted that she failed to file the required monthly report of collections and deposits she made. She justified such failure by contending that the records necessary in filing such reports went missing. In fact she presented, as evidence, a Police Report indicating therein that on January 3, 2005 she reported to the police authorities that important court documents and records could not be found on the table where they were supposed to be.[31] However, the audit team indicated in its memorandum dated April 24, 2006 that the following were the latest monthly reports filed by Roxas and received by the Financial Management Office-Accounting Division of the OCA with respect to her collections and deposits:

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[29] *Vilar v. Angeles*, A.M. No. P-06-2276, February 5, 2007, 514 SCRA 147.

[30] *Concerned Citizen v. Gabral, Jr.*, A. M. No. P-05-2098, December 15, 2005, 478 SCRA 13.

[31] *Rollo*, p. 350.

| | |
|---|---|
| Special Allowance for Justices and Judges Fund | – September 2004 |
| Clerk of Court General Fund | – September 2003 |
| Fiduciary Fund | – May 2002 |
| Sheriffs' Trust Fund | – None |
| Judiciary Development Fund | – November 2004 |
| Philippine Mediation Center Trust Fund | – None |

Per report of the OCA, Roxas became the officer-in-charge on February 11, 2002. Hence, it is clear from the foregoing that Roxas's excuse is untenable because for almost three years, even before the alleged loss of records, she was already greatly remiss in the filing of the required monthly reports of her collections. This is a gross violation of SC Circular No. 32-93 and Administrative Circular No. 5-93.

Thus, the Court finds that Roxas's failure to comply with the Court's circulars, rules and directives which are designed to promote full accountability for public funds, more particularly her failure to turn over money deposited with her, to account for the shortage in the funds she was handling, to explain and present evidence to support the validity and authenticity of the withdrawals she made as well as her failure to deposit her collections on time and to file a monthly report thereon for a period spanning over two years constitute gross neglect of duty, dishonesty, grave misconduct and malversation.[32] These offenses all carry the penalty of dismissal even for the first offense.[33]

In *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*,[34] this Court held:

> Those who work in the judiciary must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they

[32] *Office of the Court Administrator v. Fueconcillo*, A.M. No. P-06-2208, August 26, 2008, 563 SCRA 276; *Office of the Court Administrator v. Varela*, A.M. No. P-06-2113, February 6, 2008, 544 SCRA 10, 21.

[33] *Id*.

[34] A.M. No. P-06-2140, June 26, 2006, 492 SCRA 469.

must discharge their duties with due care and utmost diligence since they are officers of the court and agents of law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.

The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.[35]

While Roxas performed her functions as an officer-in-charge only in an acting capacity, still the expectation for her to perform all the duties and responsibilities of an accountable officer is not diminished. The fact that she performed her functions in a temporary capacity will not absolve her from liability.[36]

Thus, the Court finds Roxas guilty of gross neglect of duty, dishonesty, grave misconduct and malversation, for which she should be dismissed from the service.

With respect to Batongbacal, the OCA reported that he received a copy of the June 13, 2006 Resolution of the Court on July 21, 2006. Subsequently, the Court issued another Resolution dated September 19, 2006 which noted the Memorandum filed by the OCA informing the Court that no report and recommendation on Batongbacal's Motion for Reconsideration could as yet be submitted "in view of the fact that they are still waiting for [Batongbacal] to restitute the amounts of ₱26,919.00, ₱57,467.00 and ₱298,179.00 and to transmit to the Fiscal Monitoring Division (FMD), CMO, OCA, all the documents to support the validity and authenticity of the withdrawals of certain cash."[37] Batongbacal received a copy of this Resolution on November 16, 2006 as evidenced by Registry Return Receipt No. 46067.[38] Despite due notices, Batongbacal

[35] *Id.* at 482-483.

[36] *Office of the Court Administrator v. Varela*, *supra* note 32.

[37] *Rollo*, p. 298.

[38] See reverse side of *rollo*, p. 298.

never complied with the above-mentioned directives of the Court. Hence, he is deemed to have waived his right to present any evidence in his defense. The OCA should, therefore, proceed to determine the merits of his Motion for Reconsideration which has been pending since August 2004.

**WHEREFORE,** the Court resolves to:

1. *DENY* the early letter requests of respondent Remedios I. Roxas, Court Stenographer I and former Officer-in-Charge of the Municipal Trial Court (MTC), Pulilan, Bulacan, that her salaries and other allowances be made to answer for her shortages, and that she be given clearance to enable her to obtain loans from SCSLA, GSIS and PAG-IBIG to answer for her accountabilities;

2. *FIND* respondent Roxas guilty of gross neglect of duty, dishonesty, grave misconduct and malversation of public funds. She is *DISMISSED* from the service with forfeiture of all her retirement benefits with prejudice to re-employment in any branch of the government or in any government-owned or controlled corporation.

3. *DIRECT* respondent Roxas to *RESTITUTE* within thirty days from notice hereof the balance of her shortage amounting to ₱401,817.28. Of this amount, ₱400,817.28 shall be deposited to the Fiduciary Fund of MTC, Pulilan, Bulacan and the remaining amount of ₱1,000.00 to the Philippine Mediation Trust Fund of the same court; and to *SUBMIT PROOF* of such restitution to the Fiscal Monitoring Division, Court Management Office of the Office of the Court Administration.

4. *DIRECT* the OCA to file the corresponding criminal case against Roxas.

5. *DIRECT* the Financial Management Office of the OCA to *REMIT* the unpaid salaries of Roxas from September 2004 to August 2008 amounting to ₱164,609.64 and her earned leave credits with the monetary value of ₱202,073.08 as of June 30, 2008 to the Fiduciary Account of the MTC, Pulilan, Bulacan as part of the restitution of her shortages and to furnish the

FMD, CMO of the OCA with the machine-validated deposit slip as proof of such remittance.

6. *DIRECT* the OCA to *SUBMIT* its evaluation, report and recommendation on Arturo S. Batongbacal's Motion for Reconsideration, within ten (10) days from receipt of herein Resolution.

**SO ORDERED.**

*Puno, C.J., Carpio, Austria-Martinez, Corona, Tinga, Velasco, Jr., Nachura, Brion,* and *Peralta, JJ.,* concur.

*Quisumbing, Ynares-Santiago, Carpio Morales, Chico-Nazario,* and *Leonardo-de Castro, JJ.,* on official leave.

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**SECOND DIVISION**

[G.R. No. 149050. March 25, 2009]

**SAMAHAN NG MGA MANGGAGAWA SA HYATT-NUWHRAIN-APL,** *petitioner, vs.* **VOLUNTARY ARBITRATOR FROILAN M. BACUNGAN and HYATT REGENCY MANILA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; COURT OF APPEALS; JURISDICTION; THE COURT OF APPEALS IS THE PROPER BODY TO APPEAL THE DECISION OF A VOLUNTARY ARBITRATOR.—** The question on the proper recourse to assail a decision of a voluntary arbitrator has already been settled in *Luzon Development Bank v. Association of Luzon Development Bank Employees*, where the Court held that the decision or award of the voluntary arbitrator or panel of arbitrators should likewise be appealable to the Court of Appeals, in line with the procedure outlines in Revised Administrative Circular No. 1-95 (now

embodied in Rule 43 of the 1997 Rules of Civil Procedure), just like those of the quasi-judicial agencies, boards and commissions enumerated therein, and consistent with the original purpose to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial entities. Subsequently, in *Alcantara, Jr. v. Court of Appeals,* and *Nippon Paint Employees Union v. Court of Appeals,* the Court reiterated the aforequoted ruling. In *Alcantara,* the Court held that notwithstanding Section 2 of Rule 43, the ruling in *Luzon Development Bank* still stands.

**2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A SUBSTITUTE FOR A LOST APPEAL.—** On some occasions, rules of procedure may be relaxed and on that basis the Court of Appeals could have treated the petition for *certiorari* as a petition for review under Rule 43. However, as correctly pointed out by the Court of Appeals, the petition was filed beyond the reglementary period for filing a petition for review under Rule 43. It is elementary in remedial law that the use of an erroneous mode of appeal is a cause for dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal.

**3. ID.; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BODIES, GENERALLY RESPECTED.—** Well-settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.

**APPEARANCES OF COUNSEL**

*Sentro ng Alternatibong Lingap Panligal* for petitioner.

*Ermitaño Sangco Manzano & Associates* for private respondent.

## D E C I S I O N

**TINGA, *J.*:**

Before the Court is a petition for review on *certiorari*,[1] assailing the twin resolutions of the Court of Appeals in CA-G.R. SP No. 60959. The Resolution[2] dated 16 November 2000 dismissed outright petitioner's special civil action for *certiorari* therein on the ground that it was a wrong remedy while the Resolution[3] dated 10 July 2001 denied petitioner's motion for reconsideration.

The following factual antecedents are matters of record.

In 1995 and 1996, Mario Dacles and Teodoro Valencia respectively assumed their duties as glass cleaners at Hyatt Regency Manila (respondent Hyatt), pursuant to the cleaning service contract[4] executed between respondent Hyatt and City Service Corporation (CSC).[5]

Meanwhile, in April 1998, respondent Hyatt hired Amelia Dalmacio and Renato Dazo on a casual basis as florist/sales clerk and helper/driver, respectively. After their contracts expired on 30 August 1998, Dalmacio and Dazo continued reporting for work. On 16 September 1998, Dalamcio and Dazo signed another employment contract with respondent Hyatt.[6]

During the Labor Management Committee Meeting (LMC), petitioner Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL (petitioner union), a legitimate labor organization composed of the rank-and-file employees of respondent Hyatt, questioned the status as non-regular employees of Dacles, Valencia, Dalmacio and Dazo (Dacles, *et al*.).[7]

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[1] *Rollo,* pp. 3-26.

[2] *Id*. at 28; penned by Justice Edgardo P. Cruz and concurred in by Justices Eubulo G. Verzola, Chairman of the Ninth Division, and Marina L. Buzon.

[3] *Id*. at 30-31.

[4] *Id*. at 45-50.

[5] *Id*. at 6.

[6] *Id*. at 7.

[7] *Id*.

On 19 April 1999, petitioner union and respondent Hyatt agreed to submit the matter for resolution through the grievance machinery as provided for in their collective bargaining agreement (CBA). Petitioner union claimed that Dacles, *et al*. were regular employees on account of the nature of their functions as well as the length of their service. On the other hand, respondent Hotel maintained that Dalmacio and Dazo were mere project employees whose employments were co-terminus with the existence of the flower shop outlet and that Dacles and Valencia were employees of CSC, an independent contractor.

On 16 September 1999, respondent Hyatt dismissed Dacles and Valencia and disallowed them from reporting to work on the ground that the service contract between respondent Hyatt and CSC had been terminated.

Petitioner union and respondent Hyatt were unable to settle the dispute through the grievance procedure and, thus, agreed to elevate the issue for voluntary arbitration. The parties selected Dean Froilan Bacungan as voluntary arbitrator. After the exchange of responsive pleadings, the case was deemed submitted for resolution.

On 11 January 2000, the voluntary arbitrator rendered a decision, the dispositive portion of which reads:

WHEREFORE, the Voluntary Arbitrator rules that:

1. Mario Dacles and Teodoro Valencia are not employees of the Hotel. They are employees of the City Service Corporation.

2. As employees of the Hotel, Amelia Dalmacio and Renato Dazo can not be legally terminated on September 17, 1999 and November 16, 1999 respectively, but they may be legally terminated anytime the Hotel closes down the Flower Shop wherein Dalmacio and Dazo work, or earlier for cause provided by law.

SO ORDERED.[8]

Petitioner union moved for reconsideration, which was denied in a Resolution dated 10 July 2000. On 08 September 2000,

[8] *Id*. at 157.

petitioner union elevated the matter to the Court of Appeals via a petition for *certiorari*.

In the assailed Resolution dated 16 November 2000, the Court of Appeals dismissed the petition, to wit:

> Contrary to Secs. 1, 4 and 6, in relation to Sec. 7, Rule 43 of the 1997 Rules on Civil Procedure, petitioner resorted to the instant special civil action for *certiorari*, instead of a petition for review; its payment of the docket fees is short by ₱10.00; and the petition is not accompanied by a certified true copy of the motion for reconsideration of the decision dated January 11, 2000.
>
> If the action were to be treated as a petition for review, then it was filed out of time. On July 20, 2000, petitioner received the resolution dated July 10, 2000 denying its motion for reconsideration of the assailed decision. Consequently, it had until July 25, 2000, or fifteen days from notice of denial of the motion for reconsideration, within which to file a petition for review (Sec. 4, Rule 43). However, the petition was only filed on September 8, 2000, or forty-five days beyond the reglementary period.
>
> WHEREFORE, the petition is DISMISSED.
>
> SO ORDERED.[9]

Petitioner sought reconsideration, arguing that the voluntary arbitrator's decision was rendered under Title VII-A of the Labor Code and, therefore, is not covered by Rule 43 of the 1997 Rules of Civil Procedure as provided in Section 2 thereof. On 10 July 2001, the Court of Appeals rendered a resolution denying the motion for reconsideration.[10]

Hence, the instant petition, attributing the following errors to the Court of Appeals:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN RULING THAT THE APPROPRIATE REMEDY FOR ASSAILING THE DECISION OF THE RESPONDENT VOLUNTARY ARBITRATOR IS AN APPEAL BY PETITION FOR REVIEW UNDER

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[9] *Id*. at 28.

[10] *Supra* note 3.

RULE 43 AND NOT A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN DISMISSING THE PETITION ON THE BASIS OF THE REQUIREMENTS SET FORTH IN RULE 43 OF THE 1997 RULES OF CIVIL PROCEDURE.[11]

Petitioner union argues that the proper remedy to assail a decision of a voluntary arbitrator is a special civil action for *certiorari* under Rule 65 of the Rules of Court and not an appeal via a petition for review under Rule 43. Petitioner union's theory is based on the following ratiocinations: first, the decision of the voluntary arbitrator is similar to the decisions rendered by the National Labor Relations Commission (NLRC) and the Secretary of Labor and Employment, which become final and executory after ten (10) calendar days from receipt of notice, in that the Labor Code expressly disallows an appeal from their judgment or final order; second, Section 2 of Rule 43, which exempts judgments or final orders issued under the Labor Code from an appeal via Rule 43, should apply with equal force to decisions of labor voluntary arbitrators.

The petition lacks merit.

The question on the proper recourse to assail a decision of a voluntary arbitrator has already been settled in *Luzon Development Bank v. Association of Luzon Development Bank Employees*,[12] where the Court held that the decision or award of the voluntary arbitrator or panel of arbitrators should likewise be appealable to the Court of Appeals, in line with the procedure outlines in Revised Administrative Circular No. 1-95 (now embodied in Rule 43 of the 1997 Rules of Civil Procedure), just like those of the quasi-judicial agencies, boards and commissions enumerated therein, and consistent with the original purpose to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial entities.[13]

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

[12] 319 Phil. 262 (1995).

[13] *Id*. at 271.

Subsequently, in *Alcantara, Jr. v. Court of Appeals*,[14] and *Nippon Paint Employees Union v. Court of Appeals*,[15] the Court reiterated the aforequoted ruling. In *Alcantara*, the Court held that notwithstanding Section 2 of Rule 43, the ruling in *Luzon Development Bank* still stands. The Court explained, thus:

> The provisions may be new to the Rules of Court but it is far from being a new law. Section 2, Rules 42 of the 1997 Rules of Civil Procedure, as presently worded, is nothing more but a reiteration of the exception to the exclusive appellate jurisdiction of the Court of Appeals, as provided for in Section 9, Batas Pambansa Blg. 129, as amended by Republic Act No. 7902:
>
> > (3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation Commission and the Civil Service Commission, *except those falling within* the appellate jurisdiction of the Supreme Court in accordance with the Constitution, *the Labor Code of the Philippines under Presidential Decree No. 442, as amended*, the provisions of this Act and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
>
> The Court took into account this exception in *Luzon Development Bank* but, nevertheless, held that the decisions of voluntary arbitrators issued pursuant to the Labor Code do not come within its ambit x x x[16]

On some occasions, rules of procedure may be relaxed and on that basis the Court of Appeals could have treated the petition for *certiorari* as a petition for review under Rule 43. However, as correctly pointed out by the Court of Appeals, the petition was filed beyond the reglementary period for filing a petition for review under Rule 43. It is elementary in remedial law that

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[14] G.R. No. 143397, 435 Phil. 395 (2002).

[15] G.R. No. 159010, 19 November 2004, 443 SCRA 286.

[16] *Alcantara, Jr. v. Court of Appeals, supra* note 19 at 404-405.

the use of an erroneous mode of appeal is a cause for dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal.[17]

In any event, the voluntary arbitrator did not commit any reversible error in ruling that Dacles and Valencia were employees of CSC, an independent contractor, whose services may be terminated upon the expiration of the contract for cleaning services between CSC and respondent Hyatt. There is no dispute that Dacles and Valencia performed services at respondent Hyatt pursuant to the said contract. The Court affirms the ruling of the voluntary arbitrator that Dacles and Valencia cannot be considered as employees of respondent Hyatt in the absence of evidence to prove that CSC had been engaged in labor-only contracting.

The Court also affirms the voluntary arbitrator's findings that Dalmacio and Dazo were project employees, whose employment may be terminated only upon the closure of the flower shop. Said findings are in accord with the conditions of the employment contracts between respondent Hyatt and the two employees.

Well-settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. They are binding upon this Court unless there is a showing of grave abuse of discretion or where it is clearly shown that they were arrived at arbitrarily or in utter disregard of the evidence on record.[18]

**WHEREFORE,** the instant petition for review on *certiorari* is *DENIED* and the resolutions dated 16 November 2000 and 10 July 2001 of the Court of Appeals in CA-G.R. SP No. 60959 are *AFFIRMED*. Costs against petitioner.

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[17] *Nippon Paint Employees Union-Olalia v. Court of Appeals, supra* note 20 at 291.

[18] *Colegio de San Juan de Letran-Calamba v. Villas*, 447 Phil. 692, 700 (2003).

**SO ORDERED.**

*Austria-Martinez,* Corona,** Velasco, Jr.,* and *Brion, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 151952. March 25, 2009]

**THE PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **HERACLEO ABELLO *Y* FORTADA,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; TESTIMONIES IN RAPE CASES; APPRECIATION THEREOF.—** Determining the guilt or innocence of an accused, based solely on the victim's testimony, is not an easy task in reviewing convictions for rape and sexual abuse cases. For one, these crimes are usually committed in private so that only the two direct parties can attest to what happened; thus, the testimonies are largely uncorroborated as to the exact details of the rape, and are usually in conflict with one another. With this in mind, we exercise utmost care in scrutinizing the parties' testimonies to determine who of them is believable. Oftentimes, we rely on the surrounding circumstances as shown by the evidence, and on common human experience.

**2. ID.; ID.; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF ILL MOTIVE.—** A material point we noted is that Abello could not say why AAA would falsely accuse him. The substance and tenor of the testimony and the element

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* Additional member per Special Order No. 593 in lieu of *J.* Quisumbing who is on official leave.

** Additional member per Special Order No. 600 in lieu of *J.* Carpio Morales who is on official leave.

of motivation are critical points for us since a straightforward, categorical and candid narration by the victim deserves credence if no ill motive can be shown driving her to falsely testify against the accused.

**3. ID.; ID.; ID.; POSITIVE TESTIMONY PREVAILS AGAINST MERE DENIAL.—** The issue of his credibility is reduced to a choice between the offended party's positive testimony and the denial of the accused. In this case, AAA categorically and unmistakably identified Abello as her rapist and sexual abuser; the identification was positive because the scene was illuminated by a light coming from outside the parties' house at the time of the incidents. She also testified that during the rape, she saw Abello suddenly enter the room of her mother after she yelped in pain when he stepped with his knee on her hand. Settled jurisprudence tells us that the mere denial of one's involvement in a crime cannot take precedence over the positive testimony of the offended party.

**4. ID.; ID.; ID.; FAMILY RELATIONSHIP IN DOMESTIC CRIMES, DISCUSSED.—** We flatly reject Abello's argument that his relationship with AAA insulates him from the crimes charged. Our judicial experience tells us that in handling these types of cases, the relationship between the offender and the offended party has never been an obstacle to the commission of the crime against chastity. Although alarming to admit, this kind and degree of relationship is now quite common in these types of crimes. Studies show a rising incidence of family and domestic violence where 98.8% of the victims are women; an estimated 26.7% of these cases involve sexual abuse, while 33% involve incest committed against children. In these cases, the male spouse, the father of the victim, or close male relatives, have been identified as frequent abusers.

**5. ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM AGAINST HER STEPFATHER, UPHELD.—** It is highly unlikely that a woman in her right mind would expose and declare herself a victim of rape and sexual abuse, when she would thereby open herself to the humiliating experience of a public trial and to the possible social stigma of being a victim of rape and sexual abuse. In the normal course, a woman will not expose herself to these risks unless she is certain of what happened and she seeks to obtain justice against the perpetrator. We note in this regard AAA's categorical testimony that she filed the criminal charges

because she did not know what to do; she thus reported the incidents to her mother and sister-in-law who thereafter sought police assistance. The record also shows that AAA lived a sheltered life cared for by her relatives because of her *polio*. Unless the contrary is shown, it is highly unusual for her to have the worldly sophistication to invent or fabricate the charges she made, particularly one made against her stepfather. A charge against one's stepfather, too, is unusual in our socio-cultural context because of the respect we give our elders, and is only understandable if there is a deeply felt cause for complaint. We particularly note that no imputation has been made at any time in the case that AAA is not normal, save for her physical disability, or has a strained relationship with her stepfather prior to the acts charged.

**6. CRIMINAL LAW; RA NO. 8353 ON RAPE BY SEXUAL ASSAULT; ELUCIDATED.—** R.A. No. 8353 which took effect on October 22, 1997 introduced into the Philippine legal system the concept of rape by sexual assault. This amendment not only reclassified rape as a crime against persons, but also expanded the definition of rape from the traditional concept of a sexual intercourse committed by a man against an unwilling woman. The second paragraph of Article 266-A of the RPC, as amended, defines rape by sexual assault as committed *by any person who, under any of the circumstance mentioned in paragraph 1 . . . shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person*. The elements of rape by sexual assault are: (1) That the offender commits an act of sexual assault; (2) That the act of sexual assault is *committed by* any of the following means: (a) By inserting his penis into another person's mouth or anal orifice; or x x x (3) That the act of sexual assault is *accomplished* under any of the following circumstances: (a) By using force or intimidation; (b) When a woman is deprived of reason or otherwise unconscious; x x x

**7. ID.; ID.; VARIANCE BETWEEN ALLEGATIONS IN INFORMATION FOR RAPE AND THAT PROVEN AT TRIAL ON MODE OF COMMITTING RAPE, NOT FATAL WHERE ACCUSED DID NOT OBJECT TO THE PRESENTATION OF EVIDENCE.—** Both the RTC and the CA failed to notice the variance between the allegations in the

Information for rape and that proven at the trial on the mode of committing the offense. The Information alleges "force and intimidation" as the mode of commission, while AAA testified during the trial that she was asleep at the time it happened and only awoke to find Abello's male organ inside her mouth. This variance is not fatal to Abello's conviction for rape by sexual assault. In *People v. Corpuz*, we ruled that a variance in the mode of commission of the offense is binding upon the accused if he fails to object to evidence showing that the crime was committed in a different manner than what was alleged. In the present case, Abello did not object to the presentation of evidence showing that the crime charged was committed in a different manner than what was stated in the Information. Thus, the variance is not a bar to Abello's conviction of the crime charged in the Information.

**8. ID.; RA NO. 7610 ON ACTS OF LASCIVIOUSNESS AGAINST A CHILD; ELEMENTS.—** Abello was convicted of two (2) counts of sexual abuse under Section 5 (b), Article III of R.A. No. 7610, which defines and penalizes acts of lasciviousness committed against a child: Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse. x x x (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and The essential elements of this provision are: 1. The accused commits the act of sexual intercourse or *lascivious conduct.* 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child whether male or female, is below 18 years of age.

**9. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; CASE AT BAR.—** Paragraph (h), Section 2 of the Implementing

Rules and Regulations of R.A. 7610 (*implementing rules*) defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. Records show that AAA duly established this element when she positively testified that Abello fondled her breasts on two separate occasions while she slept.

**10. ID.; ID.; ELEMENTS; THAT LASCIVIOUS CONDUCT BE COMMITTED ON A CHILD WHO IS EITHER EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE; "OTHER SEXUAL ABUSE," ELUCIDATED; APPLICATION IN CASE AT BAR.—** The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. This second element requires evidence proving that: (a) AAA was either exploited in prostitution or subjected to sexual abuse and (b) she is a child as defined under R.A. No. 7610. In *Olivarez v. Court of Appeals*, we explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct **through the coercion or intimidation** by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will. In the present case, the prosecution failed to present any evidence showing that force or coercion attended Abello's sexual abuse on AAA; the evidence reveals that she was asleep at the time these crimes happened and only awoke when she felt her breasts being fondled. Hence, she could have not resisted Abello's advances as she was unconscious at the time it happened. In the same manner, there was also no evidence showing that Abello compelled her, or cowed her into silence to bear his sexual assault, after being roused from sleep. Neither is there evidence that she had the time to manifest conscious lack of consent or resistance to Abello's assault.

**11. ID.; ID.; WORD "CHILDREN" AND "CHILD" IN RA 7610, ELUCIDATED.—** AAA cannot be considered a child under Section 3(a) of R.A. No. 7610 which reads: (a) "Children" refers to person below eighteen (18) years of age **or those**

**over but are unable to fully take care of themselves or protect themselves** from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition; The implementing rules elaborated on this definition when it defined a "child" as one who is below 18 years of age **or over said age who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of herself fully because of a physical or mental disability or condition or of protecting herself from abuse.**

**12. ID.; ART. 336 OF THE REVISED PENAL CODE (RPC) ON ACTS OF LASCIVIOUSNESS; CRIME COMMITTED IN CASE AT BAR PER ALLEGATIONS OF THE ULTIMATE FACTS AND CIRCUMSTANCES IN THE INFORMATION; ELEMENTS.—** In *Olivarez*, we emphasized that the character of the crime is not determined by the caption or preamble of the information or from the specification of the provision of law alleged to have been violated; the crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information. In the present case, although the two Informations wrongly designated R.A. No. 7610 as the law violated; the allegations therein sufficiently constitute acts punishable under Article 336 of the RPC whose elements are: 1. That the offender commits any act of lasciviousness; 2. That the offended party is another person of either sex; and 3. That it is done under any of the following circumstances: a. By using force or intimidation; or b. When the offended party is deprived of reason or otherwise unconscious; or c. When the offended party is under 12 years of age or is demented.

**13. ID.; ALTERNATIVE CIRCUMSTANCES; RELATIONSHIP; AN AGGRAVATING CIRCUMSTANCE IN CRIMES AGAINST CHASTITY AND RAPE THAT MUST BE SUFFICIENTLY ESTABLISHED.—** The three Informations all alleged the stepfather-stepdaughter relationship between AAA and Abello. Relationship as an alternative circumstance under Article 15 of the RPC, as amended, and is an aggravating circumstance in crimes against chastity and in rape. This modifying circumstance, however, was not duly proven in the present case due to the prosecution's failure to present the marriage contract between Abello and AAA's mother. If the fact of marriage came out in the evidence at all, it was *via* an

admission by Abello of his marriage to AAA's mother. This admission, however, is inconclusive evidence to prove the marriage to AAA's mother, as the marriage contract still remains the best evidence to prove the fact of marriage. This stricter requirement is only proper as relationship is an aggravating circumstance that increases the imposable penalty, and hence must be proven by competent evidence.

**14. ID.; RAPE BY SEXUAL ASSAULT; PENALTY; PROPER PENALTY IN CASE AT BAR.—** Rape by sexual assault is penalized by *prision mayor* which has a range of six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be within the full range of the penalty that is one degree lower than *prision mayor*, in this case, *prision correccional* which has a range of penalty from six (6) months and one (1) day to six (6) years. In the absence of any mitigating or aggravating circumstance, the maximum of the indeterminate penalty shall be taken within the medium period of *prision mayor*, or eight (8) years and one (1) day to ten (10) years. Hence, Abello may be sentenced to suffer an indeterminate penalty ranging from six (6) months and one (1) day to six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day to ten (10) years, as maximum, for the crime of rape.

**15. ID.; ID.; PROPER CIVIL INDEMNITY AND MORAL DAMAGES.—** A victim of rape by sexual assault is entitled to an award of ₱30,000 as civil indemnity and ₱30,000 as moral damages. Civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases. Moral damages are additionally awarded without need of further pleading or proof; it is presumed that the victim necessarily suffered injury due to the odiousness of the crime.

**16. ID.; ACTS OF LASCIVIOUSNESS UNDER ART. 336 OF THE REVISED PENAL CODE; PENALTY; PROPER PENALTY IN CASE AT BAR.—** The imposable penalty for acts of lasciviousness under Article 336 of the RPC, as amended, is *prision correccional*. Under Scale No. 1 of Article 71 of this law, one degree lower from *prision correccional* is *arresto mayor* which has a range of penalty from one (1) month and one (1) day to six (6) months. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor*. Absent any

mitigating or aggravating circumstance in the case, the maximum of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. Accordingly, Abello may be meted an indeterminate penalty ranging from one (1) month and one (1) day to six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of *prision correccional*, as maximum, for each count of acts of lasciviousness.

**17. ID.; ID.; PROPER CIVIL INDEMNITY AND MORAL DAMAGES.—** For acts of lasciviousness, AAA is awarded ₱20,000 as civil indemnity and ₱30,000 as moral damages for each count in line with existing jurisprudence.

**18. CIVIL LAW; DAMAGES; AWARD OF EXEMPLARY DAMAGES IN CASE AT BAR, PROPER.—** The Court further awards exemplary damages in the amount of ₱25,000 for the rape through sexual assault committed upon AAA and ₱2,000 for each count of acts of lasciviousness. Article 2230 of the Civil Code allows an award of exemplary damages when the crime is committed with one or more aggravating circumstances. Although not alleged in the Informations (as now required by Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure), the aggravating circumstance of dwelling was nonetheless proven during the trial when AAA testified that she was sexually abused by Abello while she was asleep in their house. Additionally, Article 266-B of the RPC, as amended, recognizes knowledge by the offender *of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime*, as a qualifying circumstance. Again, this knowledge by Abello of AAA's polio was duly proven during the trial; this matter was not alleged in the Information. These aggravating and qualifying circumstances of dwelling and Abello's knowledge of AAA's physical disability may be appreciated in awarding the victim exemplary damages in line with our ruling in *People v. Catubig* where we held that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

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

**BRION, *J.*:**

We review in this appeal the decision of the Court of Appeals in CA-G.R. CR No. 23746,[1] which affirmed with modification the joint decision of the Regional Trial Court (RTC), Branch 170, Malabon City, in Criminal Case Nos. 19623-MN, 19624-MN and 19625-MN.[2]

Appellant Heracleo Abello *y* Fortada (*Abello*) stands convicted of one (1) count of violation of paragraph 2, Article 266-A of the Revised Penal Code (RPC), as amended;[3] and two (2) counts of violation of sexual abuse under Republic Act (R.A.) No. 7610 (*Child Abuse Law*). For these crimes, he was sentenced to suffer imprisonment of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, and two *reclusion perpetuas*, respectively.

The following Informations (all dated July 8, 1998) were filed against the appellant:

Criminal Case No. 19623-MN

That on or about the 8th day of July 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father (sic) of victim AAA,[4] with lewd design

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[1] Dated January 3, 2002; CA *rollo*, pp. 80-92; penned by Associate Justice Oswaldo D. Agcaoili (ret.) with Associate Justice Jose L. Sabio, Jr. and Associate Justice Mariano C. del Castillo, concurring.

[2] Dated November 22, 1999; *id*,. pp. 12-15; penned by Hon. Benjamin T. Antonio.

[3] Republic Act No. 8353 (*New Rape Law*).

[4] The real name of the victim as well as those of her immediate family members are withheld per Republic Act (R.A.) No. 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes) and R.A. No. 9262 (An Act

and by means of force and intimidation, did then and there willfully, unlawfully and feloniously putting his penis inside the mouth of said AAA, against her will and without her consent.

CONTRARY TO LAW.[5]

Criminal Case No. 19624-MN

That on or about the 30th day of June 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father (sic) of victim AAA, a (*sic*) years old, and Polio Striken (sic), with lewd design by means of violence and intimidation, did then and there willfully, unlawfully and feloniously mashing her breast, against her will and without her consent.[6]

CONTRARY TO LAW.

Criminal Case No. 19625-MN

That on or about the 2nd day of July 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father (sic) of victim AAA, a (*sic*) 21 years old, and Polio Striken (sic), with lewd design by means of violence and intimidation, did then and there willfully, unlawfully and feloniously mashing her breast, against her will and without her consent.[7]

CONTRARY TO LAW.

Abello, with the assistance of counsel, pleaded not guilty to these charges. The cases were jointly tried since they arose from similar incidents involving the same parties.[8] The prosecution

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Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes).

[5] I Records, p. 1.

[6] II Records, p. 1.

[7] *Id.*, p. 2.

[8] In Criminal Case No. 19623-MN, the defense stipulated on the marking of the prosecution's exhibits, *i.e.* Sworn Statement of AAA (Exhibit "A") and a Referral Slip issued by the Navotas Police Department (Exhibit "B").

relied on the testimony of the victim, AAA, who identified Abello as the perpetrator of the rape and sexual abuses against her. Abello's defense was confined to his denial of the accusations.

**The Background Facts**

The RTC summarized the facts as follows:

> The victim in these cases is twenty-one (21) year old AAA. She contracted polio when she was seven (7) months old. She was not able to study on account of her difficulty in walking. Hence, she could only read and write her name including that of her friends.
>
> On June 30, 1998 at around 4:00 o'clock (sic) in the early morning, AAA was sleeping in their house in Kalyeng Impiyerno, Navotas, Metro Manila along with her sister-in-law and nephew. She was suddenly awakened when Abello … mashed her breast. Come July 2, 1999 at around 3:00 a.m. Abello again mashed the breast of AAA practically under the same previous situation while the latter was sleeping. In these two occasions AAA was able to recognize Abello because of the light coming from outside which illuminated the house. Then on July 8, 1998, at around 2:00 a.m., Abello this time placed his soft penis inside the mouth of AAA. The latter got awaken when Abello accidentally kneeled on her right hand. AAA exclaimed "*Aray*" forcing the accused to hurriedly enter his room. He was nevertheless seen by AAA. The victim on the same date reported the incident to her sister-in-law and mother.
>
> Amidst the accusation of raping and twice sexually abusing AAA, Abello interposed the defense of denial. In all of the instances, Abello claimed that he merely stepped on the victim at the sala on his way to his room after retiring home.

The RTC found Abello guilty under the three Informations. The dispositive portion of the decision states:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. In **Criminal Case No. 19623-MN**, the Court finds accused **Heracleo Abello *y* Fortada** guilty beyond reasonable doubt of the crime of Violation of **Paragraph 2, Article 226-A, Republic Act [No.] 8353** and hereby sentences him to suffer an indeterminate

penalty of **Seven (7) Years of *prision mayor, as minimum*, to Thirteen (13) Years of *reclusion temporal, as maximum;***[9]

2. In **Criminal Case Nos. 19624-MN and 19625-MN**, the Court finds accused **Heracleo Abello *y* Fortada** guilty beyond reasonable doubt of two (2) counts of **Violation of Section 5,** Article III of **Republic Act [No.] 7610** and hereby sentences him in each of the two cases to suffer an indeterminate penalty of **Four (4) Years of *prision correctional*** (sic)**, as minimum, to Twelve (12) Years and One (1) Day of *prision mayor*, as maximum.**[10] [Emphasis theirs]

The CA affirmed Abello's conviction on appeal but modified the penalties imposed. The dispositive portion of its decision reads:

WHEREFORE**,** the appealed judgement (sic) is hereby **AFFIRMED** subject to the following **MODIFICATIONS**:

1.In Criminal Case No. 19623-MN, appellant is hereby sentenced to suffer an indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum; Appellant is further ordered to pay complainant, AAA, moral damages in the amount of ₱50,000.00

2. In Criminal Case Nos. 19624-MN and 19625-MN, appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* in each of the two cases.[11]

## The Issues

Abello contends in his *Brief* that:[12]

1. The court *a quo* erred in not absolving the accused-appellant of the crime of violation of paragraph 2, Article 266-A of the Revised Penal Code, as amended;

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These markings were adopted in Criminal Case Nos. 19624-MN and 19625-MN per Joint Order dated September 24, 1998, II Records, p. 6.

[9] This should be Article 266-A of R.A. No. 8353.

[10] CA *rollo*, p. 15.

[11] *Id.*, p. 92.

[12] *Id.*, pp. 26-40.

2. The court *a quo* has committed an error in not exculpating the accused-appellant of the crime of violation of Section 5, Article III of R.A. No. 7610.[13]

He emphasizes that it was impossible for him to have committed these crimes considering that: (a) he is AAA's stepfather who has a healthy sexual relationship with her mother; (b) AAA was not alone during these alleged incidents; and (c) AAA admitted that she was asleep when these incidents happened making it likely that she could have just dreamed of them.

The Office of the Solicitor General maintains the correctness of Abello's conviction on the basis of AAA's positive and candid narration covering the elements constituting the crimes of rape by sexual assault and sexual abuse.

**Our Ruling**

**We affirm Abello's conviction on all three charges.**

Determining the guilt or innocence of an accused, based solely on the victim's testimony, is not an easy task in reviewing convictions for rape and sexual abuse cases. For one, these crimes are usually committed in private so that only the two direct parties can attest to what happened; thus, the testimonies are largely uncorroborated as to the exact details of the rape, and are usually in conflict with one another. With this in mind, we exercise utmost care in scrutinizing the parties' testimonies to determine who of them is believable. Oftentimes, we rely on the surrounding circumstances as shown by the evidence, and on common human experience.

We carefully reviewed AAA's testimony in light of the issues Abello raised in his appeal, and in light of matters he did not raise but which materially affect his innocence or culpability. After due consideration, we find no reason to doubt the veracity of AAA's testimony and her version of the events that led to the filing of the present charges.

In her testimony, AAA positively and unequivocally narrated the details of her rape and sexual abuse she suffered in Abello's hands, as follows:

[13] *Id.,* p. 28.

Q: Do you remember any unusual incident that happened on June 30, 1999, inside your mother's house at around 4:00 o'clock (sic)?

A: I remembered on that date that he hold (sic) my breast, sir.

Q: Who hold (sic) your breast?

A: He is the one, sir. (Witness pointed to the accused.)

Q: What else did he do to you at that time?

A: That was again repeated on July 2 more or less 3:00 o'clock (sic), sir.

Q: What did he do to you on July 2 at 3:00 o'clock (sic)?

A: The same he mashed my breast, sir.

Q: Was that repeated?

A: On July 8 at around 2:00 o'clock in the morning, sir.

Q: What happened then?

A: He placed his penis on (*sic*) my mouth, sir.

Q: While his penis was inside your mouth, what else was he doing to you?

A: He suddenly entered the room of my mother because I saw him and I was sure that it was him who was doing that to me, sir.

Q: When was that when the accused placed his penis inside your mouth?

A: I was sleeping at that time, sir.

Q: Were you awaken (sic)?

A: Yes, sir.

Q: When you were awakened, what did you see?

A: His organ was in my mouth while I was sleeping, I got awaken (sic) because I felt pain after he accidentally kneeled on my right hand and because of that I cried "*aray*," x x x

x x x x x x x x x

Q: So, it cannot take one minute or thirty seconds that the penis of the accused was inserted on (*sic*) your mouth open?

A: I notice that my mouth was open, Your Honor.

Q: So, you were not sure whether it lasted for one second or one minute?

A: It lasted for one second, Your Honor.

Q: And you were awakened?

A: Yes, Your Honor.

Q: How do you know that it was the penis of the accused?

A: I saw it, Your Honor.

Q: Whom did you see?

A: Him, you (sic) honor.

Q: While the penis was inside your mouth, were you sleeping or awaken already?

A: I got awaken because of the placement of his penis on (*sic*) my mouth, sir.

Q: Was his penis soft or hard?

A: I got hold of it, Your honor.

x x x x x x x x x

Q: How were you able to hold the penis?

A: I hold (sic) the penis to push it out on (sic) my mouth, Your honor.[14]

We note that both the RTC and CA found AAA's testimony to be positive, direct, and categorical, while the RTC found the defense's version *too strained to be believed* for being contrary to human experience; the RTC refused to accept the claim that Abello was prosecuted for rape and sexual abuse simply because he stepped with his knees on her stepdaughter's hand.[15] A material point we noted is that Abello could not say why AAA would

[14] TSN, January 19, 1999, pp. 4-6.

[15] *Rollo*, pp. 14-15 and 84.

falsely accuse him.[16] The substance and tenor of the testimony and the element of motivation are critical points for us since a straightforward, categorical and candid narration by the victim deserves credence if no ill motive can be shown driving her to falsely testify against the accused.[17]

Our consideration of Abello's defense of denial and his other arguments lead us to reject them for the following reasons:

*First*, the issue of his credibility is reduced to a choice between the offended party's positive testimony and the denial of the accused. In this case, AAA categorically and unmistakably identified Abello as her rapist and sexual abuser;[18] the identification was positive because the scene was illuminated by a light coming from outside the parties' house at the time of the incidents.[19] She also testified that during the rape, she saw Abello suddenly enter the room of her mother after she yelped in pain when he stepped with his knee on her hand.[20] Settled jurisprudence tells us that the mere denial of one's involvement in a crime cannot take precedence over the positive testimony of the offended party.[21]

Abello likewise admitted that in the wee hours of the mornings of June 30, July 2, and July 8, 1998, he passed by the sala of their house where AAA and her companions were sleeping.[22] This admission shows that he had the opportunity and the means to commit these crimes in terms of his location and close proximity to AAA who, together with her companions, were then sleeping.

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[16] TSN, July 26, 1999, p. 4.

[17] *People v. Espino*, G.R. No. 176742, June 17, 2008.

[18] TSN, January 19, 1999, pp. 8-9.

[19] *Id.*, p. 10.

[20] *Id.*, p. 5.

[21] *People v. Bon*, G.R. No. 166401. October 30, 2006, 506 SCRA 168, 185; See *People v. Supnad*, G.R. Nos. 133791-94, August 8, 2001, 362 SCRA 346, 357, and *People v. Nazareno*, G.R. No. 167756, April 8, 2008.

[22] TSN, July 26, 1999, p. 3.

*Second*, we flatly reject Abello's argument that his relationship with AAA insulates him from the crimes charged. Our judicial experience tells us that in handling these types of cases, the relationship between the offender and the offended party has never been an obstacle to the commission of the crime against chastity. Although alarming to admit, this kind and degree of relationship is now quite common in these types of crimes. Studies show a rising incidence of family and domestic violence where 98.8% of the victims are women; an estimated 26.7% of these cases involve sexual abuse, while 33% involve incest committed against children.[23] In these cases, the male spouse, the father of the victim, or close male relatives, have been identified as frequent abusers. [24]

*Third*, we find the claim that AAA could have just dreamed of the incidents complained of, to be preposterous. It is highly unlikely that a woman in her right mind would expose and declare herself a victim of rape and sexual abuse, when she would thereby open herself to the humiliating experience of a public trial and to the possible social stigma of being a victim of rape and sexual abuse. In the normal course, a woman will not expose herself to these risks unless she is certain of what happened and she seeks to obtain justice against the perpetrator. We note in this regard AAA's categorical testimony that she filed the criminal charges because she did not know what to do; she thus reported the incidents to her mother and sister-in-law who thereafter sought police assistance.[25]

The record also shows that AAA lived a sheltered life cared for by her relatives because of her *polio*.[26] Unless the contrary

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[23] Violence and Abusive Behavior (*National Objective for Health*), http:/ /www2.doh.gov.ph/noh/197-199 as of February 26, 2009; Filipino Women and Sexual Violence: Speaking Out and Providing Services by Dee Dicen Hunt and Cora Sta. Ana-Gatbonton (*paper*),http: // cpcabrisbane.ord/CPCA/ IWSSForum.htm as of February 23, 2009, citing Women in Development Inter-Agency Committee Fourth Country Programme for Children, University of the Philippines Center for Women's Studies Foundation, Inc., and U.N. International Children's Fund, *Breaking the Silence*, September 1996.

[24] *Ibid.*

[25] TSN, January 19, 1999, p. 8, and TSN, March 16, 1999, p. 4.

[26] *Id.*, p. 2.

is shown, it is highly unusual for her to have the worldly sophistication to invent or fabricate the charges she made, particularly one made against her stepfather. A charge against one's stepfather, too, is unusual in our socio-cultural context because of the respect we give our elders, and is only understandable if there is a deeply felt cause for complaint. We particularly note that no imputation has been made at any time in the case that AAA is not normal, save for her physical disability, or has a strained relationship with her stepfather prior to the acts charged.

Based on these considerations and in the absence of clear indications of errors in giving credence to AAA's testimony, we find no reason to disturb the factual findings of the RTC and the CA.

*Rape by sexual assault*

R.A. No. 8353 which took effect on October 22, 1997 introduced into the Philippine legal system the concept of rape by sexual assault. This amendment not only reclassified rape as a crime against persons, but also expanded the definition of rape from the traditional concept of a sexual intercourse committed by a man against an unwilling woman.

The second paragraph of Article 266-A of the RPC, as amended, defines rape by sexual assault as committed *by any person who, under any of the circumstance mentioned in paragraph 1 … shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.*

The elements of rape by sexual assault are:

(1) That the offender commits an act of sexual assault;

(2) That the act of sexual assault is *committed by* any of the following means:

    (a) By inserting his penis into another person's mouth or anal orifice; or

x x x x x x x x x

(3) That the act of sexual assault is *accomplished* under any of the following circumstances:

(a) By using force or intimidation;

(b) When a woman is deprived of reason or otherwise unconscious;

x x x x x x x x x [27]

AAA's testimony covers the commission of the sexual assault through the insertion of Abello's male organ into her mouth; AAA also consistently identified Abello as the perpetrator of the sexual assault. These statements satisfy the first and second elements of the rape.

Her testimony that she was roused from sleep with Abello's male organ inserted in her mouth, goes into the third element of the crime.[28] In this respect, we observe that both the RTC and the CA failed to notice the variance between the allegations in the Information for rape and that proven at the trial on the mode of committing the offense. The Information alleges "force and intimidation" as the mode of commission, while AAA testified during the trial that she was asleep at the time it happened and only awoke to find Abello's male organ inside her mouth.

This variance is not fatal to Abello's conviction for rape by sexual assault. In *People v. Corpuz*, [29] we ruled that a variance in the mode of commission of the offense is binding upon the accused if he fails to object to evidence showing that the crime was committed in a different manner than what was alleged. In the present case, Abello did not object to the presentation of evidence showing that the crime charged was committed in a different manner than what was stated in the Information. Thus, the variance is not a bar to Abello's conviction of the crime charged in the Information.

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[27] II Reyes, *The Revised Penal Code/Criminal Law*, p. 557 [2008 edition].

[28] TSN, January 19, 1999, p. 5.

[29] G.R. No. 168101, February 13, 2006, 482 SCRA 435, 451, citing *People v. Abiera*, 326 SCRA 802 (2000) and *People v. Atienza*, 362 SCRA 802 (2000).

*Acts of lasciviousness*

Abello was convicted of two (2) counts of sexual abuse under Section 5 (b), Article III of R.A. No. 7610, which defines and penalizes acts of lasciviousness committed against a child:

> Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

The essential elements of this provision are:

1. The accused commits the act of sexual intercourse or *lascivious conduct.*
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child whether male or female, is below 18 years of age.[30]

Paragraph (h), Section 2 of the Implementing Rules and Regulations of R.A. 7610[31] (*implementing rules*) defines lascivious

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[30] *People v. Larin*, G.R. No. 128777, October 7, 1998, 297 SCRA 309, 318; *Amployo v. People*, G.R. No. 157718, April 26, 2005, 457 SCRA 282, 295; *Olivarez v. Court of Appeals*, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473; and *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643.

[31] On the Reporting and Investigation of Child Abuse Cases adopted on October 11, 1993.

conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. Records show that AAA duly established this element when she positively testified that Abello fondled her breasts on two separate occasions while she slept.

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. This second element requires evidence proving that: (a) AAA was either exploited in prostitution or subjected to sexual abuse and (b) she is a child as defined under R.A. No. 7610.

In *Olivarez v. Court of Appeals*,[32] we explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct **through the coercion or intimidation** by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.[33]

In the present case, the prosecution failed to present any evidence showing that force or coercion attended Abello's sexual abuse on AAA; the evidence reveals that she was asleep at the time these crimes happened and only awoke when she felt her breasts being fondled. Hence, she could have not resisted Abello's advances as she was unconscious at the time it happened. In the same manner, there was also no evidence showing that Abello compelled her, or cowed her into silence to bear his sexual assault, after being roused from sleep. Neither is there evidence that she had the time to manifest conscious lack of consent or resistance to Abello's assault.

More importantly, AAA cannot be considered a child under Section 3(a) of R.A. No. 7610 which reads:

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[32] *Supra* note 30, p. 475, citing *People v. Larin*, *supra* note 30, p. 319, and *Amployo v. People*, *supra* note 30, p. 295.

[33] *Amployo v. People*, *id.*, p. 296.

(a) "Children" refers to person below eighteen (18) years of age **or those over but are unable to fully take care of themselves or protect themselves** from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition; [Emphasis supplied]

The implementing rules elaborated on this definition when it defined a "child" as one who is below 18 years of age **or over said age who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of herself fully because of a physical or mental disability or condition or of protecting herself from abuse.**

While the records show that the RTC, the CA and the investigating prosecutor who filed the corresponding Informations, considered AAA's *polio* as a physical disability that rendered her incapable of normal function, no evidence was in fact presented showing the prosecution's compliance with the implementing rules. Specifically, the prosecution did not present any evidence, testimonial or documentary, of any medical evaluation or medical finding from a qualified physician, psychologist or psychiatrist attesting that AAA's physical condition rendered her incapable of fully taking care of herself or of protecting herself against sexual abuse. Under the circumstances, we cannot consider AAA a child under Section 3(a) of R.A. No. 7610.

In arriving at this conclusion, we consider that since R.A. No. 7610 is a special law referring to a particular class in society, the prosecution must show that the victim truly belongs to this particular class to warrant the application of the statute's provisions. Any doubt in this regard we must resolve in favor of the accused.

From another perspective, we also note that no evidence has been adduced showing that AAA's physical disability prevented her from resisting Abello's attacks; the evidence only reveals that Abello took advantage of the opportunity presented to him (*i.e.*, that AAA and her companions who were then asleep) to commit the sexual abuses; this inference is supported by the fact that he stopped his sexual assault when AAA started to awaken. It can also be reasonably deduced from these circumstances that Abello

sought to commit the sexual abuses with impunity — without AAA's knowledge and without any interference on her part.

In light of these conclusions, we cannot hold Abello liable under R.A. No. 7610. However, we still find him liable for acts of lasciviousness under Article 336 of the RPC, as amended.

In *Olivarez*, we emphasized that the character of the crime is not determined by the caption or preamble of the information or from the specification of the provision of law alleged to have been violated; the crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information.[34] In the present case, although the two Informations wrongly designated R.A. No. 7610 as the law violated; the allegations therein sufficiently constitute acts punishable under Article 336 of the RPC whose elements are:

1. That the offender commits any act of lasciviousness;
2. That the offended party is another person of either sex; and
3. That it is done under any of the following circumstances:
    a. By using force or intimidation; or
    b. When the offended party is deprived of reason or otherwise unconscious; or
    c. When the offended party is under 12 years of age or is demented.[35]

The presence of the first and second elements of the offense has been earlier discussed, albeit in the consideration of a charge under R.A. No. 7610. The prosecution established these elements through AAA's testimony that her breasts were fondled while she was asleep. While she did not actually see Abello fondling her (as the fondling was done while she was asleep and stopped when she awakened), she related that she identified Abello because she saw him enter her mother's room immediately after she felt her breasts fondled and after he stepped with his knees on

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[34] *Olivarez v. Court of Appeals, supra* note 30, p. 482.

[35] *Amployo v. People, supra* note 30, p. 296.

her hand.[36] AAA also testified that Abello was illuminated by a light coming from outside their house.[37] Further, the perpetrator could only be Abello as the only other occupants of the house at the time were her mother, her sister-in-law and her young nephew who were all asleep.[38] The third element was proven by her testimony that, on two occasions, Abello mashed her breasts while she was sleeping.[39]

As we discussed above, the Informations alleged the element of violence and intimidation as the mode of committing the sexual abuses, contrary to what the prosecution established during the trial that AAA was asleep on the two occasions when the offenses were committed. Pursuant to our above discussions citing *Corpuz,*[40] the deficiencies in the allegations will not relieve Abello of liability under the circumstances of this case.

The Penalty

The three Informations all alleged the stepfather-stepdaughter relationship between AAA and Abello. Relationship as an alternative circumstance under Article 15 of the RPC, as amended, and is an aggravating circumstance in crimes against chastity and in rape.[41] This modifying circumstance, however, was not duly proven in the present case due to the prosecution's failure to present the marriage contract between Abello and AAA's mother. If the fact of marriage came out in the evidence at all, it was *via* an admission by Abello of his marriage to AAA's mother. This admission, however, is inconclusive evidence to prove the marriage to AAA's mother,[42] as the marriage contract

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[36] TSN, January 19, 1999, p. 8.

[37] *Id.*, pp. 8-10.

[38] *Id* , p. 7.

[39] *Id.*, p. 6.

[40] *Supra* note 29.

[41] *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 641, and *People v. Umayam*, G.R. No. 147033, April 30, 2003, 402 SCRA 457, 478.

[42] TSN, July 26, 1999, p. 3.

still remains the best evidence to prove the fact of marriage.[43] This stricter requirement is only proper as relationship is an aggravating circumstance that increases the imposable penalty, and hence must be proven by competent evidence.

Rape by sexual assault is penalized by *prision mayor* which has a range of six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be within the full range of the penalty that is one degree lower than *prision mayor*, in this case, *prision correccional* which has a range of penalty from six (6) months and one (1) day to six (6) years. In the absence of any mitigating or aggravating circumstance, the maximum of the indeterminate penalty shall be taken within the medium period of *prision mayor*, or eight (8) years and one (1) day to ten (10) years.[44] Hence, Abello may be sentenced to suffer an indeterminate penalty ranging from six (6) months and one (1) day to six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day to ten (10) years, as maximum, for the crime of rape.

The imposable penalty for acts of lasciviousness under Article 336 of the RPC, as amended, is *prision correccional*. Under Scale No. 1 of Article 71 of this law, one degree lower from *prision correccional* is *arresto mayor* which has a range of penalty from one (1) month and one (1) day to six (6) months. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor*. Absent any mitigating or aggravating circumstance in the case, the maximum of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. Accordingly, Abello may be meted an indeterminate penalty ranging from one (1) month and one (1) day to six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day to four (4) years

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[43] *People v. Victor,* G.R. No. 127904, December 5, 2002, 393 SCRA 472, 481.

[44] Article 64 (1) of the Revised Penal Code, as amended.

and two (2) months of *prision correccional*, as maximum, for each count of acts of lasciviousness.

The Civil Liability

A victim of rape by sexual assault is entitled to an award of ₱30,000 as civil indemnity and ₱30,000 as moral damages.[45] Civil indemnity is separate and distinct from the award of moral damages which is automatically granted in rape cases.[46] Moral damages are additionally awarded without need of further pleading or proof; it is presumed that the victim necessarily suffered injury due to the odiousness of the crime.[47]

For acts of lasciviousness, AAA is awarded ₱20,000 as civil indemnity and ₱30,000 as moral damages for each count in line with existing jurisprudence.[48]

The Court further awards exemplary damages in the amount of ₱25,000 for the rape through sexual assault committed upon AAA and ₱2,000 for each count of acts of lasciviousness.[49] Article 2230 of the Civil Code allows an award of exemplary damages when the crime is committed with one or more aggravating circumstances.

Although not alleged in the Informations (as now required by Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure),[50] the aggravating circumstance of dwelling

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[45] *People v. Bunagan*, G.R. No. 177161, June 30, 2008; *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296, 306; *People v. Olaybar*, G.R. Nos. 150630-31, October 1, 2003, 412 SCRA 490, 502; and *People v. Soriano*, G.R. Nos. 142779-95, August 29, 2002, 388 SCRA 140, 172.

[46] *People v. Hermocilla, id.*, p. 305

[47] *Ibid*.

[48] *People v. Ortoa*, G.R. No. 174484, February 23, 2009, citing *People v. Magbanua*, G.R. No. 176265, April 30, 2008 and *People v. Palma*, 418 SCRA 365, 378 (2003).

[49] *People v. Hermocilla, supra* note 44, p. 306; *People v. Ceballos, Jr.*, G.R. No. 169642, September 14, 2007, 533 SCRA 493, 515, and *People v. Ortoa, supra* note 47.

[50] Sec. 8. Designation of the offense. — The complaint or information shall

was nonetheless proven during the trial when AAA testified that she was sexually abused by Abello while she was asleep in their house.[51]

Additionally, Article 266-B of the RPC, as amended, recognizes knowledge by the offender *of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime*, as a qualifying circumstance. Again, this knowledge by Abello of AAA's polio was duly proven during the trial; this matter was not alleged in the Information.[52]

These aggravating and qualifying circumstances of dwelling and Abello's knowledge of AAA's physical disability may be appreciated in awarding the victim exemplary damages in line with our ruling in *People v. Catubig*[53] where we held that the presence of an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to an award of exemplary damages.

**WHEREFORE,** premises considered, the decision dated January 3, 2002 of the Court of Appeals in CA-G.R. CR No. 23746 is *AFFIRMED* with the following *MODIFICATIONS* in that:

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state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusations. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[51] *People v. Blancaflor*, G.R. No. 130586, January 29, 2004, 421 SCRA 354, 366.

[52] TSN, July 26, 1999, p. 4; and as now required in Sections 8 and 9, Rule 110 of the 2000 Revised Rules of Criminal Procedure.

[53] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635. See: *People v. Blancaflor, supra* note 50, p. 366 and, *People v. Diunsay-Jalandoni*, G.R. No. 174277, February 8, 2007, 515 SCRA 227, 240-241.

(1) In *Criminal Case No. 19623*, we find appellant Heracleo Abello *y* Fortada *GUILTY* of rape by sexual assault defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended. We sentence him to suffer an indeterminate prison term of six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. He is ORDERED to pay AAA ₱30,000.00 as civil liability; ₱30,000.00 as moral damages and ₱25,000.00 as exemplary damages;

(2) In *Criminal Case Nos. 19624-MN* and *19625-MN*, we find appellant Heracleo Abello *y* Fortada *GUILTY* of acts of lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, as amended. For each count, he is sentenced to an indeterminate prison term of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is further *ORDERED* to pay AAA the amounts of ₱20,000.00 as civil indemnity; ₱30,000.00 as moral damages and ₱2,000.00 as exemplary damages, in each case.

**SO ORDERED.**

*Tinga (Acting Chairperson),* Austria-Martinez, Corona,* and *Velasco, Jr., JJ.,* concur.

*Quisumbing* and *Carpio Morales, JJ.,* on official leave.

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* Designated Acting Chairperson of the Second Division per Special Order No. 592 dated March 19, 2009.

**FIRST DIVISION**

[G.R. No. 167238. March 25, 2009]

**DEVELOPMENT BANK OF THE PHILIPPINES,** *petitioner, vs.* **SPOUSES JESUS and ANACORITA DOYON,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS; WHERE ASSAILED DECISION WAS BASED ON MISAPPREHENSION OF FACTS.—** This Court is not a trier of facts and, as a rule, it only entertains questions of law in a petition for review on *certiorari*. This rule, however, admits of exceptions such as when the assailed decision is based on a misapprehension of facts.

**2. CIVIL LAW; PERSONS; ARTICLE 19 OF THE CIVIL CODE ON THE DUTY OF EVERY PERSON EXERCISING HIS RIGHTS AND DOING HIS DUTIES; VIOLATION AND ACTION FOR DAMAGES THEREOF; REQUISITES.—** What is due to a person is determined by the circumstances of each particular case. Article 19 of the Civil Code provides: Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith. For an action for damages under this provision to prosper, the complainant must prove that: (a) defendant has a legal right or duty; (b) he exercised his right or performed his duty with bad faith and (c) complainant was prejudiced or injured as a result of the said exercise or performance by defendant.

**3. ID.; ID.; ID.; ID.; ID.; THAT DEFENDANT HAS LEGAL RIGHT OR DUTY; PRESENT IN CASE AT BAR.—** On the first requisite, we find that petitioner had the legal right to foreclose on the real and chattel mortgages. Since respondents neither assailed the due execution of the June 29, 1994 promissory notes nor presented proof of payment thereof, their obligation remained outstanding. Upon default, by prior mutual agreement, petitioner had the right to foreclose on the real and chattel

mortgages securing their loans. The June 29, 1994 promissory notes uniformly stated that failure to pay an installment (or interest) on the due date was an event of default. Respondents were therefore in default when they failed to pay the quarterly amortizations on the designated due dates. When the principal obligation becomes due and the debtor fails to perform his obligation, the creditor may foreclose on the mortgage for the purpose of alienating the (mortgaged) property to satisfy his credit.

**4. ID.; ID.; ID.; ID.; ID.; THAT DEFENDANT EXERCISED HIS RIGHT OR PERFORMED HIS DUTY WITH BAD FAITH; NOT PRESENT IN CASE AT BAR.—** Regarding the second requisite, bad faith imports a dishonest purpose or some moral obliquity or conscious doing of a wrong that partakes of the nature of fraud. We note that the RTC of Ormoc City (Judge Fortunito L. Madrona) "sat" on Civil Case No. 3314-O for three long years. This inordinate delay prejudiced petitioner. Inasmuch as petitioner was in the business of lending out money it borrowed from the public, sound banking practice called for the exercise of a more efficient legal remedy against a defaulting debtor like respondent. Thus, petitioner could not be faulted for resorting to foreclosure through a special sheriff. Such procedure was, after all, the more efficient method of enforcing petitioner's rights as mortgagee under its charter. Moreover, the March 2, 1998 order of the RTC (quoted above) merely stated that the withdrawal of the application for extrajudicial foreclosure in the RTC rendered Civil Case No. 3314-O moot and academic. Nothing in the said order stated, or even hinted, that respondents' obligation to petitioner had in fact been extinguished. Thus, there was nothing on the part of petitioner even remotely showing that it led respondents to believe that it had waived its claims. Inasmuch as petitioner demanded payment from them right after the dismissal of Civil Case No. 3314-O, respondents could not have reasonably presumed that the bank had waived its claims against them. Furthermore, the fact that a demand for payment was made negated bad faith on the part of petitioner. Despite giving respondents the opportunity to pay their long overdue obligations and avoid foreclosure, respondents still refused to pay.

**5. ID.; SPECIAL CONTRACTS; MORTGAGE; AGREEMENT ALLOWING MORTGAGEE TO TAKE POSSESSION OF**

**MORTGAGED PROPERTY UPON FORECLOSURE IS VALID.**— A stipulation allowing the mortgagee to take actual or constructive possession of a mortgaged property upon foreclosure is valid. In *Agricultural and Industrial Bank v. Tambunting,* we explained: A stipulation . . . authorizing the mortgagee, for the purpose stated therein specified, to take possession of the mortgaged premises upon the foreclosure of a mortgage is not repugnant [to either Article 2088 or Article 2137]. On the contrary, such a stipulation is in consonance or analogous to the provisions of Article [2132], *et seq.* of the Civil Code regarding antichresis and the provision of the Rules of Court regarding the appointment of a receiver as a convenient and feasible means of preserving and administering the property in litigation. The real estate and chattel mortgage contracts uniformly provided that petitioner could take possession of the foreclosed properties upon the failure of respondents to pay even one amortization. Thus, respondents' refusal to pay their obligations gave rise to petitioner's right to take constructive possession of the foreclosed motor vehicles.

6. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; SALE AT PUBLIC AUCTION HELD ANY TIME BETWEEN 9:00 A.M. AND 4:00 P.M. OF A PARTICULAR DAY, REGARDLESS OF DURATION, IS VALID.—** In *Philippine National Bank v. Cabatingan,* we held that a sale at public auction held at any time between 9:00 a.m. and 4:00 p.m. of a particular day, regardless of duration, was valid. Since the sale at public auction of the foreclosed real properties and chattels was conducted between 10:00 a.m. and 11:00 a.m. and between 2:00 p.m. and 3:30 p.m., respectively, the auctions were valid.

**APPEARANCES OF COUNSEL**

*Office of the Legal Counsel (DBP)* for petitioner.
*Constancio A. Trias, Jr.* for respondents.

## D E C I S I O N

**CORONA, *J.*:**

This petition[1] seeks to the set aside the November 23, 2004 decision[2] and February 18, 2005 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 74660.

In the early 1990s, respondent spouses Jesus and Anacorita Doyon obtained several loans amounting to ₱10 million[4] from petitioner Development Bank of the Philippines (DBP). As security for the loans, respondents mortgaged their real estate properties as well as the motor vehicles of JD Bus Lines.

Due to their inability to fully pay their obligations upon maturity,[5] respondents requested petitioner to restructure their

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr. of the (Former) Twentieth Division of the Court of Appeals. *Rollo*, pp. 22-41.

[3] *Id.*, pp. 81-85.

[4] Respondents obtained the following loans from petitioner:

| | | |
|---|---|---|
| Under PN dated | September 11, 1990 | ₱ 900,000 |
| | January 14, 1991 | 5,400,000 |
| | April 14, 1992 | 980,000 |
| | April 14, 1992 | 2,720,000 |
| | TOTAL | ₱10,000,000 |

Only the September 11, 1990 promissory note (PN) was presented in evidence. It was stated therein that respondents shall pay interest of 23.5% p.a. on the loan.

[5] Respondents were only able to make the following payments:

| | | |
|---|---|---|
| Under PN dated | September 11, 1990 | ₱1,095,183.06 |
| | January 14, 1991 | 4,282,605.57 |
| | April 14, 1992 | 1,000,000.00 |
| | April 14, 1992 | 1,789,731.91 |
| | TOTAL | ₱10,869,010.15 |

past due loans.[6] Petitioner agreed. Hence, respondents signed three promissory notes on June 29, 1994.[7]

Nonetheless, respondents still failed to pay the quarterly installments on the promissory notes. Thus, petitioner demanded the payment of the total value of their loans from respondents.[8] Respondents, however, ignored petitioner and adamantly refused to pay their loans.

Consequently, petitioner filed an application for extrajudicial foreclosure of real estate mortgages in the Regional Trial Court

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[6] Under the PNs, a loan is considered past due if the debtor fails to give his installment payment on the designated due date.

[7] Respondents' loans were restructured as follow:

| | | | |
|---|---|---|---|
| PN No. 94-40 | June 29, 1994 | I= 16 | ₱1,350,000 |
| 94-41 | June 29, 1994 | I= 21% | 6,591,000 |
| 94-42 | June 29, 1994 | I= 21% | 430,000 |
| | | TOTAL | ₱8,371,000 |

Each of the promissory notes uniformly stated:

[Amount] (Term: 4 years, to start on March 15, 1994)

x x x x x x x x x

[Respondents] hereby bind [themselves] to make partial payment as follows:

Principal payable in 16 equal quarterly installments of [amount] to start on June 15, 1994. Interest shall be payable quarterly together with principal due.

x x x x x x x x x

a. There shall be no grace period upon failure to pay amortization on due date. After due date, in addition to the regular interest on outstanding principal, a default charge on the past due principal and interest rate at a rate of 24% per annum shall be charged [respondents].

b. Bank advances for insurance premiums, taxes, litigation and other out of pocket expenses not covered by inspection and processing fees shall automatically be subject to one-time 2% service charge and default charge at the same rate as in (a) above, reckoned from the date advances were made.

[8] The June 29, 2004 promissory notes contained the following provision:

Upon the happening of any of the following (herein after referred to as "events of default"), the whole sum remaining unpaid, under this NOTE shall thereupon become immediately due and payable without demand and notice:

**a) failure to pay any installment or interest on the date thereof**;

(RTC) of Ormoc City in 1995. To forestall the foreclosure proceedings, respondents immediately filed an action for their nullification in the RTC of Ormoc City, Branch 35 claiming that they had already paid the principal amount of their loans (or ₱10 million) to petitioner. This was docketed as Civil Case No. 3314-O.

For three years, Civil Case No. 3314-O was not acted upon by the RTC.

In 1998, petitioner withdrew the application for extrajudicial foreclosure and thereafter moved for the dismissal of Civil Case No. 3314-O. The RTC granted the motion in an order dated March 2, 1998.[9] It held:

> In today's hearing, which is for the reception of evidence for [petitioner], [it] informed the Court about its withdrawal of the [application] for extrajudicial foreclosure of real estate made subject of the present case. In view of the withdrawal, [petitioner] moved for the dismissal of the case considering that the action would be rendered moot and academic.
>
> When [respondents were] made to comment, they interposed no objection to the motion to dismiss.
>
> By agreement therefore between the parties, this case is considered DISMISSED with prejudice.

Weeks later, petitioner demanded from respondents the payment of their outstanding obligations which had by then ballooned to more than ₱20 million. Again, respondents ignored petitioner.

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b) attachment or garnishment of any property, death, dissolution, receivership, insolvency, suspension of payments, reorganization or similar proceedings, or suspension of usual payment;

c) any of the cases mentioned in Art. 1198 of the Civil Code and Sec. 76 and 77 of the General Banking Act;

d) default in the payment of any other present or future loss or other obligation for borrowed money or any obligation guaranteed by them;

e) any act or event which, in [petitioner's] opinion results in the impairment of the financial responsibility of any of them. (emphasis supplied)

[9] Order issued by Presiding Judge Fortunito L. Madrona of the Regional Trial Court (RTC) of Ormoc City, Branch 35. Records, p. 17.

Petitioner filed an application for extrajudicial foreclosure of respondents' real and chattel mortgages with the DBP special sheriff in Makati[10] and subsequently took constructive possession of the foreclosed properties.[11] It posted guards at the perimeter of respondents' property in Barangay Cabulihan, Ormoc City (Cabulihan property) where the foreclosed motor vehicles of

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[10] Executive Order No. 81, Sec. 12 provides:

Section 12. *Legal Matters and Cases.* The Bank shall have its own Legal Department, the head of which shall be appointed by the Board of Directors of the Bank upon the recommendation of the Chairman.

In appropriate cases, the Bank may avail also of the legal services of any government legal office authorized to render such services to government-owned or controlled corporations.

**The Bank may**, **upon the recommendation of its Chief Legal Counsel**, **deputize any member of its legal staff to act as special sheriff in foreclosure cases**, in the sale or attachment of the debtor's properties and in the enforcement of court writs and processes in cases involving the bank. The special sheriff of the Bank shall make a report to the proper court of any action taken by him, which shall treat such action as if it were an act of its own sheriffs in all respects. (emphasis supplied)

[11] Paragraph 4 of the Chattel Mortgage Contract states:

That it is hereby agreed that **if at anytime the Mortgagor shall fail to pay any amortization on the indebtedness or the interest when due**, or **effective upon the breach of any condition on this mortgage contract** and in addition the remedies herein stipulated, **the Mortgagee is hereby authorized to take physical possession of the mortgaged property** including its premises and/or remove it to some other place either in preparation to foreclosure sale or for whatever purpose it may deem necessary to recover its investment and, upon demand, the Mortgagor shall peacefully surrender the same to the custody of the Mortgagee or its authorized representative. (emphasis supplied)

A similar provision is found in paragraph 5 of the real estate mortgage contracts:

**Effective upon the breach of any condition of this mortgage** and in addition to the remedies herein stipulated, the **Mortgagee is** […] likewise appointed attorney-in-fact of the Mortgagor with full power and authority, **to take actual possession of the mortgaged property,** to lease any of the mortgaged property, to collect rents, to eject tenants, to execute Bills of sale, lease or agreement that may be deemed convenient … make repairs or improvements on the mortgaged property and pay the same and perform any other act which the Mortgagee may deem convenient for the proper administration of the mortgaged property… (emphasis supplied)

JD Bus Lines were parked.[12] Subsequently, the DBP special sheriff issued notices of sale at public auction of the foreclosed properties.[13]

Meanwhile, respondents filed a complaint for damages[14] against petitioner and the DBP special sheriff in the RTC of Ormoc City, Branch 35. According to respondents, by withdrawing the application for extrajudicial foreclosure and moving for the dismissal of Civil Case No. 3314-O, petitioner led them to believe that it would no longer seek the satisfaction of its claims. Petitioner therefore acted contrary to Article 19 of the Civil Code[15] when it foreclosed on the real and chattel mortgages anew.

Furthermore, respondents claimed that the provision in the mortgage contracts[16] allowing petitioner as mortgagee to take constructive possession of the mortgaged properties upon respondents' default was void. The provision allegedly constituted a *pactum commissorium*[17] since it permitted petitioner to appropriate the mortgaged properties.

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[12] Letter dated April 27, 1998. Exhibit "14", records, p. 1071.

[13] The DBP special sheriff issued the following notices of sale at public auction:

| Date | Property to be sold | Date of sale at public auction |
|---|---|---|
| April 1, 1998 | real properties | May 6, 1998 |
| July 21, 1998 | real properties | September 16, 1998 |
| August 23, 1998 | chattel | September 16, 1998 |

[14] Docketed as Civil Case No. 3592-O. Respondents included a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order.

[15] CIVIL CODE, Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

[16] *Supra* note 11.

[17] In the case of *Tan Chun Tic v. West Coast Hurd* [54 Phil. 361 (1930)], we declared *pactum commissorium* as null and void in view of Articles 1859 and 1884 (now 2088 and 2137) of the Civil Code. There is p*actum commissorium* when:

1. the debtor mortgaged (or pledged) a real property as security for the payment of the principal obligation and

Lastly, respondents assailed the validity of the public auctions conducted by the DBP special sheriff. The September 9, 1998 notices of sale stated that the foreclosed real properties would be sold at public auction on "September 16, 1998 at 10:00 a.m. or soon thereafter"[18] while the foreclosed motor vehicles would be sold on "September 16, 1998 at 2:00 p.m. or soon thereafter."[19] Section 4 of Act 3135,[20] however, requires that public auctions must take place from 9 a.m. until 4 p.m. or, allegedly, for seven continuous hours.

Petitioner, in its answer, pointed out that despite the restructuring, respondents refused to pay the amortizations on the June 29, 2004 promissory notes. Moreover, the filing of Civil Case No. 3314-O and the delay in its resolution prevented petitioner from collecting on the said notes from respondents. It withdrew the application in the RTC and moved for the dismissal of Civil Case No. 3314-O only for the purpose of availing of a more efficient legal remedy, that is, foreclosure through a special sheriff, as authorized by its charter.[21]

In a decision dated January 25, 2002,[22] the RTC found that, by withdrawing its application for extrajudicial foreclosure and

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2. the deed of pledge or mortgage contains a stipulation allowing the creditor to appropriate the mortgaged (or pledged) real property upon the debtor's default.

Thus, it is a forfeiture clause in a deed of pledge or mortgage. *See also A. Francisco Realty and Development Corporation v. Court of Appeals,* 358 Phil. 833 (1998).

[18] Exhibit "20", records, p. 1078.

[19] Exhibit "21", records, p. 1079.

[20] Act 3135, Sec. 4. The sale shall be made at public auction, **between the hours of nine in the morning and four in the afternoon**, and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of peace of the municipality in which such sale has to be made, or of a notary public of said municipality, who shall be entitled to collect a fee of Five pesos for each day of actual work performed, in addition to his expenses. (emphasis supplied)

[21] *See* footnote 10.

[22] Penned by Presiding Judge Fortunito L. Madrona. *Rollo*, pp. 106-118.

moving for the dismissal of Civil Case No. 3314-O, petitioner led respondents to believe that their loans had been extinguished. Thus, petitioner acted in bad faith when it foreclosed on the real and chattel mortgages anew. The dispositive portion of the decision read:

> Wherefore, after due consideration of all the foregoing, judgment is hereby rendered in favor of [respondents] and against [petitioner], ordering as follows:
>
> 1. [petitioner] to immediately stop the presence of its security guards in the compound or premises of the plaintiffs at Barangay Cabulihan, Ormoc City, and to vacate them from said premises;
> 2. [petitioner] to pay actual damages to [respondents] in the total amount of ₱16,000 per day for the four buses, or a total of ₱480,000 per month for these buses starting from April 27, 1998 until the time the buses shall have been allowed to leave the compound of [respondents] or until [petitioner] shall vacate the said premises, and ₱200,000 as compensatory damages for the injury to [respondents'] business standing;
> 3. [petitioner] to pay ₱1,000,000 as exemplary damages;
> 4. [petitioner and the DBP special sheriff] jointly and severally to pay the plaintiffs the sum of ₱2,000,000 as moral damages, the sum of ₱50,000 as attorney's fees, the sum of ₱10,000 as litigation expenses and costs of the suit.

Aggrieved, petitioner appealed to the CA.[23]

In a decision dated November 23, 2004, the CA affirmed the RTC decision with modification of the liability for damages. Because the DBP special sheriff merely performed his ministerial duty (when he foreclosed on the real and chattel mortgages and issued notices of sale in public auction of the foreclosed properties), petitioner alone was liable.

Petitioner moved for reconsideration but it was denied. Hence, this petition.

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[23] Docketed as CA G.R. CV-No. 74660.

Petitioner basically asserts that it did not act in bad faith when it foreclosed on respondents' real and chattel mortgages anew. Because respondents' loans were past due, it had the right to satisfy its credit by foreclosing on the mortgages.

We grant the petition.

This Court is not a trier of facts and, as a rule, it only entertains questions of law in a petition for review on certiorari. This rule, however, admits of exceptions such as when the assailed decision is based on a misapprehension of facts.[24]

In this instance, the RTC and the CA both found that petitioner acted with bad faith when it foreclosed on the real and chattel mortgages. We disagree.

What is due to a person is determined by the circumstances of each particular case.[25] Article 19 of the Civil Code provides:

> Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

For an action for damages under this provision to prosper, the complainant must prove that:

(a) defendant has a legal right or duty;

(b) he exercised his right or performed his duty with bad faith and

(c) complainant was prejudiced or injured as a result of the said exercise or performance by defendant.

On the first requisite, we find that petitioner had the legal right to foreclose on the real and chattel mortgages.

Since respondents neither assailed the due execution of the June 29, 1994 promissory notes nor presented proof of payment thereof, their obligation remained outstanding. Upon default,

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[24] *Baluyut v. Poblete,* G.R. No. 144435, 6 February 2007, 514 SCRA 370, 380 *citing Cabotaje v. Pudunan,* G.R. No. 134712, 13 August 2004, 436 SCRA 423, 432.

[25] Jose B.L. Reyes, *1 AN OUTLINE OF PHILIPPINE CIVIL LAW* 1964 ed., 37.

by prior mutual agreement, petitioner had the right to foreclose on the real and chattel mortgages securing their loans.

The June 29, 1994 promissory notes uniformly stated that failure to pay an installment (or interest) on the due date was an event of default.[26] Respondents were therefore in default when they failed to pay the quarterly amortizations on the designated due dates.

When the principal obligation becomes due and the debtor fails to perform his obligation, the creditor may foreclose on the mortgage[27] for the purpose of alienating the (mortgaged) property to satisfy his credit.[28]

Regarding the second requisite, bad faith imports a dishonest purpose or some moral obliquity or conscious doing of a wrong that partakes of the nature of fraud.[29]

We note that the RTC of Ormoc City (Judge Fortunito L. Madrona) "sat" on Civil Case No. 3314-O for three long years. This inordinate delay prejudiced petitioner. Inasmuch as petitioner was in the business of lending out money it borrowed from the public, sound banking practice called for the exercise of a more efficient legal remedy

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[26] *Supra* note 8.

[27] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, 3 May 2006, 489 SCRA 125.

[28] *See* CIVIL CODE, Art. 2088 provides:

Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage or dispose of them. Any stipulation to the contrary is null and vo*id*.

*See also* CIVIL CODE, Art. 2087. It provides:

Article 2137. The creditor does not acquire the ownership of the real estate for non-payment of debt within the period agreed upon.

Every stipulation to the contrary shall be void. But **the creditor may petition the court for the payment of the debt or the sale of the real property**. In this case, the **Rules of Court on the foreclosure of mortgages shall apply**. (emphasis supplied)

[29] *Solidbank Corporation/Metropolitan Bank and Trust Company v. Tan*, G.R. No. 167346, 2 April 2007, 520 SCRA 123, 129.

against a defaulting debtor like respondent.[30] Thus, petitioner could not be faulted for resorting to foreclosure through a special sheriff. Such procedure was, after all, the more efficient method of enforcing petitioner's rights as mortgagee under its charter.[31]

Moreover, the March 2, 1998 order of the RTC (quoted above) merely stated that the withdrawal of the application for extrajudicial foreclosure in the RTC rendered Civil Case No. 3314-O moot and academic. Nothing in the said order stated, or even hinted, that respondents' obligation to petitioner had in fact been extinguished. Thus, there was nothing on the part of petitioner even remotely showing that it led respondents to believe that it had waived its claims.

Lastly, inasmuch as petitioner demanded payment from them right after the dismissal of Civil Case No. 3314-O, respondents could not have reasonably presumed that the bank had waived its claims against them. Furthermore, the fact that a demand for payment was made negated bad faith on the part of petitioner. Despite giving respondents the opportunity to pay their long overdue obligations and avoid foreclosure, respondents still refused to pay. Since respondents did not have a cause of action against petitioner, the RTC and CA erred in granting damages to them.

A stipulation allowing the mortgagee to take actual or constructive possession of a mortgaged property upon foreclosure is valid. In *Agricultural and Industrial Bank v. Tambunting,*[32] we explained:

> A stipulation … authorizing the mortgagee, for the purpose stated therein specified, to take possession of the mortgaged premises upon the foreclosure of a mortgage is not repugnant [to either Article 2088 or Article 2137]. On the contrary, such a stipulation is in consonance or analogous to the provisions of Article [2132], *et seq.* of the Civil Code regarding antichresis and the provision of the Rules of Court

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[30] See *Banco de Oro-EPCI, Inc. v. JAPRL Development Corporation,* G.R. No. 179901, 15 April 2008.

[31] *Supra* note 10.

[32] 73 Phil. 555 (1942).

regarding the appointment of a receiver as a convenient and feasible means of preserving and administering the property in litigation.[33]

The real estate and chattel mortgage contracts[34] uniformly provided that petitioner could take possession of the foreclosed properties upon the failure of respondents to pay even one amortization. Thus, respondents' refusal to pay their obligations gave rise to petitioner's right to take constructive possession of the foreclosed motor vehicles.

In *Philippine National Bank v. Cabatingan*,[35] we held that a sale at public auction held at any time between 9:00 a.m. and 4:00 p.m. of a particular day, regardless of duration, was valid. Since the sale at public auction of the foreclosed real properties and chattels was conducted between 10:00 a.m. and 11:00 a.m. and between 2:00 p.m. and 3:30 p.m., respectively, the auctions were valid.

**WHEREFORE,** the petition is hereby *GRANTED*. The November 23, 2004 decision and February 18, 2005 resolution of the Court of Appeals in CA-G.R. CV 74660 affirming the January 25, 2002 decision of the Regional Trial Court of Ormoc City, Branch 35 in Civil Case No. 3592-0 are *SET ASIDE*. New judgment is hereby entered dismissing Civil Case No. 3592-0 for lack of cause of action.

No pronouncement as to costs.

**SO ORDERED.**

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

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[33] *Id.* at 556.

[34] *Supra* note 11.

[35] G.R. No. 167058, 9 July 2008.

* Per Special Order No. 588 dated March 16, 2009.

**SECOND DIVISION**

[G.R. No. 168654. March 25, 2009]

**ZAYBER JOHN B. PROTACIO,** *petitioner, vs.* **LAYA MANANGHAYA & CO. and/or MARIO T. MANANGHAYA,** *respondents.*

## SYLLABUS

**1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; RULE IN RENDITION OF DECISION AND DENIAL OF MOTION FOR RECONSIDERATION; CASE AT BAR.—** Petitioner contends that the Court of Appeals' resolution which denied his motion for reconsideration violated Article VIII, Section 14 of the Constitution, which states: Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor. The assailed resolution is not a "decision" within the meaning of the Constitutional requirement. This mandate is applicable only in cases "submitted for decision," *i.e.*, given due course and after filing of briefs or memoranda and/or other pleadings, as the case may be. The requirement is not applicable to a resolution denying a motion for reconsideration of the decision. What is applicable is the second paragraph of the above-quoted Constitutional provision referring to "motion for reconsideration of a decision of the court." The assailed resolution complied with the requirement therein that a resolution denying a motion for reconsideration should state the legal basis of the denial. It sufficiently explained that after reading the pleadings filed by the parties, the appellate court did not find any cogent reason to reverse itself.

**2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* FACTUAL FINDINGS OF THE NLRC MAY BE EXAMINED THEREIN IF NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.—** As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence

upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.

**3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGES; BONUS; ELUCIDATED.—** By definition, a "bonus" is a gratuity or act of liberality of the giver. It is something given in addition to what is ordinarily received by or strictly due the recipient. A bonus is granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits. Generally, a bonus is not a demandable and enforceable obligation. It is so only when it is made part of the wage or salary or compensation. When considered as part of the compensation and therefore demandable and enforceable, the amount is usually fixed. If the amount would be a contingent one dependent upon the realization of the profits, the bonus is also not demandable and enforceable.

**4. ID.; ID.; ID.; ID.; YEAR-END LUMP SUM PAYMENT IN CASE AT BAR IS A BONUS, NOT THE BALANCE OF EMPLOYEE'S TOTAL COMPENSATION PACKAGE.—** While the amount was drawn from the annual net income of the firm, the distribution thereof to non-partners or employees of the firm was not, strictly speaking, a profit-sharing arrangement between petitioner and respondent firm contrary to the Court of Appeals' finding. The payment thereof to non-partners of the firm like herein petitioner was discretionary on the part of the chairman and managing partner coming from their authority to fix the compensation of any employee based on a share in the partnership's net income. The distribution being merely discretionary, the year-end lump sum payment may properly be considered as a year-end bonus or incentive. Contrary to petitioner's claim, the granting of the year-end lump sum amount was precisely dependent on the firm's net income; hence, the same was payable only after the firm's annual

net income and cash position were determined. Petitioner's claim that the year-end lump sum represented the balance of his total compensation package is incorrect. The fact remains that the amounts paid to petitioner on the two occasions varied and were always dependent upon the firm's financial position. Moreover, in *Philippine Duplicators, Inc. v. NLRC*, the Court held that if the bonus is paid only if profits are realized or a certain amount of productivity achieved, it cannot be considered part of wages. If the desired goal of production is not obtained, of the amount of actual work accomplished, the bonus does not accrue. Only when the employer promises and agrees to give without any conditions imposed for its payment, such as success of business or greater production or output, does the bonus become part of the wage. The granting of a bonus is basically a management prerogative which cannot be forced upon the employer who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employees' basic salaries or wages. Respondents had consistently maintained from the start that petitioner was not entitled to the bonus as a matter of right. The payment of the year-end lump sum bonus based upon the firm's productivity or the individual performance of its employees was well within respondent firm's prerogative. Thus, respondent firm was also justified in declining to give the bonus to petitioner on account of the latter's unsatisfactory performance.

**5. ID.; ID.; ID.; LEAVE CREDITS; COMPUTATION OF ITS CASH EQUIVALENT; INCLUDES ALL IN EMPLOYEE'S MONTHLY COMPENSATION; CASE AT BAR.—** With regard to the computation of the cash equivalent of petitioner's leave credits. As correctly held by the Labor Arbiter and the NLRC, the evidence on record reveals that petitioner was receiving a monthly compensation of ₱95,000.00 consisting of a basic salary of ₱61,000.00, advance incentive pay of ₱15,000.00, transportation allowance of ₱15,000.00 and representation allowance of ₱4,000.00. These amounts totaling ₱95,000.00 are all deemed part of petitioner's monthly compensation package and, therefore, should be the basis in the cash commutation of the petitioner's leave credits. These allowances were customarily furnished by respondent firm and regularly received by petitioner on top of the basic monthly pay of ₱61,000.00. Moreover, the Labor Arbiter noted that respondent firm's act of paying petitioner a 13th month-pay at

the rate of ₱95,000.00 was an admission on its part that petitioner's basic monthly salary was ₱95,000.00.

**6. ID.; ID.; ID.; ID.; ID.; 26-WORKING DAY DIVISOR TO BE USED; CASE AT BAR.—** The Court of Appeals, Labor Arbiter and NLRC used a 30-working day divisor instead of 26 days which petitioner insists. The Court of Appeals relied on Section 2, Rule IV, Book III of the implementing rules of the Labor Code in using the 30-working day divisor. The provision essentially states that monthly-paid employees are presumed to be paid for all days in the month whether worked or not. The provision has long been nullified in *Insular Bank of Asia and American Employees' Union (IBAAEU) v. Hon. Inciong, etc., et al.*, where the Court ruled that the provision amended the Labor Code's provisions on holiday pay by enlarging the scope of their exclusion. In any case, the provision is inapplicable to the instant case because it referred to the computation of holiday pay for monthly-paid employees. Petitioner's claim that respondent firm used a 26-working day divisor is supported by the evidence on record. In a letter addressed to petitioner, respondents' counsel expressly admitted that respondent used a 26-working day divisor. Thus, with a monthly compensation of ₱95,000.00 and using a 26-working day divisor, petitioner's daily rate is ₱3,653.85. Based on this rate, petitioner's cash equivalent of his leave credits of 23.5 is ₱85,865.48. Since petitioner has already received the amount ₱46,009.67, a balance of ₱39,855.80 remains payable to petitioner.

**APPEARANCES OF COUNSEL**

*Leoncio S. Solidum* for petitioner.
*Cruz Enverga and Lucero* for respondents.

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

**TINGA, *J.*:**

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing the

[1] *Rollo,* pp. 9-35.

decision[2] and resolution[3] of the Court of Appeals in CA-G.R. SP No. 85038. The Court of Appeals' decision reduced the monetary award granted to petitioner by the National Labor Relations Commission (NLRC) while the resolution denied petitioner's motion for reconsideration for lack of merit.

The following factual antecedents are matters of record.

Respondent KPMG Laya Mananghaya & Co. (respondent firm) is a general professional partnership duly organized under the laws of the Philippines. Respondent firm hired petitioner Zayber John B. Protacio as Tax Manager on 01 April 1996. He was subsequently promoted to the position of Senior Tax Manager. On 01 October 1997, petitioner was again promoted to the position of Tax Principal.[4]

However, on 30 August 1999, petitioner tendered his resignation effective 30 September 1999. Then, on 01 December 1999, petitioner sent a letter to respondent firm demanding the immediate payment of his 13th month pay, the cash commutation of his leave credits and the issuance of his 1999 Certificate of Income Tax Withheld on Compensation. Petitioner sent to respondent firm two more demand letters for the payment of his reimbursement claims under pain of the legal action.[5]

Respondent firm failed to act upon the demand letters. Thus, on 15 December 1999, petitioner filed before the NLRC a complaint for the non-issuance of petitioner's W-2 tax form for 1999 and the non-payment of the following benefits: (1) cash equivalent of petitioner's leave credits in the amount of ₱55,467.60; (2) proportionate 13th month pay for the year 1999; (3) reimbursement claims in the amount of ₱19,012.00; and (4) lump sum pay for the fiscal year 1999 in the amount of ₱674,756.70. Petitioner also sought moral and exemplary damages and attorney's

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[2] *Id.* at 37-54. Dated 19 April 2005 and penned by Justice Jose C. Reyes, Jr. and concurred in by Justices Delilah Vidallon-Magtolis, Chairperson of the Fourth Division, and Perlita J. Tria Tirona.

[3] Dated 27 June 2005; *rollo*, p. 56.

[4] *Id.* at 38.

[5] *Id.* at 38-39.

fees. Respondent Mario T. Managhaya was also impleaded in his official capacity as respondent firm's managing partner.[6]

In his complaint,[7] petitioner averred, *inter alia*, that when he was promoted to the position of Tax Principal in October 1997, his compensation package had consisted of a monthly gross compensation of ₱60,000.00, a 13th month pay and a lump sum payment for the year 1997 in the amount of ₱240,000.00 that was paid to him on 08 February 1998.

According to petitioner, beginning 01 October 1998, his compensation package was revised as follows: (a) monthly gross compensation of ₱95,000.00, inclusive of nontaxable allowance; (b) 13th month pay; and (c) a lump sum amount in addition to the aggregate monthly gross compensation. On 12 April 1999, petitioner received the lump sum amount of ₱573,000.00 for the fiscal year ending 1998.[8]

Respondent firm denied it had intentionally delayed the processing of petitioner's claims but alleged that the abrupt departure of petitioner and three other members of the firm's Tax Division had created problems in the determination of petitioner's various accountabilities, which could be finished only by going over voluminous documents. Respondents further averred that they had been taken aback upon learning about the labor case filed by petitioner when all along they had done their best to facilitate the processing of his claims.[9]

During the pendency of the case before the Labor Arbiter, respondent firm on three occasions sent check payments to petitioner in the following amounts: (1) ₱71,250.00, representing petitioner's 13th month pay; (2) ₱54,824.18, as payments for the cash equivalent of petitioner's leave credits and reimbursement claims; and (3) ₱10,762.57, for the refund of petitioner's taxes withheld on his vacation leave credits. Petitioner's copies of his withholding tax certificates were sent to him along with the

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[6] *Id.* at 72.

[7] Records, pp. 50-71.

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

[9] *Id.* at 73-74.

check payments.[10] Petitioner acknowledged the receipt of the 13th month pay but disputed the computation of the cash value of his vacation leave credits and reimbursement claims.[11]

On 07 June 2002, Labor Arbiter Eduardo J. Carpio rendered a decision,[12] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering respondents to jointly and solidarily pay complainant the following:

| | | |
|---|---|---|
| ₱ 12,681.00 | - | representing the reimbursement claims of complainant; |
| ₱ 28,407.08 | - | representing the underpayment of the cash equivalent of the unused leave credits of complainant; |
| ₱ 573,000.00 | - | representing complainant's 1999 year-end lump sum payment; and |

10% of the total judgment awards way of attorney's fees.

SO ORDERED.[13]

The Labor Arbiter awarded petitioner's reimbursement claims on the ground that respondent firm's refusal to grant the same was not so much because the claim was baseless but because petitioner had failed to file the requisite reimbursement forms. He held that the formal defect was cured when petitioner filed several demand letters as well as the case before him.[14]

The Labor Arbiter held that petitioner was not fully paid of the cash equivalent of the leave credits due him because respondent firm had erroneously based the computation on a basic pay of ₱61,000.00. He held that the evidence showed that petitioner's monthly basic salary was ₱95,000.00 inclusive

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[10] *Id.* at 74-75.

[11] *Id.* at 75.

[12] *Id.* at 70-81.

[13] *Id.* at 80-81.

[14] *Id.* at 80.

of the other benefits that were deemed included and integrated in the basic salary and that respondent firm had computed petitioner's 13th month pay based on a monthly basic pay of ₱95,000.00; thus, the cash commutation of the leave credits should also be based on this figure.[15]

The Labor Arbiter also ruled that petitioner was entitled to a year-end payment of ₱573,000.00 on the basis of the company policy of granting yearly lump sum payments to petitioner during all the years of service and that respondent firm had failed to give petitioner the same benefit for the year 1999 without any explanation.[16]

Aggrieved, respondent firm appealed to the NLRC. On 21 August 2003, the NLRC rendered a modified judgment,[17] the dispositive portion of which states:

> WHEREFORE, the Decision dated June 7, 2002 is hereby Affirmed with the modification that the complainant is only entitled to receive ₱2,301.00 as reimbursement claims. The award of ₱12,681.00 representing the reimbursement claims of complainant is set aside for lack of basis.
>
> SO ORDERED.[18]

From the amount of ₱12,681.00 awarded by the Labor Arbiter as payment for the reimbursement claims, the NLRC lowered the same to ₱2,301.00 representing the amount which remained unpaid.[19] As regards the issues on the lump sum payments and cash equivalent of the leave credits, the NLRC affirmed the findings of the Labor Arbiter.

Respondents filed a motion for reconsideration[20] but the NLRC denied the motion for lack of merit.[21] Hence,

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[15] *Id.* at 78-79.

[16] *Id.* at 79.

[17] *Id.* at 83-96.

[18] *Id.* at 96.

[19] *Id.* at 94.

[20] CA *rollo*, pp. 175-200.

[21] *Id.* at 42.

respondents elevated the matter to the Court of Appeals via a petition for *certiorari*.[22]

In the assailed Decision dated 19 April 2005, the Court of Appeals further reduced the total money award to petitioner, to wit:

> WHEREFORE, in the light of the foregoing, the assailed resolution of public respondent NLRC dated August 21, 2003 in NLRC NCR Case No. 30-12-00927-99 (CA No. 032304-02) is hereby **MODIFIED**, ordering petitioner firm to pay private respondent the following:
>
> (1) ₱2,301.00 representing private respondent's reimbursement claims;
>
> (2) ₱9,802.83 representing the underpayment of the cash equivalent of private respondent's unused leave credits;
>
> (3) ₱10,000.00 attorney's fees.
>
> SO ORDERED.[23]

Petitioner sought reconsideration. In the assailed Resolution dated 27 June 2005, the Court of Appeals denied petitioner's motion for reconsideration for lack of merit.

Hence, the instant petition, raising the following issues:

I.

WHETHER PUBLIC RESPONDENT COURT OF APPEALS' SUMMARY DENIAL OF PETITIONER'S MOTION FOR RECONSIDERATION VIOLATES THE CONSTITUTIONAL REQUIREMENT THAT COURT DECISIONS MUST STATE THE LEGAL AND FACTUAL BASIS [THEREOF].

II

WHETHER PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED IN WANTON EXCESS OF JURISDICTION IN TAKING COGNIZANCE

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[22] *Id.* at 2-39.

[23] *Rollo*, pp. 53-54.

OF [RESPONDENTS] PETITION FOR *CERTIORARI* WHEN THE RESOLUTION THEREOF HINGES ON MERE EVALUATION OF EVIDENCE.

III.

WHETHER PUBLIC RESPONDENT COURT OF APPEALS WANTONLY ABUSED ITS DISCRETION IN EMPLOYING A LARGER DIVISOR TO COMPUTE PETITIONER'S DAILY SALARY RATE THEREBY DIMINISHING HIS BENEFITS, IN [VIOLATION] OF THE LABOR CODE.

IV.

WHETHER PUBLIC RESPONDENT COURT OF APPEALS CAPRICIOUSLY ABUSED ITS DISCRETION IN REVERSING THE [CONCURRING] FINDINGS OF BOTH LABOR ARBITER AND NLRC ON THE COMPENSABLE NATURE OF PETITIONER'S YEAR END [LUMP] SUM PLAY [*sic*] CLAIM.[24]

Before delving into the merits of the petition, the issues raised by petitioner adverting to the Constitution must be addressed. Petitioner contends that the Court of Appeals' resolution which denied his motion for reconsideration violated Article VIII, Section 14 of the Constitution, which states:

> Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Obviously, the assailed resolution is not a "decision" within the meaning of the Constitutional requirement. This mandate is applicable only in cases "submitted for decision," *i.e.*, given due course and after filing of briefs or memoranda and/or other pleadings, as the case may be.[25] The requirement is not applicable to a resolution denying a motion for reconsideration of the decision.

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

[25] *Nunal v. Commission on Audit*, G.R. No. 78648, 24 January 1989, 169 SCRA 356, 362.

What is applicable is the second paragraph of the above-quoted Constitutional provision referring to "motion for reconsideration of a decision of the court." The assailed resolution complied with the requirement therein that a resolution denying a motion for reconsideration should state the legal basis of the denial. It sufficiently explained that after reading the pleadings filed by the parties, the appellate court did not find any cogent reason to reverse itself.

Next, petitioner argues that the Court of Appeals erred in giving due course to the petition for *certiorari* when the resolution thereof hinged on mere evaluation of evidence. Petitioner opines that respondents failed to make its case in showing that the Labor Arbiter and the NLRC had exercised their discretion in an arbitrary and despotic manner.

As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[26] The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.[27]

The Court is not unaware that the appellate court had reexamined and weighed the evidence on record in modifying the monetary award of the NLRC. The Court of Appeals held that the amount of the year-end lump sum compensation was not fully justified and supported by the evidence on record.

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[26] *Soriano, Jr. v. National Labor Relations Commission*, G.R. No. 165594, 23 April 2007, citing *Danzas Intercontinental, Inc. v. Daguman*, 456 SCRA 382.

[27] See *Philippine Pizza, Inc., v. Bungabong*, G.R. No. 154315, 09 May 2005, 458 SCRA 288; *Danzas Intercontinental, Inc. v. Daguman*, G.R. No. 154368, 15 April 2005, 456 SCRA 382; *Go v. Court of* Appeals, G.R. No. 158922, 28 May 2004, 430 SCRA 358.

The Court fully agrees that the lump sum award of ₱573,000.00 to petitioner seemed to have been plucked out of thin air. Noteworthy is the fact that in his position paper, petitioner claimed that he was entitled to the amount of ₱674,756.70.[28] The variance between the claim and the amount awarded, with the record bereft of any proof to support either amount only shows that the appellate court was correct in holding that the award was a mere speculation devoid of any factual basis. In the exceptional circumstance as in the instant case, the Court finds no error in the appellate court's review of the evidence on record.

After an assessment of the evidence on record, the Court of Appeals reversed the findings of the NLRC and the Labor Arbiter with respect to the award of the year-end lump sum pay and the cash value of petitioner's leave credits. The appellate court held that while the lump sum payment was in the nature of a proportionate share in the firm's annual income to which petitioner was entitled, the payment thereof was contingent upon the financial position of the firm. According to the Court of Appeals, since no evidence was adduced showing the net income of the firm for fiscal year ending 1999 as well as petitioner's corresponding share therein, the amount awarded by the labor tribunals was a baseless speculation and as such must be deleted.[29]

On the other hand, the NLRC affirmed the Labor Arbiter's award of the lump sum payment in the amount of ₱573,000.00 on the basis that the payment thereof had become a company policy which could not be withdrawn arbitrarily. Furthermore, the NLRC held that respondent firm had failed to controvert petitioner's claim that he was responsible for generating some ₱7,365,044.47 in cash revenue during the fiscal year ending 1999.

The evidence on record establishes that aside from the basic monthly compensation,[30] petitioner received a yearly lump sum amount during the first two years[31] of his employment, with

[28] Records, p. 31.

[29] *Rollo*, p. 53.

[30] Records, p. 33.

[31] *Id.* at 34-36.

the payments made to him after the annual net incomes of the firm had been determined. Thus, the amounts thereof varied and were dependent on the firm's cash position and financial performance.[32] In one of the letters of respondent Mananghaya to petitioner, the amount was referred to as petitioner's "share in the incentive compensation program."[33]

While the amount was drawn from the annual net income of the firm, the distribution thereof to non-partners or employees of the firm was not, strictly speaking, a profit-sharing arrangement between petitioner and respondent firm contrary to the Court of Appeals' finding. The payment thereof to non-partners of the firm like herein petitioner was discretionary on the part of the chairman and managing partner coming from their authority to fix the compensation of any employee based on a share in the partnership's net income.[34] The distribution being merely discretionary, the year-end lump sum payment may properly be considered as a year-end bonus or incentive. Contrary to petitioner's claim, the granting of the year-end lump sum amount was precisely dependent on the firm's net income; hence, the same was payable only after the firm's annual net income and cash position were determined.

By definition, a "bonus" is a gratuity or act of liberality of the giver. It is something given in addition to what is ordinarily received by or strictly due the recipient.[35] A bonus is granted and paid to an employee for his industry and loyalty which contributed to the success of the employer's business and made possible the realization of profits.[36] Generally, a bonus is not a demandable and enforceable obligation. It is so only when it is made part of the wage or salary or compensation. When

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[32] *Id.* at 35.

[33] *Id.* at 33.

[34] Section 8, Article IX of respondent firm's Amended Articles of Partnership states: Nothing in this Agreement shall prevent the Chairman and Managing Partner, from fixing the just compensation of any employee of the Firm, fully or partially, on the basis of a share in the Partnership's net profits.

[35] *The Manila Banking Corp. v. NLRC*, 345 Phil. 105, 125 (1997).

[36] *The Manila Banking Corp. v. NLRC*, 345 Phil. 105, 126 (1997).

considered as part of the compensation and therefore demandable and enforceable, the amount is usually fixed. If the amount would be a contingent one dependent upon the realization of the profits, the bonus is also not demandable and enforceable.[37]

In the instant case, petitioner's claim that the year-end lump sum represented the balance of his total compensation package is incorrect. The fact remains that the amounts paid to petitioner on the two occasions varied and were always dependent upon the firm's financial position.

Moreover, in *Philippine Duplicators, Inc. v. NLRC*,[38] the Court held that if the bonus is paid only if profits are realized or a certain amount of productivity achieved, it cannot be considered part of wages. If the desired goal of production is not obtained, of the amount of actual work accomplished, the bonus does not accrue.[39] Only when the employer promises and agrees to give without any conditions imposed for its payment, such as success of business or greater production or output, does the bonus become part of the wage.[40]

Petitioner's assertion that he was responsible for generating revenues amounting to more than ₱7 million remains a mere allegation in his pleadings. The records are absolutely bereft of any supporting evidence to substantiate the allegation.

The granting of a bonus is basically a management prerogative which cannot be forced upon the employer who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employees' basic salaries or wages.[41] Respondents had consistently maintained from the start that petitioner was not entitled to the bonus as a matter of right. The payment of the year-end lump sum bonus based upon the firm's productivity or the individual performance of its employees

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[37] *Id*.

[38] 311 Phil. 407 (1995).

[39] *Id.* at 419.

[40] *Id*.

[41] *Id.* at 420.

was well within respondent firm's prerogative. Thus, respondent firm was also justified in declining to give the bonus to petitioner on account of the latter's unsatisfactory performance.

Petitioner failed to present evidence refuting respondents' allegation and proof that they received a number of complaints from clients about petitioner's "poor services." For purposes of determining whether or not petitioner was entitled to the year-end lump sum bonus, respondents were not legally obliged to raise the issue of substandard performance with petitioner, unlike what the Labor Arbiter had suggested. Of course, if what was in question was petitioner's continued employment *vis-à-vis* the allegations of unsatisfactory performance, then respondent firm was required under the law to give petitioner due process to explain his side before instituting any disciplinary measure. However, in the instant case, the granting of the year-end lump sum bonus was discretionary and conditional, thus, petitioner may not question the basis for the granting of a mere privilege.

With regard to the computation of the cash equivalent of petitioner's leave credits, the Court of Appeals used a base figure of ₱71,250.00 representing petitioner's monthly salary as opposed to ₱95,000.00 used by the Labor Arbiter and NLRC. Meanwhile, respondents insist on a base figure of only ₱61,000.00, which excludes the advance incentive pay of ₱15,000.00, transportation allowance of ₱15,000.00 and representation allowance of ₱4,000.00, which petitioner regularly received every month. Because of a lower base figure (representing the monthly salary) used by the appellate court, the cash equivalent of petitioner's leave credits was lowered from ₱28,407.08 to ₱9,802.83.

The monthly compensation of ₱71,250.00 used as base figure by the Court of Appeals is totally without basis. As correctly held by the Labor Arbiter and the NLRC, the evidence on record reveals that petitioner was receiving a monthly compensation of ₱95,000.00 consisting of a basic salary of ₱61,000.00, advance incentive pay of ₱15,000.00, transportation allowance of ₱15,000.00 and representation allowance of ₱4,000.00. These amounts totaling ₱95,000.00 are all deemed part of petitioner's

monthly compensation package and, therefore, should be the basis in the cash commutation of the petitioner's leave credits. These allowances were customarily furnished by respondent firm and regularly received by petitioner on top of the basic monthly pay of ₱61,000.00. Moreover, the Labor Arbiter noted that respondent firm's act of paying petitioner a 13th month-pay at the rate of ₱95,000.00 was an admission on its part that petitioner's basic monthly salary was ₱95,000.00

The Court of Appeals, Labor Arbiter and NLRC used a 30-working day divisor instead of 26 days which petitioner insists. The Court of Appeals relied on Section 2, Rule IV, Book III[42] of the implementing rules of the Labor Code in using the 30-working day divisor. The provision essentially states that monthly-paid employees are presumed to be paid for all days in the month whether worked or not.

The provision has long been nullified in *Insular Bank of Asia and American Employees' Union (IBAAEU) v. Hon. Inciong, etc., et al.*,[43] where the Court ruled that the provision amended the Labor Code's provisions on holiday pay by enlarging the scope of their exclusion.[44] In any case, the provision is inapplicable to the instant case because it referred to the computation of holiday pay for monthly-paid employees.

Petitioner's claim that respondent firm used a 26-working day divisor is supported by the evidence on record. In a letter addressed to petitioner,[45] respondents' counsel expressly admitted that respondent used a 26-working day divisor. The Court is perplexed why the tribunals below used a 30-day divisor when

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[42] Sec. 2. *Status of employees paid by the month.* — Employees who are uniformly paid by the month, irrespective of the number of working days therein, with a salary not less than the statutory or established minimum wage *shall be presumed* to be paid for all days in the month whether worked or not.

For this purpose, the monthly minimum wage shall not be less than the statutory minimum wage multiplied by 365 days divided by twelve.

[43] 217 Phil. 629 (1984).

[44] *Id.* at 641.

[45] *Rollo*, p. 103.

there was an express admission on respondents' part that they used a 26-day divisor in the cash commutation of leave credits. Thus, with a monthly compensation of ₱95,000.00 and using a 26-working day divisor, petitioner's daily rate is ₱3,653.85.[46] Based on this rate, petitioner's cash equivalent of his leave credits of 23.5 is ₱85,865.48.[47] Since petitioner has already received the amount of ₱46,009.67, a balance of ₱39,855.80 remains payable to petitioner.

**WHEREFORE,** the instant petition for review on *certiorari* is *PARTLY GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 85038 is *AFFIRMED* with the *MODIFICATION* that respondents are liable for the underpayment of the cash equivalent of petitioner's leave credits in the amount of ₱39,855.80.

**SO ORDERED.**

*Austria-Martinez,* Corona,** Velasco, Jr.,* and *Brion, JJ.,* concur.

*Quisumbing, J.,* on official leave.

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[46] Daily rate (monthly compensation / 26 working days): ₱95,000.00 / 26 = ₱3,653.85

[47] Cash commutation of leave credits (Daily rate x 23.5): ₱3,653.85 x 23.5 = ₱85,865.48

* Additional member per Special Order No. 590 in lieu of *J.* Quisumbing who is on official business.

** Additional member per Special Order No. 600 in lieu of *J.* Carpio Morales who is on official business.

**SECOND DIVISION**

[G.R. Nos. 174256-57. March 25, 2009]

**GEOLOGISTICS, INC., (formerly LEP International Philippines, Inc.),** *petitioner, vs.* **GATEWAY ELECTRONICS CORPORATION and FIRST LEPANTO TAISHO INSURANCE CORPORATION,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION PENDING APPEAL; REQUISITES.—** The rule on execution pending appeal, which is now termed discretionary execution under Rule 39, Section 2 of the Rules of Court, must be strictly construed being an exception to the general rule. Discretionary execution of appealed judgments may be allowed upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later.

**2. ID.; ID.; ID.; ID.; ID.; GOOD REASONS; ELUCIDATED.—** Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential. The Rules of Court does not state, enumerate, or give examples of "good reasons" to justify execution. The determination of what is a good reason must, necessarily, be addressed to the sound discretion of the trial court. In other words, the issuance of the writ of execution must necessarily be controlled by the judgment of the judge in accordance with his own conscience and by a sense of justice and equity, free from the control of another's judgment or conscience. It must be so for discretion implies the absence of a hard and fast rule.

**3. ID.; ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.—** The alleged admission by respondent Gateway of its liability is more apparent than real because the issue of liability is precisely the reason the case was elevated on appeal. The exact amount of respondent Gateway's liability to petitioner remains under dispute even if, as claimed by petitioner, the evidence on record indicates that respondent Gateway's obligation is almost a certainty. Precisely the appeal process must be allowed to take its course all the way to the finality of judgment to determine once and for all the incidents of the suit. The fact alone that in the *certiorari* proceeding, the Court of Appeals also found respondent Gateway to have admitted its liability for a different amount is not automatically considered as a "good reason" to order discretionary execution. Petitioner is preempting the Court of Appeals' review of the RTC decision in insisting that in the *certiorari* proceeding, the Court of Appeals should have simply ordered the discretionary execution of the amount which it found to have been admitted by respondent Gateway. Another factor that militates against petitioner's claim that any judgment in its favor may become illusory if execution pending appeal is not allowed is the fact that petitioner is considered a secured creditor on account of the counterbond posted by respondent surety. The said counterbond, posted as it was to discharge the attachment in favor of petitioner, serves as security for the payment of any judgment that petitioner may recover in the instant action. Following its argument that respondent Gateway's obligation to petitioner is almost a certainty, petitioner will not find it hard to recover its monetary claim once final judgment is rendered in its favor because petitioner can certainly garnish the counterbond. As regards petitioner's assigned error that there was no basis for the Court of Appeals to declare that respondent Gateway's principal liability would be offset by its counterclaim for the recovery of the goods allegedly held by petitioner, suffice it to say that this controversy should be properly ventilated on appeal. All the more, petitioner's prayer for execution pending appeal should be denied because there are questions in the instant controversy, other than the issue of respondent Gateway's principal liability, that need to be resolved on appeal. Thus, the order allowing execution pending appeal would render nugatory the decision of the Court of Appeals on the appeal.

**4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; EFFECT ON AWARD OF INTEREST THEREFOR IN CASE AT BAR.—** The Court sustains the lifting of the garnishment on the amount of ₱4,769,954.32 under respondent surety's deposit account in Banco de Oro. However, the Court of Appeals' award of interest on said amount has no legal or factual basis and must be deleted. Notably, said amount was garnished by virtue of a court order. Petitioner cannot be faulted and be held liable for the errors committed by the RTC and the sheriffs concerned in the discretionary execution.

**5. ID.; ID.; APPEAL; REQUIRES PRIOR TO THE FILING OF A MOTION FOR RECONSIDERATION; EXCEPTIONS; CASE OF URGENCY; PRESENT IN CASE AT BAR.—** As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has not 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. Respondent Gateway's explanation on this aspect, which the Court of Appeals found sufficient, is that the assailed order of discretionary execution was already being implemented, thereby leaving it with no plain, speedy and adequate remedy other than to file the petition for *certiorari*, prohibition and *mandamus* before the Court of Appeals. Considering the urgency of the matter, the Court finds that under the circumstances of the case, the filing of a motion for reconsideration was properly dispensed with, more so since the issue of validity of the execution pending appeal is a pure question of law.

**APPEARANCES OF COUNSEL**

*Factoran & Associates Law Offices* for petitioner.

*Balane Tamase Alampay Law Offices* for Gateway Electronics Corp.

*R.A. QuirozLaw Offices* for First Lepanto Taisho Insurance Corp.

## D E C I S I O N

**TINGA, *J.*:**

This is a petition for review on *certiorari*,[1] praying for the reversal of the amended decision[2] of the Court of Appeals in CA-G.R. SP No. 68465 and CA-G.R. SP No. 69441 and the reinstatement of the order[3] of the Regional Trial Court (RTC), Branch 260, Parañaque City issuing a writ of partial execution.

As culled from the records of the case, the following factual antecedents appear:

Petitioner Geologistics, Inc., formerly known as LEP International Philippines, Inc., is a domestic corporation engaged in the business of freight forwarding and customs brokerage. On 17 October 1997, petitioner instituted an action for the recovery of sum of money against respondent Gateway Electronic Corporation (respondent Gateway) before the RTC of Parañaque.[4] The case was docketed as Civil Case No. 97-0496 and raffled to the sala of Judge Helen Bautista-Ricafort of Branch 260. Petitioner prayed for a judgment award in the amount of ₱4,769,954.32, representing the fees, including interest owed by respondent Gateway for petitioner's services as customs broker and freight forwarder.

The RTC subsequently issued a writ of preliminary attachment on the properties of respondent Gateway, prompting the latter to move for its dissolution. Respondent First Lepanto-Taisho Insurance Corporation (respondent surety) filed a counter-bond in the amount of ₱5 million to secure the payment of any judgment that petitioner could recover from respondent Gateway.[5]

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[1] *Rollo*, pp. 16-41.

[2] Dated 17 August 2006 and penned by Edgardo P. Cruz, *J.*, Chairman of the Special Former First Division, and concurred in by Rosmari D. Carandang and Jose C. Mendoza, *JJ.*; *id.* at 8-13.

[3] *Id.* at 84; Penned by Judge Helen Bautista-Ricafort.

[4] CA *rollo* (CA-G.R. SP No. 68465) pp. 60-62.

[5] *Id.* at 130-132.

After hearing on the merits, the RTC rendered a Decision[6] dated 19 October 2001, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering defendant to pay the plaintiff:

1. The sum of Four Million Seven Hundred Sixty Nine Thousand Nine Hundred Fifty Four and Thirty Two Centavos (₱4,769,954.32) Pesos, plus the stipulated three (3%) interest per month computes starting August 1, 1997 until the same is fully paid;
2. The amount of Two Hundred Thousand (₱200,000.00) Pesos as exemplary damages for wanton and fraudulent acts of defendants, to serve as an example for the public good and to deter other from doing same acts.
3. The amount of One Million One Hundred Ninety Two Thousand Four Hundred Eighty Eight pesos (₱1,192,488.00) representing the stipulated Twenty Five percent (25%) attorney's fees; and,
4. Costs.

Accordingly, the defendant's counterclaim is hereby DISMISSED.

SO ORDERED.[7]

Petitioner filed a motion for execution pending appeal on 30 October 2001 which was opposed by respondent Gateway. The motion alleged the following "good reasons" to execute the RTC decision pending appeal: (1) respondent Gateway was guilty of fraud in contracting its obligations to petitioner; (2) the appeal was interposed to delay the case; (3) respondent Gateway had ceased operations and was in imminent danger of insolvency; and (4) the counter-bond posted by respondent Gateway could be the subject of execution.[8]

After petitioner's filing of a reply to respondent Gateway's opposition, the motion was submitted for resolution. Respondent Gateway also filed a notice of appeal on 07 November 2001.[9]

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[6] *Id.* at 26-28.

[7] *Id.* at 27-28.

[8] *Id.* at 455-58.

[9] *Id.* at 29.

In an Order dated 10 December 2001,[10] Judge Helen Bautista-Ricafort granted petitioner's motion for execution pending appeal because respondent Gateway had admitted its principal obligation to petitioner and the case had been pending since 1997.[11] On 18 December 2001, Judge Ricafort issued a writ of execution, ordering the sheriff to execute respondent Gateway's counter-bond issued by respondent surety up to the amount of ₱4,769,954.32.[12] The writ of execution, directing respondent surety to comply with the order of the RTC within five days from notification, was served on 09 January 2002.[13]

Respondent surety filed a motion to set aside the 10 December 2001 Order of Judge Ricafort and to quash the writ of execution, but the motion was denied per Order dated 19 February 2002. In the same order, respondent surety was directed to pay petitioner the sum of ₱4,769,954.32 "without prejudice to the right of reimbursement thereafter" from respondent Gateway.[14]

On 04 March 2002, Sheriff Elosoceje implemented the writ of execution through the garnishment of respondent surety's bank account with Banco de Oro. On 18 March 2002, Sheriff Elosoceje received the garnished amount in the form of a manager's check which was then turned over to petitioner's counsel.[15]

Meanwhile, both respondents filed separate Rule 65 petitions before the Court of Appeals against Judge Ricafort, Atty. Clement Boloy, in his capacity as *Ex-Officio* Sheriff, Lucas Elosoceje, in his capacity as Sheriff, and herein petitioner.

In the petition for *certiorari*, prohibition and *mandamus* (with urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction),[16] docketed as CA-G.R. SP No. 68465, respondent Gateway advanced the following

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[10] *Id.* at 43.

[11] *Rollo*, p. 84.

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

[13] *Id.* at 87.

[14] CA *rollo* (CA-G.R. SP No. 68465) p. 192.

[15] *Id.* at 192-193.

[16] *Id.* at 5-20.

arguments: (1) no good reason existed to justify execution pending appeal especially considering the fact that the case had already been elevated on appeal; (2) the ground cited in the assailed order was not supported by the evidence on record; and (3) a writ of partial execution can implement only a partial judgment.[17]

Respondent Gateway's petition was initially dismissed by the appellate court, but upon motion for reconsideration, the appellate court ordered its reinstatement and the issuance of a temporary restraining order (TRO) against the enforcement of the RTC's Decision and the Order dated 10 December 2001.[18]

Respondent surety's petition for *certiorari*, docketed as CA-G.R. SP No. 69441, sought the nullification of the RTC orders issued on 10 December 2001 and 19 February 2002, the quashal of the writ of execution, the issuance of a TRO and a writ of preliminary injunction to enjoin the implementation of the writ of execution and the return of the garnished amount to respondent surety.[19]

During the pendency of the two petitions, the Board of Directors of respondent Gateway resolved on 18 October 2004 to file a petition for declaration of voluntary insolvency.[20]

On 28 February 2005, the Court of Appeals (First Division) rendered a Decision[21] in CA-G.R. SP No. 68465, granting respondent Gateway's petition. The dispositive portion of the decision reads:

WHEREFORE, the petition is GRANTED. The order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of ₱4,769,954.32 to First Lepanto-Taisho Insurance Corporation's deposit account.

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[17] *Id.* at 12-18.

[18] *Id.* at 185.

[19] CA *rollo* (CA-G.R. SP No. 69441) pp. 24-25.

[20] *Rollo*, pp. 523-525.

[21] CA *rollo* (CA-G.R. SP No. 69441) p.179.

SO ORDERED.[22]

Subsequently, on 31 March 2005, the Court of Appeals (Fifth Division) promulgated a Decision[23] in CA-G.R. SP No. 69441, adopting the prior decision in CA-G.R. SP No. 68465. The dispositive portion of the Decision states:

WHEREFORE, the petition is partly granted and the Order dated February 19, 2002 is nullified. The parties are ordered to comply with the Decision dated February 28, 2005 in CA-G.R. SP No. 68465, which disposed of the case as follows:

> In other words, private respondent must return to First Lepanto (petitioner herein) the amount garnished by the sheriff pursuant to the notice of garnishment, otherwise, petitioner would be compelled to reimburse First Lepanto for the same.
>
> WHEREFORE, the petition is GRANTED. The Order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of ₱4,769,954.32 to First Lepanto-Taisho Insurance Corporation's deposit account.
>
> SO ORDERED.

Pursuant to Section 3, Rule III of the 2002 Internal Rules of the Court of Appeals, as amended, subject to the conformity of the Justice who penned the aforequoted Decision, let this case be consolidated with CA-G.R. SP No. 68465.

SO ORDERED.[24]

Petitioner moved for reconsideration[25] of the decision in CA-G.R. SP No. 68465 while respondent surety sought to modify the decision in CA-G.R. SP No. 69441 to include an award of

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[22] *Id.* at 185.

[23] CA *rollo* (CA-G.R. SP No. 69441), pp. 129-139.

[24] *Id.* at 138-139.

[25] CA *rollo* (CA-G.R. SP No. 68465) pp. 212-228.

interest on the amount ordered returned to it by the appellate court.[26]

On 17 August 2006, the Court of Appeals promulgated the assailed consolidated amended decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, this Court resolves as follows:
>
> 1. In CA-G.R. SP No. 68465. –
>
> For lack of merit, private respondent's motion for reconsideration of the decision dated February 28, 2005 is DENIED. However, the dispositive portion of said decision is MODIFIED, such that it shall now read:
>
> "WHEREFORE, the petition is GRANTED. The order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE.
>
> SO ORDERED."
>
> 2. In CA-G.R. SP No. 69441 –
>
> Petitioner's motion for partial reconsideration of the decision dated March 31, 2005 is GRANTED. The first paragraph of the dispositive portion of said decision shall now read:
>
> "WHEREFORE, the petition is partly granted and the Order dated February 19, 2002 is nullified. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of ₱4,769,954.32 to petitioner First Lepanto-Taisho Insurance Corporation's deposit account plus interest thereon at the rate of 6% per annum from filing of the petition until finality of this judgment, after which the interest shall be at the rate of 12% per annum until said amount is fully deposited."
>
> For lack of merit, the motion for reconsideration filed by respondent LEP International Phils., Inc. is DENIED.
>
> SO ORDERED.[27]

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[26] CA *rollo* (CA-G.R SP No. 69441) p. 148; Motion for Partial Reconsideration of First Lepanto-Taisho Insurance Corporation.

[27] *Rollo*, pp. 12-13.

Hence, the instant petition, arguing that the Court of Appeals' decision erred in holding that no good reasons existed to warrant the discretionary execution of the RTC decision and that it would render nugatory the RTC judgment to the prejudice of petitioner. The petition also assails the appellate court's ruling that the filing of a motion for reconsideration was not a condition precedent to the filing of respondents' petition for *certiorari*. Last, the petition reiterates the claim that petitioner was neither in possession nor in control of the goods subject of respondent Gateway's counterclaim.[28]

Respondent Gateway filed a motion, praying that it be excused from filing a comment on the petition on the ground that it had filed a petition for voluntary insolvency before the RTC of Imus, Cavite, where an order was issued declaring respondent Gateway as insolvent and forbidding the transfer of its property. Petitioner did not oppose respondent Gateway's motion and in a Resolution dated 26 September 2007, the Court granted said motion.[29]

At the core of the instant petition is the question of whether a sufficient ground exists warranting the discretionary execution of the RTC decision. In granting petitioner's motion for execution pending appeal, the RTC gave weight to the fact that the case had been pending since 1997 and the alleged admission of liability on the part of respondent Gateway, which the Court of Appeals found to be unsupported by the evidence on record. Petitioner now counters that only the exact amount of liability is disputed but not respondent's admission of liability. It claims that in the *certiorari* proceeding, even the Court of Appeals acknowledged that respondent Gateway did admit owing petitioner the principal amount of ₱4,138,864.70 and not ₱4,769,954.32 which was the amount garnished pursuant to the writ of execution and the dispositive portion of the RTC decision.

The rule on execution pending appeal, which is now termed discretionary execution under Rule 39, Section 2 of the Rules of Court, must be strictly construed being an exception to the

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[28] *Id.* at 25.

[29] *Id.* at 536-537.

general rule.[30] Discretionary execution of appealed judgments may be allowed upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential.[31]

The Rules of Court does not state, enumerate, or give examples of "good reasons" to justify execution. The determination of what is a good reason must, necessarily, be addressed to the sound discretion of the trial court. In other words, the issuance of the writ of execution must necessarily be controlled by the judgment of the judge in accordance with his own conscience and by a sense of justice and equity, free from the control of another's judgment or conscience. It must be so for discretion implies the absence of a hard and fast rule.[32]

The grounds cited by the RTC in allowing the discretionary execution of its decision cannot be considered "good reasons." The alleged admission by respondent Gateway of its liability is more apparent than real because the issue of liability is precisely the reason the case was elevated on appeal. The exact amount of respondent Gateway's liability to petitioner remains under

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[30] *Planters Products Inc. v. Court of Appeals*, 375 Phil. 615, 624 (1999).

[31] *Manacop v. Equitable PCI Bank*, G.R. Nos. 162814-17, 25 August 2005, 468 SCRA 256, citing *Maceda, Jr. v. Development Bank of the Philippines*, 372 Phil. 107, 117; 313 SCRA 233, 242 ; *Diesel Construction Company, Inc. v. Jollibee Foods Corp.*, 380 Phil. 813, 829; 323 SCRA 844, 859 (2000); *Flexo Manufacturing Corporation v. Columbus Foods, Inc. and Pacific Meat Company, Inc.*, G.R. No. 164857, 11 April 2005, 455 SCRA 272.

[32] *Far East Bank and Trust Co. v. Toh, Sr.*, 452 Phil. 734, 742-743 (2003), citing *City of Manila v. Court of Appeals*, G.R. No. L-35253, 26 July 1976, 72 SCRA 98, 103-104.

dispute even if, as claimed by petitioner, the evidence on record indicates that respondent Gateway's obligation is almost a certainty. Precisely the appeal process must be allowed to take its course all the way to the finality of judgment to determine once and for all the incidents of the suit.

The fact alone that in the *certiorari* proceeding, the Court of Appeals also found respondent Gateway to have admitted its liability for a different amount is not automatically considered as a "good reason" to order discretionary execution. Petitioner is preempting the Court of Appeals' review of the RTC decision in insisting that in the *certiorari* proceeding, the Court of Appeals should have simply ordered the discretionary execution of the amount which it found to have been admitted by respondent Gateway.

Another factor that militates against petitioner's claim that any judgment in its favor may become illusory if execution pending appeal is not allowed is the fact that petitioner is considered a secured creditor on account of the counterbond posted by respondent surety. The said counterbond, posted as it was to discharge the attachment in favor of petitioner, serves as security for the payment of any judgment that petitioner may recover in the instant action.[33] Following its argument that respondent Gateway's obligation to petitioner is almost a certainty, petitioner will not find it hard to recover its monetary claim once final judgment is rendered in its favor because petitioner can certainly garnish the counterbond.

As regards petitioner's assigned error that there was no basis for the Court of Appeals to declare that respondent Gateway's principal liability would be offset by its counterclaim for the recovery of the goods allegedly held by petitioner, suffice it to say that this controversy should be properly ventilated on appeal.

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[33] RULES OF COURT, Rule 57, Section 12 states: *Discharge of attachment upon giving counterbond*. — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. x x x **In either case, the cash deposit or the counterbond shall secure the payment of any judgment that the attaching party may recover in the action.** x x x (Emphasis supplied.)

All the more, petitioner's prayer for execution pending appeal should be denied because there are questions in the instant controversy, other than the issue of respondent Gateway's principal liability, that need to be resolved on appeal. Thus, the order allowing execution pending appeal would render nugatory the decision of the Court of Appeals on the appeal.

Petitioner argues that the Court of Appeals erred in holding that the filing of a motion for reconsideration was not a requirement for the appellate court to acquire jurisdiction over the petition for *certiorari*, prohibition and *mandamus*.

As a general rule, a petition for *certiorari* before a higher court will not prosper unless the inferior court has not 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.[34]

Respondent Gateway's explanation on this aspect, which the Court of Appeals found sufficient, is that the assailed order of discretionary execution was already being implemented, thereby leaving it with no plain, speedy and adequate remedy other than to file the petition for *certiorari*, prohibition and *mandamus* before the Court of Appeals. Considering the urgency of the matter, the Court finds that under the circumstances of the case, the filing of a motion for reconsideration was properly dispensed with, more so since the issue of validity of the execution pending appeal is a pure question of law.

For respondent surety's part, it did observe the requirement of a motion for reconsideration. Before filing the petition for *certiorari* before the Court of Appeals, respondent surety filed a motion to set aside the 10 December 2001 Order of Judge Ricafort and to quash the writ of execution. However, the RTC denied the motion, prompting respondent surety to elevate the matter to the Court of Appeals via a petition for *certiorari*, which was the only plain speedy and adequate remedy available to it.

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[34] *Government of the United States of America v. Puruganan*, 438 Phil. 417, 437 (2003).

Thus, the Court sustains the lifting of the garnishment on the amount of ₱4,769,954.32 under respondent surety's deposit account in Banco de Oro. However, the Court of Appeals' award of interest on said amount has no legal or factual basis and must be deleted. Notably, said amount was garnished by virtue of a court order. Petitioner cannot be faulted and be held liable for the errors committed by the RTC and the sheriffs concerned in the discretionary execution.[35]

**WHEREFORE,** the instant petition for review on *certiorari* is *DENIED*. The Amended Decision dated 17 August 2006 of the Court of Appeals in CA-G.R. SP No. 68465 and CA-G.R. SP No. 69441 is *AFFIRMED* with the *MODIFICATION* that the interest imposed on the amount to be refunded to respondent First Lepanto-Taisho Insurance Corporation is *DELETED*.

**SO ORDERED.**

*Austria-Martinez,* Corona,** Velasco, Jr.,* and *Brion, JJ.,* concur.

*Quisumbing, J.,* on official leave.

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**SECOND DIVISION**

[G.R. No. 180188. March 25, 2009]

**C-E CONSTRUCTION CORPORATION,** *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and RAYMUNDO HERNANDEZ,** *respondents.*

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[35] See *Solidbank Corporation v. Court of Appeals*, 428 Phil. 949 (2002).

[*] Additional member per res dated 10 March 2009 in lieu of *J.* Quisumbing who is on official business.

[**] Additional member per Special Order No. 600 in lieu of *J.* Carpio Morales who is on official business.

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR ARBITER; DECISION THEREOF MADE FINAL AND EXECUTORY, TO BE ENFORCED WITHOUT DELAY.—** We disfavor delay in the enforcement of the labor arbiter's decision. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Final and executory judgments can neither be amended nor altered except for correction of clerical errors, even if the purpose is to correct erroneous conclusions of fact or of law. Trial and execution proceedings constitute one whole action or suit such that a case in which execution has been issued is regarded as still pending so that all proceedings in the execution are proceedings in the suit. Everything considered, what should be enforced thru an order or writ of execution in this case is the dispositive portion of the Labor Arbiter's decision as affirmed by the NLRC and Court of Appeals. Since the writ of execution issued by the Labor Arbiter does not vary but is in fact completely consistent with the final decision in this case, the order of execution issued by the labor arbiter is beyond challenge. It is no longer legally feasible to modify the final ruling in this case through the expediency of a petition questioning the order of execution. Judgment of courts should attain finality at some point lest there be no end to litigation. The final judgment in this case may no longer be reviewed, or in any way modified directly or indirectly, by a higher court, not even by the Supreme Court.

**2. ID.; ID.; ID.; DECISION THAT RESPONDENT WAS REGULAR EMPLOYEE IN CASE AT BAR, A SETTLED ISSUE AS MANIFESTED ALSO IN THE DISPOSITIVE PORTION OF THE COURT OF APPEALS, DECISION.—** That Hernandez is a regular employee should be deemed a settled matter. Both the labor arbiter and the NLRC so ruled in their respective decisions. The labor arbiter held that Hernandez "became regular employee entitled to security of tenure despite the fact that he signed an individual project employment contract." And the NLRC concluded: "Complainant is considered therefore a work pool worker whose job would actually be continuous and ongoing." The Court of Appeals affirmed without modification the NLRC decision. The Court of Appeals mentioned in its discussion that Hernandez was a project employee. But the statement appears only in the body of the decision, not in the

dispositive portion. Thus, the statement should be considered an *obiter dictum* at the most. What is enforceable by a writ of execution is the dispositive portion of the decision.

**APPEARANCES OF COUNSEL**

*Eufemio Law Offices* for petitioner.
*Allan S. Montaño* for private respondent.

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

**TINGA, *J.*:**

Petitioner C-E Construction Corporation (petitioner) is a duly organized corporation primarily engaged in general contract construction. Petitioner employed respondent Raymundo Hernandez as an electrician and carpenter on January 17, 1996 for its Filinvest Festival Supermall project.

The employment contract executed between Hernandez and petitioner specifically provides that the former's employment is co-terminus with the project.

On December 17, 1996, petitioner dismissed Hernandez allegedly because the initial phase of the project had been completed.[1] Hernandez immediately filed a complaint against petitioner for illegal dismissal, praying for reinstatement, backwages and attorney's fees.[2] Petitioner disputed the claims of Hernandez, asserting that Hernandez was a project employee and his services were terminated since the phase of the Supermall project for which he was hired had been finished. Thus, there was no illegal dismissal to speak of.

On February 16, 1998, the labor arbiter rendered a decision declaring petitioner's dismissal as illegal and directed petitioner to reinstate petitioner to his former position, the dispositive portion of which reads:

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[1] CA *rollo,* p. 64.

[2] *Id.*

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondent C.E. Construction Corporation and Ambrosio Salazar to:

(a) reinstate complainant, Raymundo Hernandez to his former position without loss of seniority rights;

(b) pay complainant full backwages from the time he was illegally dismissed up to actual reinstatement which amounts to ₱56,833.29.

(c) pay complainant moral damages by reason of the illegal dismissal in the amount of ₱50,000.00.

(d) pay complainant attorney's fees in the amount of ten (10%) percent of the total award.

All other claims are dismissed for lack of merit.

SO ORDERED.[3]

Petitioner appealed the decision of the Labor Arbiter to the NLRC. On September 8, 1998, the NLRC partially reversed the decision of the Labor Arbiter to the extent of deleting the award of moral damages and attorney's fees.[4] CECC moved for reconsideration[5] but this was denied by the NLRC.

In due time, petitioner filed a petition for *certiorari* with the Court of Appeals.[6] The Court of Appeals denied the petition.[7] The appellate court found that the record was bare of any evidence that the project's initial phase was completed. It concluded that petitioner had failed to discharge the burden to prove that there was valid cause for dismissing Hernandez. The appellate court also noted that petitioner had not given notice nor hearing to Hernandez.

Aggrieved, petitioner filed a petition for review on *certiorari* with this Court but this was denied in a resolution dated

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[3] *Id.* at 65-66.

[4] *Id.* at 88-100.

[5] *Id.* at 26-33.

[6] *Id.* at 2-17.

[7] *Id.* at 63-73; penned by Justice Ruben T. Reyes and concurred in by Justices Andres B. Reyes and Jose L. Sabio Jr., members.

October 18, 2000 for failure to show reversible error.[8] Petitioner moved for reconsideration but this was similarly denied by this Court in a resolution dated January 15, 2001 for lack of merit.[9] The decision attained finality on February 9, 2001 and entry of judgment was made on July 27, 2001.

On February 26, 2001, Hernandez filed an omnibus motion for "re-computation" of judgment award and issuance of writ of execution with the labor arbiter.[10] On January 28, 2002, the labor arbiter issued an order awarding Hernandez backwages.[11] The computation set forth in the order is as follows:

As per decision ₱56,833.29

A) Additional Backwages

1. Basic Salary

| | | |
|---|---|---|
| 2/16/98-12/31/98=10.50 | | |
| ₱198 x 26 x 10.5 | ₱54,054.00 | |
| 1/1/99-10/30/99=10.00 | | |
| ₱223.50 x 26 x 10.00 | 58,110.00 | |
| 10/31/99-3/30/01=20.97 | | |
| ₱250 x 26 x 20.97 | 136,305.00 | 248,469.00 |

13th mo pay

₱248,469.00/12 20,705.75

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[8] *Rollo,* p. 153; G.R. No. 144948.

[9] *Id.* at 152.

[10] *Id.* at 12.

[11] *Id.* at 142-143.

2. SILP

| | | |
|---|---|---|
| 2/16/98-12/31/98=10.50 | | |
| ₱198 x 5 x 10.5/12 | ₱866.25 | |
| 1/1/99-12/31/99=12 | | |
| ₱223.50 x 5 x 12/12 | 1,117.50 | |
| 1/1/00-12/31/00=3 | | |
| ₱250 x 5 x 12/12 | 1,1250.00 (sic) | |
| 1/1/01-3/30/01=3 | | |
| 250 X 5 X 3/12 | 312.50 | 3,546.25 |
| Total | | ₱ 329,554.29 |

Petitioner appealed the 2002 order to the NLRC. Petitioner claimed that the wages that Hernandez could have possibly earned during the pendency of the case should be deducted from the calculation of the backwages. Moreover, petitioner asserted that it had not been furnished with any writ of execution reinstating Hernandez; hence, it was not legally bound to pay the latter backwages. Petitioner also argued that backwages should only cover the period of the project where Hernandez was engaged to work and not include the period after the completion of the project.

Unimpressed by petitioner's arguments, the NLRC affirmed the decision of the Labor Arbiter on September 23, 2002.[12] Petitioner moved for reconsideration but this was also denied by the NLRC on November 30, 2004.[13] After the NLRC denied its motion for reconsideration, petitioner filed a petition for *certiorari*[14] with the appellate court reiterating the arguments

[12] *Id.* at 127-132.

[13] *Id.* at 117-118.

[14] CA *rollo*, pp. 2-17.

it raised before the NLRC. On February 28, 2006, the appellate court dismissed the petition for lack of merit. The appellate court pointed out that petitioner's argument regarding the correctness of the computation of backwages is a factual question that is not a proper subject of a petition for *certiorari*.[15] The appellate court stressed that there was nothing both in the NLRC's or labor arbiter's decisions that would indicate grave abuse of discretion on their part.

Hence, the instant petition. Abandoning its earlier posture that the wages Hernandez could have earned should be excluded and that backwages are not demandable since no order of execution was served on CECC, petitioner focuses on its submission that the backwages of Hernandez as an illegally dismissed project employee should cover only the unexpired portion of the project he was engaged in.

For his part, Hernandez asserts that petitioner maliciously failed to mention that both the NLRC and the labor arbiter found that he was a regular employee.

The petition lacks merit.

We disfavor delay in the enforcement of the labor arbiter's decision. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Final and executory judgments can neither be amended nor altered except for correction of clerical errors, even if the purpose is to correct erroneous conclusions of fact or of law.[16] Trial and execution proceedings constitute one whole action or suit such that a case in which execution has been issued is regarded as still pending so that all proceedings in the execution are proceedings in the suit.[17]

Petitioner argues that based on prevailing jurisprudence, the calculation of back wages of an illegally dismissed project employee

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[15] *Supra* note 6.

[16] *Aboitiz Shipping Employees Association v. Trajano*, 348 Phil. 910, 915 (1997).

[17] *Ysmael v. Court of Appeals*, 339 Phil. 361, 376 (1997).

should only be up to the completion of the project.[18] Hernandez counters that he is a regular employee and that the order of execution is in accord with the final ruling in the case.

That Hernandez is a regular employee should be deemed a settled matter. Both the labor arbiter and the NLRC so ruled in their respective decisions. The labor arbiter held that Hernandez "became regular employee entitled to security of tenure despite the fact that he signed an individual project employment contract."[19] And the NLRC concluded: "Complainant is considered therefore a work pool worker whose job would actually be continuous and ongoing."[20]

The Court of Appeals affirmed without modification the NLRC decision, with the following dispositive portion:

> WHEREFORE, the petition is **DENIED**, and the challenged Decision and Resolution of the NLRC are hereby **AFFIRMED**. No pronouncement as to costs.
>
> SO ORDERED.[21]

True, the Court of Appeals mentioned in its discussion that Hernandez was a project employee. But the statement appears only in the body of the decision, not in the dispositive portion. Thus, the statement should be considered an *obiter dictum* at the most.[22] What is enforceable by a writ of execution is the dispositive portion of the decision.[23]

Furthermore, petitioner did not succeed in overturning the decision of the Court of Appeals. This Court denied petitioner's

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[18] *Rollo,* pp. 14-20.

[19] CA *rollo,* p. 94.

[20] *Id.* at 98-99.

[21] *Rollo,* p. 165.

[22] *Ayala Corporation v. Rosa-Diana Realty and Development Corporation*, 400 Phil. 511, 521 (2000).

[23] *Magat v. Judge Pimentel, Jr.*, 311 Phil. 728, 735 (2000); *Olac v. Court of Appeals*, G.R. No. 84256, September 2, 1992, 213 SCRA 321 1992; *Gabuya v. Layug*, 250 SCRA 218; *Buan v. Court of Appeals*, 235 SCRA 424.

petition for review in G.R. No. 144948[24] as well as its motion for reconsideration of the resolution of denial.[25]

Everything considered, what should be enforced thru an order or writ of execution in this case is the dispositive portion of the Labor Arbiter's decision as affirmed by the NLRC and Court of Appeals. Since the writ of execution issued by the Labor Arbiter does not vary but is in fact completely consistent with the final decision in this case, the order of execution issued by the labor arbiter is beyond challenge.

It is no longer legally feasible to modify the final ruling in this case through the expediency of a petition questioning the order of execution. Judgment of courts should attain finality at some point lest there be no end to litigation.[26] The final judgment in this case may no longer be reviewed, or in any way modified directly or indirectly, by a higher court, not even by the Supreme Court.[27]

**WHEREFORE,** the petition is *DENIED*. The Decision of the Court of Appeals dated February 28, 2006 and its Resolution dated October 24, 2007 are hereby *AFFIRMED*.

**SO ORDERED.**

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[24] *Rollo,* p. 152; Per Resolution dated in G.R. No. 144948 entitled "*C-E Construction, Corporation/ Ambrosio Salazar v. Raymundo Hernandez.*

[25] *Id.* at 153.

[26] *Id.* at 154.

[27] *In Re Joaquin T. Borromeo*, 311 Phil. 441, 512 (1995), citing *Miranda v. Court of Appeals,* G.R. No. 59370, February 11, 1986, 141 SCRA 302, citing *Malia v. Intermediate Appellate Court,* G.R. No. 66395, August 7, 1985, 138 SCRA 116; *Castillo v. Donato,* G.R. No. 70230, June 24, 1985, 137 SCRA 210; *Bethel Temple, Inc. v. General Council of Assemblies of God, Inc.*, G.R. No. 355633, April 30, 1985, 136 SCRA 203; *Insular Bank of Asia and America Employees' Union (IBAAEU) v. Inciong*, 132 SCRA 663 (1984) and the cases cited therein pertaining to "immutability of judgments," *Heirs of Pedro Guminpin v. CA,* G.R. No. L-34220, February 21, 1983, 120 SCRA 687; *Commission of Internal Revenue v. Visayan Electric Co.,* G.R. No. L-24921, March 31, 1967, 19 SCRA 696; *Daquis v. Bustos,* 94 Phil. 913.

*Austria-Martinez,* Corona,** Velasco, Jr.,* and *Brion, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 165647. March 26, 2009]

**PHILIPPINES FIRST INSURANCE CO., INC.,** *petitioner, vs.* **WALLEM PHILS. SHIPPING, INC., UNKNOWN OWNER AND/OR UNKNOWN CHARTERER OF THE VESSEL M/S "OFFSHORE MASTER" and "SHANGHAI FAREAST SHIP BUSINESS COMPANY,"** *respondents.*

**SYLLABUS**

**1. COMMERCIAL LAW; COMMON CARRIERS; LIABILITY TO BE GAUGED ON THE DEGREE OF DILIGENCE REQUIRED OF A COMMON CARRIER; APPLICABLE LAWS AS SHIPMENT WAS OF INTERNATIONAL TRADE.—** Respondent's vessel is a common carrier. Thus, the standards for determining the existence or absence of the respondent's liability will be gauged on the degree of diligence required of a common carrier. Moreover, as the shipment was an exercise of international trade, the provisions of the Carriage of Goods by Sea Act (COGSA), together with the Civil Code and the Code of Commerce, shall apply.

**2. ID.; ID.; ID.; EXTRAORDINARY DILIGENCE REQUIRED IN THE VIGILANCE OF TRANSPORTED GOODS.—** Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary

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* Additional member per Special Order No. 593 in lieu of J. Quisumbing who is on official leave.

** Additional member per Special Order No. 600 in lieu of J. Carpio-Morales who is on official leave.

diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.

**3. ID.; CODE OF COMMERCE; ON MARINE VESSELS; LIABILITY OF SHIP CAPTAIN FOR THE CARGO.—** For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo,* the Court interpreted the ship captain's liability as ultimately that of the shipowner by regarding the captain as the representative of the ship owner.

**4. ID.; CARRIAGE OF GOODS BY SEA ACT (COGSA); RESPONSIBILITIES OF THE CARRIER.—** Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2) thereof then states that among the carriers' responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

**5. ID.; COMMON CARRIERS; ARRASTRE OPERATOR; FUNCTIONS AND DUTIES.—** The functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession. Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody.

**6. ID.; ID.; RELATIONSHIP AND RESPONSIBILITY THEREOF TO A CONSIGNEE OF CARGO.—** In *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.* the Court explained the relationship and responsibility of an arrastre operator to a consignee of a cargo, to quote: The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman. The relationship between the consignee and the common carrier is similar to that of the consignee and the arrastre operator. Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. **Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee.** The liability of the arrastre operator was reiterated in *Eastern Shipping Lines, Inc. v. Court of Appeals* with the clarification that the arrastre operator and the carrier are not always and necessarily solidarily liable as the facts of a case may vary the rule.

**7. ID.; ID.; RESPONSIBILITY OF COMMON CARRIER ON CARGO TO ITS UNLOADING; CASE AT BAR.—** In a case decided by a U.S. Circuit Court, *Nichimen Company v. M./V. Farland*, it was ruled that like the duty of seaworthiness, the duty of care of the cargo is non-delegable, and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It has also been held that it is ordinarily the duty of the master of a vessel to unload the cargo and place it in readiness for delivery to the consignee, and there is an implied obligation that this shall be accomplished with sound machinery, competent hands, and in such manner that no unnecessary injury shall be done thereto. And the fact that a consignee is required to furnish persons to assist in unloading a shipment may not relieve the carrier of its duty as to such unloading. It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier. In the instant case, the damage or losses were incurred during the discharge of the shipment while under the supervision of the carrier. Consequently, the carrier is liable for the damage or losses caused to the shipment. As the cost of the actual damage to the subject shipment has long been settled, the trial court's finding of actual damages in the amount of ₱397,879.69 has to be sustained.

**8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, RESPECTED.—** On the credibility of Mr. Talens, the general rule in assessing credibility of witnesses is well-settled: x x x the trial court's evaluation as to the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.

**9. ID.; ID.; RULES OF ADMISSIBILITY; IMPLIED ADMISSION NOT APPRECIATED IN THE FAILURE TO RESPOND TO A DEMAND LETTER.—** Contrary to petitioner's stance, Wallem's failure to respond to its demand letter does not constitute an implied admission of liability. To borrow the words of Mr. Justice Oliver Wendell Holmes, thus: A man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts [stated therein]. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission.

**10. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF PROPER IN CASE AT BAR.—** With respect to the attorney's fees, it is evident that petitioner was compelled to litigate this matter to protect its interest. The RTC's award of ₱20,000.00 as attorney's fees is reasonable.

**APPEARANCES OF COUNSEL**

*Astorga & Repol Law Offices* for petitioner.
*Velicaria Egenias* for respondents.

## D E C I S I O N

**TINGA, *J.*:**

Before us is a Rule 45 petition[1] which seeks the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. No. 61885. The Court of Appeals reversed the Decision[4] of the Regional Trial Court (RTC) of Manila, Branch 55 in Civil Case No. 96-80298, dismissing the complaint for sum of money.

The facts of the case follow.[5]

On or about 2 October 1995, Anhui Chemicals Import & Export Corporation loaded on board *M/S Offshore Master* a shipment consisting of 10,000 bags of sodium sulphate anhydrous 99 PCT Min. (shipment), complete and in good order for transportation to and delivery at the port of Manila for consignee, L.G. Atkimson Import-Export, Inc. (consignee), covered by a Clean Bill of Lading. The Bill of Lading reflects the gross weight of the total cargo at 500,200 kilograms.[6] The Owner and/or Charterer of *M/V Offshore Master* is unknown while the shipper of the shipment is Shanghai Fareast Ship Business Company. Both are foreign firms doing business in the Philippines, thru its local ship agent, respondent Wallem Philippines Shipping, Inc. (Wallem).[7]

On or about 16 October 1995, the shipment arrived at the port of Manila on board the vessel *M/S Offshore Master* from

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[1] *Rollo,* pp. 3-29.

[2] *Id.* at 31-37. Dated 22 June 2004. Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Danilo B. Pine and Arcangelita Romilla-Lontok.

[3] *Id.* at 54. Dated 11 October 2004. Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Mario L. Guariña III and Celia C. Librea-Leagogo.

[4] CA *rollo*, pp. 37-45. Dated 3 November 1998. Penned by Judge Hermogenes R. Liwag.

[5] Gathered from the findings of fact of the RTC decision. *Supra* note 4.

[6] Records, p. 93; Exhibit "C".

[7] *Supra* note 4 at 37.

which it was subsequently discharged. It was disclosed during the discharge of the shipment from the carrier that 2,426 poly bags (bags) were in bad order and condition, having sustained *various degrees of spillages and losses*. This is evidenced by the Turn Over Survey of Bad Order Cargoes (turn-over survey) of the arrastre operator, Asian Terminals, Inc. (arrastre operator).[8] The *bad state of the bags* is also evinced by the arrastre operator's Request for Bad Order Survey.[9]

Asia Star Freight Services, Inc. undertook the delivery of the subject shipment from the pier to the consignee's warehouse in Quezon City,[10] while the final inspection was conducted jointly by the consignee's representative and the cargo surveyor. During the unloading, it was found and noted that the bags had been discharged in damaged and bad order condition. Upon inspection, it was discovered that 63,065.00 kilograms of the shipment had sustained unrecovered spillages, while 58,235.00 kilograms had been exposed and contaminated, resulting in losses due to depreciation and downgrading.[11]

On 29 April 1996, the consignee filed a formal claim with Wallem for the value of the damaged shipment, to no avail. Since the shipment was insured with petitioner Philippines First Insurance Co., Inc. against all risks in the amount of ₱2,470,213.50,[12] the consignee filed a formal claim[13] with petitioner for the damage and losses sustained by the shipment. After evaluating the invoices, the turn-over survey, the bad order certificate and other documents,[14] petitioner found the claim to be in order and compensable under the marine insurance policy. Consequently, petitioner paid the consignee the sum of ₱397,879.69 and the latter signed a subrogation receipt.

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[8] Records, p. 104. Exhibit "H" dated 20 October 1995.

[9] *Id.* at 105. Exhibit "I" dated 11 October 1995.

[10] *Supra* note 4 at 38.

[11] *Id*.

[12] Records, p. 82 and back thereof. Exhibits "B" and B-1".

[13] TSN, 30 June 1996, p. 7.

[14] *Id.* at 5.

Petitioner, in the exercise of its right of subrogation, sent a demand letter to Wallem for the recovery of the amount paid by petitioner to the consignee. However, despite receipt of the letter, Wallem did not settle nor even send a response to petitioner's claim.[15]

Consequently, petitioner instituted an action before the RTC for damages against respondents for the recovery of ₱397,879.69 representing the actual damages suffered by petitioner plus legal interest thereon computed from the time of the filing of the complaint until fully paid and attorney's fees equivalent to 25% of the principal claim plus costs of suit.

In a decision[16] dated 3 November 1998, the RTC ordered respondents to pay petitioner ₱397,879.69 with 6% interest plus attorney's fees and costs of the suit. It attributed the damage and losses sustained by the shipment to the arrastre operator's mishandling in the discharge of the shipment. Citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[17] the RTC held the shipping company and the arrastre operator solidarily liable since both the arrastre operator and the carrier are charged with and obligated to deliver the goods in good order condition to the consignee. It also ruled that the ship functioned as a common carrier and was obliged to observe the degree of care required of a common carrier in handling cargoes. Further, it held that a notice of loss or damage in writing is not required in this case because said goods already underwent a joint inspection or survey at the time of receipt thereof by the consignee, which dispensed with the notice requirement.

The Court of Appeals reversed and set aside the RTC's decision.[18] According to the appellate court, there is no solidary liability between the carrier and the arrastre operator because it was clearly established by the court *a quo* that the damage and

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[15] *Supra* note 1 at 8. Records, pp. 107-108, citing Exhibit "K" and "K-1".

[16] *Supra* note 4.

[17] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[18] *Supra* note 2.

losses of the shipment were attributed to the mishandling by the arrastre operator in the discharge of the shipment. The appellate court ruled that the instant case falls under an exception recognized in *Eastern Shipping Lines*.[19] Hence, the arrastre operator was held solely liable to the consignee.

Petitioner raises the following issues:

1. Whether or not the Court of Appeals erred in not holding that as a common carrier, the carrier's duties extend to the obligation to safely discharge the cargo from the vessel;
2. Whether or not the carrier should be held liable for the cost of the damaged shipment;
3. Whether or not Wallem's failure to answer the extra judicial demand by petitioner for the cost of the lost/damaged shipment is an implied admission of the former's liability for said goods;
4. Whether or not the courts below erred in giving credence to the testimony of Mr. Talens.

It is beyond question that respondent's vessel is a common carrier.[20] Thus, the standards for determining the existence or absence of the respondent's liability will be gauged on the degree of diligence required of a common carrier. Moreover, as the shipment was an exercise of international trade, the provisions of the Carriage of Goods by Sea Act[21] (COGSA), together with the Civil Code and the Code of Commerce, shall apply.[22]

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[19] *Supra* note 14.

[20] CA *rollo*, pp. 41-42.

[21] Commonwealth Act No. 65 (1936).

[22] Commonwealth Act No. 65 (1936). "Section 1. That the provisions of Public Act No. 521 of the 74th Congress of the United States, approved on April 16, 1936, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: *Provided*, That nothing in this Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force or as limiting its application." Approved on April 22, 1936.

The first and second issues raised in the petition will be resolved concurrently since they are interrelated.

It is undisputed that the shipment was damaged prior to its receipt by the insured consignee. The *damage to the shipment was documented* by the turn-over survey[23] and Request for Bad Order Survey.[24] The turn-over survey, in particular, expressly stipulates that 2,426 bags of the shipment were received by the arrastre operator in damaged condition. With these documents, petitioner insists that the shipment incurred damage or losses while still in the care and responsibility of Wallem and before it was turned over and delivered to the arrastre operator.

The trial court, however, found through the testimony of Mr. Maximino Velasquez Talens, a cargo surveyor of Oceanica Cargo Marine Surveyors Corporation, that the losses and damage to the cargo were caused by the mishandling of the arrastre operator. Specifically, that the torn cargo bags resulted from the use of steel hooks/spikes in piling the cargo bags to the pallet board and in pushing the bags by the stevedores of the arrastre operator to the tug boats then to the ports.[25] The appellate court affirmed the finding of mishandling in the discharge of cargo and it served as its basis for exculpating respondents from liability, rationalizing that with the fault of the arrastre operator in the unloading of the cargo established it should bear sole liability for the cost of the damaged/lost cargo.

While it is established that damage or losses were incurred by the shipment *during* the unloading, it is disputed who should

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However, in *American President Lines, Ltd. v. Klepper, et al.*, 110 Phil. 243, 248 (1960), reiterated in *Maritime Company of the Philippines v. Court of Appeals* (G.R. No. L-47004. March 8, 1989, 171 SCRA 61), the Court ruled that the provisions of the Carriage of Goods by Sea Act are merely suppletory to the Civil Code in view of Articles 1753 and 1756 of the Civil Code.

See also *Sea-Land Service, Inc. v. Intermediate Appellate Court*, No. 75118, 31 August 1987, 153 SCRA 552.

[23] Records, p. 104; Exhibit "H".

[24] *Id.* at 105; Exhibit "I".

[25] TSN, 5 December 1997, p. 9.

be liable for the damage incurred at that point of transport. To address this issue, the pertinent laws and jurisprudence are examined.

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 transported by them.[26] Subject to certain exceptions enumerated under Article 1734[27] of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.[28]

For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo,*[29] the Court interpreted the ship captain's liability as ultimately that of the shipowner by regarding the captain as the representative of the ship owner.

Lastly, Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and

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[26] CIVIL CODE, Art. 1733.

[27] CIVIL CODE, Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

(2) Act of the public enemy in war, whether international or civil;

(3) Act or omission of the shipper or owner of the goods;

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority.

[28] CIVIL CODE, Art. 1736.

[29] 42 Phil. 256, 262 (1921).

discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act.[30] Section 3 (2) thereof then states that among the carriers' responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

The above doctrines are in fact expressly incorporated in the bill of lading between the shipper Shanghai Fareast Business Co., and the consignee, to wit:

4. PERIOD OF RESPONSIBILITY. The responsibility of the carrier shall commence from the time when the goods are loaded on board the vessel and shall cease when they are discharged from the vessel.

The Carrier shall not be liable of loss of or damage to the goods before loading and after discharging from the vessel, howsoever such loss or damage arises.[31]

On the other hand, the functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle.[32] Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.[33]

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should observe the standards and measures necessary to prevent losses and damage to shipments under its custody.[34]

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[30] This is subject to Section 6 thereof which provides the carrier and the shipper are at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods *provided* that in this case, no bill of lading shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and marked as such.

[31] Records, dorsal side of p. 93. Exhibit "C-1".

[32] *Hijos de F. Escaño, Inc. v. National Labor Relations Commission*, G.R. No. 59229, 22 August 1991, 261 SCRA 63, 69.

[33] *Summa Insurance Corporation v. Court of Appeals*, 323 Phil. 214, 223 (1996).

[34] *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.*, G.R. No. 83613, 21 February 1990, 182 SCRA 455, 461.

In *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.*[35] the Court explained the relationship and responsibility of an arrastre operator to a consignee of a cargo, to quote:

> The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman. The relationship between the consignee and the common carrier is similar to that of the consignee and the arrastre operator. Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. **Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee.** (Emphasis supplied) (Citations omitted)

The liability of the arrastre operator was reiterated in *Eastern Shipping Lines, Inc. v. Court of Appeals*[36] with the clarification that the arrastre operator and the carrier are not always and necessarily solidarily liable as the facts of a case may vary the rule.

Thus, in this case the appellate court is correct insofar as it ruled that an arrastre operator and a carrier may not be held solidarily liable at all times. But the precise question is which entity had custody of the shipment during its unloading from the vessel?

The aforementioned Section 3(2) of the COGSA states that among the carriers' responsibilities are to properly and carefully load, care for and discharge the goods carried. The bill of lading covering the subject shipment likewise stipulates that the carrier's liability for loss or damage to the goods ceases after its discharge from the vessel. Article 619 of the Code of Commerce holds a ship captain liable for the cargo from the time it is turned over to him until its delivery at the port of unloading.

In a case decided by a U.S. Circuit Court, *Nichimen Company v. M./V. Farland*,[37] it was ruled that like the duty of

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[35] G.R. No. 83613, 21 February 1990, 182 SCRA 455.

[36] *Supra* note 14.

[37] 462 F.2d 319, 1972 AMC 1573 (2d Cir. 1972), as cited in SCHOENBAUM, THOMAS J., *Admiralty and Maritime LAW*, Vol. I, 4th Ed. (2004), p. 687.

seaworthiness, the duty of care of the cargo is non-delegable,[38] and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It has also been held that it is ordinarily the duty of the master of a vessel to unload the cargo and place it in readiness for delivery to the consignee, and there is an implied obligation that this shall be accomplished with sound machinery, competent hands, and in such manner that no unnecessary injury shall be done thereto.[39] And the fact that a consignee is required to furnish persons to assist in unloading a shipment may not relieve the carrier of its duty as to such unloading.[40]

The exercise of the carrier's custody and responsibility over the subject shipment during the unloading actually transpired in the instant case during the unloading of the shipment as testified by Mr. Talens, the cargo surveyor, to quote:

Atty. Repol:

- Do you agree with me that Wallem Philippines is a shipping [company]?

A Yes, sir.

Q And, who hired the services of the stevedores?

A The checker of the vessel of Wallem, sir.[41]

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[38] Schoenbaum, *id.*, then cites another case, *Sumitomo Corp. of America v. M./V. Sie Kim*, 632 F. Supp. 824, 1987 AMC 160 (S.D.N.Y. 1985) qualifying that the court ruled therein that a shipper and a carrier could enter into a valid agreement placing the duty and expense of loading the cargo on the shipper and, where damage is caused by improper stowage performed by a stevedore who was engaged by the shipper and over whom the carrier has no control, the carrier is not liable.

[39] §489, 70 AM JUR 2d, citing *Kerry v. Pacific Marine Co.*, 121 Cal 546, 54 P 89.

[40] §375, 70 AM JUR 2d, citing *Standard Oil Co. v. Soderling*, 112 Ind. App. 437, 42 N.E. 2d 373 (1942).

[41] TSN, 5 December 1997, p. 12.

Q Mr. Witness, during the discharging operation of this cargo, where was the master of the vessel?

A On board the vessel, supervising, sir.

Q And, observed the discharging operation?

A Yes, sir.

Q And, what did the master of the vessel do when the cargo was being unloaded from the vessel?

A He would report to the head checker, sir.

Q He did not send the stevedores to what manner in the discharging of the cargo from the vessel?

A *And (sic) head checker po and siyang nagpapatakbo ng trabaho sa loob ng barko, sir.*[42]

x x x x x x x x x

Q Is he [the head checker] an employee of the company?

A He is a contractor/checker of Wallem Philippines, sir.[43]

Moreover, the *liability of Wallem* is highlighted by Mr. Talen's notes in the *Bad Order Inspection*, to wit:

"The bad order torn bags, was due to stevedores[‘] (sic) utilizing steel hooks/spikes in piling the cargo to [the] pallet board at the vessel's cargo holds and at the pier designated area **before** and after **discharged** that cause the bags to torn [*sic*]."[44] (Emphasis supplied)

The records are replete with evidence which show that the damage to the bags happened before and after their discharge[45] and it

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[42] It is the head checker who manages the operations inside the vessel, sir. TSN, 5 December 1997, pp. 13-14.

[43] *Id.* at 14.

[44] Records, p. 130; Exhibit I-f-3.

[45] *Id.* at 132. In Exhibit 1-h there is a surveyor's note which states: the bad order torn bags was due to stevedores mishandling snatching of bags at the inner cargo holds**, before discharge** and the forklift operator in towing the bags to the designated area at pier apron."

In similar tone, in Exhibit 1-j another surveyor's note states: "The bad

was caused by the stevedores of the arrastre operator who were then under the supervision of Wallem.

It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier. In the instant case, the damage or losses were incurred during the discharge of the shipment while under the supervision of the carrier. Consequently, the carrier is liable for the damage or losses caused to the shipment. As the cost of the actual damage to the subject shipment has long been settled, the trial court's finding of actual damages in the amount of ₱397,879.69 has to be sustained.

On the credibility of Mr. Talens which is the fourth issue, the general rule in assessing credibility of witnesses is well-settled:

> x x x the trial court's evaluation as to the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.[46]

Contrary to petitioner's stance on the third issue, Wallem's failure to respond to its demand letter does not constitute an implied admission of liability. To borrow the words of Mr. Justice Oliver Wendell Holmes, thus:

> A man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes

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order torn bags was due to stevedores/winch operator at the inner cargo holds **before discharge** and the forklift operator in towing the bag to the designated area at pier apron after discharged."

[46] *People of the Philippines v. Ramirez*, 334 Phil. 305 citing *People v. Gabris*, G.R. No. 116221, pp. 8-9, 11 July 1996; citing *People v. Vallena*, 244 SCRA 685, 1 June 1995.

to prove the facts [stated therein]. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission.[47]

With respect to the attorney's fees, it is evident that petitioner was compelled to litigate this matter to protect its interest. The RTC's award of ₱20,000.00 as attorney's fees is reasonable.

**WHEREFORE,** the petition is *GRANTED*. The Decision of the Court of Appeals dated 22 June 2004 and its Resolution dated 11 October 2004 are *REVERSED* and *SET ASIDE*. Wallem is ordered to pay petitioner the sum of ₱397,879.69, with interest thereon at 6% per annum from the filing of the complaint on 7 October 1996 until the judgment becomes final and executory. Thereafter, an interest rate of 12% per annum shall be imposed.[48] Respondents are also ordered to pay petitioner the amount of ₱20,000.00 for and as attorney's fees, together with the costs of the suit.

**SO ORDERED.**

*Austria-Martinez,* Corona,** Velasco, Jr.,* and *Brion, JJ.,* concur.

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[47] Cited in *Ravago Equipment Rentals, Inc. v. Court of Appeals*, 337 Phil. 584, 590-591 (1997) citing *A.B. Leach and Co. v. Peirson*, 275 US 120 [1927].

[48] *Supra* note 14.

[*] Additional Member per Special Order No. 593 in lieu of J. Quisumbing who is on official business.

[**] Additional member per Special Order No. 600 in lieu of J. Carpio Morales who is on official business.

**SECOND DIVISION**

[A.C. No. 7732. March 30, 2009]

**RODANTE D. MARCOLETA,** *complainant, vs.* **RESURRECCION Z. BORRA and ROMEO A. BRAWNER,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; AN IMPEACHABLE OFFICER WHO IS A MEMBER OF THE BAR CANNOT BE DISBARRED WITHOUT FIRST BEING IMPEACHED; CASE AT BAR.—** At the outset, the Court, guided by its pronouncements in *Jarque v. Ombudsman*, *In Re: Raul M. Gonzales* and *Cuenco v. Fernan*, has laid down the rule that *an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached*. Complainant's availment of Section 1 (1) of Article IX-C of the Constitution to skirt this rule is specious. It bears emphasis that the provision that majority of Comelec members should be lawyers pertains to the *desired* composition of the Comelec. While the appointing authority may follow such constitutional mandate, the appointment of a full complement of lawyers in the Comelec membership is not precluded. At the time the present complaint was filed, respondents and three other commissioners were all lawyers. As an impeachable officer who is at the same time a member of the Bar, respondent Borra must first be removed from office via the constitutional route of impeachment before he may be held to answer administratively for his supposed errant resolutions and actions.

**2. ID.; ID.; COMMISSION ON ELECTIONS; COMELEC OMNIBUS RESOLUTION; NOT RENDERED NULL AND VOID WITH FAILURE TO RESOLVE A FACTION CONTROVERSY WITHIN THE PRESCRIBED PERIOD IN CASE AT BAR; PROPER REMEDY.—** Respondent Borra having retired from the Comelec does not, of course, necessarily call for the dismissal of the complaint. At the heart, however, of the disbarment complaint is the issuance of Omnibus Resolution of July 18, 2007 penned by respondent Borra when

he was still a member of the Comelec's First Division. The supposed failure of respondent Borra to resolve the controversy between complainant's faction and the other faction of *Alagad* within the prescribed period does not render the Omnibus Resolution null and void. Prescribed periods partake of a directory requirement, given the Comelec's numerous cases and logistical limitations. The Court thus finds respondent Borra's contention that the grounds-bases of the disbarment complaint, fastened on supposed errors of judgment or grave abuse of discretion in the appreciation of facts, are proper for an appeal, hence, complainant's remedy is judicial, not administrative.

**3. ID.; ID.; ID.; OMNIBUS ELECTION CODE; THAT MEMBERS OF THE COMMISSION SHALL BE SUBJECT TO CANONS OF JUDICIAL ETHICS IN THE DISCHARGE OF THEIR FUNCTIONS; ELUCIDATED.—** As for complainant's invocation of Section 58 of Article VII of the Omnibus Election Code reading: The chairman and members of the Commission **shall be subject to the canons of judicial ethics in the discharge of their functions**. x x x the same relates to the quasi-judicial function of the Comelec, which function rests on judgment or discretion, so that while it is of judicial nature or character, it does not involve the exercise of functions of a judge. The same provision thus directs that in the exercise of the Comelec's quasi-judicial power, the chairman and members should be guided by the canons of judicial ethics. It bears emphasis that the New Code of Judicial Conduct for the Philippine Judiciary applies only to courts of law, of which the Comelec is not, hence, sanctions pertaining to violations thereof are made exclusively applicable to judges and justices in the judiciary, not to quasi-judicial officers like the Comelec chairman and members, who have their own codes of conduct to steer them.

**4. ID.; ID.; RETIREMENT BENEFITS; MAY BE RELEASED TO RETIRING GOVERNMENT EMPLOYEE WITH PENDING CASE, AT THE DISCRETION OF THE HEAD OF THE DEPARTMENT CONCERNED.—** As for the release of retirement benefits to respondent Borra, there is nothing irregular therewith, the same being in line with Memorandum Circular No. 10 (series of 1995) of the Office of the Ombudsman reading: x x x a person retiring from the government service, whether optional or compulsory, needs only to present

a certification from this Office whether or not he has a pending criminal or administrative case with it. In the event the certification presented states that the prospective retiree has a pending case, **the responsibility of determining whether to release his retirement benefits, as well as the imposition of necessary safeguards to ensure restitution thereof in the event the retiree is found guilty, rests upon and shall be left to the sound discretion of the head of the department, office or agency concerned.**

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

**CARPIO MORALES, *J.*:**

A Complaint[1] for disbarment was filed by Atty. Rodante D. Marcoleta (complainant) against respondents Commissioners Resurreccion Z. Borra (Borra) and Romeo A. Brawner (Brawner) of the Commission on Elections (Comelec) charging them with violating Canons 1 (1.01, 1.02 and 1.03) and 3 (3.01, 3.02, 3.05 and 3.06) of the Code of Judicial Conduct[2] and Canons 4,

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[1] *Rollo,* p. 1-5.

[2] Canon 1

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

Rule 1.01.—A judge should be the embodiment of competence, integrity, and independence.

Rule 1.02.—A judge should administer justice impartially and without delay.

Rule 1.03.—A judge should be vigilant against any attempt to subvert the independence of the judiciary and resist any pressure from whatever source.

x x x x x x x x x

Canon 3

A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE ADJUDICATIVE RESPONSIBILITIES

Rule 3.01.— A judge shall be faithful to the law and maintain professional competence.

Rule 3.02.— In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

x x x x x x x x x

5, 6 and 17 of the Canons of Judicial Ethics.[3] Additionally, complainant charges respondents of violating Republic Act

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Rule 3.05.– A judge shall dispose of the court's business promptly and decide cases within the required periods.

Rule 3.06.— While a judge may, to promote justice, prevent waste of time or clear up some obscurity, property intervene in the presentation of evidence during the trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of truth.

x x x x x x x x x

[3] x x x x x x x x x

4. Essential conduct

He should be temperate, patient, attentive, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law, diligent in endeavoring to ascertain the facts.

5. Industry

He should exhibit an industry and application commensurate with the duties imposed upon him.

6. Promptness

He should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied.

x x x x x x x x x

17. Judicial opinions

In disposing of controverted cases, judges should indicate the reasons for their action in opinions showing that they have not disregarded or overlooked serious arguments of counsel. They should show their full understanding of the case, avoid the suspicion of arbitrary conclusion, promote confidence in their intellectual integrity and contribute useful precedents to the growth of the law. But the volume of reported decisions is such and is ever so increasing that in writing opinions which are to be published, judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above. It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Therefore, except in case of conscientious difference of opinion on fundamental principle, dissents should be discouraged.

x x x x x x x x x

No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.[4]

During the 2007 National and Local Elections, the warring factions of complainant and Diogenes S. Osabel (Osabel) each filed a separate list[5] of nominees for the party-list group *Alagad*.

With *Alagad* winning a seat in the House of Representatives, the two protagonists contested the right to represent the party. By Omnibus Resolution[6] of July 18, 2007, the dispute was resolved by the Comelec's First Division in favor of Osabel. Commissioner Borra wrote the *ponencia* while Commissioner Brawner concurred.

The dispute was elevated to the Comelec *En Banc* which, by Resolution[7] of November 6, 2007, **reversed** the First Division Resolution and reinstated the certificate of nomination of complainant's group. For failing to muster the required majority voting,[8] however, the Comelec ordered the re-hearing of the controversy. Notwithstanding the conduct of a re-hearing, the necessary majority vote could not still be obtained.[9] The Comelec's First Division's Omnibus Resolution was eventually affirmed.[10] Hence, arose the present complaint for disbarment, complainant alleging as follows:

8. x x x respondents [Borra and Brawner] promulgated a highly questionable and irregular Omnibus Resolution [Annexes "F" and "F-1"], that was characterized by manifest partiality, evident bad faith,

[4] *Rollo*, p. 1.

[5] *Id.* at 6, 9; Annexes "A" and "C" of Complaint.

[6] *Id.* at 26; Annex "F" of Complaint.

[7] *Id.* at 67-80; Annex "J" of Complaint.

[8] Commissioners Borra, Brawner and Rene V. Sarmiento (Sarmiento) dissented while Commissioners Florentino A. Tuason Jr. (Tuason) and Nicodemo T. Ferrer (Ferrer) concurred. The chairman, Benjamin S. Abalos Sr. had resigned at the time.

[9] Commissioners Brawner and Sarmiento maintained their dissent while Commissioner Ferrer maintained his concurrence. Commissioners Borra and Tuason had retired by then.

[10] *Rollo*, pp. 95-98; Order of February 5, 2008 of the Comelec *En Banc*.

and gross inexcusable negligence as evidenced in the **TIMING** and **MANNER** by which the case was eventually disposed by herein respondents in their Division.

9. Respondents deliberately delayed the resolution of the case (from 5 days as mandated under Sec. 8, Rule 18 of the Comelec Rules of Procedure) to nearly 4 months after the same was deemed submitted for decision on March 20, 2007. **The delay was intentional because if the case was resolved before May 14, 2007, [Osabel] will be left alone to campaign for the Party and considering that he is relatively unknown and without resources, certainly he cannot make the Party win**. x x x. **Hence, in first making sure that ALAGAD wins a seat and, thereafter, resolved the case in favor of one who neither campaigned nor spent for it, both respondents subverted and/or frustrated the will of the 423,090 voters who supported ALAGAD and who have always believed that it was complainant who will represent them in the 14th Congress**. This is an extortionate act to say the least!

10. **Even the manner with which the case was disposed is fraught with gross deception and evident manipulation**. First of all, the respondents changed the sole and common issue stipulated by the parties: from one that is central to the complete and final resolution of the controversy, into one that was beyond the Comelec's jurisdiction.

x x x x x x x x x

11. Respondents were evidently in bad faith in muddling the issue (which resulted in an erroneous ruling) x x x.

x x x x x x x x x

13. The assailed 20-page Omnibus Resolution never cited a single law (in violation of Sec. 14, Art. VIII of the Philippine Constitution as well as Rule 18, Sec. 2, last par. of their own Rules) in erroneously ruling that petitioner's resignation cannot be considered because it was not in written form x x x.

14. Both **respondents lied** in actually delving into the root of the parties' conflict despite their avowal to the contrary and in giving *"more credence to the Minutes submitted by [Osabel]"* (Annex "F-13.b") despite their declaration that said **"minutes partisan from the start x x x in a power struggle within the organization, cannot be upheld as faithful depiction of prevailing facts." They also**

**lied in not relying on the Party's Constitution and By-Laws** (CBL), contrary to what they declared to do, when compared to the *En Banc ponencia* [Annex "J"] that reversed their Omnibus Resolution x x x.

x x x x x x x x x

16. Respondent Borra's "dissenting opinion" (if it can be qualified as such) was a mere marginal note, written above his signature that reads: *"In conscience and judiciousness, I vote to affirm the 1st Div. Omnibus Resolution."* x x x.

17. Respondent Borra knows only too well that all cases are decided and affirmed on the basis of evidence, not on conscience. For conscience is that instantaneous perception of right or wrong that can only be summoned by the spirit being a part of the Divine Wisdom. x x x.

18. It was clearly evasive for respondent Borra to use the absurd excuse "*in conscience and judiciousness*" to free himself from the mandatory submission of a separate dissenting opinion x x x.

x x x x x x x x x

20. Respondent Brawner's **Dissenting Opinion** [Ref. Annex "I"], on the other hand, only confirmed his leaning and partiality towards [Osabel] as clearly shown by his shallow disquisition, if not twisted, dissent. x x x.

21. Respondent Brawner's irresponsible claim (on page 4) that "all official records of ALAGAD's proceedings point out to Osabel's continuing as ALAGAD's President" and "the recent decision in SPA No. 04-153 dated June 12, 2007 prove the continuing stature of Osabel as ALAGAD President" is not supported by facts. x x x. Thus, it was reckless, if not unthinkable, for Brawner to have ascribed "continuing stature" upon petitioner based on a "position" appearing in the title [Annex "O-1"] of a different and old case that was disposed only recently. This ruse is gobbledygook, plain and simple! [*Padua v. Robles*, 66 SCRA 488].

x x x (Emphasis, underscoring and italics in the original)

Complainant filed a Supplemental Complaint[11] on February 12, 2008, this time charging respondent Brawner of "tamper[ing]

[11] *Id.* at 91-94.

the record of the proceedings in [SPA No. 07-020]" by falsely alleging in an Order dated February 5, 2008 that there had been a re-hearing; that both parties had agreed to simultaneously file their memoranda during the re-hearing; and that the parties filed their respective memoranda.

Respondent Brawner, in his Answer[12] dated April 2, 2008, asserted in the main that "the remedy of complainant is not to file a complaint for disbarment, but to file an appeal before [the Supreme Court] *via* [p]etition for *[c]ertiorari*," and that being members of a constitutional body enjoying presumption of regularity in the performance of their functions, he and co-respondent Borra "are supposed to be insulated from a disbarment complaint for being impeachable officers."

In his Comment,[13] respondent Borra contends that the Code of Judicial Conduct and Canons of Judicial Ethics cannot be made to apply to him and his co-respondent, they not being members of the judiciary; and that since they perform quasi-judicial functions as well as administrative duties, they are bound by the Comelec's own set of internal rules and procedure over and above a Code of Conduct that prescribes the norms and standards of behavior to be observed by the officials and employees of the Comelec, a constitutional body.

Respondent Borra further contends that the present complaint is premature as "the validity and legality of the resolutions are still subject to review;" and that the complaint is meant to "harass [him] and punish him for exercising his judgment on the case filed before him."

To respondents' Answer and Comment, complainant filed Replies,[14] alleging that respondents cannot take refuge in their being impeachable public officers to insulate them from any disbarment complaint. To complainant, "the insulation from disbarment complaint of impeachable public officers when referring particularly to the members of the [Comelec] applies

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[12] *Id.* at 155-161.

[13] *Id.* at 162-169.

[14] *Id.* at 178-216.

only to the 'majority' of its members who should all be members of the Philippine bar," citing Section 1 (1) of Article IX-C of the Constitution.[15]

Complainant goes on to charge respondent Borra of violating Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act for collecting his retirement benefits "hurriedly despite knowledge of the existence of criminal and administrative charges against him." Additionally, he charges respondents of culpable violation of the Constitution when they, together with the other members of the Comelec, adjusted their compensation scheme under Resolution No. 7685.[16]

The Court takes notice that respondent Borra retired from the Comelec on February 2, 2008 while respondent Brawner passed away on May 29, 2008.

As regards respondent Brawner then, the present case is already moot.

At the outset, the Court, guided by its pronouncements in *Jarque v. Ombudsman*,[17] *In Re: Raul M. Gonzales*[18] and *Cuenco v. Fernan*,[19] has laid down the rule that *an impeachable officer*[20]

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[15] Section 1. (1) There shall be a Commission on Elections composed of a Chairman and six Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, holders of a college degree, and must not have been candidates for any elective position in the immediately preceding elections. However, a majority thereof, including the Chairman, shall be members of the Philippine Bar who have been engaged in the practice of law for at least ten years.

[16] Entitled "IN THE MATTER OF ADJUSTING THE COMPENSATION SCHEME OF THE CHAIRMAN AND THE COMMISSIONERS PURSUANT TO EXISTING COMPENSATION SCHEMES FOR PURPOSES OF RETIREMENT" promulgated on July 11, 2006.

[17] A.C. No. 4509, December 5, 1995, 250 SCRA xi.

[18] A.M. No. 88-4-5433, April 15, 1988, 160 SCRA 771.

[19] A.C. No. 3135, February 17, 1988, 158 SCRA 29.

[20] Section 2 of Article XI of the Constitution states that: "The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office,

*who is a member of the Bar* cannot be disbarred without first being impeached. Complainant's availment of Section 1 (1) of Article IX-C of the Constitution to skirt this rule is specious.

It bears emphasis that the provision that majority of Comelec members should be lawyers pertains to the *desired* composition of the Comelec. While the appointing authority may follow such constitutional mandate, the appointment of a full complement of lawyers in the Comelec membership is not precluded.

At the time the present complaint was filed, respondents and three other commissioners[21] were all lawyers. As an impeachable officer who is at the same time a member of the Bar, respondent Borra must first be removed from office via the constitutional route of impeachment before he may be held to answer administratively for his supposed errant resolutions and actions.

Respondent Borra having retired from the Comelec does not, of course, necessarily call for the dismissal of the complaint. At the heart, however, of the disbarment complaint is the issuance of Omnibus Resolution of July 18, 2007 penned by respondent Borra when he was still a member of the Comelec's First Division.

The supposed failure of respondent Borra to resolve the controversy between complainant's faction and the other faction of *Alagad* within the prescribed period does not render the Omnibus Resolution null and void. Prescribed periods partake of a directory requirement, given the Comelec's numerous cases and logistical limitations.[22]

The Court thus finds respondent Borra's contention that the grounds-bases of the disbarment complaint, fastened on supposed errors of judgment or grave abuse of discretion in the appreciation

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on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[21] Commissioners Tuason Jr., Ferrer and Sarmiento. Resigned chairman Abalos Sr. is likewise a lawyer by profession.

[22] *Vide*: *Alvarez v. Comelec*, G.R. No. 142527, March 1, 2001, 353 SCRA 434, 437.

of facts, are proper for an appeal, hence, complainant's remedy is judicial, not administrative.

As for complainant's invocation of Section 58 of Article VII of the Omnibus Election Code[23] reading:

> The chairman and members of the Commission **shall be subject to the canons of judicial ethics in the discharge of their functions**.
>
> x x x (Emphasis and underscoring supplied),

the same relates to the quasi-judicial function of the Comelec, which function rests on judgment or discretion, so that while it is of judicial nature or character, it does not involve the exercise of functions of a judge.[24]

The same provision thus directs that in the exercise of the Comelec's quasi-judicial power, the chairman and members should be guided by the canons of judicial ethics. It bears emphasis that the New Code of Judicial Conduct for the Philippine Judiciary[25] applies only to courts of law, of which the Comelec is not, hence, sanctions pertaining to violations thereof are made exclusively applicable to judges and justices in the judiciary, not to quasi-judicial officers like the Comelec chairman and members, who have their own codes of conduct to steer them.

Even if the Court were to gauge the assailed actions of respondent Borra under the Code of Professional Responsibility, no specific incidents and sufficient evidence can be gathered to show that respondent did engage in dishonest, immoral or deceitful conduct in his capacity as a lawyer. It bears reiteration that the acts particularized in the complaint pertain to respondent Borra's duties as a Comelec commissioner.

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[23] Batas Pambansa Bilang 881.

[24] *Sandoval v. Comelec*, G.R. No. 133842, January 26, 2000, 323 SCRA 403, 423.

[25] In AM No. 03-05-01-SC dated April 27, 2004, the Court promulgated the "NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY," which took effect on June 1, 2004. THE CANONS OF JUDICIAL ETHICS and the CODE OF JUDICIAL CONDUCT shall be applied in a suppletory character in case of deficiency or absence of specific provisions in the New Code.

As for the release of retirement benefits to respondent Borra, there is nothing irregular therewith, the same being in line with Memorandum Circular No. 10 (series of 1995) of the Office of the Ombudsman reading:

> x x x a person retiring from the government service, whether optional or compulsory, needs only to present a certification from this Office whether or not he has a pending criminal or administrative case with it. In the event the certification presented states that the prospective retiree has a pending case, **the responsibility of determining whether to release his retirement benefits, as well as the imposition of necessary safeguards to ensure restitution thereof in the event the retiree is found guilty, rests upon and shall be left to the sound discretion of the head of the department, office or agency concerned**. (Emphasis and underscoring in the original)

Interestingly, while complainant singled out the participation of respondents Borra and Brawner in the promulgation of the questioned resolutions, he spared the other commissioners who were also signatories to the resolutions.

**WHEREFORE,** the complaint for disbarment against now deceased Comelec Commissioner Romeo Brawner is *DISMISSED* for being moot. That against Commissioner Resurreccion Borra is likewise *DISMISSED* for lack of merit.

**SO ORDERED.**

*Quisumbing (Chairperson), Tinga, Velasco, Jr.,* and *Peralta,* JJ.,* concur.

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* Additional member per Special Order No. 587 dated March 16, 2009 in lieu of the leave of absence due to sickness of Justice Arturo D. Brion.

**SECOND DIVISION**

[A.M. No. RTJ-07-2052. March 30, 2009]

**LORENA P. ONG,** *complainant, vs.* **JUDGE OSCAR E. DINOPOL, Regional Trial Court, Branch 24, Koronadal City, South Cotabato,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; SUBSTANTIAL EVIDENCE REQUIRED AGAINST PRESUMPTION OF REGULAR PERFORMANCE OF JUDGE'S FUNCTION IN CASE AT BAR.—** The established rule is that in administrative proceedings, the complainant bears the onus of proving, in general by substantial evidence, the allegations in the complaint. Such burden must overcome the presumption of regularity in the performance of a judge's functions. The presumption necessarily springs from a judge's solemn oath of office to administer justice according to the law and evidence, without respect to any person and without fear or favor.

**2. ID.; ID.; JUDGES; ERRORS IN JUDICIAL DISCRETION WARRANTS JUDICIAL, NOT ADMINISTRATIVE RECOURSE.—** From a consideration of complainant's second ground of her complaint *vis-a-vis* respondent's explanation thereon, the Court finds that complainant is assailing the correctness of respondent's exercise of judicial discretion in issuing the questioned Order of September 22, 2005. Any perceived errors in the exercise of such discretion cannot be reviewed and corrected through the present administrative case, however, but via judicial recourse, such as an appeal or a petition for *certiorari*, which is an adequate remedy in law. As the Court finds no appreciable presence of fraud, dishonesty, corruption or bad faith, the acts of respondent rendered in his judicial capacity are not subject to disciplinary action, even if they are erroneous. That respondent had previously ruled in favor of complainant in fact dispels complainant's charge that he is biased.

**APPEARANCES OF COUNSEL**

*Cecille E. Diel* for complainant.
*Palamine & Pacana Law Office* for respondent.

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

**CARPIO MORALES, *J.*:**

The present administrative case arose in the course of the proceedings in Civil Case No. 1632, "*Lorena P. Ong, Plaintiff, v. Domingo Ong, Defendant*" (the civil case), an action for declaration of nullity of marriage or legal separation and damages filed before the Regional Trial Court (RTC), Koronadal City and raffled to Branch 24 thereof, presided over by Judge Oscar E. Dinopol (respondent).

In the course of the trial of the civil case, the therein plaintiff-herein complainant Lorena P. Ong filed on April 1, 2005 a motion for the issuance of a "protection order"[1] praying for the custody of her two children, Lorenzo Ruiz Ong[2] and Maria Monica Loren Ong,[3] then 10 and 4 years old, respectively, and support from her husband-therein defendant Domingo Ong (Domingo).

By Order[4] of June 23, 2005, respondent ordered Domingo to turn over to complainant the custody of Maria Monica Loren. During the pendency of the hearing on the custody of Lorenzo Ruiz, Domingo sought reconsideration of the June 23, 2005 Order, but it was denied by Order of September 15, 2005.[5]

After the issuance of the September 15, 2005 Order, respondent interviewed the parties' children the result of which is incorporated in his Order[6] dated September 22, 2005, *viz*:

[1] *Rollo*, pp. 28-30. While the motion was so captioned, the prayer therein was limited only to the custody and support of the children.

[2] Born on July 6, 1994.

[3] Born on April 29, 2000.

[4] *Id.* at 32.

[5] *Id.* at 39.

[6] *Id.* at 40.

In the working area of the staff of RTC Branch 24 and in their presence, the Presiding Judge past 10:00 a.m. of September 15, 2005 conducted an unannounced interview of the children of the parties for about 30 minutes and discovered that both children, in spite of the encouragement of the Presiding Judge, refused to sleep with their mother, plaintiff in this case, they apparently are well treated and cared of by their father while they are forced to do things by their mother. It also appeared from the manifestation in court by counsel for the plaintiff that the latter is enrolled in a nursing school that required her to devote her quality time in school and away from her children. (Underscoring supplied)

By said Order of September 22, 2005, respondent thus set aside his June 23 and September 15, 2005 Orders, disposing as follows:

ACCORDINGLY, as the children are bound to be in the custody of plaintiff for a minimal period each day, and considering the paramount interest of the children who should not be further traumatized as narrated by them, the previous order denying the motion for reconsideration is hereby set aside. Meantime, let a *status quo ante* before the filing of this case be maintained and custody of the children remain temporarily with defendant until the hearing on 19 January 2006, subject to the inherent right of plaintiff to be with her children, but not forcing them to sleep with her. The parties are likewise encouraged to attend to their Sunday obligations as a family. (Underscoring supplied)

Complainant filed a motion for reconsideration[7] of this Order. In the meantime, respondent issued an Order[8] dated February 22, 2006 directing the court-appointed Social Welfare Officer, Hidelisa O. Soria (Soria), to conduct a child study report on the minor children and recommend who, between their parents, would have preliminary custody over them.

In her Social Case Study Report,[9] Soria recommended that: **(1)** both complainant and Domingo "must undergo and submit themselves to a Neuro-Psychiatric Evaluation and Therapy and

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[7] *Id.* at 41-44.

[8] *Id.* at 45.

[9] *Id.* at 46-54.

be referred to Dra. Agnes Padilla, Department Head, Davao Medical Center, Psychiatry Department, JP Laurel Avenue, Davao City," and **(2)** both children will remain under the custody of their father, Domingo, during school days from Monday to Friday afternoon, and of their mother from Friday evening to Sunday, the arrangement to be implemented on "a six months (6) trial custody to prevent a traumatic turn-over of the minors, considering that solidarity between father-son-daughter relationships is visibly intact." In the same Report, Soria manifested that she would submit a progress report after six months to determine who shall have permanent custody of the children.

By Order[10] of August 17, 2006, respondent approved Soria's recommendation. To this Order Domingo filed a motion for reconsideration, praying that complainant should be given custody over their children only on Sundays since "during Saturdays they (children) still need to wind up their academic activities and requirements, which they can do well if they are in the place they consider a home – where defendant and the children are staying." Domingo capped his motion, though, by imploring complainant that "with open arms, they are still waiting for [her] to come home and stay with him and their children."[11] Complainant opposed the motion.

Respondent thereupon issued an Order[12] dated August 25, 2006 modifying the schedule of custody by giving 1) complainant

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[10] *Id.* at 55-56.

[11] *Id.* at 57-62.

[12] *Id.* at 63-66. The dispositive portion of the Order reads:

ACCORDINGLY, the defendant is hereby directed to allow plaintiff to take custody of the minor children starting not later than eight (8) o'clock in the morning of August 26, 2006 and every Saturday thereafter, for a period of three (3) months reckoned from August 26, 2006. In like manner, plaintiff shall allow defendant to recover custody of the children not later than seven (7) o'clock in the morning of August 28, 2006 and every Monday thereafter. In the alternate custody of the parties, the other shall have visitorial rights over the children.

Meantime, as directed in paragraph No. 1 of the order, the parties are directed to undergo the court sought Neuro Psychiatric Evaluation, within twenty [four] (24) hours upon notice, by Dra. Agnes Padilla. The court, however,

custody of the children from 8:00 o'clock in the morning of Saturday, beginning August 26, 2006 and every Saturday thereafter, until 7:00 o'clock Monday morning of August 28, 2006, and every Monday thereafter; and 2) Domingo custody from 7:00 o'clock Monday morning of August 28, 2006 and every Monday thereafter, until 8:00 o'clock of Saturday morning, and every Saturday thereafter. The Order stated that the alternate custody scheme was only for a three-month trial period.

Significantly, complainant did not file any motion for reconsideration of the August 25, 2006 Order.

Perceiving, however, that respondent had become "patently partial in favor of [Domingo]," complainant filed on September 15, 2006 a motion for inhibition[13] of respondent from further hearing the case, which motion she set for hearing on September 22, 2006.

Respondent set the hearing of the motion for inhibition, however, to November 16, 2006 as he ordered Domingo to comment thereon.[14]

Before her motion for inhibition could be heard, however, complainant filed on October 31, 2006 the present verified letter-complaint[15] dated October 25, 2006 against respondent charging him for: **(1)** *gross violation of Sections 18,*[16] *20*[17]

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earnestly admonishes the parties to comply with their Sunday (spiritual) obligations together.

SO ORDERED.

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

[14] *Id.* at 71.

[15] *Id.* at 73-79.

[16] **Section 18.** Mandatory Period for Acting on Application for Protection Order. – Failure to act on an application for a protection order within the reglementary period specified in the previous section without justifiable cause shall render the official or judge administratively liable.

[17] **Section 20.** Priority of Application for a Protection Order. – *Ex-parte* and adversarial hearings to determine the basis of applications for a protection order under this Act shall have priority over all other proceedings. *Barangay* officials and the courts shall schedule and conduct hearings on applications for a protection order under this Act above all other business and, if necessary, suspend other proceedings in order to hear applications for a protection order.

*and 28*[18] *of Republic Act No. 9262* (otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004"); **(2)** *gross violation of judicial ethics and knowingly rendering an unjust judgment relative to Civil Case No. 1632*; and **(3)** *unduly and unreasonably delaying the resolution of her motion to inhibit*. She prayed that respondent "be administratively investigated and sanctioned" and, "in the meantime, be directed to inhibit himself from further hearing [the civil] case due to obvious partiality."

By 1st Indorsement[19] dated November 2, 2006, complainant's letter-complaint was endorsed by the Office of the Chief Justice for appropriate action to the Office of the Court Administrator (OCA).

In the meantime, Domingo submitted in the civil case his comment[20] on complainant's motion for inhibition, disputing complainant's charge of partiality on the part of respondent towards him, contending that respondent's orders were properly issued in the exercise of his sound discretion.

By Order[21] of November 3, 2006, respondent denied complainant's motion for reconsideration of the September 22, 2005 Order, as well as her motion for inhibition. Complainant filed a motion for reconsideration of the Order of November 3, 2006, stressing that with her filing of the present administrative complaint, respondent "should inhibit himself from further hearing the civil case."[22] This motion was denied by Order[23] dated January 3, 2007.

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[18] **Section 28.** Custody of Children. – The woman victim of violence shall be entitled to the custody and support of her grandchildren. Children below seven (7) years old or older but with mental or physical disabilities shall automatically be given to the mother, with right to support, unless the court finds compelling reasons to order otherwise.

[19] *Rollo*, p. 72.

[20] *Id.* at 213-214.

[21] *Id.* at 215-217.

[22] *Id.* at 218-220.

[23] *Id.* at 222-225.

Back to the administrative complaint, respondent, in compliance with the directive[24] of the OCA, filed his Answer/Comment[25] thereon dated January 12, 2007 denying the charges leveled against him and praying that the complaint be dismissed for being totally unfounded.

By Resolution of June 13, 2007, this Court's Second Division referred the administrative case to Executive Justice Teresita Dy-Liacco Flores of the Court of Appeals (CA), Mindanao Station, for assignment by raffle among the associate justices there, and for investigation, report and recommendation. The case was raffled to Associate Justice Edgardo A. Camello.

By his December 14, 2007 Investigation Report, Justice Camello recommended the dismissal of the administrative complaint "for insufficiency of evidence,"[26] Nevertheless, he went on to recommend that "respondent should be strongly reminded to refrain from entertaining litigants outside the court premises to avoid any suspicion of impropriety,"[27] in light of respondent's admission in his Affidavit proffered during the hearing of the administrative complaint, *viz*: that "Domingo Ong visited [his] house one evening complaining that he had been deceived by his counsel and Lorena Ong because sometime in December 2006, while he and his wife Lorena were observing the alternate shared custody of their minor children, his lawyer told him to allow Lorena to take custody of Lorenz during the Christmas break, and assured him that Lorena will return the child to him," but that "since February 11, 2007, Lorena did not anymore return Lorenz until [that day]"; and that again, "on September 4, 2007, Domingo Ong visited [his] house to complain that Lorena brainwashed Lorenz against [him] because Lorenz suddenly turned against him and did not anymore return to him."[28]

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[24] *Id.* at 142.

[25] *Id.* at 145-160.

[26] Investigation Report, p. 36.

[27] *Ibid.*

[28] *Rollo,* pp. 317-318.

Thus, the Investigating Justice reported:

> Parenthetically, the admission made by respondent in his affidavit that one of the parties in Civil Case No. 1632-24, Domingo, visited him twice in his residence during the pendency of the case below should not be taken against him for purposes of the present administrative charge. That matter was not even alleged in the complaint. It was the respondent who volunteered the information in his affidavit presented during the hearing in order to prove that he is hiding nothing and to prove that he is impartial in the discharge of his duties as judge. x x x. Domingo's visits (sometime in March or April 2007 and on September 4, 2007) to the house of respondent took place long after the happening of the following material events to the case, *i.e.*, issuance of the assailed Order, the filing of the motion for inhibition, the denial of the motion for inhibition and the filing of this administrative case before the Office of the Court Administrator. Apparently, the purpose of Domingo's visit was to complain to the respondent about what Domingo perceived as connivance between his lawyer and complainant Lorena, which resulted in the refusal of minor Lorenzo Ruiz to be under his custody, a situation discordant to the court-ordered shared custody over the feuding couple's children for the three-month trial period. The complainant presented no proof that the visits of Domingo were upon the prodding of the respondent. The circumstances *per se* could hardly be equated with the improper conduct of fraternizing with litigants. Still and all, the broad injunction of *Section 1, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary* that judges should avoid impropriety and the appearance of impropriety in all their activities, warrants a strong reminder to the respondent that he should in the future refrain from entertaining any party to a case pending before his sala outside the court premises most especially in his own residence, for no matter how innocent such act might be in truth, the probability of its being publicly perceived as malicious is not remote at all. x x x. Like Caesar's wife, a judge must not only be pure but beyond suspicion (*State Prosecutors v. Muro*, A.M. No. RTJ-92-876, Sept. 19, 1994 (Underscoring supplied).[29]

The recommendation is well-taken.

The established rule is that in administrative proceedings, the complainant bears the onus of proving, in general by substantial

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[29] Investigation Report, pp. 33-34.

evidence, the allegations in the complaint.[30] Such burden must overcome the presumption of regularity in the performance of a judge's functions. The presumption necessarily springs from a judge's solemn oath of office to administer justice according to the law and evidence, without respect to any person and without fear or favor.[31] Complainant failed to discharge the onus, however.

Under the first ground of her complaint, complainant alleged that respondent "grossly violated" R.A. No. 9262, specifically **Sections 18** (requiring prompt action for any application for protection order), **20** (treating an application for a protection order a priority over all other cases) and **28** (granting to the mother automatic custody of "children below seven years old or older but with mental or physical disabilities," "unless the court finds compelling reasons to order otherwise").

Complainant contradicted herself, however, when she stated in her complaint that upon filing her motion for protection order, which mainly prayed that the custody of her children be given to her, respondent acted properly, thus:

> When I filed through my counsel a motion for provisional remedies among others, the custody of my children especially Maria Monica Loren who is still below seven years old, Judge Dinopol was initially on the right tract (*sic*). He issued an order dated April 19, 2005 giving the defendant, my husband, five days from receipt of the order to show cause why the custody of my children should not be given to me as provided for in Article 213 of the Family Code x x x. On June 23, 2005, he issued an order directing the defendant to turn over to me the custody of my daughter Monica Loren Ong x x x. I even started to testify in court insofar as the prayer for the custody of my son, Lorenzo Ruiz Ong who is already over seven years old, is concerned. On July 14, 2005, defendant through his counsel filed

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[30] *Datuin, Jr. v. Soriano*, A.M. No. RTJ-01-1640, October 15, 2002, 391 SCRA 1, 5, citing *Lorena v. Encomienda*, 302 SCRA 632, 641 (1999) and *Office of the Court Administrator v. Sumilang*, 271 SCRA 316, 324 (1997).

[31] *Datuin, Jr. v. Soriano*, *id.*, citing *Soriano v. Angeles*, 339 SCRA 366, 375 (2000); *People v. Kho*, G.R. No. 139381, April 20, 2001, 357 SCRA 290, citing *Go v. CA*, 221 SCRA 397 (1993).

a motion for reconsideration of the order dated June 23, 2005 x x x. The motion was denied in Judge Dinopol's order dated September 15, 2005 x x x.[32] (Underscoring supplied)

Complainant anchors the second ground of her complaint on respondent's issuance of the Order of September 22, 2005 giving back the temporary custody of the children to Domingo "until the hearing on January 19, 2006." She contends that respondent grossly violated judicial ethical standards and knowingly rendered an unjust judgment in the civil case, thus:

x x x. In the order dated September 22, 2005, Judge Dinopol made a sudden turn around and revised his previous orders granting me the custody of my daughter who is below seven years old. His reason was his alleged "unannounced interview" with the children on September 15, 2005 x x x where the children expressed their desire to stay with their father and that I could not devote my quality time with the children because I was enrolled at a nursing school. I had gone over the Rules on Civil Procedure and other provisions of the Rules of Court, but I had never encountered such procedures as "unannounced interview" which was conducted by Judge Dinopol. x x x. It is obvious that the "unannounced interview" was made as a result of the out-of-court discussion of defendant's counsel and Judge Dinopol, a gross violation of judicial ethical standards. x x x. The other reason for Judge Dinopol's reversal of his previous orders that I could not devote quality time with my children because I was enrolled in a nursing school is illogical. x x x.[33] (Underscoring supplied)

Refuting complainant's charge, respondent narrated the circumstances leading to the issuance of his Order of September 22, 2005:

But, while the order (dated June 23, 2005) transferring temporary custody of Ma. Monica to complainant was signed due to lack of opposition from Domingo, the Court pursuant to the last paragraph of Article 213, Civil Code and Article 8 of P.D. No. 603, still made known its intention to interview the children.

COURT:

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[32] *Rollo*, p. 75.

[33] *Id.* at 75-76.

x x x x x x x x x

And bring the children next hearing. [TSN, June 23, 2005, p. 40; underscoring supplied]

x x x x x x x x x

ATTY. IGNES:

We just want to be clarified. Who among the parties will bring to Court the children?

COURT:

On August 3, the two (2) children should be also in Court. The parties are directed to bring Lorenzo Ruiz and Monica Loren. [*Ibid*., p. 42]

Unfortunately, further testimony of Lorena on August 3, 2005 was reset to September 15, 2005 (Annex "1"). On September 15, 2005 the parties moved for a joint resetting to January 19, 2006 (Annex "2"), and the court issued an Order (Annex "3") on even date denying the motion for reconsideration filed by Domingo Ong. When respondent went out of his chamber, his staff informed him of the presence of the two minors, and without much thought he started talking to both minors. He encouraged them to be with their mother who loves them and that they should sleep with her. Respondent was shocked how the minors resisted being and sleeping with their mother. Your respondent obtained by himself from the mouth of the two minors their desire not to be with their mother and instead expressed to continue living with and be with their father. The revelation of the minors, indeed, affirmed the testimony of Lorena on June 23, 2006 that her daughter did not like her either. These are her declarations:

Q [to herein complainant]

How is your relationship with Ma. Monica your younger child?

A She doesn't want to go with me. She was so attached to the father because everything was given to her, not in my case that I have to discipline her.

Q What do you mean by everything is given to her by the father?

A She is spoiled.

Q Did you ever try to relate to your daughter?

A Yes, but because most often I spent less time than the father, I am in Tacurong and the father is always in Marbel same house, same work, so they are more close.

Q Was there ever a time that you wanted to hug your daughter or take her into your arms?

A Yes, but she refused like lately she doesn't want to sit with me any more then I come to her and she will say, "Daddy, *daddy nandiyan si Mommy*." I tried twice. I went inside the room they saw me and they locked immediately the room.

Q You wanted to get near them they hid inside the bathroom and locked it?

A Yes, sir.

Q Did they say anything to you?

A "*Bawal pumasok daw*," *sir*.

x x x x x x x x x

Q How does the child talk to you?

A Very impolite, sir.

Q What does she say to you?

A "*Ayaw ko sa 'yo*." She doesn't even talk. She just ran away. She would not even play with me unless the mother would insist (mother of Domingo).

x x x [*Id*., pp. 32-34; underscoring supplied]

COURT:

x x x x x x x x x

Q The Court is curious. I noted in your marriage contract that you are a Catholic. Do you attend mass every Sunday with your children?

A Before I used to go with them but later on after that incident I did not anymore because there is no point going with them particularly to my husband.

Q But in what year, if you could remember you stopped going to mass together with your family?

A Two (2) years after the birth of Monica, sir.

x x x x x x x x x

Q Who usually invites that the whole family will go to church on Sunday?

A The respondent because after the mass I have to go back to work on Sunday. [*Id*., pp. 30-31; underscoring supplied]

Given these declarations of complainant Lorena in Court admitting the dislike of her children to sleep with her and which her said children similarly expressed to herein respondent in his presence after conducting an interview on September 15, 2005, respondent was personally caught in opposing sides of sympathy with Lorena and the future growth of her children. There being a compelling reason, it was the view of respondent that a phased or gradual transfer of custody to her without drastically imposing a condition that would further traumatize the children in case of sudden turn over of custody was a practical option beneficial to Lorena and her minor children. And so, after seriously evaluating the rights of Lorena and her children, on September 22, 2005, respondent issued the contested order ordering a status quo ante. To further ascertain the true relationship of the children with Lorena, after the latter's counsel filed a motion for reconsideration, respondent ordered on February 22, 2006 the court-appointed social worker to conduct a child study report to be submitted in 30 days, but on May 12, 2006 (Annex "4") the social worker asked an extension of 90 days. The Court on June 20, 2006 directed the social worker to submit the report until September 7, 2006. Curiously enough, even the social worker in her eight (8)-page report recommended (Annex "5") that –

x x x x x x x x x[34]

From a consideration of complainant's second ground of her complaint *vis-a-vis* respondent's explanation thereon, the Court finds that complainant is assailing the correctness of respondent's exercise of judicial discretion in issuing the questioned Order of September 22, 2005. Any perceived errors in the exercise of such discretion cannot be reviewed and corrected through the

[34] *Id.* At 147-151.

present administrative case, however,[35] but via judicial recourse, such as an appeal or a petition for *certiorari*, which is an adequate remedy in law.[36]

As the Court finds no appreciable presence of fraud, dishonesty, corruption or bad faith, the acts of respondent rendered in his judicial capacity are not subject to disciplinary action, even if they are erroneous.[37] That respondent had previously ruled in favor of complainant in fact dispels complainant's charge that he is biased.[38]

Complainant's charge that respondent knowingly rendered an unjust "judgment" is unsubstantiated. Suffice it to say that there is no judgment or decision to speak of as the proceedings in the civil case have, at the time the present complaint was filed, been on-going.

As for complainant's charge that respondent is "unreasonably delaying the resolution of [her] motion to inhibit" by still "granting defendant [Domingo] fifteen (15) days to comment [thereon] without the [latter] asking for it,"[39] the same fails. She herself set her motion for inhibition for hearing. It was just fair for respondent to hear Domingo's side.

**WHEREFORE,** the complaint against respondent is *DISMISSED*. He is *REMINDED* and *WARNED*, however, against entertaining litigants outside the court premises, failing which he could be faulted.

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[35] *Dionisio v. Escano*, A.M. No. RTJ 98-1400, February 1, 1999, 302 SCRA 411, 422.

[36] *Claro v. Efondo*, A.M. No. MTJ-05-1585, March 31, 2005, 454 SCRA 218, 226, citing *De Guzman v. Pamintuan*, A.M. No. RTJ-02-1736, June 26, 2003, 405 SCRA 22; *People v. Kho*, G.R. No. 139381, April 20, 2001, 357 SCRA 290, 298.

[37] *Datuin, Jr. v. Soriano, supra*, citing *Canson v. Garchitorena*, 311 SCRA 268, 287 (1999); *Causin v. Demecilio*, A.M. No. RTJ-04-1860, September 8, 2004, 437 SCRA 594, 606; *Rondina v. Bello, Jr.*, A.M. No. CA-05-43, July 8, 2005, 463 SCRA 1, 14.

[38] *People v. Kho*, *supra* at 298.

[39] *Rollo*, p. 17.

**SO ORDERED.**

*Quisumbing (Chairperson), Velasco, Jr., Nachura,** and *Brion, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 173279. March 30, 2009]

**MOTOROLA PHILIPPINES, INC. and/or SCG PHILIPPINES, INC., ROMERICO S. SERRANO, DANIEL JAVELOSA, ALFRED GAMBOL, ANN DALUPAN and JOSEPH JACOBSON,** *petitioners, vs.* **IMELDA B. AMBROCIO, AMELITA ALAO, MERLE ALMASCO, LIBRADA C. ACEBES, ELVIRA C. ANULAT, FE ARAGON, CARINA D. ARGAME, MA. TERESA R. ALMARIO, ISIDORA S. ALMENDRAS, ARLENE C. ALINDAY, EDNA B. ASIATICO, SUSANA AGUILON, MELINDA A. BALLON, ANNABELLA T. BRAVO, FEROLYN H. BACO, LOIDA A. BONSOL, MA. LUISA L. BONAOBRA, TERESITA BELBES, EMILIANA C. CARRAO, MA. CRISTINA L. CARINO, ERLINDA T. CARIGMA, DAISY E. CAPUNO, IMELDA S. CAGUIOA, AMELIA E. CASTRO, ROSEMARIE B. CASICAS, CARMELITA B. CASTILLO, FLORA O. CABRERA, MERLINDA B. CAJILIG, CRISELDA D. CAINGLET, ROSITA B. CERBAS, MA. VICTORIA R. CERRER, MARILOU T. COSCOS, SILVIA S. CUNANAN, PERLITA CIELO, TERESITA B. CRUZ, LUZVIMINDA E. CELIS, RUFINA T. CRUZ, YOLANDA D. CONSTANTINO, ANABELEN CANAPI, JOCELYN CHALAN,**

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* Additional member per Special Order No. 571 dated February 12, 2009 in lieu of Justice Dante O. Tinga who is on official leave.

**MAYDELYN C. DAYAO, ERLINDA M. DAJAO, BRIGIDA R. DE CHAVEZ, MERLE E. DE LOS SANTOS, CRISTINA C. DUPAYA, CERLY B. DISTOR, YOLANDA A. DIONISIO, GLORIA R. DAIGDIGAN, YOLANDA DE JESUS, HAYDEE G. DE LEON, MERCEDITA M. DELGADO, ROSALINDA B. DEL ROSARIO, CRISTINA D. ENTUCIASMO, EUGENIA G. ENRIQUES, ELIZABETH G. FRANCIA, FLORDELINA B. FLORES, LEDILLA DARDE, ROSALIDAR R. GARCIA, REMEDIOS B. GALMAN, CURINA F. GAMA, ELISA G. GUSTILO, ISABELITA A. GAGARIN, SERENA G. GENTOLLANES, MA. EMELITA T. GUARIN, ANNE C. GONZALES, ARCILLA G. GLORIA, DOROTEA T. HAMILE, RIZALINA CARAMAT, ERLINDA DEUDA, DOMINGA ILAO, NAZARIA P. HERNANDEZ, EDITHA P. JAUDALSO, CELEDONIA LAPUZ, JOSEPHINE T. LAGUNERO, OLIVIA O. LABRADOR, EMELITA G. LEGASPI, WILMA G. LEMONCITO, CARLINA R. LIRAZAN, LUISA R. LOYOLA, JEAN S. LOZANO, MA. TERESA R. LIZARDO, NENA L. MARCELO, CORAZON R. MATEO, GUADALUPE T. MAYNIGO, LOLITA C. MALLILLIN, HELEN Q. MERCADO, TERESITA L. MEDIADO, ERLINDA G. MECUA, EDITHA M. MERCADO, DORIS V. MADARANG, LOIDA G. MALLARI, MARILOU C. MARTINEZ, LUCIA C. MANALO, RUBY M. MAMARIL, ANITA C. MEDALLA, LTA M. MEJIA, MARY A. MINA, GLORIA M. NIEVA, MELINDA F. NOFUENTE, CORAZON B. NUYDA, LETICIA R. ORTEGA, ROMEO P. ORTEGA, RAUL R. ORAA, FE P. PASCUA, GLICERIA B. PLACIDO, FELICITAS R. PATO, SYLVIA PERALTA, LENIDA R. PONES, ROSALINDA PAREDES, YOLANDA PANGANIBAN, MARITEL PILASPILAS, CONSOLACION M. QUINOY, FLORANDO C. QUITAIN, ERLINDA I. REYES, ROSENDA S. RAMOS, IRENE G. REGACHO, EMILITA R. REYES, LEONORA A. RIVERA, REMEDIOS M. ROBOSA, MELINDA G. RODULFO,**

**LEPOLDO A. RODRIGUEZ, VERONICA S. RIVERA, NANCY J. ROMERO, TERESITA F. RONQUILLO, EVA B. RUANTO, MARIA LUISA LUY RABIN, ROSITA SABINO, ROSEMARIE J. SALANATIN, MARILIE S. SANCHEZ, OLIVIA C. SANTIOQUE, LUISA R. SAN MIGUEL, JOSEFINA F. SAN MIGUEL, ANGELES C. SAMAR, OLIVIA P. SALLE, NELIA E. SARABILLO, NENITA R. SAFLOR, GLORIA B. SANTIAGO, ANGELINA H. SANTOS, MARINA B. SOLIDUM, MARITESS G. SUNGA, SALVADOR M. SALES, SUSANA C. TAGAM, ARCEL S. TAYAG, JOSEPHINE B. TADIOAN, SILVIA L. TAN, LIGAYA C. TANCINGCO, MARIVIC R. TELEBRICO, ROSELYN B. TERUEL, MARILYN G. TOLENTINO, MARILYN B. TAGUINES, AMALIA UNIPA, MANUEL UNIPA, EMERENCIANA VILLAGONZALO, NINA VILLANUEVA, JOSEPHINE VILLANUEVA, HELEN J. VILLARIN, NELIA VILLANUEVA, ANALYN B. VIDA, CLAUDIA YASAY, GLORIA C. ZAFRA, SYLVIA R. ZAFRA, FLOR G. FUNA, BELEN BANDALAN, ELENA H. SARZUELA, CRISTINA C. BALICOCO, GLORIA C. BALICOCO, GLORIA N. BANOG, REMEGIA DE LOS SANTOS, BEVERLY N. PAYAS, JULIET BUERA, EMERCIANA E. MARCELO, LEONIDA N. QUINTO, AURORA Q. BACUD, ZENAIDA R. MANAHAN, VIVIAN G. PERALTA, CRISANTA ROTONE, LEONILA R. VIRTUS, TERESA ALEGADA, ROSALINA R. AQUINO, JAIME A. AROGO, ELISA C. BARLAS, JULIETA V. BUENAVENTURA, HELEN F. CAMAROA, EDNA C. ESTILLORE, HELINDA H. HAGOOT, LIBERTY B. ISIP, EMERLITA B. LAYNO, ANGELITA C. MACALINDONG, SEVERINA E. MALAGA, VIOLETA C. NACIANCENO, MARITA C. NATIVIDAD, CRISTINA NAVARRO, RODRIGO L. RIVERA, TERESITA C. ROLLON, REMEDIOS C. SANTOS, MILAGROS B. SUNGA, VIDISTA B. TALAVERA, CARMELITA J. TAMPE, VIOLETA P. GUEVARA, AMELITA ILAO, MYRNA A.**

**COMBALECER, CONCHITA V. CONSIBIDO, LIZA MOYA, SUSAN PATARATA, MILA SAMORTIN, BEATRIZ UMALI, EVA BANCOLETA, RIZALINO BANCOLETA, MARIA RIZA BERNI, ELIZABETH SUNGA, IMELDA DE VILLA and MINDA SAN PEDRO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; PROCEDURAL RULES; LIBERAL APPLICATION; ALLEGATION OF "SUBSTANTIAL JUSTICE" MUST BE SCRUTINIZED.—** Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights. **The bare invocation of "substantial justice" is not a magic wand that will compel the court to suspend the rules of procedure. Rather, the appellate court needs to assess if the appeal is absolutely meritorious on its face. Only after such finding, can it ease the often stringent rules of procedure.**

**2. ID.; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; PERIOD OF 15 DAYS TO FILE MOTION IS IMPERATIVE; NO COMPELLING REASON PRESENT TO RELAX THE RULE IN CASE AT BAR.—** In the present case, aside from the appellate court's declaration that the fact that the "case has been filed by more than a hundred petitioners is sufficient to impress it with a strong public interest," no compelling reason was proffered to justify the acceptance of respondents' motion for reconsideration which was admittedly filed out of time or 11 days beyond the reglementary period. It is a hornbook doctrine that the 15-day reglementary period for filing a motion for reconsideration is non-extendible. Provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses and strict compliance with such rules is mandatory and imperative. In the case at bar, not only was there a considerable delay of 11 days beyond the 15-day reglementary period; no explanation therefor was proffered by respondents. That respondents numbered more than a hundred does not, per se, justify the relaxation of procedural rules. The unexplained delay in the

filing of respondents' motion for reconsideration before the appellate court is not just a technical lapse which can be excused. More importantly, it is a jurisdictional defect to thus render the January 10, 2006 Resolution final and executory.

**3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL; RETIREMENT PAY NOT PROPER AS ONLY SEPARATION PAY IS ALLOWED FOR EMPLOYEES TERMINATED PURSUANT TO REDUNDANCY.—** On the merits, respondents have no cause of action as against petitioners with respect to their claim for additional retirement benefits. Article 283 of the Labor Code, as amended, provides: "ART. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. **In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher.** In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year." Separation pay has been defined as the amount that an employee receives at the time of his severance and is designed to provide the employee with the wherewithal during the period he is looking for another employment, and is recoverable only in the instances enumerated under Articles 283 and 284 of the Labor Code, as amended, or in illegal dismissal cases when reinstatement is no longer possible. Retirement pay, on the other hand, presupposes that the employee entitled to it has reached the compulsory retirement age or has rendered the required number of years as provided for in the collective bargaining agreement (CBA),

the employment contract or company policy, or in the absence thereof, in Republic Act No. 7641 or the Retirement Law. It is admitted that respondents were terminated pursuant to a redundancy, and not due to a retirement program, hence, they were entitled to a separation pay of one month salary per year of service. When respondents were paid a separation pay of two months salary for every year of service under the Redundancy Package, they already received what was due them under the law and in accordance with MPI's plan.

**APPEARANCES OF COUNSEL**

*Sycip Salazar Hernandez and Gatmaitan* for petitioners.
*Bisquera Balagtas Law Office* for respondents.

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

**CARPIO MORALES, *J.*:**

On petition for review on *certiorari* is the Court of Appeals March 1, 2006 Resolution[1] and June 27, 2006 Resolution[2] reinstating the appeal of respondent Imelda B. Ambrocio and 235[3] other respondents from the December 13, 2004 Resolution[4] and September 30, 2005 Resolution[5] of the National Labor Relations Commission (NLRC) in NLRC RAB IV Case Nos. 4-13771-01-C, and 4-13772-01-C.

Culled from the five-volume records of the case are the following undisputed facts:

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[1] CA *rollo*, pp. 823-824. Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Roberto A. Barrios and Santiago Javier Ranada.

[2] *Rollo*, pp.15-16. Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Roberto A. Barrios and Santiago Javier Ranada.

[3] A physical count of the herein named petitioners shows that there are only 188 of them.

[4] Records I, pp. 680-703. *Per curiam*, Presiding Commissioner Lourdes C. Javier and Commissioners Tito F. Genilo and Ernesto C. Verceles.

[5] Records II, pp. 833-837. *Per curiam*, Presiding Commissioner Lourdes C. Javier and Commissioners Tito F. Genilo and Romeo C. Lagman.

Sometime in 1997, Motorola Philippines, Inc. (MPI), a subsidiary of Motorola U.S., decided to close its Parañaque plant in order to consolidate its operations at its Carmona, Cavite plant. It thus offered to its affected employees a redundancy/separation package consisting of the following benefits and emoluments:

1) separation pay equivalent to two months salary per year of service;

2) two-year health insurance policy;

3) one-year life insurance policy;

4) cost of stock liquidation transactions on the employees' stock options;

5) orientation program on fund management; and

6) orientation program and training on livelihood options.

Out of about 900 employees who availed of the package and were consequently separated from employment on July 24, 1998 when MPI's Parañaque plant finally closed shop, 236 employees including respondents herein, filed on July 24, 2001 two separate complaints against MPI, for payment of *retirement* pay equivalent to one month salary per year of service, alleging that they were entitled thereto under Sec. III-B of MPI's Retirement Plan.[6]

For its part, MPI alleged that the applicable retirement plan was not Sec. III-B, but Policy 1215, specifically Sec. III par. 6 thereof which reads:

> In case of *voluntary separation* from the company due to Labor Saving devices or redundancy, retrenchment program initiated by the Company as a result of a merger or to prevent losses or other similar causes, the company shall provide a separation pay equivalent to one (1) month's pay per year of service, inclusive of any service benefit eligibility under the Retirement Plan.[7] (Italics and underscoring supplied)

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[6] B. INVOLUNTARY SEPARATION

In case of involuntary separation with the company due to retrenchment/ redundancy, the employee shall be given a service benefit equivalent to one month per year of service.

[7] Policy 1215, Records I, pp. 204-213 at 210.

MPI thus insisted that respondents had already received such one-month pay, the same having been included in the cash component of the separation/redundancy package, which consisted of two-months pay per year of service, paid to them.

Labor Arbiter Waldo Emerson Gan, by Decision[8] of December 16, 2002, found MPI and its officers liable to respondents for the payment of "retirement pay service benefits" under Sec. III-B of the Retirement Plan, as well as for interest thereon at 15% per annum, moral and exemplary damages equivalent to 25% of the total monetary award in each case, and attorney's fees equivalent to 15% of the total monetary award in each case.

In arriving at the decision, the Arbiter noted that retirement pay is separate and distinct from *separation* pay, hence, respondents were entitled to their claim of another separate one-month pay per year of service; that Policy 1215 was unfair; and that the quitclaims and waivers signed by respondents were void for they were forced and defrauded into signing them.

MPI appealed to the NLRC, which move was opposed by respondents, they alleging that the appeal was not perfected since the surety bond was filed not by MPI but by Motorola Communications Philippines, Inc. (MCPI) "for and in behalf of Motorola Philippines, Inc. and/or SCG Corporation," and that the initial amount of the bond posted was insufficient, being way below the amount of the total monetary award.

Respondents' opposition notwithstanding, the NLRC gave due course to MPI's appeal by Resolution of December 13, 2004, it holding that there is nothing in the law which requires that only the employer can post the appeal bond in order to perfect it, hence, MCPI was not precluded from filing the same on behalf of MPI and/or SCG Corporation.

The NLRC further held that the "rationale behind the requirement for the posting of an appeal bond to perfect an appeal is to guarantee the payment of the employee's valid and legal claims against any occurrence, during the pendency of the

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[8] CA *rollo*, pp. 701-732.

appeal, that would defeat or diminish recovery under the appealed judgment if it is subsequently affirmed," and this was complied with by MCPI's filing of the appeal bond in favor of MPI.

Moreover, the NLRC gave credence to MPI's explanation that prior to MPI's transfer of ownership to SCG Corporation, it was a sister company of MCPI, and the posting of the appeal bond by MCPI in favor of MPI/SCG Corporation was in fact in compliance with the indemnity agreement Motorola, Inc., MCPI's parent company, entered into with SCG – that SCG would be free from any and all liability arising from or related to the claims of MPI's former employees who were separated when SCG acquired its business.

Respecting the merits of the appeal, the NLRC held that MPI was not liable for payment of the so-called "retirement service benefits" under Sec. III-B of the Retirement Plan, consistent with its earlier findings in "*Fe de Vera, et al. v. Motorola Philippines, Inc., et al., and Yolanda Rombaon, et al. v. Motorola Philippines, Inc.* – cases filed by former employees of MPI which it decided on appeal.

In granting MPI's appeal and dismissing the complaint of respondents, the NLRC held that the benefits received by respondents for involuntary separation under MPI's retirement plan included the service pay benefits under either Sec. III-B of the Retirement Plan or Policy 1215 which both grant exactly the same benefit in case of involuntary separation – one month's pay for every year of service.

The NLRC added that retirement pay is due only if an employee retires, and since none of respondents retired but were actually involuntarily separated due to redundancy, then they cannot avail of such pay.

The NLRC thus concluded that since respondents availed of the separation package consisting of two months pay for every year of service (as well as other emoluments) under MPI's retirement plan and Article 283 of the Labor Code, as amended, they no longer have any cause of action.

Contrary to the arbiter's observation, the NLRC held that Policy 1215 was fair, for it did not revoke nor reduce any of the benefits granted under Sec. III-B of the Retirement Plan.

On the quitclaims and waivers executed by respondents, the NLRC found the same to be valid, it noting that respondents were given every opportunity to ask questions and review them in connection with the redundancy program through the meetings and seminars held, and pamphlets and other materials were in fact distributed and explained to them by MPI's officers.

The NLRC deleted the arbiter's award of damages and attorney's fees, finding no basis therefor. And with respect to the complaint of the four respondents namely Conchita V. Consibido, Violeta P. Guevarra, Liza Moya and Mila Samortin, the NLRC held that their cause of action had prescribed, their complaints having been filed three (3) years and one day from the time they were separated.

Finally, the NLRC rebuked the arbiter for granting monetary claims to persons, who were not listed as complainants in the two complaints, also named as respondents herein, *viz*: Rizalino Bancoleta, Elizabeth Sunga, Eva Bancoleta, Imelda de Villa, Maria Riza Berni, and Minda San Pablo.

Their motion for reconsideration having been denied by Resolution dated September 30, 2005, respondents appealed to the Court of Appeals.

Initially, the appellate court dismissed the petition by Resolution[9] promulgated on January 10, 2006 on the following technicalities: the signatory to the certification against non-forum shopping had no apparent authorization; the copies of the assailed NLRC resolutions appended to the petition were not certified true copies; and the copy of MPI's reply to the opposition as mentioned in the petition was not attached as required under Section 3 of Rule 46.

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[9] CA *rollo*, pp. 452-453. Penned by Associate Justice Mario L. Guariña III and concurred in by Associate Justices Roberto A. Barrios and Santiago Javier Ranada.

However, by the first challenged Resolution of March 1, 2006, the appellate court reinstated the petition on respondents' motion for reconsideration.

MPI filed a motion for reconsideration of the said Resolution of March 1, 2006, questioning the reinstatement of the petition, noting[10] that respondents' motion for reconsideration was filed out of time on February 8, 2006 or 11 days after the January 10, 2006 Resolution was received by respondents on January 13, 2006. MPI concluded that since respondents' motion for reconsideration was filed out of time, then the January 10, 2006 Resolution dismissing the petition had attained finality.

MPI, in any event, pointed out that the petition remained defective for the following reasons: the certification against forum shopping was signed by one Fe de Vera who is not a party to the case nor was authorized to sign it, ostensibly to "simplify the tedious individual signing of several legal documents," and the belated submission of the special power of attorneys (SPAs) in favor of de Vera did not cure the defect; the SPAs are dubious; and there was no explanation as to the belated filing of the Motion for Reconsideration as required under the Rules.

The appellate court, by Resolution dated June 27, 2006, denied MPI's motion for reconsideration, justifying its reinstatement of the petition with the fact that the petition was filed by more than a hundred complainants, hence, impressed it with a strong public interest warranting a suspension of the Rules in line with *Amorganda v. CA.*[11]

Hence, the instant petition for review on *certiorari* wherein MPI faults the appellate court to have committed grave abuse of discretion in reinstating respondents' petition, and in, among other things, applying the *Amorganda* ruling given that respondents did not give any explanation at all for their belated filing of their Motion for Reconsideration.

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[10] See Motion for Time *Ad Cautelam* to file Comment *Ad Cautelam* to Joint Petition for *Certiorari*, CA *rollo*, pp. 825-828.

[11] No. 80040, September 30, 1988, 166 SCRA 203.

And MPI maintains that the attachments to the Motion for Reconsideration did not cure the fatal defects in the petition.

The petition is impressed with merit.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights. **The bare invocation of "substantial justice" is not a magic wand that will compel the court to suspend the rules of procedure. Rather, the appellate court needs to assess if the appeal is absolutely meritorious on its face. Only after such finding, can it ease the often stringent rules of procedure**.[12] (Emphasis supplied)

In the present case, aside from the appellate court's declaration that the fact that the "case has been filed by more than a hundred petitioners is sufficient to impress it with a strong public interest," no compelling reason was proffered to justify the acceptance of respondents' motion for reconsideration which was admittedly filed out of time or 11 days beyond the reglementary period.

It is a hornbook doctrine that the 15-day reglementary period for filing a motion for reconsideration is non-extendible. Provisions of the Rules of Court prescribing the time within which certain acts must be done or certain proceedings taken are considered absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of judicial businesses and strict compliance with such rules is mandatory and imperative.[13]

The citation by the appellate court of the ruling in *Amorganda* is misplaced. In *Amorganda*, the Court stated that the therein petitioners' motion for reconsideration which was filed two calendar days late should have been given due course by the appellate court, as the counsel's mistaken belief that the last day for filing the motion, a Saturday, was a legal holiday, is pardonable.[14]

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[12] *Securities and Exchange Commission v. PICOP Resources, Inc.*, G.R. No. 164314, September 26, 2008.

[13] *Ponciano v. Laguna Lake Development Authority*, G.R. No. 174536, October 29, 2008.

[14] *Amorganda*, *supra*, at 210.

The Court went on to note that "anyway, the delay of two (2) calendar days – one of which was a Sunday- in the filing of the motion for reconsideration did not prejudice the cause of private respondents, or that said private respondents suffered material injury by reason of the delay," and that "private respondents who appear to be guilty of coercion, stand to unjustly profit from their fraudulent and deceitful act at the expense of petitioners."[15]

In the case at bar, not only was there a considerable delay of 11 days beyond the 15-day reglementary period; no explanation therefor was proffered by respondents. That respondents numbered more than a hundred does not, per se, justify the relaxation of procedural rules.

The unexplained delay in the filing of respondents' motion for reconsideration before the appellate court is not just a technical lapse which can be excused. More importantly, it is a jurisdictional defect to thus render the January 10, 2006 Resolution final and executory. As such, the appellate court erred in taking cognizance of the motion for reconsideration.

Technicality aside, on the merits, respondents have no cause of action as against petitioners with respect to their claim for additional retirement benefits. Article 283 of the Labor Code, as amended, provides:

ART. 283. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the [Department] of Labor and Employment at least one (1) month before the intended date thereof. **In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher.** In case of retrenchment to prevent losses and in cases of closures or cessation of operations of

[15] *Id*.

establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied)

Separation pay has been defined as the amount that an employee receives at the time of his severance and is designed to provide the employee with the wherewithal during the period he is looking for another employment,[16] and is recoverable only in the instances enumerated under Articles 283 and 284 of the Labor Code, as amended, or in illegal dismissal cases when reinstatement is no longer possible.

Retirement pay, on the other hand, presupposes that the employee entitled to it has reached the compulsory retirement age or has rendered the required number of years as provided for in the collective bargaining agreement (CBA), the employment contract or company policy, or in the absence thereof, in Republic Act No. 7641 or the Retirement Law.

It is admitted that respondents were terminated pursuant to a redundancy, and not due to retirement program, hence, they were entitled to a separation pay of one month salary per year of service.

As correctly ruled by the NLRC, by whatever version of MPI's Retirement Plan would be made applicable, respondents are entitled to a separation pay of one month salary per year of service. Under Sec. III-B of the Plan on which respondents rely, "[i]n case of involuntary separation with the company due to retrenchment/redundancy, the employee shall be given a service benefit equivalent to one month per year of service." On the other hand, based on Policy 1215 on which MPI relies, under the same circumstances, the company shall provide its employee a separation pay equivalent to one (1) month's pay per year of service, inclusive of any service benefit eligibility under the Retirement Plan.

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[16] *Gabuay v. Oversea Paper Supply*, G.R. No. 148837, August 13, 2004, 436 SCRA 514, 519-520.

Thus, when respondents were paid a separation pay of two months salary for every year of service under the Redundancy Package, they already received what was due them under the law and in accordance with MPI's plan.

**WHEREFORE,** the petition of Motorola is hereby *GRANTED*. The Resolution of the Court of Appeals dated March 1, 2006 and its Resolution dated June 27, 2006 are *SET ASIDE*. Respondents' petition for *certiorari* is *DISMISSED*.

**SO ORDERED.**

*Quisumbing (Chairperson), Tinga, Velasco, Jr.,* and *Peralta,* JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 174168. March 30, 2009]

**SY TIONG SHIOU, JUANITA TAN SY, JOLIE ROSS TAN, ROMER TAN, CHARLIE TAN, and JESSIE JAMES TAN,** *petitioners, vs.* **SY CHIM and FELICIDAD CHAN SY,** *respondents.*

[G.R. No. 179438. March 30, 2009]

**SY CHIM and FELICIDAD CHAN SY,** *petitioners, vs.* **SY TIONG SHIOU and JUANITA TAN,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY PROCEEDING; NOT A QUASI-JUDICIAL FUNCTION OF THE PROSECUTION AND COURT'S POLICY IS NON-INTERFERENCE THEREIN;**

* Additional member per Special Order No. 587 dated March 16, 2009 in lieu of the leave of absence due to sickness of Justice Arturo D. Brion.

**EXCEPTIONS; GRAVE ABUSE OF DISCRETION.—** A preliminary proceeding is not a quasi-judicial function and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. Moreover, it is settled that the preliminary investigation proper, *i.e.*, the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution. This Court has adopted a policy of non-interference in the conduct of preliminary investigations and leaves to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the supposed offender. As in every rule, however, there are settled exceptions. Hence, the principle of non-interference does not apply when there is grave abuse of discretion which would authorize the aggrieved person to file a petition for *certiorari* and prohibition under Rule 65, 1997 Rules of Civil Procedure.

**2. ID.; ID.; PREJUDICIAL QUESTION; ELUCIDATED.—** A prejudicial question comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed since howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The reason behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

**3. ID.; ID.; ID.; IN THE ABSENCE THEREOF IN CASE AT BAR, THE DOCTRINE OF PRIMARY JURISDICTION NO LONGER PRECLUDES THE SIMULTANEOUS FILING OF CRIMINAL CASE WITH THE CORPORATE/CIVIL CASE.—** The civil action and the criminal cases do not involve any prejudicial question. The civil action for accounting and damages, Civil Case No. 03-106456 pending before the RTC Manila, Branch 46, seeks the issuance of an order compelling the Spouses Sy to render a full, complete and true accounting

of all the amounts, proceeds and fund paid to, received and earned by the corporation since 1993 and to restitute it such amounts, proceeds and funds which the Spouses Sy have misappropriated. The criminal cases, on the other hand, charge that the Spouses Sy were illegally prevented from getting inside company premises and from inspecting company records, and that Sy Tiong Shiou falsified the entries in the GIS, specifically the Spouses Sy's shares in the corporation. Surely, the civil case presents no prejudicial question to the criminal cases since a finding that the Spouses Sy mishandled the funds will have no effect on the determination of guilt in the complaint for violation of Section 74 in relation to Section 144 of the Corporation Code; the civil case concerns the validity of Sy Tiong Shiou's refusal to allow inspection of the records, while in the falsification and perjury cases, what is material is the veracity of the entries made by Sy Tiong Shiou in the sworn GIS. The Court agrees with the Court of Appeals' holding, citing the case of *Fabia v. Court of Appeals*, that the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case with the corporate/civil case.

**4. ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; ELUCIDATED.—** The term probable cause does not mean 'actual and 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 evidence of the prosecution in support of the charge. 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.

**5. COMMERCIAL LAW; CORPORATION CODE; ON VIOLATION OF STOCKHOLDER'S RIGHT TO INSPECT THE CORPORATE BOOKS; REQUISITES BEFORE THE PENAL PROVISION MAY BE APPLIED, ELEMENTS.—** In the recent case of *Ang-Abaya, et al. v. Ang, et al.*, the Court had the occasion to enumerate the requisites before the

penal provision under Section 144 of the Corporation Code may be applied 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 elements of the offense, as laid down in the case, are: 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.

**6. ID.; ID.; ID.; DEFENSE OF IMPROPER USE OR MOTIVE MAY BE ALLEGED; NOT PRESENT IN CASE AT BAR; EFFECT THEREOF IN CASE AT BAR.—** 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. However, where no such improper motive or purpose is alleged, and even though so alleged, it is not proved by the corporation, then there is no valid reason to deny the requested inspection. There being no allegation of improper motive, and it being undisputed that Sy Tiong Shiou, *et al*. denied Sy Chim and Felicidad Chan Sy's request for inspection, the Court rules and so holds that the DOJ erred in dismissing the criminal charge for violation of Section 74 in relation to Section 144 of the Corporation Code.

**7. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS THROUGH UNTRUTHFUL NARRATION OF FACTS; ELEMENTS.—** The elements of falsification of public documents through an untruthful narration of facts are: (a) the offender makes in a document untruthful statements in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated; (c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.

**8. ID.; PERJURY; ELEMENTS.—** The elements of perjury are: (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and, (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

**9. REMEDIAL LAW; CRIMINAL PROCEDURE; VENUE OF ACTIONS; RULE WHERE CRIMINAL ACTION SHALL BE INSTITUTED; CASE AT BAR.—** The Court finds that the City of Manila is the proper venue for the perjury charges, the GIS having been subscribed and sworn to in the said place. Under Section 10(a), Rule 110 of the Revised Rules of Court, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred. In *Villanueva v. Secretary of Justice*, the Court held that the felony is consummated when the false statement is made. Thus in this case, it was alleged that the perjury was committed when Sy Tiong Shiou subscribed and sworn to the GIS in the City of Manila, thus, following Section 10(a), Rule 110 of the Revised Rules of Court, the City of Manila is the proper venue for the offense.

**10. COMMERCIAL LAW; INTERIM RULES OF PROCEDURE FOR INTER-CORPORATE CONTROVERSIES; PROHIBITED AND ALLOWED PLEADINGS; THIRD-PARTY COMPLAINT NOT INCLUDED BUT NEITHER EXCLUDED; CONFLICT RESOLVED ACCORDING TO RULES ON STATUTORY CONSTRUCTION.—** The conflicting provisions of the Interim Rules of Procedure for

Inter-Corporate Controversies read: Rule 1, Sec. 8. *Prohibited pleadings*.—The following pleadings are prohibited: (1) Motion to dismiss; (2) Motion for a bill of particulars; (3) Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial; (4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and (5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath. Rule 2, Sec.2. *Pleadings allowed*.—The only pleadings allowed to be filed under these Rules are the complaint, answer, compulsory counterclaims or cross-claims pleaded in the answer, and the answer to the counterclaims or cross-claims. There is a conflict, for while a third-party complaint is not included in the allowed pleadings, neither is it among the prohibited ones. Nevertheless, this conflict may be resolved by following the well-entrenched rule in statutory construction, that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Statutes, including rules, should be construed in the light of the object to be achieved and the evil or mischief to be suppressed and they should be given such construction as will advance the object, suppress the mischief and secure the benefits intended. A statute should therefore be read with reference to its leading idea, and its general purpose and intention should be gathered from the whole act, and this predominant purpose will prevail over the literal import of particular terms or clauses, if plainly apparent, operating as a limitation upon some and as a reason for expanding the signification of others, so that the interpretation may accord with the spirit of the entire act, and so that the policy and object of the statute as a whole may be made effectual and operative to the widest possible extent. Otherwise stated, the spirit, rather than the letter of a law determines its construction; hence, a statute, as in the rules in this case, must be read according to its spirit and intent. This spirit and intent can be gleaned from Sec. 3, Rule 1 of the Interim Rules, which reads: Sec. 3. *Construction*.—These Rules shall be liberally construed in order to promote their objective

of securing a just, summary, speedy and inexpensive determination of every action or proceeding.

**11. ID.; ID.; ID.; ID.; ID.; THIRD PARTY COMPLAINT ALLOWED IN CASE AT BAR.—** It thus appears that the summary nature of the proceedings governed by the Interim Rules, and the allowance of the filing of third-party complaints is premised on one objective—the expeditious disposition of cases. Moreover, following the rule of liberal interpretation found in the Interim Rules, and taking into consideration the suppletory application of the Rules of Court under Rule 1, Sec. 2 of the Interim Rules, the Court finds that a third-party complaint is not, and should not be prohibited in controversies governed by the Interim Rules. The logic and justness of this conclusion are rendered beyond question when it is considered that Sy Tiong Shiou and Juanita Tan are not complete strangers to the litigation as in fact they are the moving spirit behind the filing of the principal complaint for accounting and damages against the Spouses Sy. The allegations in the third-party complaint impute direct liability on the part of Sy Tiong Shiou and Juanita Tan to the corporation for the very same claims which the corporation interposed against the Spouses Sy. It is clear therefore that the Spouses Sy's third-party complaint is in respect of the plaintiff corporation's claims, and thus the allowance of the third-party complaint is warranted.

**12. REMEDIAL LAW; CIVIL PROCEDURE; THIRD PARTY COMPLAINT; ELUCIDATED.—** A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. It is actually a complaint independent of, and separate and distinct from the plaintiff's complaint. In fact, were it not for Rule 6, Section 11 of the Rules of Court, such third-party complaint would have to be filed independently and separately from the original complaint by the defendant against the third-party defendant. Jurisprudence is consistent in declaring that the purpose of a third-party complaint is to avoid circuitry of action and unnecessary proliferation of law suits and of disposing expeditiously in one litigation all the matters arising from one particular set of facts. A prerequisite to the exercise of such right is that some substantive basis for a third-party claim be found to exist, whether the basis be one of indemnity,

subrogation, contribution or other substantive right. The bringing of a third-party defendant is proper if he would be liable to the plaintiff or to the defendant or both for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction. The defendant may implead another as third-party defendant: (a) on an allegation of liability of the latter to the defendant for contribution, indemnity, subrogation or any other relief; (b) on the ground of direct liability of the third-party defendant to the plaintiff; or (c) the liability of the third-party defendant to both the plaintiff and the defendant. In determining the sufficiency of the third-party complaint, the allegations in the original complaint and the third-party complaint must be examined. A third-party complaint must allege facts which *prima facie* show that the defendant is entitled to contribution, indemnity, subrogation or other relief from the third-party defendant.

**APPEARANCES OF COUNSEL**

*E.L. Gayo and Associates* and *Bonifacio G. Bacani* for Sy Tiong Shiou, *et al*.

*Siguion Reyna Montecillo and Ongsiako* and *Divino & Gavino* for Sy Chim and Felicidad Chan Cy.

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

**TINGA, *J.*:**

These consolidated petitions involving the same parties. although related, dwell on different issues.

G.R. No. 174168.

This is a petition for review[1] assailing the decision and resolution of the Court of Appeals dated 31 May 2006 and 8 August 2006, respectively, in CA-G.R. SP No. 91416.[2]

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[1] *Rollo* (G.R. No. 174168), pp. 10-33.

[2] *Id.* at 37-60; penned by Associate Justice Renato S. Dacudao with the concurrence of Associate Justice Remedios Salazar Fernando and Associate Justice Lucas P. Bersamin.

On 30 May 2003, four criminal complaints were filed by Sy Chim and Felicidad Chan Sy (Spouses Sy) against Sy Tiong Shiou, Juanita Tan Sy, Jolie Ross Tan, Romer Tan, Charlie Tan and Jessie James Tan (Sy Tiong Shiou, *et al*.) before the City Prosecutor's Office of Manila. The cases were later consolidated. Two of the complaints, I.S. Nos. 03E-15285 and 03E-15286,[3] were for alleged violation of Section 74 in relation to Section 144 of the Corporation Code. In these complaints, the Spouses Sy averred that they are stockholders and directors of Sy Siy Ho & Sons, Inc. (the corporation) who asked Sy Tiong Shiou, *et al*., officers of the corporation, to allow them to inspect the books and records of the business on three occasions to no avail. In a letter[4] dated 21 May 2003, Sy Tiong Shiou, *et al.* denied the request, citing civil and intra-corporate cases pending in court.[5]

In the two other complaints, I.S. No. 03E-15287 and 03E-15288,[6] Sy Tiong Shiou was charged with falsification under Article 172, in relation to Article 171 of the Revised Penal Code (RPC), and perjury under Article 183 of the RPC. According to the Spouses Sy, Sy Tiong Shiou executed under oath the 2003 General Information Sheet (GIS) wherein he falsely stated that the shareholdings of the Spouses Sy had decreased despite the fact that they had not executed any conveyance of their shares.[7]

Sy Tiong Shiou, *et al.* argued before the prosecutor that the issues involved in the civil case for accounting and damages pending before the RTC of Manila were intimately related to

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[3] *Id.* at 85-94.

[4] *Id.* at 83.

[5] Civil Case No. 03-106456-00 is for Accounting and Damages pending before the Regional Trial Court of Manila, Branch 46. Incidentally, the other petition, G. R. No. 179438 is an offshoot of this civil case.

[6] *Id.* at 95-104.

[7] The 2003 GIS, compared to the 2002 GIS showed a decrease from 33.75 % to only 17.40 % ownership of the outstanding capital stock of the corporation for Sy Chim and a decrease from 16.88% to 8.70% ownership of the outstanding capital stock for Felicidad Chan Sy.

the two criminal complaints filed by the Spouses Sy against them, and thus constituted a prejudicial question that should require the suspension of the criminal complaints. They also argued that the Spouses Sy's request for inspection was premature as the latter's concern may be properly addressed once an answer is filed in the civil case. Sy Tiong Shiou, on the other hand, denied the accusations against him, alleging that before the 2003 GIS was submitted to the Securities and Exchange Commission (SEC), the same was shown to respondents, who at that time were the President/Chairman of the Board and Assistant Treasurer of the corporation, and that they did not object to the entries in the GIS. Sy Tiong Shiou also argued that the issues raised in the pending civil case for accounting presented a prejudicial question that necessitated the suspension of criminal proceedings.

On 29 December 2003, the investigating prosecutor issued a resolution recommending the suspension of the criminal complaints for violation of the Corporation Code and the dismissal of the criminal complaints for falsification and perjury against Sy Tiong Shiou.[8] The reviewing prosecutor approved the resolution. The Spouses Sy moved for the reconsideration of the resolution, but their motion was denied on 14 June 2004.[9] The Spouses Sy thereupon filed a petition for review with the Department of Justice (DOJ), which the latter denied in a resolution issued on 02 September 2004.[10] Their subsequent motion for reconsideration was likewise denied in the resolution of 20 July 2005.[11]

The Spouses Sy elevated the DOJ's resolutions to the Court of Appeals through a petition for *certiorari*, imputing grave abuse of discretion on the part of the DOJ. The appellate court granted the petition[12] and directed the City Prosecutor's Office

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[8] *Id.* at 111-118; penned by Assistant City prosecutor Bernardino L. Cabiles.

[9] *Id.* at 137-143.

[10] *Id.* at 183-185.

[11] *Id.* at 207-209.

[12] *Id.* at 37-66; Decision dated 31 May 2006.

to file the appropriate informations against Sy Tiong Shiou, *et al*. for violation of Section 74, in relation to Section 144 of the Corporation Code and of Articles 172 and 183 of the RPC. The appellate court ruled that the civil case for accounting and damages cannot be deemed prejudicial to the maintenance or prosecution of a criminal action for violation of Section 74 in relation to Section 144 of the Corporation Code since a finding in the civil case that respondents mishandled or misappropriated the funds would not be determinative of their guilt or innocence in the criminal complaint. In the same manner, the criminal complaints for falsification and/or perjury should not have been dismissed on the ground of prejudicial question because the accounting case is unrelated and not necessarily determinative of the success or failure of the falsification or perjury charges. Furthermore, the Court of Appeals held that there was probable cause that Sy Tiong Shiou had committed falsification and that the City of Manila where the 2003 GIS was executed is the proper venue for the institution of the perjury charges. Sy Tiong Shiou, *et al*. sought reconsideration of the Court of Appeals decision but their motion was denied.[13]

On 2 April 2008, the Court ordered the consolidation of G.R. No. 179438 with G.R. No. 174168.[14]

Sy Tiong Shiou, *et al*. argue that findings of the DOJ in affirming, modifying or reversing the recommendations of the public prosecutor cannot be the subject of *certiorari* or review of the Court of Appeals because the DOJ is not a quasi-judicial body within the purview of Section 1, Rule 65 of the Rules of Court. Petitioners rely on the separate opinion of former Chief Justice Andres R. Narvasa in *Roberts, Jr. v. Court of Appeals*,[15] wherein he wrote that this Court should not be called upon to determine the existence of probable cause, as there is no provision of law authorizing an aggrieved party to petition for such a determination.[16] In any event, they argue, assuming without

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[13] *Id.* at 71-72; Resolution dated 8 August 2006.

[14] *Id.* at 528-529.

[15] 324 Phil. 568, 619-620 (1996).

[16] *Rollo,* (G.R. No. 174168), pp. 22-23.

admitting that the findings of the DOJ may be subject to judicial review under Section 1, Rule 65 of the Rules of Court, the DOJ has not committed any grave abuse of discretion in affirming the findings of the City Prosecutor of Manila. They claim that the Spouses Sy's request for inspection was not made in good faith and that their motives were tainted with the intention to harass and to intimidate Sy Tiong Shiou, *et al*. from pursuing the criminal and civil cases pending before the prosecutor's office and the Regional Trial Court (RTC) of Manila, Branch 46. Thus, to accede to the Spouses Sy's request would pose serious threats to the existence of the corporation.[17] Sy Tiong Shiou, *et al*. aver that the RTC had already denied the motion for production and inspection and instead ordered petitioners to make the corporate records available to the appointed independent auditor. Hence, the DOJ did not commit any grave abuse of discretion in affirming the recommendation of the City Prosecutor of Manila.[18] They further argue that adherence to the Court of Appeals' ruling that the accounting case is unrelated to, and not necessarily determinative of the success of, the criminal complaint for falsification and/or perjury would unnecessarily indict petitioner Sy Tiong Shiou for the said offenses he may not have committed but only because of an outcome unfavorable to him in the civil action.[19]

Indeed, a preliminary proceeding is not a quasi-judicial function and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause.[20] Moreover, it is settled that the preliminary investigation proper, *i.e.*, the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.[21] This Court has adopted a

[17] *Id*. at 27.

[18] *Id*. at 28.

[19] *Id*. at 29.

[20] *Santos v. Go*, G.R. No. 156081, 19 October 2005, 473 SCRA 350, 360-361.

[21] *Cabahug v. People*, 426 Phil. 490, 499 (2002).

policy of non-interference in the conduct of preliminary investigations and leaves to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the supposed offender.[22]

As in every rule, however, there are settled exceptions. Hence, the principle of non-interference does not apply when there is grave abuse of discretion which would authorize the aggrieved person to file a petition for *certiorari* and prohibition under Rule 65, 1997 Rules of Civil Procedure.[23]

As correctly found by the Court of Appeals, the DOJ gravely abused its discretion when it suspended the hearing of the charges for violation of the Corporation Code on the ground of prejudicial question and when it dismissed the criminal complaints.

A prejudicial question comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed since howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The reason behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.[24]

The civil action and the criminal cases do not involve any prejudicial question.

The civil action for accounting and damages, Civil Case No. 03-106456 pending before the RTC Manila, Branch 46, seeks the issuance of an order compelling the Spouses Sy to

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[22] *Yupangco Cotton Mills, Inc., v. Mendoza,* G.R. No. 139912, 31 March 2005, 454 SCRA 386, 406.

[23] *Sistoza v. Desierto*, 437 Phil. 117, 129 (2002).

[24] *Tuanda v. Sandiganbayan*, 319 Phil. 460, 470 (1995).

render a full, complete and true accounting of all the amounts, proceeds and fund paid to, received and earned by the corporation since 1993 and to restitute it such amounts, proceeds and funds which the Spouses Sy have misappropriated. The criminal cases, on the other hand, charge that the Spouses Sy were illegally prevented from getting inside company premises and from inspecting company records, and that Sy Tiong Shiou falsified the entries in the GIS, specifically the Spouses Sy's shares in the corporation. Surely, the civil case presents no prejudicial question to the criminal cases since a finding that the Spouses Sy mishandled the funds will have no effect on the determination of guilt in the complaint for violation of Section 74 in relation to Section 144 of the Corporation Code; the civil case concerns the validity of Sy Tiong Shiou's refusal to allow inspection of the records, while in the falsification and perjury cases, what is material is the veracity of the entries made by Sy Tiong Shiou in the sworn GIS.

Anent the issue of probable cause, the Court also finds that there is enough probable cause to warrant the institution of the criminal cases.

The term probable cause does not mean 'actual and 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 evidence of the prosecution in support of the charge.[25]

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.[26]

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[25] *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[26] G.R. No. 178511, 4 December 2008, citing *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721.

Section 74 of the Corporation Code reads in part:

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The records of all business transactions of the corporation and the minutes of any meeting 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.

Any officer or agent of the corporation who shall refuse to allow any director, trustee, 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.

Meanwhile, Section 144 of the same Code provides:

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 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.

In the recent case of *Ang-Abaya, et al. v. Ang, et al.*,[27] the Court had the occasion to enumerate the requisites before the penal provision under Section 144 of the Corporation Code may be applied 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 elements of the offense, as laid down in the case, are:

> 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.[28]

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.[29] However, where no such improper motive or purpose is alleged, and even though

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[27] *Id*.

[28] *Id*.

[29] *Id.* citing 5A Fletcher Cyc. Corp. §. 2220, 2008.

so alleged, it is not proved by the corporation, then there is no valid reason to deny the requested inspection.

In the instant case, however, the Court finds that the denial of inspection was predicated on the pending civil case against the Spouses Sy. This is evident from the 21 May 2003 letter of Sy Tiong Shiou, *et al.*'s counsel[30] to the Spouses Sy,[31] which reads:

> Gentlemen:
>
> We write in behalf of our clients, SY SIY HO, INC. ( Guan Yiac Hardware); SY TIONG SHIOU, JUANITA TAN SY; JOLIE ROSS TAN; CHARLIE TAN; ROMER TAN; and JESSE JAMES TAN, relative to your letter dated 16 May 2003. Please be informed that a case for Accounting and Damages had already been filed against your clients, Sy Chim and Felicidad Chan Sy before the Regional Trial Court of Manila, Branch 46, denominated as Civil Case No. 03-106456.
>
> We fully understand your desire for our clients to respond to your demands, however, under the prevailing circumstance this would not be advisable. The concerns that you raised in your letter can later on be addressed after your clients shall have filed their responsive pleading in the abovesaid case.
>
> We trust that this response will at the moment be enough.[32]

Even in their Joint Counter-Affidavit dated 23 September 2003,[33] Sy Tiong Shiou, *et al*. did not make any allegation 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." Instead, they merely reiterated the pendency of the civil case. There being no allegation of improper motive,

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[30] Atty. Elvin P. Grana of A. Tan, Zoleta and Associates Law Firm.

[31] The law firm of Siguion Reyna Montecillo & Ongsiako.

[32] *Rollo,* (G.R. No. 174168), p. 83.

[33] *Id.* at 106-108.

and it being undisputed that Sy Tiong Shiou, *et al*. denied Sy Chim and Felicidad Chan Sy's request for inspection, the Court rules and so holds that the DOJ erred in dismissing the criminal charge for violation of Section 74 in relation to Section 144 of the Corporation Code.

Now on the existence of probable cause for the falsification and/or perjury charges.

The Spouses Sy charge Sy Tiong Shiou with the offense of falsification of public documents under Article 171, paragraph 4; and/or perjury under Article 183 of the Revised Penal Code (RPC). The elements of falsification of public documents through an untruthful narration of facts are: (a) the offender makes in a document untruthful statements in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated;[34] (c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.[35] On the other hand, the elements of perjury are: (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and, (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

A General Information Sheet (GIS) is required to be filed within thirty (30) days following the date of the annual or a special meeting, and must be certified and sworn to by the corporate secretary, or by the president, or any duly authorized officer of the corporation.[36] From the records, the 2003 GIS submitted to the SEC on 8 April 2003 was executed under oath

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[34] "Legal obligation "means that there is a law requiring the disclosure of the truth of the facts narrated, REYES, *THE REVISED PENAL CODE,* Book Two 210, (15th Ed., Rev. 2001).

[35] *Enemecio v. Office of the Ombudsman,* 464 Phil. 102, 115 (2004).

[36] *Rollo,* p. 317; As stated in the instructions on the GIS Form.

by Sy Tiong Shiou in Manila, in his capacity as Vice President and General Manager.[37] By executing the document under oath, he, in effect, attested to the veracity[38] of its contents. The Spouses Sy claim that the entries in the GIS pertaining to them do not reflect the true number of shares that they own in the company. They attached to their complaint the 2002 GIS of the company, also executed by Sy Tiong Shiou, and compared the entries therein *vis-a-vis* the ones in the 2003 GIS. The Spouses Sy noted the marked decrease in their shareholdings, averring that at no time after the execution of the 2002 GIS, up to the time of the filing of their criminal complaints did they execute or authorize the execution of any document or deed transferring, conveying or disposing their shares or any portion thereof; and thus there is absolutely no basis for the figures reflected in the 2003 GIS.[39] The Spouses Sy claim that the false statements were made by Sy Tiong Shiou with the wrongful intent of injuring them. All the elements of both offenses are sufficiently averred in the complaint-affidavits.

The Court agrees with the Court of Appeals' holding, citing the case of *Fabia v. Court of Appeals*, that the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case with the corporate/civil case.[40] Moreover, the Court finds that the City of Manila is the proper venue for the perjury charges, the GIS having been subscribed and sworn to in the said place. Under Section 10(a), Rule 110 of the Revised Rules of Court, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.[41]

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[37] *Id.* at 321.

[38] *Id.*; "that the matters set forth in this General Information Sheet x x x are true and correct to the best of my knowledge," last page of the GIS Standard Form.

[39] *Supra* note 6.

[40] *Fabia v. Court of Appeals*, 437 Phil. 389, 397 (2002).

[41] *Saavedra, Jr. v. Department of Justice*, G.R. No. 93173, 15 September 1993, 226 SCRA 438, 445 citing *Diaz v. People*, 191 SCRA 86, 93 (1990); see also *Burgos v. Aquino*, 319 Phil. 623 (1995). The elements of perjury are:

In *Villanueva v. Secretary of Justice*,[42] the Court held that the felony is consummated when the false statement is made.[43] Thus in this case, it was alleged that the perjury was committed when Sy Tiong Shiou subscribed and sworn to the GIS in the City of Manila, thus, following Section 10(a), Rule 110 of the Revised Rules of Court, the City of Manila is the proper venue for the offense.

G. R. No. 179438.

This petition assails the decision[44] and resolution[45] of the Court of Appeals dated 26 May 2004 and 29 August 2007, respectively, in CA-G.R. SP No. 81897.

On 3 February 2003, Juanita Tan, corporate treasurer of *Sy Siy Ho & Sons, Inc*. (the corporation), a family corporation doing business under the name and style Guan Yiac Hardware, submitted a letter[46] to the corporation's Board of Directors (Board) stating that the control, supervision and administration of all corporate funds were exercised by Sy Chim and Felicidad Chan Sy (Spouses Sy), corporate president and assistant treasurer,

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1.The accused made a statement under oath or executed an affidavit upon a material matter;

2.The statement or affidavit was made before a competent officer authorized to receive and administer oath;

3.In that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and

4.The sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

[42] *Villanueva v. Secretary of Justice*, G.R. No. 162187, 18 November 2005, 475 SCRA 495.

[43] *Id.* at 512 citing *U.S. v. Norris*, 300 U.S. 564 (1937).

[44] *Id.* at 386-389.

[45] *Rollo* (G.R. No. 179438), pp. 363-373; *Sy Tiong Shiou and Juanita Tan v. Hon. Artemio S. Tipon, Presiding Judge of the Regional Trial Court*, Branch 46, Manila, Sy Chim and Felicidad Chan Sy, penned by Associate Justice Noel G. Tijam with the concurrence of Associate Justice Delilah Vidallon-Magtolis and Associate Justice Edgardo P. Cruz.

[46] *Id.* at 58-59.

respectively. In the same letter, Juanita Tan disclosed that Felicidad Chan Sy did not make cash deposits to any of the corporation's banks from 1 November 2001 to 31 January 2003, thus the total bank remittances for the past years were less than reflected in the corporate financial statements, accounting books and records. Finally, Juanita Tan sought to be free from any responsibility over all corporate funds. The Board granted Juanita Tan's request and authorized the employment of an external auditor to render a complete audit of all the corporate accounting books and records.[47] Consequently, the Board hired the accounting firm *Banaria, Banaria & Company*. In its Report[48] dated 5 April 2003, the accounting firm attributed to the Spouses Sy ₱67,117,230.30 as unaccounted receipts and disbursements from 1994 to 2002.[49]

A demand letter[50] was subsequently served on the Spouses Sy on 15 April 2003. On the same date, the children of the Spouses Sy allegedly stole from the corporation cash, postdated checks and other important documents. After the incident, the Spouses Sy allegedly transferred residence and ceased reporting to the corporation. Thereupon, the corporation filed a criminal complaint for robbery against the Spouses Sy before the City Prosecutor's Office of Manila.[51] A search warrant was subsequently issued by the Regional Trial Court.[52]

On 26 April 2003, Sy Tiong Shiou, corporate Vice President and General Manager, called a special meeting to be held on 6 May 2003 to fill up the positions vacated by the Spouses Sy. Sy Tiong Shiou was subsequently elected as the new president and his wife, Juanita Tan, the new Vice President.[53] Despite

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[47] *Id.* at 60-63; Minutes of the Special Meeting dated 24 March 2003.

[48] *Rollo* (G.R. No. 179438), pp. 66-74.

[49] *Id.* at 73.

[50] *Id.* at 85.

[51] *Id.* at 75. The complaint was docketed as IS No. 03D-12147.

[52] *Id.* at 76-77.

[53] *Rollo* (G.R. No. 179436), pp. 78-81; Minutes of the Special Meeting dated 6 May 2003.

these developments, Sy Chim still caused the issuance of a Notice of Stockholders meeting dated 11 June 2003 in his capacity as the alleged corporate president.[54]

Meanwhile, on 1 July 2003, the corporation, through Romer S. Tan, filed its *Amended Complaint for Accounting and Damages*[55] against the Spouses Sy before the RTC Manila, praying for a complete and true accounting of all the amounts paid to, received and earned by the company since 1993 and for the restitution of the said amount.[56] The complaint also prayed for a temporary restraining order (TRO) and or preliminary injunction to restrain Sy Chim from calling a stockholders' meeting on the ground of lack of authority.

By way of *Answer*,[57] the Spouses Sy averred that Sy Chim was a mere figurehead and Felicidad Chan Sy merely performed clerical functions, as it was Sy Tiong Shiou and his spouse, Juanita Tan, who have been authorized by the corporation's by-laws to supervise, control and administer corporate funds, and as such were the ones responsible for the unaccounted funds. They assailed the meetings called by Sy Tiong Shiou on the grounds that the same were held without notice to them and without their participation, in violation of the by-laws. The Spouses Sy also pursued their counter-claim for moral and exemplary damages and attorney's fees.

On 9 September 2003, the Spouses Sy filed their *Motion for Leave to File Third-Party Complaint*,[58] praying that their attached *Third Party Complaint*[59] be allowed and admitted against Sy Tiong Shiou and his spouse. In the said third-party complaint, the Spouses Sy accused Sy Tiong Shiou and Juanita Tan as

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[54] *Id.* at 84.

[55] *Id.* at 34-49.

[56] *Id.* at 48-49.

[57] *Id.* at 86-113.

[58] *Id.* at 179-185.

[59] *Id.* at 186-197. The third party plaintiffs prayed that Sy Tiong Shiou and Juanita Tan directly and solely liable in respect of plaintiff's claim for accounting and damages.

directly liable for the corporation's claim for misappropriating corporate funds.

On 8 October 2003, the trial court granted the motion for leave to file the third-party complaint, and forthwith directed the issuance of summons against Sy Tiong Shiou and Juanita Tan.[60] On 16 January 2004, their counsel allegedly discovered that Sy Tiong Shiou and Juanita Tan were not furnished with the copies of several pleadings, as well as a court order, which resulted in their having been declared in default for failure to file their answer to the third-party complaint; thus, they opted not to file a motion for reconsideration anymore and instead filed a petition for *certiorari* before the Court of Appeals.

In its Decision dated 26 May 2004, the Court of Appeals granted the petition of Sy Tiong Shiou and Juanita Tan.[61] The appellate court declared that a third-party complaint is not allowed under the *Interim Rules of Procedure Governing Intra-Corporate Controversies Under R.A. No. 8799* (Interim Rules), it not being included in the exclusive enumeration of allowed pleadings under Section 2, Rule 2 thereof. Moreover, even if such a pleading were allowed, the admission of the third-party complaint against Sy Tiong Shiou and Juanita Tan still would have no basis from the facts or the law and jurisprudence.[62] The Court of Appeals also ruled that the respondent judge committed a manifest error amounting to lack of jurisdiction in admitting the third-party complaint and in summarily declaring Sy Tiong Shiou and Juanita Tan in default for failure to file their answer within the purported reglementary period. The Court of Appeals set aside the trial court's 8 October 2003 Order admitting the third-party complaint, as well as the 19 December 2003 Order, declaring Sy Tiong Shiou and Juanita Tan in default for failure to file their answer. The trial court was further ordered to dismiss the third-party complaint without prejudice to any action that the corporation may separately file against Sy Tiong Shiou and Juanita Tan.[63]

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[60] *Id.* at 229-232.

[61] *Id.* at 363-373.

[62] *Id.* at 368-371.

[63] *Id.* at 363-373; Court of Appeals Decision dated 26 May 2004.

The Spouses Sy filed a motion for reconsideration, but their motion was denied on 29 August 2007.[64]

Sy Chim and Felicidad Chan Sy argue before this Court that a third-party complaint is not excluded or prohibited by the Interim Rules, and that the Court of Appeals erred in ruling that their third- party complaint is not actionable because their action is not in respect of the corporation's claims. They add that the disallowance of the third-party complaint will result in multiplicity of suits.

The third-party complaint should be allowed.

The conflicting provisions of the Interim Rules of Procedure for Inter-Corporate Controversies read:

Rule 1, Sec. 8. *Prohibited pleadings*.—The following pleadings are prohibited:

(1) Motion to dismiss;

(2) Motion for a bill of particulars;

(3) Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial;

(4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and

(5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath.

Rule 2, Sec.2. *Pleadings allowed*.—The only pleadings allowed to be filed under these Rules are the complaint, answer, compulsory counterclaims or cross-claims pleaded in the answer, and the answer to the counterclaims or cross-claims.[65]

There is a conflict, for while a third-party complaint is not included in the allowed pleadings, neither is it among the prohibited

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[64] *Id.* at 386-389.

[65] SC-A.M. No. 01-2-04 (2001) ENTITLED, INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES.

ones. Nevertheless, this conflict may be resolved by following the well-entrenched rule in statutory construction, that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[66] Statutes, including rules, should be construed in the light of the object to be achieved and the evil or mischief to be suppressed and they should be given such construction as will advance the object, suppress the mischief and secure the benefits intended. A statute should therefore be read with reference to its leading idea, and its general purpose and intention should be gathered from the whole act, and this predominant purpose will prevail over the literal import of particular terms or clauses, if plainly apparent, operating as a limitation upon some and as a reason for expanding the signification of others, so that the interpretation may accord with the spirit of the entire act, and so that the policy and object of the statute as a whole may be made effectual and operative to the widest possible extent.[67] Otherwise stated, the spirit, rather than the letter of a law determines its construction; hence, a statute, as in the rules in this case, must be read according to its spirit and intent.[68]

This spirit and intent can be gleaned from Sec. 3, Rule 1 of the Interim Rules, which reads:

> Sec. 3. *Construction*.—These Rules shall be liberally construed in order to promote their objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding.[69]

Now, a third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his

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[66] *Aisporna v. Court of Appeals*, 113 SCRA 459, 467.

[67] H.C. BLACK, *HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS* 322, (2nd Ed, 1971).

[68] *Paras v. COMELEC*, 332 Phil. 56, 64 (1996).

[69] SC-A.M. No. 01-2-04 (2001), Rule 1, Sec. 3.

opponent's claim. It is actually a complaint independent of, and separate and distinct from the plaintiff's complaint. In fact, were it not for Rule 6, Section 11 of the Rules of Court, such third-party complaint would have to be filed independently and separately from the original complaint by the defendant against the third-party defendant. Jurisprudence is consistent in declaring that the purpose of a third-party complaint is to avoid circuitry of action and unnecessary proliferation of law suits and of disposing expeditiously in one litigation all the matters arising from one particular set of facts.[70]

It thus appears that the summary nature of the proceedings governed by the Interim Rules, and the allowance of the filing of third-party complaints is premised on one objective—the expeditious disposition of cases. Moreover, following the rule of liberal interpretation found in the Interim Rules, and taking into consideration the suppletory application of the Rules of Court under Rule 1, Sec. 2[71] of the Interim Rules, the Court finds that a third-party complaint is not, and should not be prohibited in controversies governed by the Interim Rules. The logic and justness of this conclusion are rendered beyond question when it is considered that Sy Tiong Shiou and Juanita Tan are not complete strangers to the litigation as in fact they are the moving spirit behind the filing of the principal complaint for accounting and damages against the Spouses Sy.

The Court also rules that the third-party complaint of the Spouses Sy should be admitted.

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[70] *Tayao v. Mendoza*, G.R. No. 162733, 12 April 2005, 455 SCRA 726, 732-733; *Firestone Tire and Rubber Company of the Philippines v. Tempongco*, 137 Phil. 238, 243 (1969); *British Airways v. Court of Appeals*, 349 Phil. 379, 394 (1998) citing 67 CJS 1034. *In Asian Construction and Development Corporation v. Court of Appeals*, G.R. No. 160242, 17 May 2005, the Court had the occasion to declare that "the purpose of Section 11, Rule 6 of the Rules of Court is to permit a defendant to assert an independent claim against a third-party which he, otherwise, would assert in another action, thus preventing multiplicity of suits."

[71] SEC. 2. *Suppletory application of the Rules of Court*.—The Rules of Court, in so far as they may be applicable and are not inconsistent with these Rules, are hereby adopted to form an integral part of these Rules.

A prerequisite to the exercise of such right is that some substantive basis for a third-party claim be found to exist, whether the basis be one of indemnity, subrogation, contribution or other substantive right. The bringing of a third-party defendant is proper if he would be liable to the plaintiff or to the defendant or both for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction. The defendant may implead another as third-party defendant: (a) on an allegation of liability of the latter to the defendant for contribution, indemnity, subrogation or any other relief; (b) on the ground of direct liability of the third-party defendant to the plaintiff; or (c) the liability of the third-party defendant to both the plaintiff and the defendant.[72]

In determining the sufficiency of the third-party complaint, the allegations in the original complaint and the third-party complaint must be examined. A third-party complaint must allege facts which *prima facie* show that the defendant is entitled to contribution, indemnity, subrogation or other relief from the third-party defendant.[73]

The complaint alleges that the Spouses Sy, as officers of the corporation, have acted illegally in raiding its corporate funds, hence they are duty bound to render a full, complete and true accounting of all the amounts, proceeds and funds paid to, received and earned by the corporation since 1993 and to restitute to the corporation all such amounts, proceeds, and funds which they took and misappropriated for their own use and benefit, to the damage and prejudice of the plaintiff and its stockholders.[74] On the other hand, in the third-party complaint, the Spouses Sy claim that it is Sy Tiong Shiou and Juanita Tan who had full and complete control of the day-to day operations and complete control and custody of the funds of the corporation, and hence they are the ones liable for any shortfall or unaccounted difference of the corporation's cash account. Thus, Sy Tiong Shiou and

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[72] *Asian Construction and Development Corporation v. Court of Appeals*, G.R. No. 160242, 17 May 2005, 458 SCRA 750, 759.

[73] *Id*.

[74] *Rollo* (G.R. No. 179438), p. 40.

Juanita Tan should render a full, complete and true accounting of all the amounts, proceeds, funds paid to, received and earned by the corporation since 1993, including the amount attributed to the Spouses Sy in the complaint for accounting and damages. In their prayer, the Spouses Sy moved that Sy Tiong Shiou and Juanita Tan be declared as directly and solely liable in respect of the corporation's claim for accounting and damages, and that in the event that they, the Spouses Sy, are adjudged liable to the corporation, Sy Tiong Shiou and Juanita Tan be ordered to pay all amounts necessary to discharge their liability to the corporation by way of indemnity or reimbursement.

The allegations in the third-party complaint impute direct liability on the part of Sy Tiong Shiou and Juanita Tan to the corporation for the very same claims which the corporation interposed against the Spouses Sy. It is clear therefore that the Spouses Sy's third-party complaint is in respect of the plaintiff corporation's claims,[75] and thus the allowance of the third-party complaint is warranted.

**WHEREFORE,** these cases are resolved as follows:

**G.R. No. 174168**

The petition for review is *DENIED*. The Decision and Resolution of the Court of Appeals dated 31 May 2006 and 8 August 2006, respectively, in CA-G.R. SP No. 91416 are *AFFIRMED*.

Costs against the petitioners.

G.R. No. 179438

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[75] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 85868, 13 October 1989, 178 SCRA 526. The tests to determine whether the claim for indemnity in a third-party claim is "in respect of plaintiff's claim." are: (a) whether it arises out of the same transaction on which the plaintiffs claim is based, or whether the third-party's claim, although arising out of another or different contract or transaction, is connected with the plaintiffs claim; (b) whether the third-party defendant would be liable to the plaintiff or to the defendant for all or part of the plaintiffs claim against the original defendant, although the third-party defendant's liability arises out of another transaction; or (c) whether the third-party defendant may assert any defense which the third-party plaintiff has, or may have against plaintiff s claim.

The petition is *GRANTED*. The decision and resolution of the Court of Appeals dated 26 May 2004 and 29 August 2007, respectively, in CA-G.R. SP No. 81897 are *SET ASIDE* and the Orders of the Regional Trial Court of Manila Branch 46 dated 8 October 2003 and 19 December 2003 are *REINSTATED*.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 177827. March 30, 2009]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ANSELMO BERONDO, JR.** ***y*** **PATERES,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DELAY IN REVEALING IDENTITY OF ACCUSED. —** Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. No standard form of behavior can be expected from people who had witnessed a strange or frightful experience. Jurisprudence recognizes that witnesses are naturally reluctant to volunteer information about a criminal case or are unwilling to be involved in criminal investigations because of varied reasons. Some fear for their lives and that of their family; while others shy away when those involved in the crime are their relatives or townmates. And where there is delay, it is more

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* Additional member per Raffle dated 25 June 2008 in lieu of J. Arturo D. Brion who inhibited himself.

important to consider the reason for the delay, which must be sufficient or well-grounded, and not the length of delay. x x x Despite the delay in reporting the identities of the malefactors, Nietes testified in a categorical, straightforward, and spontaneous manner, and remained consistent even under grueling cross-examination. Such bears the marks of a credible witness.

**2. CRIMINAL LAW; HOMICIDE; CRIME COMMITTED IN CASE AT BAR.—** As regards the sufficiency of the prosecution's evidence, we affirm the findings of the CA that the crime committed was only homicide and not murder. As correctly noted by the appellate court, the attendant circumstances of conspiracy and abuse of superior strength were not proved, thus: The Court notes that witness Nietes Jr. was not able to identify the person who shot the victim. It was witness Tero who said that it was accused Julie Tubigon, but he did not witness the stabbing. Witness Nietes Jr. did. No evidence exists to show the events preceding the attack and those occurring after. The simultaneity of the delivery of stabs by the three assailants alone is not sufficient to prove conspiracy. The Court likewise finds error in finding that the killing of the deceased was committed with abuse of superior strength, because no evidence was presented to prove that the accused purposely took advantage of their numerical superiority. Absent clear and convincing evidence of any qualifying circumstance, conviction should only be for homicide.

**3. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES AWARDED BUT DECREASED IN CASE AT BAR.—** On the award of damages, the appellate court did not grant actual damages due to lack of proof of actual expenses, but instead granted temperate damages in the amount of PhP 50,000. Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount cannot be proved with certainty. In this case, it cannot be denied that the heirs of the victim incurred funeral and burial expenses although the exact amount was not established. In line with current jurisprudence, the amount of temperate damages should, however, be decreased to PhP 25,000.

**4. ID.; ID.; CIVIL INDEMNITY AND MORAL DAMAGES, BOTH PROPER IN CASE AT BAR.—** The CA also properly awarded civil indemnity as such is given without need of proof other

than the fact of death as a result of the crime and proof of accused-appellant's responsibility for it. The trial court, however, failed to award moral damages. Moral damages are awarded without need of further proof other than the fact of the killing. Thus, PhP 50,000 in moral damages is additionally awarded in favor of the heirs of the victim.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

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

**VELASCO, JR., *J.*:**

**The Case**

This is an appeal from the November 7, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00386 entitled *People of the Philippines v. Anselmo Berondo, Jr. y Pateres* which held accused-appellant Anselmo Berondo, Jr. guilty of homicide. The CA Decision modified the September 23, 2003 Decision[2] in Criminal Case No. 11760-02 of the Regional Trial Court (RTC), Branch 8 in Malaybalay City, which held accused-appellant liable for murder.

**The Facts**

At around 11:30 p.m. of February 13, 1999, after joining the Miss Gay competition at New Danao, Sinaysayan, Kitaotao, Bukidnon, Herbert Nietes, Jr. walked home to Puntian, Quezon, Bukidnon. While on the way, he suddenly heard a gunshot from nearby. Feeling afraid, he ran towards the grassy area by the roadside to hide. After about five minutes, he saw accused-appellant, Julie Tubigon, and Jesus Sudario, each holding a knife, walk towards the road and take turns in stabbing a person who

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[1] *Rollo*, pp. 4-18. Penned by Associate Justice Sixto C. Marella Jr. and concurred in by Associate Justices Edgardo A. Camello and Mario V. Lopez.

[2] CA *rollo*, pp. 11-19. Penned by Judge Agustin Q. Javellana.

was already slumped on the ground. He recognized the three as they are his townmates. Thereafter, he ran away from the area and went to Bato-Bato, Sinaysayan, Kitaotao, Bukidnon, where he spent the night. The next day, he learned that the person stabbed was Genaro Laguna. He later testified that he did not reveal what he had witnessed to anyone because he was afraid of getting involved.[3]

At about the same time, Pedro Tero, who was also walking along the road towards Puntian, saw Tubigon shoot Laguna. After the victim fell, about five to six persons whom he did not recognize went near the victim. He then immediately ran away from the scene and no longer saw what had happened next to the victim. On the following day, he told a certain Hoseas Sagarino what he saw but did not report it to the authorities.[4]

Two years after the incident, Nietes and Tero admitted to Dolores, Laguna's widow, that they had witnessed the crime. They then reported the matter to the police and, accordingly, executed their respective sworn statements. Thereafter, an Information for robbery with murder was filed against accused-appellant, Tubigon, and Sudario. The Information reads:

> That on or about the 13th day of February 1999, in the evening, at Purok 2, barangay West Dalurong, [Kitaotao], [Bukidnon], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to gain, did then and there willfully, unlawfully and criminally take, rob and carry away cash amounting to SIX THOUSAND FIVE HUNDRED PESOS [PhP 6,500], belonging to GENARO LAGUNA, to his damage and prejudice in the aforementioned amount;
>
> That on the occasion of the said Robbery, the above name accused, acting on the same conspiracy, and to enable them to consummate their desire, with intent to kill by means of force and taking advantage of superior strength, armed with a firearm with an unknown caliber, did then and there willfully, unlawfully, and criminally attack, assault and shoot GENARO LAGUNA, inflicting upon his person multiple

[3] *Id.* at 13-14.

[4] *Id.* at 14.

stab and gunshot wounds, which caused the instantaneous death of GENARO LAGUNA to the damage and prejudice of the legal heirs of GENARO LAGUNA in such amount as may be allowed by law.

Contrary to and in Violation of Article 294 in relation to Article 14 of the Revised Penal Code as amended by R.A. 7659.[5]

Trial proceeded only against accused-appellant because the two other accused remained at-large.

In his defense, accused-appellant denied any involvement in the killing of Laguna. He claimed that in the evening of February 13, 1999, he was with his wife and daughter watching the activities during the *Araw ng New Danao* (New Danao Day) at the Poblacion, New Danao, Sinaysayan. When the activities ended at about two o'clock in the morning of the next day, they went home together. Hours later, Geno Laguna, the victim's cousin, told him about the incident and together they proceeded to the place where the victim's body was found. Further, he alleged that prosecution witness Nietes was his daughter's former sweetheart. Their relationship became unfriendly after Nietes acted rudely against accused-appellant's daughter.[6]

On September 23, 2003, the RTC rendered a Decision, the dispositive part of which reads:

WHEREFORE, the accused ANSELMO BERONDO JR. *y* PATERES is found GUILTY beyond reasonable doubt as principal in the crime of MURDER under Article 248 of the Revised Penal Code and is sentenced to the penalty of *RECLUSION PERPETUA.* The accused is further ordered to pay the heirs of the deceased Genaro Laguna the amount of FIFTY THOUSAND PESOS (PhP50,000.00) as actual damages and civil indemnity in the sum of FIFTY THOUSAND PESOS (PhP50,000.00).

SO ORDERED.

The case was appealed to the CA.

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[5] *Rollo,* p. 5.

[6] CA *rollo,* p. 39.

**The Ruling of the CA**

Affirming the decision of the trial court, the appellate court found credible Nietes' testimony pointing to accused-appellant as one of the persons who stabbed the victim. It dismissed the imputation of ill motive against Nietes and held that the clear and straightforward manner in which he testified is worthy of belief. Also, it held that Nietes' delay in reporting the crime was reasonable considering that eyewitnesses have a tendency to remain silent rather than imperil their lives or that of their family.

The CA, however, found that the prosecution failed to prove the attendance of the qualifying circumstance of abuse of superior strength. It held that no evidence was presented to prove that the three accused purposely took advantage of their numerical superiority. Thus, accused-appellant was held guilty only of homicide and not murder.

The CA also modified the award of damages. Finding that there was absence of proof of actual damages, the CA instead awarded temperate damages in the amount of PhP 50,000.

The *fallo* of the November 7, 2006 CA Decision reads:

> WHEREFORE, the Decision appealed from is modified. In lieu of murder, the Court finds appellant guilty beyond reasonable doubt of homicide and he is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. Appellant is further ordered to pay the heirs of Genaro Laguna the amount of fifty thousand pesos (Php 50,000.00) as temperate damages and fifty thousand pesos (Php 50,000.00) as civil indemnity.[7]

Hence, we have this appeal.

**The Issues**

In a Resolution dated August 22, 2007, this Court required the parties to submit supplemental briefs if they so desired. On October 25, 2007, accused-appellant, through counsel, signified that he was no longer filing a supplemental brief. Thus, the

[7] *Id.* at 17.

following issues raised in accused-appellant's Brief dated November 16, 2004 are now deemed adopted in this present appeal:

I.

The court *a quo* gravely erred in convicting the accused-appellant of [homicide] despite the prosecution's failure to prove his guilt beyond reasonable doubt.

II.

The court *a quo* gravely erred in giving weight and credence to the incredible and inconsistent testimony of the prosecution witnesses.[8]

In essence, the case involves the credibility of the prosecution eyewitnesses and the sufficiency of the prosecution evidence.

**The Ruling of the Court**

The appeal is without merit.

Accused-appellant's guilt is anchored only on the testimony of Nietes. Accused-appellant, however, faults Nietes for belatedly reporting the identities of the assailants. He claims that the delay impaired Niete's credibility; thus, the latter's testimony should be disregarded.

We disagree. Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given.[9] No standard form of behavior can be expected from people who had witnessed a strange or frightful experience.[10] Jurisprudence recognizes that witnesses are naturally reluctant to volunteer information about a criminal case or are unwilling to be involved in criminal

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[8] *Id.* at 34.

[9] *People v. Castillo*, G.R. No. 118912, May 28, 2004, 430 SCRA 40, 49; *People v. Abendan*, G.R. Nos. 132026-27, June 28, 2001, 360 SCRA 106, 123.

[10] *People v. Dulanas*, G.R. No. 159058, May 3, 2006, 489 SCRA 58, 74; *People v. Quirol*, G.R. No. 149259, October 20, 2005, 473 SCRA 509, 516; *People v. Plazo*, G.R. No. 120547, January 29, 2001, 350 SCRA 433, 442.

investigations because of varied reasons. Some fear for their lives and that of their family;[11] while others shy away when those involved in the crime are their relatives[12] or townmates.[13] And where there is delay, it is more important to consider the reason for the delay, which must be sufficient or well-grounded, and not the length of delay.[14]

In this case, although it took Nietes more than two years to report the identity of the assailants, such delay was sufficiently explained. Nietes stated that he feared for his life because the three accused also lived in the same town and the incident was the first killing in their area. He only had the courage to reveal to Dolores what he had witnessed because his conscience bothered him.

Despite the delay in reporting the identities of the malefactors, Nietes testified in a categorical, straightforward, and spontaneous manner, and remained consistent even under grueling cross-examination. Such bears the marks of a credible witness.[15]

As regards the sufficiency of the prosecution's evidence, we affirm the findings of the CA that the crime committed was only homicide and not murder. As correctly noted by the appellate court, the attendant circumstances of conspiracy and abuse of superior strength were not proved, thus:

The Court notes that witness Nietes Jr. was not able to identify the person who shot the victim. It was witness Tero who said that it was accused Julie Tubigon, but he did not witness the stabbing.

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[11] See *People v. Zuniega*, G.R. No. 126117, February 21, 2001, 352 SCRA 403; *People v. Rimorin*, G.R. No. 124309, May 16, 2000, 332 SCRA 178.

[12] *People v. Paraiso*, G.R. No. 131823, January 17, 2001, 349 SCRA 335.

[13] See *People v. Ignas*, G.R. Nos. 140514-15, September 30, 2003, 412 SCRA 311; *People v. Alarcon*, G.R. Nos. 133191-93, July 11, 2000, 335 SCRA 457; *People v. Suza*, G.R. No. 130611, April 6, 2000, 330 SCRA 167.

[14] *People v. Natividad*, G.R. No. 138017, February 23, 2001, 352 SCRA 651, 661.

[15] *People v. Torres*, G.R. Nos. 135522-23, October 2, 2001, 366 SCRA 408, 424; *Sevalle v. Court of Appeals*, G.R. No. 122858, February 28, 2001, 353 SCRA 33, 43.

Witness Nietes Jr. did. No evidence exists to show the events preceding the attack and those occurring after. The simultaneity of the delivery of stabs by the three assailants alone is not sufficient to prove conspiracy.

The Court likewise finds error in finding that the killing of the deceased was committed with abuse of superior strength, because no evidence was presented to prove that the accused purposely took advantage of their numerical superiority.

Absent clear and convincing evidence of any qualifying circumstance, conviction should only be for homicide.[16]

On the award of damages, the appellate court did not grant actual damages due to lack of proof of actual expenses, but instead granted temperate damages in the amount of PhP 50,000. Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount cannot be proved with certainty. In this case, it cannot be denied that the heirs of the victim incurred funeral and burial expenses although the exact amount was not established. In line with current jurisprudence, the amount of temperate damages should, however, be decreased to PhP 25,000.[17]

The CA also properly awarded civil indemnity as such is given without need of proof other than the fact of death as a result of the crime and proof of accused-appellant's responsibility for it.[18] The trial court, however, failed to award moral damages. Moral damages are awarded without need of further proof other than the fact of the killing.[19] Thus, PhP 50,000 in moral damages is additionally awarded in favor of the heirs of the victim.

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[16] *Supra* note 1, at 16-17.

[17] *People v. Jabiniao, Jr.*, G.R. No. 179499, April 30, 2008, 553 SCRA 769, 787-788; *People v. Dacubo*, G.R. No. 175594, September 28, 2007, 534 SCRA 458, 477; *People v. Belonio*, G.R. No. 148695, May 27, 2004, 429 SCRA 579, 596.

[18] *People v. Whisenhunt*, G.R. No. 123819, November 14, 2001, 368 SCRA 586, 610.

[19] *People v. Geral*, G.R. No. 145731, June 26, 2003, 405 SCRA 104, 111; *People v. Cabote*, G.R. No. 136143, November 15, 2001, 369 SCRA 65, 78; citing *People v. Panado*, G.R. No. 133439, December 26, 2000.

**WHEREFORE,** the Court *AFFIRMS* the November 7, 2006 CA Decision in CA-G.R. CR-H.C. No. 00386 with *MODIFICATIONS*. As modified, the dispositive portion of the CA Decision shall read:

WHEREFORE, the accused ANSELMO BERONDO JR. *y* PATERES is found GUILTY beyond reasonable doubt of the crime of HOMICIDE and is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years, eight (8) months and one (1) day of *reclusion temporal* as maximum. He is likewise ordered to pay the heirs of the victim the sum of PhP 50,000 as civil indemnity, PhP 25,000 as temperate damages, and **PhP 50,000 as moral damages**.

**SO ORDERED.**

*Quisumbing (Chairperson), Carpio Morales, Tinga,* and *Brion, JJ.,* concur.

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**SECOND DIVISION**

[ADM. CASE No. 6383. March 31, 2009]

**IRENE SANTOS-TAN, Represented by her Attorney-in-fact MIRIAM S. ELGINCOLIN,** *complainant, vs.* **ATTY. ROMEO R. ROBISO,** *respondent.*

**SYLLABUS**

**1. LEGAL ETHICS; ATTORNEYS; HANDLING OF CLIENT'S CASE; RESPONDENT LAWYER CANNOT BE FAULTED IF THE ACTING PRESIDING JUDGE DID NOT WANT TO ACT ON THE MOTION FOR RECONSIDERATION UNTIL THE REGULAR PRESIDING JUDGE RETURNED.—** On the issue of negligence on the part of respondent in handling complainant's case, the Court agrees that based on the facts presented there was nothing that he could have done to expedite

the resolution of the motion for reconsideration then pending before the RTC. The RTC had already ordered that the motion for reconsideration be submitted for resolution. Respondent could not be faulted if the acting presiding judge did not want to act on the motion until the regular presiding judge returned.

**2. CRIMINAL LAW; SPECIAL CRIMES; B.P. BLG. 22; NATURE.—** In *People v. Tuanda*, we explained the nature of violation of B.P. Blg. 22 as follows: The gravamen of the offense punished by Blg.22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment x x x. The thrust of the law is to prohibit under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property but an offense against public order. x x x The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest.

**3. LEGAL ETHICS; ATTORNEYS; MUST OBEY THE LAWS OF THE LAND; VIOLATION OF ATTORNEY'S OATH BY RESPONDENT.—** In issuing a worthless check, respondent showed that he was unmindful of the deleterious effects of his act to the public interest and public order. Respondent violated the Attorney's Oath that he will, among others, obey the laws. The Code of Professional Responsibility specifically provides: CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, **OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE LAW AND LEGAL PROCESSES.** Rule 1.01 – A Lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. CANON 7—A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. Rule 7.03– A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life,

behave in a scandalous manner to the discredit of the legal profession.

**4. ID.; ID.; ID.; ID.; THE ACT OF A LAWYER IN ISSUING A CHECK DRAWN AGAINST INSUFFICIENT FUNDS CONSTITUTES CONDUCT UNBECOMING OF AN OFFICER OF THE COURT.—** The issuance of bouncing check cannot be countenanced nor condoned under any circumstances. The act of a lawyer in issuing a check which is drawn against insufficient funds constitutes deceitful conduct or conduct unbecoming an officer of the court. The court has held that the issuance of checks which were later dishonored or having been drawn against a closed account indicates a lawyer's unfitness or the trust and confidence reposed on him. It shows a lack of personal honesty and good moral character as to render him unworthy of public confidence.

**5. ID.; ID.; ID.; ID.; ID.; A LAWYER MAY BE SANCTIONED WITH SUSPENSION FROM THE PRACTICE OF LAW.—** As such, we have held that deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. The IBP Board of Governors recommended that respondent be suspended from the practice of law for one year. However, the Court notes that, in practice, acceptance fees of lawyers are generally non-refundable and the fact that, in the present case, respondent is willing to make good the amount of the bouncing check. Thus, we deem that one month suspension from the practice of law and the restitution of ₱85,000.00 to complainant would be sufficient in this case.

**APPEARANCES OF COUNSEL**

*Domingo S. Cruz* for complainant.

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

**TINGA, *J.*:**

This is an administrative complaint filed by complainant Irene Santos-Tan against respondent Atty. Romeo Robiso.[1] Complainant

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

charged respondent with malpractice for grossly neglecting his duties and responsibilities as counsel for complainant and for issuing a bouncing check. Complainant seeks that respondent be disbarred and ordered to return the sum of ₱85,000.00, plus interest.

Complainant asserts the following: Sometime in December 2000, complainant engaged the professional services of respondent as her counsel to represent her in Special Proceeding No. 01-101339, entitled *In the Matter of the Intestate Estate of Eusebio G. Tan, a.k.a. Tan Chin Bio G.*, pending before the Regional Trial Court of Manila, Branch 45. She paid respondent ₱100,000.00 as acceptance fee. Subsequently, respondent entered his appearance as new counsel on 12 December 2002.

After several months had passed, complainant asked respondent about the status of her case. She found out that her case had not progressed and that the only pleading that respondent had filed was his notice of appearance.[2] Not satisfied with the way respondent was handling her case, complainant and her sister, Miriam Elgincolin (Miriam), went to his office on 3 November 2003. She demanded that he return the professional fees earlier paid as there was allegedly no professional service rendered by him. And for the purpose of returning a portion of the professional fee, respondent issued to complainant Asia United Bank Check No. 0048229 dated 29 November 2003 in the amount of ₱85,000.00.[3]

However, respondent's check was dishonored by the drawee bank for insufficiency of funds.[4] Despite several demands, respondent failed to make good or replace the check. In reply to complainant's final demand, made through her counsel, respondent wrote a letter dated 25 January 2004 asserting that the check was without consideration and it was issued to stop complainant's "acerbic verbal abuse."[5]

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[2] *Id.* at 10.

[3] *Id.* at 12.

[4] *Id.* at 13.

[5] *Id.* at 14.

In compliance with the Court's 21 June 2004 Resolution,[6] respondent filed his Comment dated 16 August 2004[7] and a Supplement Comment dated 17 September 2004.[8] Below are his allegations:

Before respondent entered his appearance as counsel, a motion for reconsideration of the order appointing Jude Chua Tan as administrator of complainant's husband and a motion for early resolution of said motion for reconsideration had already been filed by complainant's former counsel. Still, respondent "went back and forth to the court to personally follow-up the resolution of the motion for reconsideration."[9] However, the branch clerk of court would only advise him to wait "for the replacement of the presiding judge who retired."[10] Further still, he would, once or twice a month, still drop by the office of the branch clerk of court to inquire about the status of the case. But without fail, the answer he would get was "no new judge yet."[11] It was only later that he learned that the regular judge did not actually retire but was suspended by the Court. Respondent recorded the dates of his court visits in his notes and these were part of the case file which was turned over to complainant when she terminated his services. Whatever delay in the resolution of the motions before the RTC was due to the suspension of the regular presiding judge of the court and the reluctance of the acting judge to resolve said motions during such period. In effect, he even contacted the opposing counsel to explore the possibility of an amicable settlement. Thus, he was never remiss in his duties as counsel for complainant.[12]

Complainant was proud and nasty. His secretary would receive her calls berating him on the slow progress of the case.

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[6] *Id.* at 16.

[7] *Id.* at 21-23.

[8] *Id.* at 30-33.

[9] *Id.* at 21.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 22.

Complainant also badmouthed her former lawyers while expressing her disappointment over their failure to have the RTC appoint her as an administrator of her husband's estate.

As to the acceptance fee, it was understood to be non-refundable. But on 3 November 2003, so respondent asserts, complainant "bullied respondent with harsh words right inside his office."[13] Complainant shouted invectives at him. So, to make her leave his office, he wrote the ₱85,000.00 check and gave it to her.[14]

In her Reply to respondent's Comment and Supplemental Comment dated 6 October 2004,[15] complainant avers: if respondent had really made numerous follow-ups regarding her case, he would have known that the regular presiding judge did not retire but was merely suspended.[16] Respondent learned of such fact only when he reviewed the case record. Instead of apologizing to her for issuing the rubber check, respondent concocted an incredible tale to make it appear that she was the one bullying him inside his office and forcing him to issue her a check. It is unthinkable for an ordinary person like herself to raise her voice against a lawyer especially inside the latter's office. It is unbelievable for any person to issue a check for ₱85,000.00 just to appease another person. Respondent could have called security to stop her if indeed she was bullying him in his office. Moreover, respondent himself deducted ₱15,000.00 from the acceptance fee as payment for the alleged professional service he had rendered.[17]

Attached to complainant's reply is the affidavit[18] of her sister Miriam who was with her when she went to respondent's office and witnessed everything that had transpired therein. According

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[13] *Id*.

[14] *Id*.

[15] *Id.* at 47-52.

[16] *Id.* at 47.

[17] *Id.* at 48-49.

[18] *Id.* at 53-57.

to Miriam, respondent explained to complainant that he had been following-up the case and that he could not return the full amount of the acceptance fee. Complainant was told by respondent that he had no money so instead he wrote her a check before her departure to the U.S. They then left the office of respondent. Miriam stated that she saw the case folder was given by respondent and there were no notes which would allegedly indicate the dates when he made follow-ups in the intestate case.[19]

In a Resolution dated 26 January 2005,[20] the Court referred the case to the Integrated Bar of the Philippines (IBP) for evaluation, report and recommendation.

The issues are: (1) whether respondent was negligent in handling complainant's case; and (2) whether respondent should be disciplined for issuing a bouncing check. To thresh out the issues, the IBP conducted the mandatory conference/hearing and thereafter required both parties to submit their respective verified position papers.

Both parties submitted their respective verified position papers both substantially reiterating their arguments in previous submission.

Complainant notes that respondent had admitted in effect his negligent handling of her case when he returned ₱85,000.00 of the acceptance fee she paid him. The commission of a criminal act, such as the issuance of a bouncing check, a violation of Batas Pambansa (B.P.) 22, clearly constitute gross misconduct. Respondent's claim that there was no consideration for the check is not true since it was issued to return the complainant's ₱100,000.00 attorney's fees for services that were not rendered. There was in effect a rescission and cancellation of the retainer agreement.[21]

For respondent's part, he alleges that his secretary, Amarie Malana, saw the notes in which he recorded the dates when he

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[19] *Id.* at 54-55.

[20] *Id.* at 62-63.

[21] IBP record, pp. 9-19.

went to court to follow up the status of complainant's case. Respondent's secretary also witnessed how he was berated in his office on November 2003. Since he was also in a hurry to catch up with his law class, he quickly issued the check to complainant.[22] As for complainant's case, neglect should not be attributed to him then since the motions filed by her previous lawyer were already submitted for resolution and there was nothing further he could do. That at the beginning of his engagement as lawyer, he made it clear to complainant that the ₱100,000.00 was an acceptance fee and was non-refundable.

The hearing officer, Caesar Dulay, in his Report and Recommendation dated 20 November 2007,[23] recommended that respondent be suspended for one month with strong warning that a commission of a similar offense would be dealt with more severity in the future. He also recommended that respondent be ordered to reimburse complainant the amount of ₱70,000.00, ₱30,000.00 of which corresponds to the services rendered by him on a *quantum meruit*. He did not find respondent to be grossly negligent in the performance of his duties as there was nothing more respondent could do in accelerating the resolution of the motions which were already submitted for resolution. The filing of additional pleadings or papers with the court would not be necessary. During the time the motion for reconsideration was pending the regular presiding judge of the court was under suspension and the acting presiding judge who issued the resolution considering the motion as submitted for resolution was not disposed to act on said motion but instead opted to wait for the regular presiding judge to act on it.

However, the hearing officer recommended that respondent be made liable for issuing the bouncing check. Whatever was respondent's reason for issuing the check, the fact remains that the same was dishonored by the bank for having been drawn against insufficient funds. If respondent's purpose was just to appease complainant to make her leave his office and he firmly believed that he had no obligation to return the ₱100,000.00,

[22] *Id.* at 27-35.

[23] *Id.* at 67-74.

then he could have issued a stop-payment order to the bank before the encashment of the check, the hearing officer added.

The Board of Governors of the IBP, in a Resolution on 14 December 2007, adopted and approved the Report and Recommendation with modification that the recommended penalty of suspension from the practice of law be increased to one year.[24]

Pursuant to Rule 139-B of the Rules of Court, the administrative case is now before the Court for resolution.

The Court affirms the findings of the IBP.

On the issue of negligence on the part of respondent in handling complainant's case, the Court agrees that based on the facts presented there was nothing that he could have done to expedite the resolution of the motion for reconsideration then pending before the RTC. The RTC had already ordered that the motion for reconsideration be submitted for resolution. Respondent could not be faulted if the acting presiding judge did not want to act on the motion until the regular presiding judge return.

Regarding the other issues, as a lawyer, respondent is deemed to know the law, especially Batas Pambansa Blg. 22 (B.P. Blg. 22). By issuing a check in violation of the provisions of this law, respondent is guilty of serious misconduct.

In *People v. Tuanda*,[25] we explained the nature of violation of B.P. Blg. 22 as follows:

> The gravamen of the offen se punished by B.P. Blg. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment x x x. The thrust of the law is to prohibit under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property but an offense against public order.
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[24] *Id.* at 65-66.

[25] Adm.Case No. 3360, 30 January 1990, 181 SCRA 692.

The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest.[26]

In issuing a worthless check, respondent showed that he was unmindful of the deleterious effects of his act to the public interest and public order. Respondent violated the Attorney's Oath that he will, among others, obey the laws. The Code of Professional Responsibility specifically provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, **OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE LAW AND LEGAL PROCESSES**.

Rule 1.01 – A Lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. [emphasis supplied]

The issuance of bouncing check cannot be countenanced nor condoned under any circumstances. The act of a lawyer in issuing a check which is drawn against insufficient funds constitutes deceitful conduct or conduct unbecoming an officer of the court. The Court has held that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him. It shows a lack of personal honesty and good moral character as to render him unworthy of public confidence.[27]

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[26] *Id.* at 696, citing *Lozano v. Martinez*, 146 SCRA 323 (1986).

[27] *Cuizon v. Macalino*, Adm Case No. 4334, 7 July 2004, 433 SCRA 479, 486.

As such, we have held that deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law.[28] The IBP Board of Governors recommended that respondent be suspended from the practice of law for one year. However, the Court notes that, in practice, acceptance fees of lawyers are generally non-refundable and the fact that, in the present case, respondent is willing to make good the amount of the bouncing check. Thus, we deem that one month suspension from the practice of law and the restitution of ₱85,000.00 to complainant would be sufficient in this case.

The Court reiterates that membership in the legal profession is a privilege and demands a high degree of good moral character, not only as a condition precedent to admission, but also as a continuing requirement for the practice of law.[29] As servant of the law, a lawyer should moreover make himself an exemplar for others to emulate. The responsibilities of a lawyer are greater than those of a private citizen. He is looked up to in the community.

**IN VIEW WHEREOF,** respondent *Atty. Romeo R. Robiso* is *ORDERED SUSPENDED* from the practice of law for a period of ONE (1) month effective upon receipt of this Decision. He is further *ORDERED* to pay complainant the full amount of ₱85,000.00, as reflected in the check. He is *STERNLY WARNED* that a commission of a similar offense will be acted upon with more severity. Let a copy of this Decision be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines to be entered into the personal record of Atty. Robiso. The Court Administrator is directed to circulate this order of suspension to all courts in the country.

**SO ORDERED.**

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

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[28] *Lao v. Atty. Medel*, 453 Phil. 115, 124 (2003).

[29] *Lao v. Atty. Medel*, 453 Phil. 115, 123 (2003).

* Additional member as replacement of Justice Arturo D. Brion who is on official leave per Special Order No. 587.

**EN BANC**

[ADM. CASE. No. 7902. March 31, 2009]

**TORBEN B. OVERGAARD,** *complainant, vs.* **ATTY. GODWIN R. VALDEZ,** *respondent.*

**SYLLABUS**

**1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; NOTIFICATION OF PROCEEDINGS; RECEIPT OF NOTICE BY LAWYER'S AGENT IS NOTICE TO THE LAWYER.—** A copy of the Complaint as well as the Order to answer the Complaint was sent by the IBP Commission on Bar Discipline to the respondent's Makati office address, and it was duly received by the respondent. The Registry Return Receipt shows that it was also received by one "RRJ," whose signature appears on the space for the signature of the addressee's agent. The respondent cannot claim lack of knowledge of the complaint for disbarment against him when the Complaint and the Order for him to submit an Answer were duly received by his agent at his Makati law office.

**2. ID.; ID.; ID.; NOTICES SENT TO LAWYER'S OFFICE ADDRESS MADE KNOWN TO THE PUBLIC AND PROPERLY RECEIVED BY LAWYER'S AGENT ARE DEEMED NOTICE TO THE LAWYER HIMSELF.—** Succeeding notices in connection with the disbarment proceedings were also sent to the respondent's Makati law office. He cannot escape liability for his misdeeds by feigning ignorance of the disbarment case, since the notices in connection with the proceedings were sent to his office address made known to the public and properly received by his agent.

**3. ID.; ID.; ID.; ID.; INVESTIGATION *EX PARTE,* PROPER WHERE ATTORNEY FAILS TO APPEAR AND ANSWER THE ACCUSATIONS AGAINST HIM; CASE AT BAR.—** Respondent Valdez was given full opportunity, upon reasonable notice, to answer the charges against him and to present evidence on his behalf. The IBP Commission on Bar Discipline was correct in proceeding with the investigation *ex parte,* because it was due to the respondent's own fault and negligence that he was not able to submit an answer to the Complaint and participate in the investigation. Rule 138, Section 30 provides that an attorney should

be heard before he is removed or suspended; but if, upon reasonable notice, an attorney fails to appear and answer the accusations against him, the matter may be dealt with *ex parte*.

**4. ID.; ID.; ID.; GROSS NEGLIGENCE; ABANDONING LAW OFFICE WITHOUT ADVISING CLIENT AND FORGETTING ABOUT THE CASES ENTRUSTED TO HIS CARE EVEN IF THERE WERE THREATS TO HIS SAFETY, A CASE OF; MANNER OF COMMISSION.—** In abruptly abandoning his law office without advising his client and without making sure that the cases he was handling for his client were properly attended to during his absence, and without making arrangements whereby he would receive important mail, the respondent is clearly guilty of gross negligence. A lawyer cannot simply disappear and abandon his clients and then rely on the convenient excuse that there were threats to his safety. Even assuming that there were serious threats to his person, this did not give him the permission to desert his client and leave the cases entrusted to his care hanging. He should have at least exercised reasonable and ordinary care and diligence by taking steps to ensure that the cases he was handling were attended to and that his client's interest was safeguarded. If it was not possible for him to handle the cases entrusted to his care, he should have informed the complainant of his predicament and asked that he be allowed to withdraw from the case to enable the client to engage the services of another counsel who could properly represent him. Deplorably, the respondent just disappeared, deserted his client and forgot about the cases entrusted to his care, to the complainant's damage and prejudice. x x x The respondent's disbarment is not anchored on his failure to do anything in relation to the cases entrusted to his care, but on his abandonment of his client. He will not be absolved from liability on the basis alone of these inconsequential acts which he claims to have accomplished because the glaring fact remains that he has failed to perform his essential obligations to his client, to the court and to the society. This includes not merely reviewing the cases entrusted to his care and giving the complainant sound legal advice, but also properly representing his client in court, attending scheduled hearings, preparing and filing required pleadings, prosecuting the cases entrusted to his care with reasonable dispatch, and urging their termination without waiting for his client or the court to prod him to do so. He should not idly sit by and leave the rights of his client in a state of uncertainly. After all the representations he made to the complainant and after receipt of

the full amount of the legal fees, respondent absconded from his responsibilities and betrayed his client's trust. There is no excuse for this, and his gross negligence and appalling indifference is unforgiveable.

**5. ID.; ID.; ID.; IT IS A LAWYER'S DUTY TO PROPERLY ACCOUNT FOR THE MONEY HE RECEIVES FROM A CLIENT.—** It is a lawyer's duty to properly account for the money he received from the client. If indeed the respondent told the client that he would pay ₱300,000.00 to two intelligence operatives, as he claims in his Motion for Reconsideration, he should have held this money in trust, and he was under an obligation to make an accounting. It was his duty to secure a receipt for the payment of this amount on behalf of his client. But he failed to present any receipt or certification from Collado that the payment was received. Since the respondent was not able either to present an accounting of the ₱900,000.00 paid to him upon the complainant's demand, or to provide a sufficient and plausible explanation for where such amount was spent, he must immediately return the same.

**APPEARANCES OF COUNSEL**

*Montesa and Associates* for complainant.
*Trinidad Narag & Associates* for respondent.

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

***PER CURIAM*:**

At bar is a Motion for Reconsideration,[1] dated, October 21, 2008 filed by respondent Godwin R. Valdez (Valdez), praying that the September 30, 2008 decision of this Court disbarring him from the practice of law be reconsidered by remanding the records of the case to the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline. He further prays that the IBP Commission on Bar Discipline be directed to receive his Answer, evidence and Position Paper and thereafter, that he be absolved of the charges against him and that his name be reinstated in the Roll of Attorneys.[2]

[1] *Rollo,* pp. 104-127.

[2] *Id.* at p. 124.

We have previously decided in ***Torben B. Overgaard v. Atty. Godwin R. Valdez***,[3] that respondent Valdez committed malpractice and gross misconduct in his office as attorney and is thus unfit to continue discharging the trust reposed in him as a member of the bar.

The complainant, Torben Overgaard (Overgaard) engaged the services of respondent Valdez as his legal counsel in two cases filed by him and two cases filed against him. Despite the receipt of the full amount of legal fees of ₱900,000.00 as stipulated in a Retainer Agreement, the respondent refused to perform any of his obligations under their contract for legal services, ignored the complainant's request for a report of the status of the cases entrusted to his care, and rejected the complainant's demands for the return of the money paid to him.

Complainant Overgaard filed a complaint for disbarment against Valdez before the IBP. During the investigation, respondent Valdez did not participate despite due notice. He was declared in default for failure to submit an answer and attend the mandatory conference. He did not submit a position paper or attend the hearing.

On September 30, 2008, this Court held that respondent Valdez committed multiple violations of the canons of the Code of Professional Responsibility. The dispositive portion of this Decision states:

> IN VIEW WHEREOF, respondent Atty. Godwin R. Valdez is hereby DISBARRED and his name is ordered STRICKEN from the Roll of Attorneys. He is ORDERED to immediately return to Torben B. Overgaard the amount of $16,854.00 or its equivalent in Philippine Currency at the time of actual payment, with legal interest of six percent (6%) per annum from November 27, 2006, the date of extra-judicial demand. A twelve percent (12%) interest per annum, in lieu of six percent (6%), shall be imposed on such amount from the date of promulgation of this decision until the payment thereof. He is further ORDERED to immediately return all papers and documents received from the complainant.[4]

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[3] A.C. 7902, September 30, 2008.

[4] *Id.* at p. 11; *rollo,* p. 99.

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Hence, this Motion for Reconsideration filed on October 21, 2008, by respondent Valdez, based on the following grounds:

I. RESPONDENT HAD ABSOLUTELY NO KNOWLEDGE THAT COMPLAINANT HAD FILED CHARGES AGAINST HIM AND THAT THERE WERE DISBARMENT PROCEEDINGS AND AN INVESTIGATION CONDUCTED BY THE INTEGRATED BAR OF THE PHILIPPINES.

II. HAD HE BEEN GIVEN AN OPPORTUNITY TO BE HEARD, HE WOULD HAVE PRESENTED STRONG, VALID AND MERITORIOUS DEFENSES TO THE CHARGES LEVELLED AGAINST HIM WHICH DEFENSES, CORRECTLY APPRECIATED, WOULD HAVE TOTALLY EXONERATED HIM.[5]

We deny the Motion for Reconsideration.

On the first issue, the respondent argues that the IBP has no jurisdiction over him since proof of service of the initiatory pleading to the defendant is a jurisidictional requirement.[6] He states in his Motion for Reconsideration that "he had no inkling whatsoever of the existence of the disbarment case filed by the complainant."[7] He asserts that, in September 2006, he "abruptly abandoned his office at Suite 402 Pacific Irvine Bldg., 2746 Zenaida St., at Makati City following persistent and serious threats to his physical safety and security x x x."[8] On the advice of his close friends and clients to "lie low" and "make himself 'scarce,'"[9] he stayed for a few days in his residence at Imus, Cavite then relocated to Malaybalay City, Bukidnon.[10] He has

[5] *Rollo,* pp.104-105.

[6] *Id.* at p. 108.

[7] *Id.* at p. 105.

[8] *Id.* at p. 106.

[9] *Id.*

[10] *Id.*

been holding office and residing in Bukidnon since then, and he only found out about the decision from a colleague in Bukidnon who read the decision from the Court's website.

He claims that because he "abruptly abandoned"[11] his Makati office on September 2006, he was not able to receive the demand letter[12] sent by the complainant.[13] He was also not able to receive any of the notices, orders and other papers pertaining to the disbarment proceedings because at the time these were sent to his Makati office address, he was already holding office in Bukidnon.

Complainant Overgaard filed an "Opposition/Comment to the Motion for Reconsideration"[14] on December 9, 2008. He counters that respondent Valdez was duly notified of the charge against him and of all the proceedings at the IBP,[15] since all notices were sent to "Suite 402 Pacific Irvine Bldg., No. 2746 Zenaida St., Makati City, Metro Manila, Philippines,"[16] which is the respondent's office address indicated in his letterhead and made known to the complainant and to the public. He sent the respondent a letter dated November 27, 2006, demanding that the latter return the documents and the ₱900,000.00 paid to him in relation to the case. The demand letter was sent to the same address and was received by one whose signature was "RRJ," as noted in the Registry Return Receipt.[17]

Complainant Overgaard argues that respondent cannot claim ignorance of the disbarment case against him, since this is a natural offshoot of a wrongful act.[18] Complainant Overgaard points out that when respondent Valdez left for Bukidnon, he already knew that the complainant was looking for him and demanding the return of the money and documents he received

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[11] *Id.* at p. 106.

[12] *Id.* at p. 40.

[13] *Id*.

[14] *Id.* at pp. 162-176.

[15] *Id.* at p. 162.

[16] *Id.* at p. 163.

[17] *Id.* at p. 164.

[18] *Id*.

from the complainant.[19] The November 27, 2006 demand letter further contained a warning that "[i]f [the respondent] will not return the documents and the money within ten (10) days from receipt hereof, [the complainant] will bring the matter to the proper authorities/forum for the redress of [his] grievances."[20] The complainant denies that he or his business partners know of respondent's whereabouts, and he argues that it is the respondent's duty as his counsel to adopt and strictly maintain a system that efficiently takes into account all notices sent to him.[21]

We hold that respondent was given reasonable notice of the complaint for disbarment against him.

A copy of the Complaint as well as the Order[22] to answer the Complaint was sent by the IBP Commission on Bar Discipline to the respondent's Makati office address, and it was duly received by the respondent. The Registry Return Receipt[23] shows that it was also received by one "RRJ," whose signature appears on the space for the signature of the addressee's agent. The respondent cannot claim lack of knowledge of the complaint for disbarment against him when the Complaint and the Order for him to submit an Answer were duly received by his agent at his Makati law office. Succeeding notices in connection with the disbarment proceedings were also sent to the respondent's Makati law office. He cannot escape liability for his misdeeds by feigning ignorance of the disbarment case, since the notices in connection with the proceedings were sent to his office address made known to the public and properly received by his agent.

Respondent Valdez was given full opportunity, upon reasonable notice, to answer the charges against him and to present evidence on his behalf. The IBP Commission on Bar Discipline was correct in proceeding with the investigation *ex parte*, because it was due to the respondent's own fault and negligence that he was

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[19] *Id*.

[20] *Id.* at p. 166.

[21] *Id.* at p. 167.

[22] *Id.* at p. 13.

[23] *Id*.

not able to submit an answer to the Complaint and participate in the investigation. Rule 138, Section 30 provides that an attorney should be heard before he is removed or suspended; but if, upon reasonable notice, an attorney fails to appear and answer the accusations against him, the matter may be dealt with *ex parte*. Rule 138, Section 30 states:

> SECTION 30. Attorney to be heard before removal or suspension. — No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. **But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.** (Emphasis supplied.)

The respondent's feeble excuse that he was no longer holding office at his Makati office address at the time the Order of the IBP Commission on Bar Discipline was sent to him is unacceptable. Ordinary prudence would have guarded against his alleged failure to receive the notices. All notices to the respondent were sent to his Makati office address, which was the address made known to the public and to the complainant. This is even the address printed on the letterhead of the Retainer Agreement between the complainant and the respondent. And although the respondent claims that he had to "make himself 'scarce'"[24] due to threats to his life and safety, this does not mean that he avoids the responsibility of taking account of his mail. The respondent owes it to himself and to his clients to adopt a system whereby he would be able to receive mail sent to his law office during his absence. Assuming that circumstances would justify the respondent's abrupt abandonment[25] of his Makati office, it absolutely does not give him the license to abandon his clients as well.

This brings us to the second issue: whether or not respondent committed multiple violations of the Code of Professional Responsibility and thus his disbarment should be sustained.

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[24] *Id*.

[25] *Id.* at p. 106

The respondent argues that he did not abandon his client. He denies that he refused to perform any of his obligations under the contract for legal services between himself and the complainant. He claims that he gave the complainant legal advice, and that he searched for and interviewed witnesses in relation to the cases he was handling for the complainant.[26] He also denies that he ignored the complainant's requests for a report of the cases entrusted to his care. He claims that he gave periodic status reports on the result of his work, that he returned the documents in connection with the case, and that he rendered an accounting of the money that he actually received.

We find that respondent's disbarment should be upheld. From the facts of the case, and based on his own admissions, it is evident that he has committed multiple violations of the Code of Professional Responsibility.

In abruptly abandoning his law office without advising his client and without making sure that the cases he was handling for his client were properly attended to during his absence, and without making arrangements whereby he would receive important mail, the respondent is clearly guilty of gross negligence. A lawyer cannot simply disappear and abandon his clients and then rely on the convenient excuse that there were threats to his safety. Even assuming that there were serious threats to his person, this did not give him the permission to desert his client and leave the cases entrusted to his care hanging. He should have at least exercised reasonable and ordinary care and diligence by taking steps to ensure that the cases he was handling were attended to and that his client's interest was safeguarded. If it was not possible for him to handle the cases entrusted to his care, he should have informed the complainant of his predicament and asked that he be allowed to withdraw from the case to enable the client to engage the services of another counsel who could properly represent him.[27] Deplorably, the respondent just disappeared, deserted his client and forgot about the cases entrusted to his care, to the complainant's damage and prejudice.

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[26] *Id.* at pp. 116-188.

[27] *Ventura v. Santos,* 59 Phil. 123, 128 (1933).

The respondent denies that he did not do anything in connection with the cases included in the Retainer Agreement. He asserts that he reviewed the documents in relation to the case and gave the complainant important advice. He claims that he travelled to Bato, Camarines Norte to negotiate for an amicable settlement with the members of the family of the adverse party in one of the cases filed against the complainant.[28] He also went to San Carlos City (Negros Oriental), Antipolo City, and other parts of Metro Manila to interview and search for witnesses for the cases that he was handling for the complainant.[29]

The respondent's disbarment is not anchored on his failure to do anything in relation to the cases entrusted to his care, but on his abandonment of his client. He will not be absolved from liability on the basis alone of these inconsequential acts which he claims to have accomplished because the glaring fact remains that he has failed to perform his essential obligations to his client, to the courts and to society. As the complainant's lawyer, the respondent is expected to serve his client with competence and diligence.[30] This includes not merely reviewing the cases entrusted to his care and giving the complainant sound legal advice, but also properly representing his client in court, attending scheduled hearings, preparing and filing required pleadings, prosecuting the cases entrusted to his care with reasonable dispatch, and urging their termination without waiting for his client or the court to prod him to do so. He should not idly sit by and leave the rights of his client in a state of uncertainty.

The respondent's acts and omissions were not just a case of inaction, but they amount to deceitful conduct and are contrary to good morals. After assuring the complainant that he would protect the latter's interest and attend to the cases included in the Retainer Agreement, he abandoned his client. It was only after the complainant's own inquiry that he discovered that the respondent never appeared in court to represent the complainant in the cases filed against him, so much so that he had no knowledge that warrants of arrest were already issued against him. The respondent also failed to enter his

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[28] *Rollo,* pp. 114-115.

[29] *Id.* at pp. 117-118.

[30] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 21.

appearance in the civil case for *Mandamus*, Injunction and Damages that the complainant filed. After receiving the complete amount of legal fees, giving the complainant initial legal advice, and interviewing some witnesses, the respondent just disappeared and the complainant never heard from him despite his continued efforts to contact the respondent.

The complainant put his trust in the respondent with full faith that the latter would exert his best effort and ability in the prosecution and defense of his client's cause. But instead of devotion to his client's cause, the respondent grossly neglected his duties to his client. After all the representations he made to the complainant and after receipt of the full amount of the legal fees, he absconded from his responsibilities and betrayed his client's trust. There is no excuse for this, and his gross negligence and appalling indifference is unforgiveable.

On the Court's finding that the respondent refused to return the money he received from the complainant despite written and verbal demands and was not able to give a single report regarding the status of the cases, the respondent claims that he returned the documents to the complainant's representative in the middle of July 2006,[31] and that he also gave an accounting of the money he received sometime immediately after it was demanded from him on July 25 or 26, 2006. The respondent counters that although he initially received the amount of ₱900,000.00, he gave ₱300,000.00 to two intelligence operatives for locating witnesses in favor of the complainant in Antipolo City and other parts of Metro Manila.[32] He claims that only ₱600,000.00 was actually received by him, and from this amount he drew all expenses in connection with the complainant's cases. The respondent further avers that he made an accounting of the ₱600,000.00 received by him and offered to return ₱250,000.00, but it was the complainant's business partner who refused to accept the ₱250,000.00 and insisted on the payment of the whole amount.[33]

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[31] *Rollo*, p. 121.

[32] *Id*.

[33] *Id.* at p. 122.

The complainant declared that he did not receive the documents being demanded from the respondent, nor did he receive an accounting of the money he paid to the respondent. He stated in his "Opposition/Comment to the Motion for Reconsideration" that the respondent's empty claims — that he already returned the documents sometime in the middle of July 2006 and that he rendered an accounting of the money paid to him immediately after July 25 or 26, 2006 — are refuted by the demand letter sent by the complainant on November 27, 2006, four months after the alleged time of return.

We agree with the complainant.

If the respondent had indeed returned the documents sometime in the middle of July 2006, he would have presented a receipt to prove such turnover of documents. And if the respondent had indeed rendered an accounting of the money that was paid to him, he would have attached a received copy of the accounting to his Motion for Reconsideration. But he failed to do both. There was no proof presented. We cannot rely on his bare allegation, especially when the complainant demanded the return of the documents months after they were allegedly returned.

Neither are we persuaded by the respondent's explanation as to how and where the ₱900,000.00 was spent. He claims that out of the ₱900,000.00, he only received ₱600,000.00 because he paid ₱300,000.00 to two intelligence operatives. In paying the intelligence operatives, he stated in his Motion for Reconsideration that he deposited ₱100,000.00 to the Land Bank account of one Investigator Operative Collado (Collado) sometime in the second week of January 2006, and that the rest of the ₱200,000.00 was personally handed by him to Collado in the last week of January 2006 at McDonald's restaurant at the corner of Pasong Tamo and J.P. Rizal Streets at Makati City.[34]

Such an account offered by the respondent is insufficient to free him from liability. If the respondent indeed paid ₱300,000.00 to two intelligence operatives with the knowledge of the

[34] *Id*.

complainant, he would have presented a receipt issued by Collado, and he would have also presented a validated deposit slip or certification as proof that he deposited the amount he claims to have deposited to Collado's account. His failure to attach proof of payment of the ₱300,000.00 to the intelligence operatives does not only make his defense flawed, it also highlights his incompetence in handling the money he received from the client.

It is a lawyer's duty to properly account for the money he received from the client.[35] If indeed the respondent told the client that he would pay ₱300,000.00 to two intelligence operatives, as he claims in his Motion for Reconsideration, he should have held this money in trust, and he was under an obligation to make an accounting. It was his duty to secure a receipt for the payment of this amount on behalf of his client. But he failed to present any receipt or certification from Collado that the payment was received. Since the respondent was not able either to present an accounting of the ₱900,000.00 paid to him upon the complainant's demand, or to provide a sufficient and plausible explanation for where such amount was spent, he must immediately return the same.

For these reasons, and those previously stated in the September 30, 2008 Decision of this Court, we find that respondent Valdez has committed multiple violations of the canons of the Code of Professional Responsibility. He has failed to observe the fundamental duties of honesty and good faith and, thus, we sustain his disbarment.

We must emphasize that the right to practice law is not a natural or constitutional right but is in the nature of a privilege or franchise,[36] and it may be extended or withheld by this Court in the exercise of its sound discretion. As guardian of the legal profession, this Court has ultimate disciplinary power over members of the Bar in order to ensure that the highest standards of competence and of honesty and fair dealing are maintained.

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[35] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 16, Rule 16.01.

[36] *In Re: SyCip*, G.R. No. X92-1, July 30, 1979, 92 SCRA 1, 10, citing, 7 C.J.S. 708.

We find that the respondent has fallen below such exacting standard and is unworthy of the privilege to practice law.

**IN VIEW WHEREOF,** the Motion for Reconsideration is *DENIED*. This Court's *en banc* decision in Administrative Case No. 7902 dated September 30, 2008, entitled ***Torben B. Overgaard v. Atty. Godwin R. Valdez,*** is *AFFIRMED*.

**SO ORDERED.**

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

*Austria-Martinez, J.,* on official leave.

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**EN BANC**

[G.R. No. 123346. March 31, 2009]

**MANOTOK REALTY, INC. and MANOTOK ESTATE CORPORATION,** *petitioners, vs.* **CLT REALTY DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 134385. March 31, 2009]

**ARANETA INSTITUTE OF AGRICULTURE, INC.,** *petitioner, vs.* **HEIRS OF JOSE B. DIMSON, REPRESENTED BY HIS COMPULSORY HEIRS: HIS SURVIVING SPOUSE, ROQUETA R. DIMSON AND THEIR CHILDREN, NORMA AND CELSA TIRADO, ALSON AND VIRGINIA DIMSON, LINDA AND CARLOS LAGMAN, LERMA AND RENE POLICAR, AND ESPERANZA R. DIMSON; AND THE REGISTER OF DEEDS OF MALABON,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SECTION 6, RULE 135; POWER OF THE COURT TO ADOPT ANY SUITABLE PROCESS OR MODE OF PROCEEDING WHICH APPEARS CONFORMABLE TO THE SPIRIT OF THE RULES TO CARRY INTO EFFECT ALL AUXILIARY PROCESSES AND OTHER MEANS NECESSARY TO CARRY THE COURT'S JURISDICTION INTO EFFECT.—** It is incorrect to presume that the earlier referral of these cases to the Court of Appeals for reception of evidence was strictly in accordance with Rule 32. Notably, Section 1 of said Rule authorizes the referral of the case to a commissioner "by written consent of both parties," whereas in the cases at bar, the Court did not endeavor to secure the consent of the parties before effectuating the remand to the Court of Appeals. Nonetheless, our earlier advertence to Rule 32 remains proper even if the adopted procedure does not hew strictly to that Rule, owing to our power under Section 6, Rule 135 to adopt any suitable process or mode of proceeding which appears conformable to the spirit of the Rules to carry into effect all auxiliary processes and other means necessary to carry our jurisdiction into effect.

**2. POLITICAL LAW; CONSTITUTIONAL LAW; EXPROPRIATION; TITLES ACQUIRED BY THE STATE BY WAY OF EXPROPRIATION ARE DEEMED CLEANSED OF WHATEVER PREVIOUS FLAWS MAY HAVE ATTENDED THESE TITLES.—** The fact of expropriation is extremely significant, for titles acquired by the State by way of expropriation are deemed cleansed of whatever previous flaws may have attended these titles. As Justice Vitug explained in *Republic v. Court of Appeals*, and then Associate Justice (now Chief Justice) Puno reiterated in *Reyes v. NHA*: "In an *rem* proceeding, condemnation acts upon the property. After condemnation, the paramount title is in the public under a new and independent title; thus, by giving notice to all claimants to a disputed title, condemnation proceedings provide a judicial process for securing better title against all the world than may be obtained by voluntary conveyance." This doctrine was derived from the opinion of then Chief Judge (now U.S. Supreme Court Justice) Stephen Breyer in *Cadorette v. U.S.*, which in turn cited the pronouncement of the U.S. Supreme Court in *U.S. v. Carmack* that "[b]y giving notice to all claimants to a disputed

title, condemnation proceedings provide a judicial process for securing better title against all the world than may be obtained by voluntary conveyance."

**3. ID.; EVIDENCE; ANNULMENT OR RECONVEYANCE OF TITLE; A PARTY SEEKING IT SHOULD ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE LAND SOUGHT TO BE RECONVEYED IS HIS.—** Inasmuch as we agree with the factual findings and evaluation of the Special Division, we likewise adopt the above conclusions. As we earlier stated, it was incumbent on the Heirs of Dimson and/or CLT to establish their claim to title for reasons other than the fact that OCT No. 994 dated 19 April 1917 is extant. They failed to do so. It should be noted that the instant cases arose from separate actions filed by Jose Dimson and CLT seeking the recovery of possession and/or annulment of title against Araneta and the Manotok Group. Thus, the burden of evidence was on Dimson and CLT to establish the strength of their respective claims of ownership, and not merely to rely upon whatever weaknesses in the claims of the Manotoks and Araneta for their causes of action to prosper. The well-settled legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

**4. CIVIL LAW; LAND TITLES AND DEEDS; CASE WHERE LAND TITLE HOLDER UNABLE TO TRACE PRESENT TITLES TO ORIGINAL CERTIFICATE OF TITLE; CASE AT BAR.—** Hence, in lieu of annulling the Manotok titles per the Special Division's third recommendation, the Court deems it sufficient to require the Registers of Deeds concerned to annotate this Resolution on said titles so as to sufficiently notify the public of their unclear status, more particularly the inability of the Manotoks to trace the titles without any gap back to OCT No. 994 issued on 3 May 1917. If there should be any cause for the annulment of those titles from a proper party's end, then let the proper case be instituted before the appropriate court.

**APPEARANCES OF COUNSEL**

*Palaez Gregorio and Gregorio, Formoso & Quimbo, Puno and Puno* and *Kapunan Tamano Villadolid and Associates* for Araneta Institute of Agriculture, Inc.

*Villaraza Cruz Marcelo & Angcangco Law Offices* and *Alejandro Alfonso E. Navarro Augusto A. San Pedro, Jr. & Elmar B. Galacio* for CLT Realty Dev't. Corp.

*Felix B. Lerio, Sycip Salazar Hernandez & Gatmaitan* for Manotok Realty, Inc. & Manotok Estate Corp.

*Ponce Enrile Cayetano Reyes and Manalastas, Benjamin Formoso* for petitioner.

*Gutierrez Sundiam & Villanueva, Martinez Caparroso & Villasis Law Office, Sanidad & Villanueva Law Office* and *Cases Corpus & Associates Law Offices* for Heirs of Jose Dimson.

*Ernesto Pineda* and *Lacas Villanueva & Associates* for Intervenor F. David, *et al.*

*Arquillo Dela Cruz & Associates Law Offices* for Intervenor C.V. San Juan.

*Blanco Lumasag Go & Suan* for Intervenor C. San Juan Blanco Lumasag Go & Suan.

*Hector B. Centeno* and *Macam Raro Ulep and Partners* for Intervenor B. Rivera, *et al.*

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

**TINGA, *J.*:**

In the Court's Resolution dated 14 December 2007,[1] the Court constituted a Special Division of the Court of Appeals to hear the instant case on remand. The Special Division was composed of three Associate Justices of the Court of Appeals, with Justice Josefina Guevara-Salonga as Chairperson; Justice

[1] See also 540 SCRA 304.

Lucas Bersamin as Senior Member; and Associate Justice Japar B. Dimaampao as Junior Member. We instructed the Special Division to proceed as follows:

The Special Division is tasked to hear and receive evidence, conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within three (3) months from finality of this Resolution.

In ascertaining which of the conflicting claims of title should prevail, the Special Division is directed to make the following determinations based on the evidence already on record and such other evidence as may be presented at the proceedings before it, to wit:

i. Which of the contending parties are able to trace back their claims of title to OCT No. 994 dated 3 May 1917?

ii. Whether the imputed flaws in the titles of the Manotoks and Araneta, as recounted in the 2005 Decision, are borne by the evidence? Assuming they are, are such flaws sufficient to defeat the claims of title of the Manotoks and Araneta?

iii. Whether the factual and legal bases of 1966 Order of Judge Muñoz-Palma and the 1970 Order of Judge Sayo are true and valid. Assuming they are, do these orders establish a superior right to the subject properties in favor of the Dimsons and CLT as opposed to the claims of Araneta and the Manotoks?

iv. Whether any of the subject properties had been the subject of expropriation proceedings at any point since the issuance of OCT No. 994 on 3 May 1917, and if so what are those proceedings, what are the titles acquired by the Government and whether any of the parties is able to trace its title to the title acquired by the Government through expropriation.

v. Such other matters necessary and proper in ascertaining which of the conflicting claims of title should prevail.

WHEREFORE, the instant cases are hereby REMANDED to the Special Division of the Court of Appeals for further proceedings in accordance with Parts VI, VII and VIII of this Resolution.

SO ORDERED.[2]

The Special Division proceeded to conduct hearings in accordance with the Resolution. The parties to these cases, namely CLT Realty Development Corporation (CLT), Manotok Realty Inc. and Manotok Estate Corporation (the Manotoks), the Heirs of Jose B. Dimson (Heirs of Dimson), and Araneta Institute of Agriculture, Inc. (Araneta), were directed by the Special Division to present their respective evidence to the Court of Appeals. Thereafter, the Special Division rendered a 70-page Report[3] (Report) on 26 November 2008. The Special Division submitted the sealed Report to this Court.

Before taking action on the Report itself, we dispose of a preliminary matter. On February 17, 2009, the Manotoks filed a motion beseeching that copies of the report be furnished the parties "so that they may submit their comments and objections thereon in accord with the principle contained in Sec. 10, Rule 32 of the Rules of Court." We deny the motion.

It is incorrect to presume that the earlier referral of these cases to the Court of Appeals for reception of evidence was strictly in accordance with Rule 32. Notably, Section 1 of said Rule authorizes the referral of the case to a commissioner "by written consent of both parties," whereas in the cases at bar, the Court did not endeavor to secure the consent of the parties before effectuating the remand to the Court of Appeals. Nonetheless, our earlier advertence to Rule 32 remains proper even if the adopted procedure does not hew strictly to that Rule, owing to our power under Section 6, Rule 135 to adopt any suitable process or mode of proceeding which appears conformable to the spirit of the Rules to carry into effect all auxiliary processes and other means necessary to carry our jurisdiction into effect.

Moreover, furnishing the parties with copies of the Sealed Report would not serve any useful purpose. It would only delay

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[2] *Manotok Realty v. CLT Realty*, G.R. Nos. 123346 & 134385, 14 December 2007, 540 SCRA 304.

[3] Hereinafter, Report. Penned by Associate Justice J. Guevara-Salonga, concurred in by Associate Justices L Bersamin and J. Dimaampao.

the promulgation of the Court's action on the Sealed Report and the adjudication of these cases. In any event, the present Resolution quotes extensively from the sealed Report and discusses its other substantive segments which are not quoted.

The Report is a commendably exhaustive and pellucid analysis of the issues referred to the Special Division. It is a more than adequate basis for this Court to make the following final dispositions in these cases.

I.

We adopt the succeeding recital of operative antecedents made by the Special Division in its Report.

**THE PROCEDURAL ANTECEDENTS**

***DIMSON v. ARANETA***
**CA-G.R. CV. NO. 41883 & CA-G.R. SP No. 34819**
**[SC-G.R. No. 134385]**

On 18 December 1979, DIMSON filed with the then Court of First Instance ["CFI"] of Rizal a complaint for Recovery of Possession and Damages against ARANETA. On 7 May 1980, DIMSON amended his complaint and included Virgilio L. Enriquez ["ENRIQUEZ"] as his co-plaintiff.

In said Amended Complaint, DIMSON claimed that he is the absolute owner of a 50-hectare land located in Bo. Potrero, Malabon, Metro Manila covered by TCT No. R-15169, [Lot 25-A-2] of the Caloocan Registry of Deeds. Allegedly, DIMSON had transferred the subject property to ENRIQUEZ by way of an absolute and irrevocable sale on 14 November 1979. Unfortunately though, DIMSON and ENRIQUEZ discovered that the subject property was being occupied by ARANETA wherein an "agricultural school house" is erected and that despite repeated demands, the latter refused to vacate the parcel of land and remove the improvements thereon.

ARANETA, for its part, refuted said allegations and countered that it is the absolute owner of the land being claimed by DIMSON and that the real properties in the Araneta Compound are "properly documented and validly titled." It maintained that it had been in possession of the subject parcel of land since 1974. For this reason,

the claims of DIMSON and ENRIQUEZ were allegedly barred by prescription.

During the trial, counsel for ARANETA marked in evidence, among others, certifications from the Land Registration Commission attesting that TCTs Nos. 13574 and 26538, covering the disputed property, are in the names of ARANETA and Jose Rato, respectively. ARANETA also offered TCT No. 7784 in evidence to prove that it is the registered owner of the land described therein.

On 28 May 1993, the trial court rendered a Decision upholding the title of DIMSON over the disputed property xxx

Undaunted, ARANETA interposed an appeal to the Court of Appeals, docketed as CA-G.R. CV No. 41883, which was later consolidated with CA-GR. SP No. 34819 in view of the inter-related issues of the two cases.

In its 30 May 1997 Decision, the Court of Appeals, in CA-G.R. CV No. 41883, sustained the RTC Decision in favor of DIMSON finding that the title of ARANETA to the disputed land in a nullity. In CA-GR. SP No. 34819, the Court of Appeals likewise invalidated the titles of ARANETA, relying on the Supreme Court ruling in *Metropolitan Waterworks and Sewerage System v. Court of Appeals,* which declared null and void the certificates of title derived from OCT No. 994 registered on 3 may 1917. It was also held that ARANETA failed to sufficiently show that the Order sought to be nullified was obtained through extrinsic fraud that would warrant the annulment thereof.

Dissatisfied still, ARANETA filed a Motion for Reconsideration And/Or New Trial espousing therein as basis for its entreaty the various letters from different government agencies and Department order No. 137 of the Department of Justice, among others.

On 16 July 1998, the various Motions of ARANETA were denied by the Court of Appeals. Nonetheless, the Court ordered DIMSON to maintain status quo until the finality of the aforesaid judgment.

Consequently, ARANETA filed a petition before the Supreme Court. Refuting the factual finding of the trial court and the Court of Appeals, ARANETA contended that there in only one OCT 994 covering the Maysilo Estate issued on 3 May 1917 pursuant to the Decree No. 36455 issued by the Court of Land Registration on

19 April 1917 and added that there were subsequent certifications issued by the government officials, notably from the LRS, the DOJ Committee Report and the Senate Committees' Joint Report which attested that there is only one OCT 994, that which had been issued on 3 May 1917.

***CLT v. MANOTOK***
**CA-G.R. CV. No. 45255**
**[SC-G.R. No. 123346]**

On 10 August 1992, CLT filed with the Regional Trial Court ["RTC"] A COMPLAINT FOR Annulment of Transfer Certificates of Title, Recovery of Possession and Damages against the MANOTOKS and the Registry of Deeds of Metro Manila District II (Calookan City, Metro Manila) ["CALOOCAN RD"].

In its Complaint, CLT alleged that it is the registered owner of Lot 26 of the Maysilo Estate located in Caloocan City and covered by Transfer Certificate of Title No. T- 177013, a derivative title of OCT No. 994. As a basis of its proprietary claim, CLT averred that on 10 December 1988, it had acquired Lot 26 from its former registered owner, Estelita I. Hipolito ["HIPOLITO"], by virtue of a Deed of Sale with Real Estate Mortgage. HIPOLITO's title was, in turn, a direct transfer from DIMSON, the registered owner of TCT No. 15166, the latter having acquired the same by virtue of a Court Order dated 13 June 1966 issued by the Court of First Instance of Rizal in Civil Case No. 4557.

On the other hand, the MANOTOKS maintained the validity of their titles, which were all derivatives of OCT No. 994 covering over twenty (20) parcels of land located over a portion of Lot 26 in the Maysilo Estate. In substance, it was contented that the title of CLT was an offspring of an ineffective grant of an alleged undisputed portion of Lot 26 by way of attorney's fees to its predecessor-in- interest, Jose B. Dimson. The MANOTOKS, in this connection, further contended that the portion of Lot 26, subject of the present controversy, had long been disposed of in favor of Alejandro Ruiz and Mariano Leuterio and hence, there was nothing more in said portion of Lot 26 that could have been validly conveyed to Dimson.

Tracing the legitimacy of their certificates of titles, the MANOTOKS alleged that TCT No. 4210, which cancelled OCT No. 994, had been issued in the names of Alejandro Ruiz and Mariano Leuterio on September 1918 by virtue of an *Escritura De Venta* executed by Don Tomas Arguelles and Don Enrique Lopes on 21 August 1918. TCT No. 4210 allegedly covered an approximate area of 19,565.43 square meters of Lot 26. On even date, TCT No. 4211 was transferred to Francisco Gonzales on the strength of an Escritura de Venta dated 3 March 1920 for which TCT No. T-5261, covering an area of 871,982 square meters was issued in the name of one Francisco Gonzales, married to Rufina Narciso.

Thereafter, TCT No. T-35485, canceling TCT No. T-5261, was issued to Rufina Narcisa *Vda. de* Gonzales which was later replaced with the names of Gonzales six (6) children. The property was then subdivided and as a result of which, seven (7) certificates of titles were issued, six (6),under the names of each of the children while the remaining title was held by all of them as co-owners.

Eventually, the properties covered by said seven certificates of title were expropriated by the Republic of the Philippines. These properties were then later subdivided by the National Housing Authority ["NHA"], into seventy-seven (77) lots and thereafter sold to qualified vendees. As it turned out, a number of said vendees sold nineteen (19) of these lots to Manotok Realty, Inc. while one (1) lot was purchased by the Manotok Estate Corporation.

During the pre-trial conference, the trial court, upon agreement of the parties, approved the creation of a commission composed of three commissioners tasked to resolve the conflict in their respective titles. Accordingly, the created Commission convened on the matter in dispute.

On 8 October 1993, Ernesto Erive and Avelino San Buenaventura submitted an exhaustive Joint Final Report ["THE MAJORITY REPORT"] finding that there were inherent technical infirmities or defects on the face of TCT No. 4211, from which the MANOTOKS derived their titles (also on TCT No. 4210), TCT No. 5261 and TCT No. 35486. Teodoro Victoriano submitted his Individual Final Report ["THE MINORITY REPORT"] dated 23 October 1993.

After the conduct of a hearing on these reports, the parties filed their respective comments/objections thereto. Upon order of the trial court, the parties filed their respective memoranda.

Adopting the findings contained in the Majority Report, the RTC, on 10 May 1994, rendered a Decision, in favor of CLT and ordered, among others, the cancellation of the certificates of title issued in the name of the MANOTOKS.

The MANOTOKS elevated the adverse RTC Decision on appeal before the Court of Appeals. In its Decision dated 28 September 1995, the Court of Appeals affirmed the RTC Decision, except as to the award of damages which was deleted. The MANOTOKS then moved for reconsideration, but said motion was denied by said appellate court in its Resolution dated 8 January 1996. After the denial of their Motion for Reconsideration, the MANOTOKS filed a Petition for Review before the Supreme Court.

## PROCEEDINGS BEFORE THE SUPREME COURT

Before the Supreme Court, the Petitioners for Review, separately filed by the MANOTOKS, ARANETA and Sto. Niño Kapitbahayan Association, Inc., ["STO. NIÑO"], were consolidated.

Also submitted for consideration of the Supreme Court were the report of the Fact Finding Committee dated 28 August 1997 and the Senate Committee Report No. 1031 dated 25 May 1998 which concluded that there was only one OCT No. 994 issued, transcribed and registered on 3 May 1917.

## THE SUPREME COURT DECISION

In its Decision dated 29 November 2005 ["THE SUPREME COURT 2005 DECISION"], the Supreme Court, through its Third Division, affirmed the RTC Decision and Resolutions of the Court of Appeals, which declared the titles of CLT and DIMSON as valid.

In invalidating the respective titles of the MANOTOKS and ARANETA, the Supreme Court, in turn, relied on the factual and legal findings of the trial courts, which had heavily hinged on the imputed flaws in said titles. Considering that these trial court findings had been affirmed by the Court of Appeals, the Supreme Court highlighted the fact that the same were accorded the highest degree of respect and, generally, should not be disturbed on appeal.

Emphasis was also made on the settled rule that because the Supreme Court was not a trier of facts, it was not within its function to review

factual issues and examine, evaluate or weigh the probative value of the evidence presented by the parties.

## THE SUPEME COURT RESOLUTION

Expectedly, the MANOTOKS and ARANETA filed their respective Motions for Reconsideration of the Supreme Court 2005 Decision.

Resolving said motions for reconsideration, with the Office of the Solicitor General ["OSG"] intervening on behalf of the Republic, the Supreme Court, in its Resolution of 14 December 2007 ["THE SUPREME COURT 2007 RESOLUTION"] reversed and nullified its 2005 Decision and categorically invalidated OCT No. 994 dated 19 April 1917, which was the basis of the propriety claims of CLT and DIMSON. However, the Supreme Court resolved to remand the cases to this Special Division of the Court of Appeals for reception of evidence.

To guide the proceedings before this Special Division of the Court of Appeals, the Supreme Court made the following binding conclusions:

> "*First, there is only one OCT 994. As it appears on the record, that mother title was received for transcription by the Register of Deeds on 3 May 1917, and that should be the date which should be reckoned as the ate of registration of the title. It may also be acknowledged, as appears on the title, that OCT No. 994 resulted from the issuance of the decree of registration on (19)*[*] *April 1917, although such dated cannot be considered as the date of the title or the date when the title took effect.*
>
> *Second. Any title that traces its source to OCT No. 994 dated (19) April 1917 is void, for such mother title is inexistent. The fact that the Dimson and CLT titles made specific reference to an OCT No. 994 dated (19)* April 1917 casts doubt on the validity of such titles since they refer to an inexistent OCT. This error alone is, in fact, sufficient to invalidate the Dimson and CLT claims over the subject property if singular reliance is placed by them on the dates appearing on their respective titles.*
>
> *Third. The decision of this Court in MWSS v. Court of Appeals and Gonzaga v. Court of Appeals cannot apply to*

[*] Through advertence, the number "17" appeared in the original.

*the cases at bar, especially in regard to their recognition of an OCT No. 994 dated 19 April 1917, a title which we now acknowledge as inexistent. Neither could the conclusions in MWSS or Gonzaga with respect to an OCT No. 994 dated 19 April 1917 bind any other case operating under the factual setting the same as or similar to that at bar.*[4]

*II.*

The parties were afforded the opportunity to present their evidence before the Special Division. The Report names the evidence submitted to the Special Division for its evaluation:

**CLT EVIDENCE**

In its Offer of Evidence,[5] CLT adopted the documentary exhibits and testimonial evidence of witnesses submitted in the case filed by CLT against STO. NIÑO in Civil Case No. C-15491, ["CLT-STO NIÑO CASE"]. These pieces of evidence include, among others, the Majority and Minority Reports, the Formal Offer of Evidence in the presentation of the evidence-in-chief and rebuttal evidence in the CLT-STO NIÑO CASE consisting of various certificates of titles, plans by geodetic engineer, tax declarations, chemistry report, specimen signatures and letters of correspondence.

**MANOTOKS EVIDENCE**

The MANOTOKS sought admission of the following evidence: Senate and DOJ Committee Reports; certificates of title issued to them and their vendees/assignees, *i.e.*, Republic of the Philippines, the Gonzalezes, Alejandro Ruiz and Mariano Leuterio, Isabel Gil del Sola and Estelita Hipolito; deeds of absolute sale; contracts to sell; tax declarations and real property tax receipts; the Formal Officer of Evidence of Philville Development & Housing Corporation; ["PHILVILLE"], in Civil Case No. 15045; this Court of Appeals' Decision in CA-G.R. CV. No. 52606 between CLT and PHILVILLE; the Orders of Judge Palma dated 13 June 1966 and 16 August 1966 in Case No. 4557 and the billing statements of SSHG Law Office. They also submitted in evidence the Affidavits and Supplemental Affidavits of Rosa R. Manotok and Luisa T. Padora; Affidavits of Atty. Felix B. Lerio, Atty. Ma. P.G. Ongkiko and Engineer Jose Marie

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[4] Report, pp. 5-16.

[5] *Rollo* of the Special Division, Vol. I, pp. 771-809.

P. Bernabe; a copy of a photograph of BM No. 9; certified true copy of coordinates and reference point of L.M. No. 1 and BM No. 1 to 10 of Piedad Estate and TCT No. 177013 of CLT.[6]

## DIMSON EVIDENCE

In their Consolidated Formal Offer of Evidence,[7] DIMSON submitted the previous decisions and resolutions passed relative to these cases, various certifications of different government agencies, OCT 994, subdivision plan of Lot 25-A-2, observations of Geodetic Engineer Reggie P. Garcia showing the relative positions of properties within Lot 25-A; the Novation of Contract/Deed of Sale and Mortgage dated 15 January 1948 between Rato, Don Salvador Araneta and Araneta Institute of Agriculture; copies of various certificates of titles to dispute some of the titles held by ARANETA; several letter-requests and official receipts.

## ARANETA EVIDENCE

ARANETA, in turn, offered in evidence various certificates of title, specifically, OCT No. 994, TCT No. 8692; TCT No. 21857; TCT No. 26538; TCT No. 26539; TCT No. (7784)-738 and TCT no. 13574. It also marked in evidence the certified true copies of Decree No. 36577; the DOJ and Senate Reports; letters of correspondence to the Land Registration Commission and the Register of Deeds of Malabon City; survey plans of Lot 25-A and TCT r-15169 of Dimson and; the affidavit of Engineer Felino M. Cortez and his curriculum vitae. ARANETA also offered the certified true copy of TCT No. 6196 in the name of Victoneta, Inc.; TCT No. 13574 in the name of ARANETA; certifications issued by Atty. Josephine H. Ponciano, Acting Register of Deeds of Malabon city-Navotas; certified true copy of Judge Palma's Order dated 16 August 1966 in Case No. 4557; Circular No. 17 (which pertains to the rules on reconstitution of titles as of 19 February 1947) and its official receipt and; the owner's duplicate copy of OCT No. 994.[8][9]

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[6] *Rollo* of the Special Division, Consolidated Offer of Evidence, Vol. II, pp. 1584-1619.

[7] *Id.* at 1626-1638.

[8] *Id.* at 1541-1581.

[9] Report, pp. 19-21.

*III.*

We now turn to the evaluation of the evidence engaged in by the Special Division. To repeat, the Special Division was tasked to determine the following issues based on the evidence:

i. Which of the contending parties are able to trace back their claims to Original Certificate of Title (OCT) No. 994 dated 3 May 1917:

ii. Whether the respective imputed flaws in the titles of the Manotoks and Araneta, as recounted in the Supreme Court 2005 Decision, are borne by the evidence. Assuming they are, are such flaws sufficient to defeat said claims?

iii. Whether the factual and legal bases of the 1966 Order of Judge Muñoz-Palma and the 1970 Order of Judge Sayo are true and valid. Assuming they are, do these orders establish a superior right to the subject properties in favor of the Dimsons and CLT as opposed to the claims of the Araneta and the Manotoks?

iv. Whether any of the subject properties had been the subject of expropriation proceedings at any point since the issuance of OCT No. 994 on 3 May 1917, and if so, what are those proceedings, what are the titles acquired by the Government, and is any of the parties able to trace its title acquired by the government through expropriation?

v. Such other matters necessary and proper in ascertaining which of the conflicting claims of title should prevail.

The ultimate purpose of the inquiry undertaken by the Court of Appeals was to ascertain which of the four groups of claimants were entitled to claim ownership over the subject properties to which they claimed title thereto. One set of properties was disputed between CLT and the Manotoks, while the other set was disputed between Araneta and the Heirs of Dimson.

As can be gleaned from the Report, Jose Dimson was able to obtain an order in 1977 issued by Judge Marcelino Sayo of the Court of First Instance (CFI) of Caloocan City on the basis of

which he was able to register in his name properties belonging to the Maysilo Estate. Judge Sayo's order in turn was sourced from a 1966 Order issued by Judge (later Supreme Court Associate Justice) Cecilia Muñoz-Palma of the CFI of Rizal. Dimson's titles reflected, as their mother title, OCT No. 994 dated 19 April 1917.[10] Among these properties was a fifty (50)-hectare property covered by Transfer Certificate of Title (TCT) No. 151169, which apparently overlapped with the property of Araneta covered by TCT No. 13574 and 26538.[11] Araneta was then and still is in possession of the property. The Araneta titles state, as their mother title, OCT No. 994 dated 3 May 1917. Consequently, Dimson filed an action for recovery of possession against Araneta.

Another property in Dimson's name, apparently taken from Lot 26 of the Maysilo Estate, was later sold to Estelita Hipolito, who in turn sold the same to CLT. Said property was registered by CLT under TCT No. T-177013, which also reflected, as its mother title, OCT No. 994 dated 19 April 1917.[12] Said property claimed by CLT encroached on property covered by titles in the name of the Manotoks. The Manotoks traced their titles to TCT Nos. 4210 and 4211, both issued in 1918 and both reflecting, as their mother title, OCT No. 994 dated 3 May 1917.

It is evident that both the Heirs of Dimson and CLT had primarily relied on the validity of OCT No. 994 dated 19 April 1917 as the basis of their claim of ownership. However, the Court in its 2007 Resolution held that OCT No. 994 dated 19 April 1917 was inexistent. The proceedings before the Special Division afforded the Heirs of Dimson and CLT alike the opportunity to prove the validity of their respective claims to title based on evidence other than claims to title the inexistent 19 April 1917 OCT No. 994. Just as much was observed by the Special Division:

> Nonetheless, while the respective certificates of title of DIMSON and CLT refer to OCT 994 issued on 19 April 1917 and that their previous postulations in the present controversies had been anchored

[10] See *id.* at 26-27.

[11] See *id.* at 6.

[12] See *id.* at 12-13.

on the supposed validity of their titles, that which emanated from OCT 994 of 19 April 1917, and conversely the invalidity of the 3 May 1917 OCT 994, the Supreme Court has yet again allowed them to substantiate their claims on the basis of other evidentiary proofs:

> Otherwise stated, both DIMSON and CLT bear the onus of proving in this special proceedings, by way of the evidence already presented before and such other forms of evidence that are not yet of record, that either there had only been an error in the course of the transcription or registration of their derivative titles, or that other factual and legal bases existed to validate or substantiate their titles aside from the OCT No. 994 issued on 19 April 1917.[13]

Were they able to discharge such burden?

*A.*

We begin with the Heirs of Dimson. The Special Division made it clear that the Heirs of Dimson were heavily reliant on the OCT No. 994 dated 19 April 1917.

> [DIMSON], on the strength of Judge Sayo's Order dated 18 October dated 18 October 1977, was issued separate certificates of title, *i.e.,* TCT Nos. 15166, 15167, 15168 and 15169, covering portions of the Maysilo Estate. Pertinently, with respect to TCT No. 15169 of DIMSON, which covers Lot 25-A-2 of the said estate, the following were inscribed on the face of the instrument.
>
> > *"IT IS FURTHER CERTIFIED that said land was originally registered on the 19th day of April in the year nineteen hundred and seventeen in the Registration Book of the Office of the Register of Deeds of Rizal, Volume NA page NA, as Original Certificate of Title No. 994 pursuant to Decree No. 36455 issued in L.R.C. Case No. 4429 Record No. _____*
> >
> > *This Certificate is a transfer from Original Certificate of Title No. 994/NA, which is cancelled by virtue hereof in so far as the above-described land is concerned.*[14]

From the above accounts, it is clear that the mother title of TCT no. 15169, the certificate of title of DIMSON covering the now

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

[14] *Rollo* of the Special Division, DIMSON's Exhibit "J-Dimson".

disputed Lot 25-A-2, is OCT No. 994 registered on 19 April 1917. Manifestly, the certificate of title issued to DIMSON, and as a matter of course, the derivative title later issued to CLT, should both be voided inasmuch as the OCT which they emanated had already been declared inexistent.[15]

The Special Division noted that the Heirs of Dimson did not offer any explanation why their titles reflect the erroneous date of 19 April 1917. At the same time, it rejected CLT's explanation that the transcription of the erroneous date was a "typographical error."

As can be gleaned from the records, both DIMSON and their successor-in-interest CLT, had failed to present evidence before this Court to prove that there had been a mere typographical error in the transcription of their respective titles with regard to the date of registration of OCT No. 994. CLT specifically harps on this assertion that there had only been a typographical error in the transcription of its title.[16] On the other hand, while DIMSON had refused to categorically assert that there had been such a typographical error causing the invalidity of their title, their failure to proffer any reason or argument which would otherwise justify why their title reflects 19 April 1917 and not 3 May 1917 leads this Court to conclude that they simply had no basis to support their proprietary claim.

Thus, without proffering any plausible explanation as to what led to the erroneous entry of the registration dated of OCT 994, DIMSON are left without any recourse but to substantiate their claim on the basis of other evidence not presented during the proceedings below, which would effectively prove that they had a valid proprietary claim over the disputed properties. This is specifically true because DIMSON had previously placed reliance on the MWSS doctrine to prove the validity of their title.[17]

Absent such explanation, the Heirs of Dimson were particularly constrained to rely on the 1977 Order of Judge Sayo, which

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[15] *Id.* at 23-24.

[16] Transcript of Stenographic Notes, in RTC Civil Case No. C-8050, 10 July 2008, pp. 14-15.

[17] *Id.* at 25-26.

was allegedly sourced from the 1966 Order of Judge Muñoz Palma. On that issue, the Special Division made the following determinations:

It should be recalled that in their appellee's brief in CA-G.R.CV No. 41883, therein appellee Jose Dimson specifically denied the falsity of TCT No. R-15169 alleging that the contention "*is already moot and can be determined by a controlling decision.*"[18] Jose Dimson expounded on his reliance as follows:

> *"In Metropolitan Waterworks & Sewerage System (for brevity MWSS) case, Jose B. Dimson's (as private respondent) title TCT No. 15167 issued for Lot 28 on June 8, 1978 derived from OCT No. 994 registered on April 19, 1917, is overlapping with MWSS title TCT No. 41028 issued on July 29, 1940 derived from the same OCT 994, registered on May 3, 1917.*
>
> *(Same facts in the case at bar; Jose B. Dimson' (plaintiff-appellee) title TCT No. R-15169 issued for Lot 25-A-2, on June 8, 1978, is overlapping with defendant-appellant's title TCT Nos. 13574 and 21343, not derived from OCT No. 994."*[19]

So viewed, *sans* any proof of a mechanical error in the transcription or annotation on their respective certificates of title, the present inquiry then hinges on whether the Order dated 13 June 1966 issued by then Judge Cecilia Muñoz-Palma of the Court of First Instance of Rizal in Civil Case No. 4557 ["PALMA ORDER"] and Judge Sayo's Order dated 18 October 1977 ["SAYOS 18 OCTOBER 1977 ORDER"], can be validated and authenticated. It is so since the brunt of the proprietary claims of both DIMSON and CLT has its roots on said Orders.

Perforce, in consideration of the foregoing, this leads Us to the **THIRD ISSUE** as presented by the Supreme Court, to wit:

> ***"Whether the factual and legal bases of Palma's 13 June 1966 Order and Sayo's 18 October 1977 Order are true and valid. Assuming they are, do these orders establish a superior right to the subject properties in favor of the Dimsons and CLT as opposed to the claims of Araneta and the Manotoks?"***

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[18] Brief for Plaintiff-Appellee, *rollo*, SC-G.R. No. 134385, p. 266.

[19] *Id.* at 266-267.

As it is, in contending that their certificates of title could be validly traced from the 3 May 1917 OCT No. 994, DIMSON point out that their title was issued pursuant to a court order issued by Judge Palma in Case No. 4557 and entered in the memorandum of Encumbrance of OCT No. 994. DIMSON also insist that TCT Nos. 8692, 21857 and 26538 were mere microfilmed or certified copies and, therefore, inadmissible. Lastly, DIMSON reiterated the flaws and irregularities which voided the titles of the ARANETA in the previous proceedings and focused on the burden of ARANETA to present evidence to defeat their titles.

The foregoing contentions of DIMSON find to factual and legal basis. As we see it, Sayo's 18 October 1977 Order, which apparently confirmed Palma's 13 June 1966 Order, raised serious questions as to the validity of the manner by which it was arrived at.

It is worthy to note that as early as 25 August 1981, counsel for the ARANETA applied for a *subpoena duces tecum* addressed to the Clerk of Court of CFI Pasig for the production of the records of LRC Case No. 4557 for purposes of determining the genuineness and authenticity of the signature of Judge Palma and also of her Order granting the confirmation. A certain Atty. Contreras, Officer-in-Charge of the said court, appeared and manifested in open court that the records pertaining to the petition for Substitution of names of Bartolome Rivera, *et al*. could no longer be located inasmuch as they had passed hands from one court to another.

What is perplexing to this Court is not only the loss of the entire records of Case No. 4557 but the admission of Judge Sayo that he had not seen the original of the Palma Order. Neither was the signature of Judge Palma on the Order duly proven because all that was presented was an unsigned duplicate copy with a stamped notation of "original signed." Equally perplexing is that while CFI Pasig had a Case No. 4557 on file, said file pertained not to an LRC case but to a simple civil case.[20] Thus:

"Atty. Directo:

The purpose of this subpoena *duces tecum* is to present your Honor the Order Order (sic) of Judge Palma in order to determine the genuineness and authenticity of the signature

[20] Transcript of Stenographic Notes, in RTC Civil Case No. C-8050, 25 August 1981, pp. 4-5, 7.

of Judge Palma in this court order and which order was a basis of a petition in this court to be confirmed. That is the reason why we want to see the genuineness of the signature of Judge Palma.

COURT:

No signature of Judge Palma was presented in this court. It was a duplicate copy not signed. There is a stamp only of original signed.

Atty. Directo:

That is the reason why we want to see the original.

Court:

I did not see the original also. When the records of this case was brought here, I checked the records, there were so many pages missing and the pages were re-numbered but then I saw the duplicate original and there is a certification of a woman clerk of Court, Atty. Molo.

Atty. Directo:

That is the reason why we want to see this document, we are surprised why it is missing.

Court:

We are surprised also. You better ask Judge Muñoz Palma.

Atty. Contreras:

May I make of record that in verifying our records, we found in our original vault LRC application no. N-4557 but the applications were certain Feliciano Manuel and Maria Leaño involving Navotas property because I was wondering why they have the same number. There should be only one.

Atty. Directo:

Aside from that, are there other cases of the same number?

Atty. Contreras:

No, there should be only number for a particular case; that must be a petition after decree record.

Atty. Ignacio:

This 4557 is not an LRC Case, it is a simple civil case.

x x x x x x x x x

Moreover, both the MANOTOKS and ARANETA insist that Palma's 13 June 1966 Order had been recalled by a subsequent Order dated 16 August 1966, ["RECALL ORDER"],[21] wherein the trial court dismissed the motion filed by DIMSON on the court's findings that " x x x *whatever portion of the property covered by OCT 994 which has not been disposed of by the previous registered owners have already been assigned and adjudicated to Bartolome Rivera and his assignees, as a result of which there is no portion that is left to be given to the herein supposed assignee Jose Dimson*."

However, We are reluctant to recognize the existence and due execution of the Recall Order considering that its original or even a certified true copy thereof had not been submitted by either of the two parties relying on it despite having been given numerous opportunities to do so.

Be that as it may, even if We are to consider that no Recall Order was ever issued by then Judge Palma, the validity of the DIMSON titles over the properties in the Maysilo Estate becomes doubtful in light of the fact that the supposed "share" went beyond what was actually due to Jose Dimson under the Compromise Agreement with Rivera. It should be recalled that Palma's 13 June 1966 Order approved only the conveyance to Jose Dimson of "*25% of whatever share of Bartolome Rivera has over Lots 25, 26, 27, 28-B and 29 of OCT 994 x x x subject to availability of undisposed portion of the said lots*."[22]

In relation to this, We find it significant to note the observations contained in the Senate Committee Report No. 1031 that, based on the assumption that the value of the lots were equal, and "(C)onsidering that the share of Maria de la Concepcion Vidal was only 1-189/1000

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21 *Rollo* of the Special Division, MANOTOKS' Exhibit "63".

22 *Id.*, MANOTOKS' Exhibit "64".

percent of the Maysilo Estate, the Riveras who claimed to be the surviving heirs of Vidal will inherit only 197, 405.26 square meters (16,602,629.53 m2 x 1.1890%) or 19.7 hectares as their share.[23] Even if we are to base the 25% of Jose Dimson on the 19.7 hectares allotted to the Riveras, it would appear that Jose Dimson would only be entitled to more or less five (5)hectares of the Maysilo Estate. Obviously, basing only on TCT No. 15169 of Dimson which covered a land area of 50 hectares (500,000 square meters),[24] it is undisputable that the total properties eventually transferred to Jose Dimson went over and beyond his supposed 25% share.

What is more, Palma's 13 June 1966 Order specifically required that "x x x *whatever title is to be issued herein in favor of Jose Dimson, the same shall be based on a subdivision plan duly certified by the Land Registration Commission as correct and in accordance with previous orders issued in this proceedings, said plan to be submitted to this court for final approval.*

Interestingly however, despite such requirement, DIMSON did not submit Survey Plan LRC (GLRO) Rec. No. 4429 SWO-5268 which allegedly was the basis of the segregation of the lands, if only to prove that the same had been duly approved and certified correct by the Land Registration Commission. What was submitted before the RTC and this Court was only the Subdivision Plan of Lot 25-A-2 which notably does not bear the stamp of approval of the LRC. Even an inspection of the exhibit for CLT does not bear this Survey Plan, which could have, at the very least, proven the authenticity of the DIMSON title.

Indeed, We find the absence of this piece of evidence as crucial in proving the validity of the titles of DIMSON in view of the allegation of contending parties that since the survey plan upon which the land titles were based contained the notation "SWO," meaning that the subdivision plan was only a product of a "special work order," the same could not have passed the LRC. Neither was it duly certified by the said office.[25]

In addition, the Special Division took note of other irregularities attending Dimson's TCT No. R-15169.

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[23] *Id.*, ARANETA's Exhibit "12-AIA".

[24] *Id.*, DIMSON's Exhibit "J-Dimson".

[25] Report, pp. 26-32.

[Firstly], OCT No. 994 showed that Lot 25-A of the Maysilo Estate was originally surveyed on "September 8-27, 1911, October 4-21 and November 17-18, 1911." Yet, in said TCT No. R-15169, the date of the original survey is reflected as "Sept. 8-27, 1911" and nothing more.[26] The variation in date is revealing considering that DIMSON's titles are all direct transfers from OCT No. 994 and, as such, would have faithfully adopted the mother lot's data. Unfortunately, no explanation for the variance was ever offered.

Equally worthy of consideration is the fact that TCT No. 15169 indicates that not only was the date of original registration inexistent, but the remarks thereon tend to prove that OCT No. 994 had not been presented prior to the issuance of the said transfer certificate. This manifest from the notations "NA" on the face of DIMSON's title meaning, "not available." It bears emphasizing that the issuance of a transfer certificate of title to the purchaser without the production of the owner's duplicate is illegal (*Rodriguez v. Llorente, 49 Phil. 826)* and does not confer any right to the purchaser (*Philippine National Bank vs. Fernandez, 61 Phil. 448 [1935])*. The Registrar of Deeds must, therefore, deny registration of any deed or voluntary instrument if the owner's duplicate is not presented in connection therewith. *(Director of Lands vs. Addison, 40 Phil. 19 [1926]; Hodges vs. Treasurer of the Phil. 50 Phil. 16 [1927]).*[27]

In has also been held that, in cases where transfer certificates of title emanating from one common original certificate of title were issued on different dates to different persons or entities covering the same land, it would be safe to conclude that the transfer certificate issued at an earlier date along the line should prevail, barring anomaly in the process of registration.[28] Thus, *"(w)here two certificates purport to include the same land, the earlier in date prevails. x x x. In successive registration, where more than one certificate is issued in respect of a particular estate or interest in land, the person is deemed to hold under the prior certificate who is the holder or whose claim is derived directly from the person*

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[26] *Rollo* of the Special Division, MANOTOKS' Exhibit "41".

[27] *REGISTRATION OF LAND TITLES AND DEEDS*, NOBLEJAS AND NOBLEJAS, 1992 Revised Ed., p. 292.

[28] *REGISTRATION OF LAND TITLES AND DEEDS*, PEÑA, PEÑA, Jr., PEÑA, 1994 Revised Ed., p. 144.

*who was the holder of the earliest certificate issued in respect thereof. x x x"*[29]

x x x x x x x x x

Still another indication of irregularity of the DIMSON title over Lot No. 25-A is that the issuance of the Sayo Order allegedly confirming the Palma Order was in itself suspect. Gleaning from the records, DIMSON filed the Motion only on 10 October 1977, or eleven (11) years after obtaining the supposed sanction for the issuance of titles in this name. Besides, what was lodged by Jose Dimson before the sala of then Judge Palma was not a simple land registration case wherein the only purpose of Jose Dimson was to establish his ownership over the subject parcels of land, but, as reflected in the Palma Order, the subject of the case was the confirmation of Jose Dimson's claim over the purported rights of Rivera in the disputed properties. The case did not partake of the nature of a registration proceeding and thus, evidently did not observe the requirements in land registration cases. Unlike in a land registration case, therefore, Jose Dimson needed to file an action before Judge Sayo to seek "confirmation" of Palma's Order dated 13 June 1966.

So viewed the general rule proscribing the application of laches or the statute of limitations in land registration cases,[30] as well as Section 6, Rule 39 of the Rules of Court, in relation to its provisions on revival of judgment applies only to ordinary civil actions and not to other or extraordinary proceedings such as land registration cases, is clearly not applicable in the present case. The legal consequences of laches as committed by DIMSON and their failure to observe the provisions of Rule 39 should, therefore, find application in this case and thus, the confirmation of DIMSON's title, if any, should fail.

Parenthetically, the allegations of DIMSON would further show that they derive the validity of their certificates of title from the decreased Jose Dimson's 25% share in the alleged hereditary rights of Bartolome Rivera ["RIVERA"] as an alleged grandson of Maria Concepcion Vidal ["VIDAL"]. However, the records of these cases would somehow negate the rights of Rivera to claim from Vidal.

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[29] *Alzate v. Philippine National Bank*, L-20068, 26 June 1967, 20 SCRA 422.

[30] *Republic v. Lourdes Abiera Nillas*, G.R. No. 159595, 23 January 2007, 512 SCRA 286.

The Verification Report of the Land Registration Commission dated 3 August 1981 showed that Rivera was 65 years old on 17 May 1963 (as gathered from the records of Civil Case Nos. 4429 and 4496).[31] It can thus be deduced that, if Rivera was already 65 years old in 1963, then he must have been born around 1898. On the other hand, Vidal was only nine (9) years in 1912; hence, she could have been born only on 1905. This alone creates an unexplained anomalous, if not ridiculous, situation wherein Vidal, Rivera's alleged grandmother, was seven (7) years younger than her alleged grandson. Serious doubts existed as to whether Rivera was in fact an heir of Vidal, for him to claim a share in the disputed portions of the Maysilo Estate.[32]

These findings are consonant with the observations raised by Justice Renato Corona in his Concurring and Dissenting Opinion on our 2007 Resolution. To wit:

TCT No. T-177013 covers Lot 26 of the Maysilo Estate with an area of 891,547.43 sq. m. It was a transfer from TCT No. R-17994 issued in the name of Estelita I. Hipolito. On the other hand, TCT No. R-17994 was a transfer from TCT No. R-15166 in the name of Jose B. Dimson which, in turn, was supposedly a direct transfer from OCT No. 994 registered on April 19, 1917.

Annotations at the back of Hipolito's title revealed that Hipolito acquired ownership by virtue of a court order dated October 18, 1977 approving the compromise agreement which admitted the sale made by Dimson in her favor on September 2, 1976. Dimson supposedly acquired ownership by virtue of the order dated June 13, 1966 of the CFI of Rizal, Branch 1 in Civil Case No. 4557 awarding him, as his attorney's fees, 25% of whatever remained of Lots 25-A, 26, 27, 28 and 29 that were undisposed of in the intestate estate of the decedent Maria de la Concepcion Vidal, one of the registered owners of the properties covered by OCT No. 994. This order was confirmed by the CFI of Caloocan in a decision dated October 13, 1977 and order dated October 18, 1977 in SP Case No. C-732.

However, an examination of the annotation on OCT No. 994, particularly the following entries, showed:

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[31] Records of CA-G.R. SP No. 34819, Vol. I, pp. 94-97.

[32] Report, pp. 32-34.

*AP-6665/0-994 — Venta: Queda cancelado el presente Certificado en cuanto a una extencion superficial de 3,052.93 metros cuadrados y 16,512.50 metros cuadrados, y descrita en el lote no. 26, vendida a favor de Alejandro Ruiz y Mariano P Leuterio, el primer casado con Deogracias Quinones el Segundo con Josefa Garcia y se ha expedido el certificado de Titulo No; 4210, pagina 163 Libro T-22.*

*Fecha del instrumento — Agosto 29, 1918*

*Fecha de la inscripcion — September 9, 1918*

*10:50 AM*

*AP-6665/0-994 — Venta: — Queda cancelado el presente Certficado el cuanto a una extencion superficial de 871,982.00 metros cuadrados, descrita en el lote no. 26, vendida a favor de Alejandro Ruiz y Mariano P. Leuterio, el primer casado con Deogracias Quinones el segundo con Josefa Garcia y se ha expedido el certificado de Titulo No 4211, pagina 164, Libro T-22.*

*Fecha del instrumento — Agosto 25, 1918*

*Fecha de la inscripcion – September 9, 1918*

*10:50- AM*

Based on the description of Lot No. 26 in OCT No. 994, it has an area of 891,547.43 sq. m. which corresponds to the total area sold in 1918 pursuant to the above-cited entries. Inasmuch as, at the time the order of the CFI of Rizal was made on June 13, 1966, no portion of Lot No. 26 remained undisposed of, there was nothing for the heirs of Maria de la Concepcion Vidal to convey to Dimson. Consequently, Dimson had nothing to convey to Hipolito who, by logic, could not transmit anything to CLT.

Moreover, subdivision plan Psd-288152 covering Lot No. 26 of the Maysilo Estate described in Hipolito's certificate of title was not approved by the chief of the Registered Land Division as it appeared to be entirely within Pcs-1828, Psd-5079, Psd-5080 and Psd-15345 of TCT Nos. 4210 and 4211. How Hipolito was able to secure TCT No. R-17994 was therefore perplexing, to say the least.

All these significant facts were conveniently brushed aside by the trial and appellate courts. The circumstances called for the need to preserve and protect the integrity of the Torrens system. However, the trial and appellate courts simply disregarded them.[33]

The Court thus adopts these findings of the Special Division on the validity of Jose Dimson's titles, which he obtained consequent to the 1977 Order of Judge Sayo. Consequently, we cannot give due legal recognition to any and all titles supposedly covering the Maysilo Estate obtained by Dimson upon the authority of either the purported 1966 Order of Judge Muñoz-Palma or the 1977 Order of Judge Sayo.

*B.*

Indubitably, as between the titles of ARANETA and the MANOTOKS and their predecessors-in-interest, on one hand, and those of DIMSON, on the other, the titles held by ARANETA and the MANOTOKS must prevail considering that their titles were issued much earlier than the titles of the latter.

Our findings regarding the titles of Jose Dimson necessarily affect and even invalidate the claims of all persons who seek to derive ownership from the Dimson titles. These include CLT, which acquired the properties they laid claim on from Estelita Hipolito who in turn acquired the same from Jose Dimson. Just as much was concluded by the Special Division as it evaluated CLT's claims.

For its part, CLT contended that even at the trial court level, it maintained that there was only one OCT No. 994 from where its claim emanates. It argued that its case against the MANOTOKS, including that of STO. NIÑO, was never decided based on the doctrines laid down in *Metropolitan Waterworks and Sewerage System v. Court of Appeals*[34] and *Heirs of Gonzaga v. Court of Appeals*.[35]

Before this Special Division, CLT insists that the MANOTOKS failed to submit "new" competent evidence and, therefore, dwelling

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[33] *J.* Corona, Concurring and Dissenting Opinion, *Manotok Realty v. CLT*, *supra* note 2 at 412-414.

[34] G.R. No. 103558, 17 November 1992, 215 SCRA 783.

[35] G.R. No. 96259, 3 September 1996, 261 SCRA 327.

on the alleged flaws of the MANOTOK's titles, "*the findings and conclusions of the court-appointed commissioners as adopted by the trial court, then upheld by the Honorable Court in its Decision dated 28 September 1995 and finally affirmed in the Supreme Court's Decision dated 29 November 2005, therefore stand, as there is no reason to disturb them.*"

Furthermore, CLT contends that the Orders of Judge Palma and Judge Sayo are no longer open to attack in view of their finality. Lastly, CLT asserts that the properties covered by the MANOTOKS' titles and those covered by the expropriation proceedings did not property pertain to and were different from Lot 26 owned by CLT. Thus, it maintains that the MANOTOKS cannot use as basis for the validity of their titles the expropriation undertaken by the Government as a means of staking their claims.

To restate, CLT claims the 891,547.43 square meters of land covered by TCT No. T-177013[36] located in Malabon, Caloocan City and designated as "Lot 26, Maysilo Estate, LRC Swo-5268." TCT No. T-177013 shows that its mother titles is OCT No. 994 registered on 19 April 1917. Tracing said claim, Estelita Hipolito executed a Deed of Sale with Real Estate Mortgage in favor of CLT on 10 December 1988. By virtue of this transfer, Hipolito's TCT No. R-17994[37] was cancelled and in lieu thereof, CLT's TCT No. 223677/R-17994 of TCT No. R-17994. Hipolito, on the other hand, was a transferee of the deceased Dimson who was allegedly the registered owner of the subject land on the basis of TCT No. 15166.

In view of the foregoing disquisitions, invalidating the titles of DIMSON, the title of CLT should also be declared a nullity inasmuch as the nullity of the titles of DIMSON necessarily upended CLT's propriety claims. As earlier highlighted, CLT had anchored its claim on the strength of Hipolito's title and that of DIMSON's TCT No. 15166. Remarkably and curiously though, TCT No. 15166 was never presented in evidence for purposes of tracing the validity of titles of CLT. On this basis alone, the present remand proceedings remain damning to CLT's claim of ownership.

Moreover, considering that the land title of CLT carried annotations identical to those of DIMSON and consequently included the defects

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[36] *Rollo* of the Special Division, CLT's Exhibit "3-A-CLT".

[37] *Id*.

in DIMSON's title, the fact that whatever typographical errors were not at anytime cured by subsequent compliance with the administrative requirements or subjected to administrative correction bolsters the invalidity of the CLT title due to its complete and sole dependence on the void DIMSON title.[38]

*IV.*

The task of the Special Division was not limited to assessing the claims of the Heirs of Dimson and CLT. We likewise tasked the Special Division to ascertain as well the validity of the titles held by the Manotoks and Araneta, titles which had been annulled by the courts below. Facially, these titles of the Manotoks and Araneta reflect, as their valid mother title, OCT No. 994 dated 3 May 1917. Nonetheless, particular issues were raised as to the validity of the Manotok and Araneta titles independent of their reliance on the 3 May 1917 OCT No. 994 *vis-à-vis* the inexistent 19 April 1917 OCT No. 994.

*A.*

We begin by evaluating the Araneta titles. The Special Division quoted the observations of the trial court, which upheld Dimson's claim over that of Araneta, citing the following perceived flaws of TCT Nos. 26538 and 26539, from which Araneta derived its titles, thus:

> Let us now examine TCT 26538 and TCT 26539 both in the name of Jose Ma. Rato from where defendant was said to have acquired TCT 13574 and TCT 7784 now TCT 21343 in the name of Araneta and the other documents related thereto:
>
> 1) Perusal of TCT 26538 shows that its Decree No. and Record No. are both 4429. In the same vein, TCT 26539 also shows that it has Decree No. 4429 and Record No. 4429.
>
> However, Decree No. 4429 was issued by the Court of First Instance, Province of Isabela (Exhibit I) and Record No. 4429, issued for Ordinary Land Registration Case, was issued on March 31, 1911 in CLR No. 5898, Laguna (Exhibit 8, 8-A Bartolome Rivera *et al.*)

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[38] Report, pp. 35-36.

How then could TCT No. 26538 and TCT No. 26539 both have Decree No. 4429 and Record No. 4429, which were issued in Court of First Instance, Province of Isabela and issued in Laguna, respectively.

2) TCT no. 26538 and TCT No. 26539 in the name of Jose Ma. Rato are not annotated in the Original Certificate of Title 994, where they were said to have originated.

3) The Escritura de Incorporacion de Philippine Land Improvement Company (Exhibit I) executed on April 8, 1925 was only registered and was stamped received by the Office of the Securities and Exchange Commission only April 29, 1953 when the Deed of Sale & Mortgage was executed on August 23, 1947 (Exh. 5 defendant) and the Novation of Contract, Deed of Sale and Mortgage executed on November 13, 1947 (Exh. M). So, that when Philippine Land Improvement was allegedly given a special power of attorney by Jose Ma. Rato to represent him in the execution of the said two (2) documents, the said Philippine Land Improvement Company has not yet been duly registered.

4) TCT 26538 and 26538 and TCT 26539 both in the name of Jose Ma. Rato, both cancel 21857 which was never presented in Court if only to have a clear tracing back of the titles of defendant Araneta.

5) If the subject matter of the Deed of Sale & Mortgage (Exhibit 5 defendant) is TCT 26539, why is it that TCT 13574 of defendant Araneta cancels TCT 6196 instead of TCT 26539. That was never explained. TCT 6196 was not even presented in Court.

6) How come TCT 26538 of Jose Ma. Rato with an area of 593,606.90 was cancelled by TCT 7784 with an area of only 390,282 sq.m.

7) How was defendant Araneta able to have TCT 7784 issued in its name, when the registration of the document entitled Novation of Contract, Deed of Sale & Mortgage (Exhibit M) was suspended/ denied (Exhibit N) and no title was received by the Register of Deeds of Pasig at the time the said document was filed in the said Office on March 4, 1948 (Exhibit N and N-1).

Under Sec. 55 of Land Registration Act (Act No. 496) now Sec. 53 of Presidential Decree No. 1529, no new certificate of title shall

be entered, no memorandum shall be made upon any certificate of title by the register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such endorsement.

8) The sale by Jose Ma. Rato in favor of defendant Araneta is not reflected on the Memorandum of Encumbrances of TCT 26538 (Exhibit 7-defendant) meaning that TCT 26538 still exists and intact except for the encumbrances annotated in the Memorandum of Encumbrances affecting the said title (Exhibits 16, 16-A and 16-N David & Santos).

9) In the encumbrances annotated at the back of TCT 26539 (Exhibit 4-defendant) there appears under entry No. 450 T 6196 Victoneta, Incorporated covering parcel of land canceling said title (TCT 26539) and TCT 6196 was issued ( x x x) which could have referred to the Deed (sic) of Sale and Mortgage of 8-23-47 (Exhibit 5-defendant) entered before Entry 5170 T-8692 Convenio Philippine Land Improvement Company, with Date of Instrument: 1-10-29, and Date of Inscription: 9-21-29.

In TCT 26838 this Entry 5170 T-8692 Convenio Philippine Land Improvement Company (Exhibit 16-J-1) appears, but the document, Novation of Contract, Deed of Sale & Mortgage dated November 13, 1947 (Exhibit M) does not appear.

Entry marked Exhibit 16-J-1 on TCT 26538 shows only the extent of the value of ₱42,000.00 invested by Jose Ma. Rato in the Philippine Land Improvement Company. Said entry was also entered on TCT 26539.

The Court also wonders why it would seem that all the documents presented by defendant Araneta are not in possession of said defendant, for according to witness Zacarias Quintan, the real estate officer of the said defendant Araneta since 1970, his knowledge of the land now in possession of defendant Araneta was acquired by him from all its documents marked in evidence which were obtained only lately when they needed for presentation before this Court.[39][40]

The Special Division then proceeded to analyze these factual contentions, and ultimately concluded that the Araneta claim to

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[39] Original records, SC-G.R. No. 134385, Vol. II, RTC Decision, pp. 337-339.

[40] Report, pp. 8-11.

title was wholly valid. We adopt in full the following factual findings of the Special Division, thus:

As for the proprietary claim of ARANETA, it maintains that it has established by direct evidence that its titles were validly derived from OCT No. 994 dated 3 May 1917. With regard to the imputed flaws, it asseverates that these were unfounded and thus, labored to refute all of them. ARANETA further expounded on the nullity of the Palma and Sayo Orders which was the basis of DIMSON's titles.

The documentary exhibits it proffered traced its certificates of title to OCT No. 994 registered on 3 May 1917. From the titles submitted, its predecessor-in-interest was Jose Ma. Rato *y* Tuazon ["RATO"], one of the co-heirs named in OCT No. 994, who was allotted the share of nine and five hundred twelve one thousandths (9-512/1000) percent share of the Maysilo Estate.[41] For this reason, to ascertain the legitimacy of the derivative title of ARANETA, the origin and authenticity of the title of RATO need to be reassessed.

Verily, attesting to RATO's share on the property, Entry No. 12343/O-994 of the Owner's Duplicate Copy of OCT no. 994, records the following:

> *"12343/O-994 – Auto: Jose Rato y Tuason - - - Queda cancelado el presente seartificado en cuanto a una estension superficial de 1,405,725.90 metro Cuadrados mas o menos descrita en el Lote No. 25-A-3, an virtud del auto dictado por el Juzgado de Primera Instancia de Riza, de fecha 28 de Julio de 1924, y que en au lugar se had expedido el Certificados de Titulo No. 8692, folio 492 del Tomo T-35 del Libro de Certicadads de Transferencia.*
>
> *Date of Instrument – Julio 28, 1924.*
>
> *Date of Inscription – Agosto 1, 1024 – 10:19 a.m.*
>
> *SGD. GLICERIO OPINION, Register of deeds*
>
> *Agosto 19, 1924*[42]

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41 *Rollo* of the Special Division, ARANETA's Exhibit "24-A-AIA".

42 *Id*.

In accordance with the decree, RATO was issued on 1 August 1924, TCT No. 8692[43] which covers "*Lote No. 25 A-3 del plano del subdivision, parte del Lote No. 25-A, plano Psu-(not legible), "Hacienda de Maysilo," situado en el Munisipio de Caloocan, Provincia del Rizal x x x.*"[44] The parcel of land covers an approximate area of "*UN MILLION CUATROCIENTOS CINCO MIL SETECIENTOS VEINTICINCO metros cuadrados con NOVENTA decimetros cuadrados (1,405,725.90) mas o menos*." As reflected under Entry No. 14517… T-8692,[45] the parcel of land covered under this certificate of title was subdivided into five (5) lots under subdivision plan Psd-6599 as per Order of the court of First Instance of Rizal. Consequently, TCT Nos. 21855, 21856, 21857, 21858 and 21859 were issued.

Focusing on TCT No. 21857 issued on 23 May 1932, this certificate of title issued in RATO's name,[46] cancelled TCT No. 8692[47] with respect to the property it covers. On its face, TCT No. 21857,[48] was a derivative of OCT No. 994 registered on 3 May 1917. It covers Lot No. 25 A-3-C of subdivision plan Psd-6589, being a portion of Lot No. 25-A-3, G.L.R.O Record No. 4429. Thereafter, TCT No. 21857 was cancelled by TCT No. 26538[49] and TCT No. 26539[50] which were both issued in the name of Jose Ma. Rato *y* Tuazon on 17 September 1934.

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[43] *Rollo* of the Special Division, ARANETA's Exhibit "4-AIA".

[44] Another TCT No. 8692, as per certification of Acting Register of Deeds of Malabon City, Navotas, Josephine Ponciano, surfaced during the hearing upon a *subpoena duces tecum* applied for by the counsel for the Heirs of Dimson. This TCT No. 8692 is registered under the name of Gregorio Araneta, Incorporated and located at Tinajeros, Malabon, Rizal, designated as Lot Nos. 1 and 2, Block No. 44 of the consolidation and subdivision plan Pcs-188. It also showed that it cancelled TCT No. 46118 and its mother title was traced back to OCT NO. 994 registered on 3 May 1917. *Rollo* of the Special Division, Vol. I, pp. 1229-1230.

[45] *Rollo* of the Special Division, ARANETA's Exhibit "4-G-AIA".

[46] *Id.*, ARANETA's Exhibit "5-E-AIA".

[47] Entry No. 12343 of the owner's duplicate copy of OCT NO. 994 makes a reference to TCT No. 8692 and Lot No. 25-A-3, Exhibit "24-A-AIA".

[48] The lot area could not be determined from the certificate of title submitted.

[49] Exhibit "7-AIA".

[50] Exhibit "8-AIA".

With respect to TCT No. 26539, the certificate of title showed that it covered a parcel of land designated as Section No. 2 of the subdivision plan Psd-10114, being a portion of Lot 25-A-3-C having an approximate area of 581,872 square meters.[51] Thereafter, TCT No. 26539 was cancelled by TCT No. 6196[52] whose registered owner appears to be a certain Victoneta, Inc. This parcel of land has an area of 581,872 square meters designated as section No. 2 of subdivision plan Psd-10114, being a portion of Lot 25-A-3-C.

As shown on its face, TCT No. 6196 issued on 18 October 1947 in the name of Victoneta, Inc. and its mother title were traced from OCT No. 994 registered on 3 May 1917. Later, TCT No. 6196 was cancelled, and in lieu thereof, TCT No. 13574 was issued in favor of Araneta Institute of Agriculture on 20 May 1949.[53] It covers a parcel of land designated as section No. 2 of subdivision plan Psd-10114, being a portion of Lot 25-A-3-C. It has an aggregate area of 581,872 square meters.

On the other hand, appearing under Entry No. 16086/T-No. 13574 of TCT No. 6196 is the following:

> "*Entry No. 16086/T-No. 13574 – SALE in favor of the ARANETA INSTITUTE OF AGRICULTURE, vendee: Conveying the property described in this certificate of title which is hereby cancelled and issuing in lieu thereof Transfer Certificate of Title No. 13574, page 74, Book T-345 in the name of the vendee. (Doc. No. 149, page 98, Book II, S. of 1949 of Notary Public for Manila, Hospicio B. Biñas).*
>
> *Date of Instrument – May 18, 1949*
>
> *Date of the Inscription – May 30, 1949 at 11:00 a.m.*[54]

TCT No. 26538[55] in turn showed on its face that it covers a parcel of land designated as Section 1 of subdivision plan Psd-10114

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[51] *Rollo* of the Special Division, ARANETA's Exhibit "8-A-AIA" and "8-C-AIA".

[52] *Id.*, ARANETA's Exhibit "19-AIA".

[53] *Id.*, ARANETA's Exhibit "21-AIA".

[54] *Id.*, ARANETA's Exhibit "19-AIA".

[55] As per certification of Reynaldo S. Vergara, Acting Register of Deeds,

being a portion of Lot 25-A-3-C having an area of 592,606.90 square meters.[56]

On 4 March 1948, TCT No. 26538 was cancelled by TCT No. 7784, which was issued in favor of Araneta Institute of Agriculture. TCT No. 7784 covers four (4) parcels of land with an aggregate area of 390,282 square meters.[57] It would appear from the records of CA-G.R. SP No. 34819 consolidated with CA-G.R. CV No. 41883 that TCT No. 7784 was eventually cancelled by TCT No. 21343.[58] As per attachment of ARANETA in its Answer dated 6 march 1980 filed in Civil Case No. 8050, a mere copy of TCT No. 21343 showed that it covers a parcel of land designated as Lot 6-B of the subdivision plan Psd-24962 being a portion of Lot 6, described as plan Psd-21943, G.L.R.O. Record No. 4429 with an approximate area of 333,377 square meters.[59] However, for reasons unknown, a copy of TCT No. 21343, whether original or certified true copy thereof, was not submitted before this Court.

In summation, ARANETA had shown that RATO, as one of the co-owners of the property covered by OCT NO. 994, was assigned Lot No. 25-A-3. His evidence of ownership is reflected on TCT No. 8692 issued in his name. RATO held title to these parcels of land even after its subdivision in the 1930's. Further subdividing the property, RATO was again issued TCT No. 21857, and later TCT Nos. 26538 and 26539,

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upon the request of one Crisanta Santos appearing on the dorsal portion of Exhibit "7-AIA".

[56] *Rollo* of the Special Division, ARANETA's Exhibit "7-AIA".

[57] Covering (1) Lot No. 1, Block No. 127 of the subdivision plan Psd-20096 being a portion of Lot No. 2, Block No. 100 of subdivision plan Psd-17729, G.L.R.O. Record No. 4429 with an area of 5,625 square meters; (2) Lot No. 2, Block No. 130 of the subdivision plan Psd-20096 being a portion of Lot No. 2, Block No. 100 of the subdivision plan Psd-17729, G.L.R.O. Record No. 4429 with an area of 3,440 square meters; (3) Block No. 131 of the subdivision plan Psd-20096 being a portion of Lot No. 2, Block No. 100 of the subdivision plan Psd-17729, G.L.R.O. Record No. 4429 with an area of 7,840 square meters; and (4) Lot No. 6 of the subdivision plan Psd-21943, being a portion of Block No. 132 of the subdivision plan Psd-20096, G.L.R.O. Record No. 4429 with an area of 373,377 square meters.

[58] CA Decision, CA-G.R. SP No. 34819 and CA-G.R. SP No. 41883, Vol. II, pp. 898-899.

[59] Original Records, RTC Civil Case No. C-8050, p. 42.

still covering Lot No. 25 A-3-C. In all his certificates of title, including those that ultimately passed ownership to ARANETA, the designation of the lot as either belonging to or portions of Lot 25-A-3 was retained, thereby proving identity of the land.

More importantly, the documentary trail of land titles showed that all of them were derived from OCT No. 994 registered on 3 May 1917. For purposes of tracing ARANETA's titles to Oct No. 994, it would appear that the evidence presented ultimately shows a direct link of TCT Nos. 7784 and 13574 to said mother title. Suffice it to state, the origin and legitimacy of the proprietary claim of ARANETA had been well substantiated by the evidence on record and on this note, said titles deserve validation.

Under the guidelines set, we shall now proceed to evaluate the imputed flaws which had been the previous bases of the trial court in invalidating ARANETA's titles.

One of the flaws observed on the titles of ARANETA's predecessor-in-interest was that TCT No. 26538 and TCT No. 26539 in Rato's name refer to Decree No. 4429 and Record No. 4429, as basis of their issuance. This is being questioned inasmuch as Decree No. 4429 refers to a decree issued by the CFI of Isabela while Record No. 4429 was issued for ordinary Land Registration Case No. 31 March 1911 in CLR No. 5898 of Laguna.

Explaining this discrepancy, ARANETA insisted that the same was a mere typographical error and did not have any effect on the validity of their title. It further contended that the number "4429" was the case number of Decree No. 36455 and was used interchangeably as the record number.

This Court finds that the incorrect entry with respect to the Decree and Record Number appearing on the title of ARANETA's predecessor-in-interest cannot, by itself, invalidate the titles of ARANETA's predecessors-in-interest and ultimately, that of ARANETA. To the mind of this Court, the incorrect entries alluded to would not have the effect of rendering the previous titles void sans any strong showing of fraudulent or intentional wrongdoing on the part of the person making such entries. Fraud is never presumed but must be established by clear and convincing evidence.[60] The

[60] *MC Engineering, Inc. v. Court of Appeals*, G.R. No. 104047, 3 April, 2002, 380 SCRA 116.

strongest suspicion cannot sway judgment or overcome the presumption of regularity. The sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass.[61]

The Supreme Court, in *Encinas v. National Bookstore, Inc.*[62] acknowledged that certain defects on a certificate of title, specifically, the interchanging of numbers, may occur and "*it is certainly believable that such variance in the copying of entries could be merely a typographical or clerical error.*" In such cases, citing with approval the decision of the appellate court, the technical description in the title should prevail over the record number.[63]

Thus, what is of utmost importance is that the designation and the technical description of the land, as stated on the face of the title, had not been shown to be erroneous or otherwise inconsistent with the source of titles. In ARANETA's case, all the titles pertaining to Lot No. 25 had been verified to be an offshoot of Decree No. 36455 and are all located in Tinajeros, Malabon. At any rate, despite the incorrect entries on the title, the properties, covered by the subject certificates of title can still be determined with sufficient certainty.

It was also opined that TCT No. 26538 and TCT No. 26539 in the name of RATO had not been annotated on OCT No. 994 from which said titles had supposedly originated. It should be stressed that what partially cancelled OCT No. 994 with respect to this subject lot were not TCT Nos. 26538 and 26539 but TCT No. 8692 issued on 1 August 1924. In fact, TCT Nos. 26538 and 26539 are not even the immediate predecessors of OCT No. 994 but were mere derivatives of TCT No. 21857. Logically therefore, these two certificates of title could not have been annotated on OCT No. 994, they not being the preceding titles.

In any case, a perusal of OCT No. 994 shows an entry, which pertains to Jose Ma. Rato but, on account of the physical condition of the copy submitted to this Court, the entry remains illegible for us to make a definite conclusion.[64] On the other hand, Entry

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61 *Alonso v. Cebu Country Club, Inc.*, G.R. No. 130876, 31 January 2002, 375 SCRA 390.

62 G.R. No. 162704, 19 November 2004, 443 SCRA 293.

63 *Encinas v. National Bookstore, Inc., id.*

64 *Rollo* of the Special Division, ARANETA's Exhibit "2-G-AIA".

No. 12343/O-994 found on the Owner's Duplicate Copy of OCT No. 994 specifically recorded the issuance of TCT No. 8692 over Lot No. 25-A-3.[65]

The other flaws noted on ARANETA's certificates of title pertained to its failure to present TCT Nos. 21857, 6196 and 21343. As we have discussed, ARANETA offered in evidence a certified microfilm copy of TCT No. 21857 and a certified true copy of TCT No. 6196 marked as Exhibits 5-A1A and 19-A1A, respectively. However, it failed to submit a copy of said TCT No. 21343. Be that as it may, we will not hasten to declare void TCT No. 7784 as a consequence of such omission, especially so since TCT No. 21343 appears to be a mere derivative of TCT No. 7784. Given that the validity of TCT No. 7784 had been preponderantly proven in these proceedings, the authenticity of said title must be sustained. Besides, ARANETA's failure to submit TCT No. 21343 had never been put into issue in these proceedings.

With respect to the difference in the area of more than 200,0000 square meters between TCT No. 7784 and TCT No. 26538, we find that the trial court failed to consider the several conveyances of portions of TCT No. 26538 before they finally passed on to ARANETA. Thus, on the Memorandum of Encumbrance of TCT No. 26538, it is apparent that portions of this piece of land had been sold to various individuals before the same were transferred to ARANETA on 4 march 1948. Naturally, since the subject land had been partially cancelled with respect to the portion disposed of, it could not be expected that the area of TCT No. 26538 will remain the same at the time of its transfer to ARANETA. Even assuming that the entire area covered by TCT No. 26538 had been disposed of, this fact alone, cannot lend us to conclude that the conveyance was irregular. An anomaly exists if the area covered under the derivative title will be much more than its predecessor-in-interest. Evidently, this is not so in the case before us.

The trial court, relying on Exhibit "N", further asserted that ARANETA should not have been issued TCT No. 7784 considering that the registration of the Novation of Contract, deed of Sale & Mortgage was suspended/denied and no title was received by the Register of Deeds of Pasig at the time the said document was filed in the said Office on March 4, 1948. A perusal of Exhibit "N"

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65 *Id.,* ARANETA's Exhibit "24-A-AIA".

submitted before the trial court, shows that the suspension or denial was merely conditional considering that the person seeking registration had give (sic) days within which to correct the defects before final denial thereof. As we see it, the Notice merely contained a warning regarding the denial of the registration of the voluntary deed but, in no way, did it affect the vested rights of ARANETA to be land. The fact that the title to the land was subsequently issued free from any notation of the alluded defect creates a reasonable presumption that ARANETA was in fact able to comply with the condition imposed. This is especially true since the notice itself contained a note, "Just Completed," written across the face of the letter.

Records also reveal the RTC's observation with regard to Araneta's failure to disprove the result of the plotting made on the subject land (Exhibit K) to the effect that TCT 26538 overlaps ½ portion of TCT 15159 and TCT 26539 also overlaps the other ½ portion of said TCT R-15169. The trial court further noted that "*TCT R-15169 (Jose Dimson) and TCT 26539 (Jose Rato) and TCT 21343 (Araneta) are overlapping each other within Lot 25-A. That portion of TCT R-15169 (Jose Dimson) along bearing distance points to 17 to 18 to 19 to 20 to 21 to 1 and 2 shaded in yellow color in the Plan is not covered by TCT 21343 (Araneta).*"[66]

Scrutinizing Exhibit "K", it becomes apparent that the said evidence relied upon was only a private survey conducted by Geodetic Engineer Reggie P. Garcia which had not been duly approved by the Bureau of Lands and was based only on photocopies of relevant land titles.[67] What is more, said geodetic engineer also failed to adequately explain his observations, approach and manner of plotting the relative positions of the lots.[68] From all indications, the conclusions reached by said geodetic engineer were anchored on unfounded generalizations.

Another defect cited on ARANETA's title was the absence of any entry on the Memorandum of Encumbrances of TCT No. 26538 of the alleged sale between RATO and ARANETA. As pointed out by ARANETA, the copy of TCT No. 26538 submitted to the trial court contained entries only up to the year 1947, thus, explaining

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66 Original Records, SC-G.R. No. 134385, Vol. II, RTC Decision, p. 337.

67 Exhibit "K", Folder of Exhibits, RTC Civil Case No. C-8050.

68 Exhibit "L", Folder of Exhibits, RTC Civil Case No. C-8050.

the (1) lack of entry with regard to the issuance of TCT No. 7784 in favor of ARANETA considering that the same was issued a year later and; (2) entry pertaining to Convenio Philippine Land Improvement Company which was entered way back on 21 August 1929.

Nonetheless, it still cannot be denied that Rato and ARANETA together with Don Salvador Araneta, entered into a voluntary agreement with the intention of transferring the ownership of the subject property. Moreover, no conclusion should have been reached regarding the total cancellation of TCT No. 26538 inasmuch as TCT No. 7784 cancelled the former certificate of title to the extent only of Three Hundred Ninety Thousand Two Hundred Eighty Two (390,282) square meters.

Notably also, with the evident intent to discredit and refute the title of ARANETA, DIMSON submitted TCT Nos. 26538[69] and 21857,[70] which are both derivatives of OCT No. 994 registered on 3 May 1917 and cover parcels of land located in Malabon, Rizal. However, these certificates of title reflect different registered owners and designation of the land covered.

Pertinently, Exhibit "M-Dimson" relating to TCT No. 26538, registered on 12 June 1952, points to one Angela Bautista de Alvarez as the registered owner of a 240 square meter of land designated as Lot No. 19, Block 14 of the subdivision plan Psd-5254 being a portion of Lot No. 7-A-1-A. This certificate of title cancels TCT No. 14112/ T-348 and refers to a certain TCT No. 30473 on the inscriptions.

Exhibit "N-Dimson", on the other hand, pertaining to TCT No. 21857 was issued on 30 March 1951 to one Angela I. Tuason de Perez married to Antonio Perez. This certificate of Title covers a parcel of land described as Lot No. 21, Block 16 of the consolidation and subdivision plan Pcs-140, G.L.R.O. Record No. 4429. It has an area of 436 square meters and cancels TCT No. 21856.

Exhibit "Q-Dimson"[71] consisting of TCT No. 8692 covers two parcels of land designated as Lot Nos. 1 and 2 of Block No. 44 of

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69 *Rollo* of the Special Division, DIMSON's Exhibit "M-Dimson".

70 *Id.*, DIMSON's Exhibit "N-Dimson".

71 *Rollo* of the Special Division, DIMSON's Exhibit "Q-Dimson".

the consolidation Subdivision Plan Pcs-188 with a total area of 3,372 square meters. It was issued to Gregorio Araneta, Incorporated on 7 May 1948. This certificate of title cancelled TCT No. 46118.

Comparing these titles to those of the ARANETA, it is apparent that no identity of the land could be found. The Supreme Court, in the case of *Alonso v. Cebu City Country Club, Inc.*[72] agreeing with the Court of Appeals' dissertation in said case, ruled that there is nothing fraudulent for a certificate of title to bear the same number as another title to another land. On this score, the Supreme Court elucidated as follows:

> *"On the question that TCT No. RT-1310 (T-1151) bears the same number as another title to another land, we agree with the Court of Appeals that there is nothing fraudulent with the fact that Cebu Country Club, Inc.'s reconstituted title bears the same number as the title of another parcel of land. This came about because under General Land Registration Office (GLRO) Circular No. 17, dated February 19, 1947, and Republic Act No. 26 and Circular No. 6, RD 3, dated August 5, 1946, which were in force at the time the title was reconstituted on July 26, 1946, the titles issued before the inauguration of the Philippine Republic were numbered consecutively and the titles issued after the inauguration were numbered also consecutively starting with No. 1, so that eventually, the titles issued before the inauguration were duplicated by titles issued after the inauguration of the Philippine Republic x x x."*

Parenthetically, in their Motion for Partial Reconsideration of this Court's Resolution dated 30 October 2008, DIMSON objected to the admissibility of Exhibits 4-A1A to 7-A1A on the ground that ARANETA failed to submit the original copies of these certificates of title and contended that the "originals" contain different "contents" from their own Exhibits M, N and Q.[73] The fact that the entries contained in ARANETA's pieces of evidence are different from that of DIMSON's do not automatically make ARANETA's exhibits inferior replications or a confirmation of their falsity. Interestingly, the objection regarding the non-submission of the "original copy" had not been raised by DIMSON in their Comments/Objections to

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[72] G.R. No. 130876, 31 January 2002, 375 SCRA 390.

[73] *Rollo* of the Special Division, Vol. II, pp. 2433-2436.

Consolidated Formal Offer of Evidence (Of Araneta Institute of Agriculture, Inc.).[74] In any case, we find the objections unwarranted considering that certified true copies or certified microfilm copies of Exhibits 4-A1A to 7-A1A had been submitted by ARANETA in these proceedings.

Lastly, on the alleged non-registration of Philippine Land Improvement Company at the time the special power of attorney was executed by Jose Ma. Rato to represent him in the execution of the deed of conveyances, the same only proves that Philippine Land Improvement Company was not yet registered and this does not go as far as proving the existence or non-existence of the company at which time it was executed. In effect, the company was not precluded to enter into contracts and be bound by them but it will do so at the risk of the adverse effects of non-registration under the law.

Ultimately, the question of whether the aforesaid certificates of title constitute as clouds on ARANETA's titles are not for this Court to rule upon for purposes of the present remand. Needless to state, it is not for the Heirs of Dimson to rely on the weakness of ARANETA's titles and profit from it. Rather, they should have focused on the strength of their own titles since it is not within our office to decide in whose hands the contested lands should go, our task being merely to trace back the parties' claims to OCT No. 994 dated 3 May 1917.[75]

There is no question that the Araneta titles were derived from OCT No. 994 dated 3 May 1917, particularly from the share of Jose Ma. Rato *y* Tuazon, one of the co-heirs named in OCT No. 994. The Special Division correctly assessed, among others, the reference to Decree No. 4429 and Record No. 4429 in some of the antecedent titles of Araneta[76] as mere clerical errors that could not have invalidated said titles, "4429" being the case number of Decree No. 36455, and the designation and the technical description of the land on those titles not having been shown to be erroneous or variant with the source title.

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[74] *Id.* at 1664-1675.

[75] Report, pp. 51-63.

[76] Particularly TCT No. 26538 and TCT No. 263539.

The Special Division also correctly considered that the trial court had failed to take into account the several conveyances of TCT No. 26538 before it was ultimately transferred to Araneta in 1948, which explain the difference in area between TCT No. 7784 and TCT No. 26538. The imputed overlap of TCT No. 26538 and TCT No. 26539 with the titles held by Dimson was based on a private survey which had not been duly approved by the Bureau of Lands. The alleged absence of any entry on the Memorandum of Encumbrances of TCT No. 26538 of the sale of the property between Rato and Araneta did not, according to the Special Division, discount the fact that Rato and Araneta entered into a voluntary agreement with the intention of transferring the ownership of the subject property. Finally, the Special Division noted that the titles derived from OCT No. 994, which Dimson had submitted as evidence to discredit the Araneta claim, pertain to properties wholly different from those covered by the Araneta titles.

There is no cause to dispute the factual findings and conclusions of the Special Division on the validity of the Araneta titles, and we affirm the same.

*B.*

It appears that the claim to title of the Manotoks is somewhat more controversial. The Special Division did not discount the fact that there could have been flaws in some of the intervening titles between the 3 May 1917 OCT No. 994 and the present titles of the Manotoks. However, the significant event was the expropriation proceedings undertaken by the Republic of the Philippines sometime in 1947. At least some of the titles in the name of the Manotoks were sourced from the titles issued to and subsequently distributed by the Republic. The Special Division explained the milieu in full:

**VALIDITY OF THE MANOTOK TITLES**

The notation under Entry No. 6655/O-994, found on page 17 of OCT 994 of the Owner's Duplicate Copy, shows that Lot No. 26 had been a subject of sale in favor of Alejandro Ruiz and Mariano P. Leuterio.[77] The notations reads:

[77] *Rollo* of the Special Division, MANOTOKS' Exhibit "41".

*"Ap. 6655/O-994 – Venta: Queda Cancelado el presente Certificado en cuanto a una extension superficial de 3,052.93 Metros cuadrados y 16,512.50 metros Cuadrados y descrita en elLote No. 26 vendida a favor de Alejandro Ruis y Mariano P. Leuterio, el primar casado con Diogracias Quinones y el Segundo con Josefa Garcia y se be expedido el Certificado de Titulo No. 4210, Pagina 163, Libro T-22.*

*Date of the Instrument – Aug. 29, 1918*
*Date of Inscription – Sept. 9, 1918 – 10:50 a.m.*
*(GD) L. GARDUNIO, Register of Deeds"*

*"Ap. 6665/O-994-Venta: Queda Cancelado el presente Cerficiado en cuanto a una extension superficial de 871,982.00 metros cuadrados, descrita en el Lote No. 26, vendida a favor de Alejandro Ruiz y Mariano P. Leuterio, el primar casado con Deogracias Quinones y el Segundo con Josefa Garcia y se be expedido el Certificado de Titulo No. 4211, Pagina 164, Libro T-No. 22.*

*Date of Instrument – Aug. 21, 1918*
*Date of Inscription – Sept. 9, 1918 – 10:50 a.m.*
*(SGD.) L. GARDUNIO, Register of Deeds"*

As a result, TCT No. 4211 was cancelled by TCT No. 5261 which was issued in the name of Francisco Gonzales. Inscribed on the "Memorandum of the Incumbrances Affecting the Property Described in this Certificate" was the sale executed in favor of Francisco Gonzales dated 3 March 1920. Thus, on 6 April 1920, TCT No. 5261 was issued in the name of Francisco Gonzales.[78]

On 22 August 1938, TCT No. 5261 was cancelled by TCT No. 35486 in the names of Jose Gonzales *y* Narciso married to Maria P. Gutierrez, Consuelo Susana Gonzales *y* Narciso married to Alfonso D. Prescilla; Juana Francisco Gonzales *y* Narciso married to Fortunato de Leon; Maria Clara Gonzales *y* Narciso married to Delfin Hilario; Francisco Felipe Gonzales *y* Narciso married to Pilar Narciso, and Concepcion Andrea Gonzales *y* Narciso married to Melquiades M. Virata, Jr.

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[78] *Id.*, CLT's Exhibit "3-F-1-CLT".

Appearing on the "Memorandum" of TCT No. 5261 is NOTA: *Ap 2111* which reads as follows:[79]

> *"A/2111 – Adjudicado el torreno descrito en este certificado de titulo, a Rufina Narciso Vda. de Gonzales, a cuenta de la participacion de osia esta en (not legible) los tienes de la eseledad de genanciales. Habida entre la misma y el finado Francisco J. Gonzales, per una orden del Hon. Fernando Jugo, Juez del Juzgado de Primera Instancia de Manila Sala II, dienada el 20 de Septiembre de 19 (not legible), en el Expidiente de intestado del nombrado Francisco J. Gonzales, No. 49034, se cancela el presente certificado de tituto y se expide otre a hombre decha Rufina Narciso, con (not legible) No. 35486, folio 86, Tomo T-168 del libro de transferencias, archivando se la copia de dicha orden da que se ha heche referencia en al Legajo T-No. 35486.*
>
> *(SGD) TEODORO GONZALES,*
> *Registrado de Titulos."*

The property was later subdivided into seven lots in accordance with subdivision plan Psd-21154.[80] Partitioning the lots among the co-owners, TCT No. 35486 was eventually cancelled and in lieu thereof six (6) certificates of titles were individually issued[81] to Francisco Gonzales's six (6) children, specifically, TCT Nos. 1368-1373 while TCT No. 1374 was issued in favor of all the children.[82]

As previously mentioned, the properties covered by TCT Nos. 1368-1374 were expropriated by the Republic of the Philippines and were eventually subdivided and sold to various vendees. Eighteen (18) lots were obtained by MRI from the years 1965 to 1974, while it acquired the lot covered by TCT No. 165119 in 1988. On the other hand, MEC acquired from PhilVille Development Housing Corporation Lot No. 19-B by virtue of Deed of Exchange executed in its favor for which, TCT No. 232568 was issued on 9 May 1991.

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79 *Id.*, CLT's Exhibit "3-F-CLT".

80 As per Entry No. 1368 appearing on TCT No. 35486, *id.*, MANOTOKS' Exhibit "37".

81 Entry No. 3730/T-No. 1368 appearing on TCT No. 35486.

82 TCT Nos. 1368 to 1374, *Rollo* of the Special Division, MANOTOKS' Exhibits "30" to "36".

The 20 certificates of titles were traced by the MANOTOKS, as follows:

1) TCT No. 7528 registered in the name of MRI covers Lot No. 2 of consolidation-subdivision plan (LRC) Pcs-1828 which has an area of 4,988 square meters. MRI purchased this lot from one Basilio Caina who was issued TCT No. 7526 which cancelled TCT Nos. 36657-62 registered in the name of the Republic of the Philippines.[83]

2) TCT No. 7762, covering Lot 1-C, was obtained by MRI from one Narcisa Buenaventura. The Parcel of land has an approximate area of 2,876 square meters. Buenaventura's ownership was evidenced by TCT No. 7525,[84] deriving the same from TCT No. 36657-63.[85]

3) TCT No. 8012 in the name of MRI covers Lot No. 12-1 having an area of 20,000 square meters.[86] This certificate of title was traced from one Filemon Custodio who held TCT No. 7792. Custodio was in turn a transferee of Guillermo Rivera, the latter having been issued TCT No. 7760 by virtue of sale between him and then People's Homesite and Housing Corporation ["PHHC"]. The latter title eventually cancelled TCT No. 36557-63 of the Republic.[87]

4) TCT No. 9866 issued to MRI covers Lot No. 21 and has an approximate area of 23,979 square meters. MRI's certificate of title was derived from TCT No. 9854 registered in the name of Filemon Custodio, a transferee of Jose Dionisio, who was issued TCT No. 9853. Dionisio's title in turn cancelled the Republic's TCT No. 36657-63.[88]

5) TCT No. 21107 issued to MRI covers Lot 22 with an approximate area of 2,557 square meters. MRI acquired the same by virtue of sale between him and Francisco Custodio, holder of TCT No. 21040. Francisco Custodio was a transferee of Lorenzo Caina, registered

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83 *Rollo* of the Special Division, MANOTOKS' Exhibit "3".

84 The parcel of land was subdivided into three (3) lots, namely, Lot Nos. 1-A, 1-B and 1-C, under subdivision plan (LRC) Psd-42090.

85 *Rollo* of the Special Division, MANOTOKS' Exhibit "4".

86 Per Deed of Sale between Custodio and MRI, *id.*, MANOTOKS' Exhibit "5B".

87 *Id.*, MANOTOKS' Exhibit "5E".

88 *Id.*, MANOTOKS' Exhibit "6".

owner of TCT No. 21039 as evidenced by a Deed of Sale between Caina and the PHHC, the latter's certificate of title canceling TCT No. 36557-63 of the Republic.[89]

6) TCT No. 21485 was issued to MRI by virtue of sale between it and Francisco Custodio, registered owner of TCT No. 21484. The certificate of title covers Lot 20 with an approximate area of 25,276 square meters Custodio was in turn a transferee of Lorenzo Caina, the latter being the registered owner of TCT No. 21013 by reason of sale between him and PHHC.[90] Under Entry No. 6277/T-21485, it would appear that portions of the property covered under TCT No. 21485 and TCT No. 232568 had been subject of an expropriation proceedings to which the Manotok Estate Corporation, *et al.* interposed no objections subject to the payment of just compensation.[91]

7) TCT Nos. 26405[92] and 26406,[93] both registered in the name of MRI, cancelled TCT Nos. 9773 and 9774, respectively. TCT Nos. 9773 and 9774 were registered in the names of Romulo, Rosalina, Lucila, Felix and Emilia all surnamed Jacinto, [JACINTOS"], before the same were transferred to MRI by reason of sale in favor of the latter. The JACINTOS' certificates of title were in turn derived from TCT Nos. 8014 and 8015 issued in the name of Filemon Custodio[94] Both TCT Nos. 8014 and 8015 cancelled TCT 7792/ T-39. However, for purposes of tracing TCT No. 7792/T-39 to the Republic's certificate of titles, this certificate of title was not submitted in evidence.

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89 *Id.*, MANOTOKS' Exhibit "7".

90 TCT 21013 was not submitted in evidence but appears only in the Deed of Absolute Sale between Custodio and Caina. The Deed of Sale between Custodio and PHHC was also submitted. *Id.*, MANOTOKS' Exhibit "8".

91 TCT No. 21485, attached to the Manifestation of MRI, submitted on 29 October 2008 to the Special Division. *Rollo* of the Special Division, Vol. II, pp. 2144-2146.

92 Covers Lot No. 12-E with an area of 1,000 square meters. *Rollo* of the Special Division, MANOTOKS' Exhibit "9".

93 Covers Lot No. 12-F with an area of 1,000 square meters. *Rollo* of the Special Division, MANOTOKS' Exhibit "10".

94 *Rollo* of the Special Division, MANOTOKS' Exhibits "9C" and "10B".

8) TCT No. 26407[95] issued to MRI was traced back to the title of Lourdes Mercado Cloribel who was the registered owner of TCT No. 8404 by virtue of sale between the two, thereby transferring ownership to MRI. On the fact of TCT No. 8404, it would show that it cancelled TCT No. 8013/T41 but there is no showing in whose name TCT No. 8013 was registered and what certificate of title it cancelled.

9) TCT No. 33904[96] of MRI cancelled TCT No. 8017 of Filemon Custodio by virtue of sale between the latter and MRI.[97] We note that TCT No. 8017 cancelled TCT No. 7792/T-39 but there is no showing whether the same could be traced back to the Republic's certificates of title.

10) TCT No. 34255, covering Lot No. 11-Bm, Psd-75797 with an area of 11,000 square meters, reflects MRI as the registered owner. This certificate of title cancels TCT No. 36557-63 of the Republic.[98]

11) TCT No. 254875[99] bears MRI as the registered owner of Lot 55-A with an area of approximately 1,910 square meters. This certificate of title cancelled TCT No. 41956 which covers Lot 55, also registered in the name of MRI. It would appear that MRI acquired the lot covered under TCT No. 41956 from one Joaquin Caina who was the registered owner of TCT No. 25715 being a vendee of PHHC.[100]

12) TCT No. 53268 of MRI covered Lot No. 15,[101] which was purchased by MRI from one Maria V. Villacorta who held TCT No. 53155. Villacorta in turn acquired the same land from one Eufrocina Mackay whose TCT No. 7827 was eventually cancelled

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95 Covers Lot 12-B with an area of 1,000 square meters. *Id.*, MANOTOKS' Exhibit "11".

96 Covers Lot No. 12-H with an area of 1,802 square meters.

97 *Rollo* of the Special Division, MANOTOKS' Exhibit "12B".

98 *Id.*, MANOTOKS' Exhibit "13B".

99 Lot No. 55-A with an area of 1,910 square meters.

100 *Rollo* of the Special Division, MANOTOKS' Exhibit "14B".

101 With an approximate area of 3,163 square meters.

by Villacorta's land title.[102] It would appear that TCT No. 7827 cancelled TCT No. 7826/T-40 but there is no trace to whom the latter title was registered and what certificate of title it cancelled.

13) TCT No. 55897 shows MRI as the registered owner of Lot 3 of the consolidation-subdivision plan (LRC) Pcs-1828 of the Maysilo Estate covering an area of more or less 20,531 square meters. This certificate of title cancelled TCT No. 53122 in the names of MRI (19,531 square meters) and one Silvestre Domingo (1,000 square meters). TCT No. 53122 in turn cancelled TCT No. 21347 registered in the names of Jesus Hipona (19,531 square meters) and Silvestre Domingo (1,000 square meters). Notably, TCT No. 21347 cancelled TCT No. 21315/T-107 but there is no indication to whom TCT No. 21315 was registered and what certificate of title it cancelled.[103]

14) TCT No. C-17272 reflects MRI as the registered owner of Lot 6-C which has an approximate area of 27,850 square meters. MRI's certificate of title cancelled TCT No. C-17234 registered in the names of MRI (27,750 square meters), Roberto S. David (3,0000 square meters) and Jose Madulid (500 square meters). It would appear that TCT No. C-17234 cancelled TCT No. 53124 registered in the names of MRI, Spouses Priscila and Antonio Sebastian and Jose Madulid.[104] MRI also submitted in evidence a Deed of Partition between itself, Roberto David and Madulid thereby subdividing the property into Lots 6-A, 6-B and 6-C as per subdivision plan (LRC) Psd-277091.[105] Again, we note that TCT No. 53124 cancelled TCT No. 21350/T-107 but the records are bereft of any indication what certificate of title it cancelled and to whom the same was registered.

15) TCT No. C-35267, covering Lot 56-B of subdivision plan (LRC) Psd-292683 with an approximate area of 9,707 square meters, was a by-product of TCT No. 25146, also registered in the name of MRI, after the same was subdivided into two lots, namely, Lot Nos. 56-A and 56-B. TCT No. 25146 cancelled TCT No. 25145 registered in the name of Quirino Labing-isa by virtue of sale in

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[102] *Rollo* of the Special Division, MANOTOKS' Exhibits "15A" and "15C".

[103] *Id.*, MANOTOKS' Exhibits "16" and "16B".

[104] *Id.*, MANOTOKS' Exhibits "17" and "17A".

[105] *Id.*, MANOTOKS' Exhibit "17C".

favor of MRI. In turn, TCT No. 21545 cancelled TCT Nos. (36557) 12836 to (36563) 12842.[106]

16) TCT No. T-121428, registered in the name of MRI covers Lot No. 5-C of subdivision plan (LRC) psd-315272 which has an approximate area of 4,650 square meters. It was previously registered in the names of MRI (4,650 square meters), Ricardo Cruz (941 square meters) and Conchita Umali (1,000 square meters) under TCT No. 53123 by order of the Court of First Instance of Rizal, Caloocan City, Branch XII and as per agreement of the parties in Civil Case No. C-424. TCT No. 53123 in turn cancelled TCT No. 21346 whose registered owners were Conchita Umali (1,000 square meters), Ricardo Cruz (941 square meters) and Jesus Hipona (4,650 square meters).[107] Like some of the other titles, TCT No. 21346 cancelled TCT No. 21316 but there is no trace of this latter certificate of title.

17) TCT No. 163902, registered in the name of MRI, covers Lot No. 4-B-2 and has an area of more or less 6,354 square meters and a by-product of TCT No. 9022, also in the name of MRI, after the same was subdivided under subdivision plan (LRC) Psd-334454. TCT No. 9022, in turn, cancelled TCT No. 8994/T-45 registered in the name of Filemon S. Custodio whose ownership thereon was transferred to MRI by virtue of a voluntary sale.[108] TCT No. 8894 cancelled TCT No. 8846/T-45 but this latter certificate of title was not submitted in evidence for purposes of tracing back to the Republic's title.

18) TCT No. 165119[109] was issued to MRI by virtue of a Deed of Sale between Spouses Francisca Labing-isa and Juan Ignacio [SPOUSES IGNACIO] and MRI, as a result of which, TCT No. C-36960 of the SPOUSES IGNACIO was cancelled.[110] It would appear that TCT No. C-39690 cancelled TCT No. 35266/T-173 but TCT No. 35266/T-173 was not submitted in evidence.

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106 *Id.*, MANOTOKS' Exhibits "18A" and "18B".

107 *Id.*, MANOTOKS' Exhibits "19", "19A" and "19B".

108 *Id.*, MANOTOKS' Exhibits "20A" and "20B".

109 Lot No. 56-A with an area of 415 square meters.

110 *Rollo* of the Special Division, MANOTOKS' Exhibit "21A".

19) TCT No. T-232568 of the Manotok Estate Corporation, covering Lot No. 19-B of subdivision plan Psd-13011152 with an area of 23,206 square meters, was derived from the certificate of title held by PhiVille Development and Housing Corporation under TCT No. 197357. MEC acquired the subject parcel of land by virtue of Deed of Exchange between it and PHILVILLE DATED 9 May 1991.[111] TCT No. 197357 cancelled TCT No. 195730/T-974 but there is no trace what certificate of title the latter title cancelled.

By and large, all the certificates of title submitted by the MANOTOKS, including their derivative titles, were all traced to OCT No. 994 registered on 3 May 1917. Likewise, they declared all the lots covered by such titles for taxation purposes. Without doubt, MRI had successfully traced back some of their certificates of title to the valid OCT No. 994, they having acquired the lots from some of the vendees of the PHHC after the same were expropriated by the Republic from the Gonzalezes.

The fact that these lots were subjected to expropriation proceedings sometime in 1947 under Commonwealth Act No. 539 for resale to tenants is beyond question, as also enunciated by the Supreme Court in *Republic of the Philippines v. Jose Leon Gonzales, et al.* To bolster this fact, paragraph "r" of the Majority Report noted that the seven properties covered by TCT Nos. 1368 to 1374 were expropriated by the Republic from the Gonzalezes.

The fact that these lots were subjected to expropriation proceedings sometime in 1947 under Commonwealth Act No. 539 for resale to tenants is beyond question, as also enunciated by the Supreme Court in *Republic of the Philippines vs. Jose Leon Gonzales, et al.* To bolster this fact, paragraph "r" of the Majority Report noted that the seven properties covered by TCT Nos. 1368 to 1374 were expropriated by the People's Homesite and Housing Corporation which were later consolidated and subdivided into 77 lots for resale to tenants. No sign of protest was ever raised by CLT on this point.[112]

The fact of expropriation is extremely significant, for titles acquired by the State by way of expropriation are deemed cleansed of whatever previous flaws may have attended these titles. As

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[111] *Id.*, MANOTOKS' Exhibits "22", "22A" and "22B".

[112] Report, pp. 37-47.

Justice Vitug explained in *Republic v. Court of Appeals*,[113] and then Associate Justice (now Chief Justice) Puno reiterated in *Reyes v. NHA*:[114] "In an *rem* proceeding, condemnation acts upon the property. After condemnation, the paramount title is in the public under a new and independent title; thus, by giving notice to all claimants to a disputed title, condemnation proceedings provide a judicial process for securing better title against all the world than may be obtained by voluntary conveyance."[115] This doctrine was derived from the opinion of then Chief Judge (now U.S. Supreme Court Justice) Stephen Breyer in *Cadorette v. U.S.*,[116] which in turn cited the pronouncement of the U.S. Supreme Court in *U.S. v. Carmack*[117] that "[b]y giving notice to all claimants to a disputed title, condemnation proceedings provide a judicial process for securing better title against all the world than may be obtained by voluntary conveyance."[118]

In annulling the Manotok titles, focus was laid on the alleged defects of TCT No. 4211 issued in September of 1918. However, TCT No. 4211 was issued decades before the property was expropriated. Thus, any and all defects that may have attended that particular title would have been purged when the property covered by it was subsequently acquired by the State through eminent domain. The Special Division noted as much:

> As it is, the validity of most of MRI's certificates of title should be upheld because they were derived from the Republic's valid certificates of title. In fact, some of the MANOTOKS' titles can be traced back to the Government's titles as a result of the expropriation in 1947.
>
> Relevantly, the titles of the Republic, as the predecessor-in-interest of the MANOTOKS, are presumed valid by virtue of their acquisition

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[113] 433 Phil. 106 (2002).

[114] 443 Phil. 604 (2003).

[115] See *Republic v. Court of Appeals*, *supra* at 121-122; *Reyes v. NHA*, *supra* at 614.

[116] 988 F2d 215 (1993).

[117] 329 U.S. 230 (1946).

[118] *Id.* at 239.

resulting from the exercise of its inherent power of eminent domain that need not be granted even by the fundamental law. Thus, the alleged flaws concerning the certificates of title issued previous to the exercise of the State of its inherent power did not affect or render invalid the subsequent transfers after the forced sale. Indeed, when land has been acquired for public use in fee simple unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate or title acquired or any reversion to the former owner.[119]

The Special Division also took exception to the majority report of the Commissioners (Majority Report) who had been tasked by the trial court to examine the validity of the Manotok titles. The Majority Report had arrived at several conclusions with respect to the TCTs from which the Manotok titles were derived.[120] The Special Division, however, concluded that such

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[119] Report, pp. 47-48.

[120] "In the light of the foregoing facts, the undersigned Commissioners have come to the following conclusions:

a. There are inherent technical infirmities or defects on the face of TCT Nos. 4211 (also on TCT No. 4210), 5261 and 35486. The fact that the technical descriptions in TCT Nos. 4211, 5261 and 35486 are written in Spanish while those on the alleged mother title, OCT-994, were already in English, is abnormal and contrary to the usual practice in the issuance of titles. If OCT-994 is the mother title of TCT Nos. 4211, 5261 and 35486, then said titles should also be written in English because OCT-994 is already in English. It is possible that an ascendant title be written in Spanish and the descendant title in English, the language now officially used, but the reverse is highly improbable and irregular.

b. Also, the fact that the original survey dates of OCT-994 (September 8-27, October 4-21 and November 17-18, 1911) are not indicated on the technical descriptions on TCT Nos. 4211, 5261 and 35486, but an entirely different date, December 22, 1917, is instead indicated, likewise leads to the conclusion that TCT Nos. 4211, 5261 and 35486 could not have been derived from OCT-994. It is the established procedure to always indicate in the certificate of title, whether original or transfer certificates, the date of the original survey of the mother title together with the succeeding date of subdivision or consolidation. Thus, in the absence of the original survey dates of OCT-994 on TCT Nos. 4211, 5261 and 35486, then OCT-994 is not the mother title of TCT Nos. 4211, 5261 and 35486, not only because the original survey dates

report was in fact tainted by the fact that it was determined "outside the scope of the issues framed and agreed upon by the parties." To wit:

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are different but because the date of original survey is always earlier than the date of the issuance of the original title. OCT-994 was issued on May 3, 1917 and this is much ahead of the date of survey indicated on TCT Nos. 4210 and 4211 which is December 22, 1917;

c. Granting that the date December 22, 1917 is the date of a subdivision survey leading to the issuance of TCT Nos. 4210 and 4211, there are, however, no indications on the face of the titles themselves which show that a verified and approved subdivision of Lot 26 took place. In subdividing a lot, the resulting parcels are always designated by the lot number of the subdivided lot followed by letters of the alphabet starting from the letter "A" to designate the first resultant lot, *etc*., for example, if Lot 26 is subdivided into three (3) lots, these lots will be referred to as Lot 26-A, Lot 26-N and Lot 26-C followed by a survey number such as "Psd-_____" or "(LRC) Psd-_____." However, the lots on TCT Nos. 4210 and 4211 do not contain such descriptions. In fact, the parcels of land covered by TCT Nos. 4210 and 4211 are not even described by lot number, and this is again technically irregular and defective because the designation of lots by Lot Number was already a practice at that time as exemplified by the technical descriptions of some sub-lots covered by OCT-994, *i.e*., 23-A, 25-A, 25-D, *etc*.;

d. That TCT Nos. 4210 and 4211 which allegedly was the result of a subdivision of Lot 26 should not have been issued without a subdivision plan approved by the Director of Lands or the Chief of the General Land Registration Office. Republic Act No. 496 which took effect on November 6, 1902, particularly Section 58 thereof, provided that the Registry of Deeds shall not enter the transfer certificate to the grantee until a plan of such land showing all the portions or lots into which it has been subdivided, and the technical description of each portion or lot, have been verified and approved by the Director of Lands. . .' and as corroborated by Section 44, Paragraph 2, and that the plan has been approved by the Chief of the General Land Registration Office, or by the Director of Lands as provided in Section fifty-eight of this Act, the Registry of Deeds may issue new certificates of title for any lot in accordance with said subdivision plan;'

e. The absence of a lot number and survey plan number in the technical description inscribed on TCT Nos. 4210 and 4211, and the absence of a subdivision survey plan for Lot 26 at the records of the Bureau of Lands or the Land Registration Authority lead to the conclusion that there was no verified and approved subdivision survey plan of Lot 26, which is a compulsory requirement needed in the issuance of said titles;

f. Similarly, the absence of plan Psd-21154 from the files of the Bureau of Lands, the official depository of survey plans, is another indication that the titles covered by TCT Nos. 1368 thru 1374 which were derived from TCT No. 4211 are again doubtful and questionable;

In meeting the issue, the MANOTOKS disproved the "opinion" with regard to the alleged defects of their titles inasmuch as the majority report submitted before the trial court was made outside the scope of the tasks which the trial court confined them to perform. The MANOTOKS also argued that before this proceeding on remand, CLT failed to introduce evidence of such flaws neither were the concerned geodetic engineers presented as witnesses. Moreover, the MANOTOKS further maintained that CLT failed to submit any factual or legal bases to prove the authenticity and validity of the Palma and Sayo Orders. They insisted that the Palma Order was a void one for being conditional and having resulted to the issuance of "duplicate certificates of land title."

With respect to the imputed flaws on the MANOTOKS' titles which were based on the Majority Report, we find that the bases of the alleged defects proceeded from unreliable sources thus, tainting the veracity of the said report.

The records of the case between CLT and the MANOTOKS reveal that the parties approved the creation of a commission to resolve only these two issues, to wit:

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g. Moreover, the changing of the tie points in the technical descriptions on TCT Nos. 1368 thru 1374 from that of the mother lot's tie point which is BLLM No. 1, Caloocan City to different location monuments of adjoining Piedad Estate which resulted in the shifting of the position of the seven (7) lots in relation to the mother lot defeats the very purpose of tie points and tie lines since the accepted practice is to adopt the mother lot's tie point in order to fix the location of the parcels of land being surveyed on the earth's surface.

h. Based on the foregoing, it is the conclusion of the undersigned Commissioners that defendants' (Manotok Realty, Inc. and Manotok Estate Corporation) titles overlap portions of plaintiff's (CLT Realty Development Corporation's) title, which overlapping is due to the irregular and questionable issuance of TCT Nos. 4211 (also of TCT No. 4210), 5261, 35486, 1368 to 1374. The inherent technical defects on TCT No. 4211 (from where defendants derived their titles) and TCT No. 4210 which were exhaustively elucidated above, point to the fact that there was no approved subdivision of Lot 26 which served as legal basis for the regular issuance of TCT Nos. 4210 and 4211. Thus, as between plaintiff's title, which was derived from regularly issued titles, and defendants' titles, which were derived from irregularly issued titles, plaintiff's title which pertains to the entire Lot 26 of the Maysilo Estate should prevail over defendants' titles. 18 (Underscoring supplied) See G.R. No. 123346, *rollo*, pp. 268-275.

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*These issues to be resolved by the 3 Commissioners are as follows:*

*1) Whether or not the property covered by the Transfer Certificates of Title of defendants pertain to or involve Lot No. 26 of the Maysilo Estate presently titled in the name of the plaintiff; and*

*2) Whether or not the property covered by the title of the plaintiff and the property covered by the titles of the defendants overlap.*[121]

Scrutinizing the Majority Report upon which the trial court's conclusions were based, it would appear that the findings therein were outside the scope of the issues framed and agreed upon by the parties. Specifically, the deductions with regard to the technical infirmities and defects of TCT Nos. 4211, 4210, 5261 and 35486 do not involve the question of whether or not the subject properties were identified as Lot No. 26 of the Maysilo estate or whether there was overlapping of titles. Records bear out that the MANOTOKS took exception to the procedure taken citing therein the "*ultra vires*" acts of the two Commissioners.

In addition, the majority report focused on the alleged flaws and inherent technical defects of TCT Nos. 4211, 5261 and 35486, ranging from the language of the technical descriptions, absence of subdivision plan, lot number and survey plan. Evidently, these defects go only as far as the certificates of title issued prior to those of the Republic. Remarkably, no specific flaw was found on the MANOTOKS' titles indicating any irregularity on their issuance. In fact, the Commissioners who signed the majority report even concluded that only TCT Nos. 4211, 4210, 5261, 35486, 1368 thru 1324 (*sic*)[122] were irregularly and questionably issued without any reference to the MANOTOKS' certificates of title.[123] Otherwise stated, the

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[121] RTC Order dated 2 July 1993, Original Records, CV No. C-15539, Vol. I, pp. 245-246.

[122] Should have been 1368 thru 1374.

[123] Majority Report, paragraph h—"Based on the foregoing, it is the conclusion of the undersigned Commissioners that defendants' titles overlap portions of plaintiff's title which overlapping is due to the irregular and

imputed flaws affect only those certificates of title issued prior to those registered in the name of the Republic. No flaw had been specifically identified or established in the proceedings below, which would taint the titles held by the MANOTOKS in so far as the regularity of their issuance is concerned.[124]

At the same time, the Special Division was not prepared to uphold the validity of all of the Manotok titles. It took issue with the particular titles which could not be retraced to the titles acquired by the Republic of the Philippines by way of expropriation.

Although the MANOTOKS had traced their title from the vendees of PHHC, there are, however, some certificates of title which could not be traced back to the titles previously held by the Republic specifically, MRI's TCT Nos. 26405 and 26406, 26407, 33904, 53268, 55897, C-17272, T-121428, 163903, 165119 and MEC's TCT No. T-232568. As to these certificates of title, the MANOTOKS failed to make any specific reference to the preceding certificates of title which they cancelled and to whose names they were subsequently transferred and registered. Thus, we find no sufficient basis to make a conclusion as to their origins.[125]

*V.*

The Special Division supplied the following precise and concise summary of its conclusions:

In *précis*, the factual milieu of the present controversy and the evidence on record clearly establish the failure of DIMSON and CLT to substantiate their titles and overcome the onus of proving that said titles are derivatives of OCT 994 registered on 3 May 1917,

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questionable issuance of TCT Nos. 4211 (also TCT No. 4210), 5261, 35486, 1368 thru 1324 (sic). The inherent technical defects on TCT No. 4211 (from where defendants derive their titles) and TCT No. 4210, which were exhaustively elucidated above, point to the fact that there was no approved subdivision of Lot 26 which served as legal basis for the regular issuance of TCT Nos. 4210 and 4211. Thus, as between plaintiff's title which was derived from regularly issued titles and defendants' titles which were derived from irregularly issued titles, plaintiff's title which pertains to the entire Lot 26 of the Maysilo Estate should prevail over defendants' titles."

[124] Report, pp. 48-50.

[125] *Id.* at 48.

and not 19 April 1917, as what is reflected in their titles. In contrast, the MANOTOKS and ARANETA, both of which had consistently anchored their proprietary claims on OCT No. 994 registered on 3 May 1917, have, in this remand proceeding, been able to support their claims of ownership over the respective portions of the Maysilo Estate. Except in the case of the MANOTOKS which had failed to substantiate the validity of some of their certificates of title, the MANOTOKS and ARANETA presented evidence proving the identity, the extent and the origin of their titles.

Answering the issues assigned by the Supreme Court relative to the tenability of the respective imputed flaws in the titles of the MANOTOKS and ARANETA and whether such flaws are sufficient to defeat said claims, this Court finds that, as discussed above, such flaws are inconsequential and ineffectual in invalidating the MANOTOKS and ARANETA titles.

Significantly, since the respective certificates of title of herein contending parties are contradictory to each other and stand to refute the validity of their opposing titles, it cannot be gainsaid that said certificates of title have correspondingly been subjected to dispute on the basis of separate and distinct imputed flaws. Still, the crucial difference between the imputed flaws allegedly tainting said contending titles, DIMSON and CLT on one hand, and the MANOTOKS and ARANETA, on the other, is that the imputed flaws purportedly beleaguering the respective certificates of title of the MANOTOKS and ARANETA relate to the mechanical and technical aspect of the transcription of their titles and are therefore inconsequential to the import and validity thereof. Said imputed flaws do not depart from the fact that the predecessors-in-interest of the MANOTOKS and ARANETA had been clothed with the right of ownership over the disputed portions of the Maysilo Estate.

On the other hand, the flaws attending the titles of DIMSON and CLT primarily stem from infirmities attending or otherwise affecting the very crux of their claim of ownership. Having derived their titles from RIVERA, whose title is questionable and dubious to the core, DIMSON and CLT cannot rightly insist on the validity of their titles. Such flaws are hard to overcome as they delve into the substance of their proprietary claims. As stated, DIMSON and CLT miserably failed to overcome their onus and instead opted to hap on the supposed flaws of the adverse parties. For these reasons, the titles of DIMSON and CLT should be declared a nullity.

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From the foregoing evaluation and in conformity with the Supreme Court 2007 Resolution, this Court arrived at the following conclusions as to the status of the original title and its subsequent conveyances:

1. As categorically declared by the Supreme Court, there is only one OCT 994, the registration date of which had already been decisively settled as 3 May 1917 and not 19 April 1917. OCT 994 which reflects the date of 19 April 1917 as its registration date is null and void.

2. In view thereof and in addition to other grounds we have already discussed, the certificates of title of the deceased Jose Dimson and his successor-in-interest, CLT, having been traced back to OCT 994 dated 19 April 1917, are NULL and VOID and thus vest no legal right or claim in favor of DIMSON and CLT.

3. The 13 June 1966 Palma Order and the 18 October 1977 Sayo Order, on which DIMSON and CLT anchor the validity of their respective titles, do not substantiate their proprietary claims. While the existence of said Orders are admitted, the legal import thereof nonetheless fails to confer a semblance of legality on the titles of DIMSON and consequently, of CLT, more so, a superior right to defeat the titles of the MANOTOKS and ARANETA, respectively.

4. Portions of Lot No. 26 pertinent to this controversy, particularly that being disputed by the MANOTOKs and CLT, were expropriated by the Republic of the Philippines sometime in 1947 under Commonwealth Act No. 539 for resale to tenants. The MANOTOKS, thus as successor-in-interest of the Republic, were able to establish that some of their certificates of title had indeed originated or were derived from said expropriated parcels of land.

5. The evidence on record confirm that the certificates of title covering the land being claimed by ARANETA were derived from OCT NO. 994 registered on 3 May 1917 thereby ultimately showing a direct link of TCT Nos. 7784 and 13574 to said mother title. By reason of which, that is either belonging to or portions of Lot 25-A-3 as previously owned by RATO, had been well substantiated and proven to be superior to that of DIMSON.

6. For reasons above-stated and in view of the established rights of ownership of both the MANOTOKS and ARANETA over the contested properties, we find that the imputed flaws on their titles

cannot defeat the valid claims of the MANOTOKS and ARANETA over the disputed portions of the Maysilo Estate.[126]

Inasmuch as we agree with the factual findings and evaluation of the Special Division, we likewise adopt the above conclusions. As we earlier stated, it was incumbent on the Heirs of Dimson and/or CLT to establish their claim to title for reasons other than the fact that OCT No. 994 dated 19 April 1917 is extant. They failed to do so. It should be noted that the instant cases arose from separate actions filed by Jose Dimson and CLT seeking the recovery of possession and/or annulment of title against Araneta and the Manotok Group. Thus, the burden of evidence was on Dimson and CLT to establish the strength of their respective claims of ownership, and not merely to rely upon whatever weaknesses in the claims of the Manotoks and Araneta for their causes of action to prosper. The well-settled legal principle in actions for annulment or reconveyance of title is that a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his.[127] In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.[128]

We now proceed to tackle the recommendations submitted by the Special Division. They are as follows:

**RECOMMENDATIONS**

Apropos to said conclusions, this Court hereby respectfully makes the following recommendations regarding the validity of the conflicting proprietary claims as interposed by the herein contending parties:

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[126] *Id.* at 63-66.

[127] See CIVIL CODE, Art. 364. See *Silvestre v. Court of Appeals*, G.R. No. L-32694 & L-33119, 16 July 1982, 115 SCRA 63; *Manotok Realty v. CLT Realty*, *supra* note 2 at 3.

[128] *Pisalbon v. Balmoja* (31 August 1965); citing CIVIL CODE, Art. 364. See also *Misamis Lumber v. Director of Lands*, 57 Phil 881 (1933); *Sanchez Mellado v. Municipality of Tacloban*, 9 Phil. 92; *Nolan v. Jalandoni*, 23 Phil. 292 (1912).

1. To declare with finality that the certificates of title of DIMSON and CLT including other derivative titles issued to their successors-in-interest, if any, are NULL and VOID, thus invalidating their legal claims over the subject parcels of land.

2. To declare LEGAL and VALID the proprietary claims the MANOTOKS over the parcels of land covered by the following certificates of title:

a) TCT No. 7528 registered in the name of MRI covers Lot No. 2 of consolidation-subdivision plan (LRC) Pcs-1828 which has an area of 4,988 square meters.

b) TCT No. 7762 covering Lot 1-C, with an approximate area of 2,287 square meters.

c) TCT No. 8012 covering Lot No. 12-1 having an area of 20,000 square meters.

d) TCT No. 9866 covering Lot No. 21 and has an approximate area of 23,979 square meters.

e) TCT No. 21107 covering Lot 22 with an approximate area of 2,557 square meters.

f) TCT No. 21485 covering Lot 20 with an approximate area of 25,276 square meters.

g) TCT No. 34255 covering Lot No. 11-Bm, Psd-75797 with an area of 11,000 square meters.

h) TCT No. 254875 covering Lot 55-A with an area of approximately 1,910 square meters.

i) TCT No. C-35267 covering Lot 56-B of subdivision plan (LRC) Psd-292683 with an approximate area of 9,707 square meters.

With regard to the following certificates of title, namely:

3.A. MANOTOK REALTY INC.

a) TCT No. 26405 covering Lot No. 12-E with an area of 1,0000 square meters.

b) TCT No. 26406 covering Lot No. 12-F with an area of 1,000 square meters.

c) TCT No. 26407 covering Lot No. 12-B with an area of 1,000 square meters.

d) TCT No. 33904 covering Lot No. 12-H with an area of 1,802 square meters.

e) TCT No. 53268 covering Lot No. 15 purchased by MRI from one Maria V. Villacorta with an approximate area of 3,163 square meters.

f) TCT No. 55897 covering Lot 3 of consolidation-subdivision plan (LRC) Pcs-1828 of the Maysilo Estate covering an area of more or less 20,531 square meters.

g) TCT No. C-17272 covering Lot 6-C which has an approximate area of 27,850 square meters.

h) TCT No. T-121428 covering Lot No. 5-C of subdivision plan (LRC) psd-315278, which has an approximate area of 4,650 square meters.

i) TCT No. 163902 covering Lot No. 4-B-2 with an area of more or less 6,354 square meters allegedly a by-product of TCT No. 9022, which in turn, cancelled TCT No. 8994/T-45 registered in the name of Filemon S. Custodio.

j) TCT No. 165119 which allegedly cancelled TCT No. C-36960 of the SPOUSES IGNACIO by virtue of a Deed of Sale between said Spouses and MRI.

3.B. MANOTOK ESTATE CORPORATION

a) TCT No. T-232568 covering Lot No. 19-B of subdivision plan Psd-13011152 with an area of 23,206 square meters.

The foregoing certificates of title (3.A and 3.B), failing to make specific references to the particular certificates of title which they cancelled and in whose name they were registered, may be declared NULL and VOID, or in the alternative, subject the same to further technical verification.

4. To declare LEGAL and VALID the title of ARANETA respecting parcels of land covered by the following certificates of title:

a) TCT No. 13574 covering a parcel of land designated as Section No. 2 of subdivision plan Psd-10114, being a portion of Lot 25-A-3-C with an aggregate area of 581,872 square meters;

b) TCT No. 7784 covering four (4) parcels of land with an aggregate area of 390,383 square meters.[129]

The first, second and fourth recommendations are well taken as they logically arise from the facts and conclusions, as determined by the Special Division, which this Court adopts.

The third recommendation – that eleven (11) of the titles held by the Manotoks be declared null and void or subjected to further technical verification – warrants some analysis.

The Court has verified that the titles mentioned in the third recommendation do not, as stated by the Special Division, sufficiently indicate that they could be traced back to the titles acquired by the Republic when it expropriated portions of the Maysilo Estate in the 1940s. On the other hand, the Manotok titles that were affirmed by the Special Division are traceable to the titles of the Republic and thus have benefited, as they should, from the cleansing effect the expropriation had on whatever flaws that attached to the previous titles. However, although the Special Division did not concede the same benefit to the other Manotok titles named in the third recommendation, at the same time it did not conclude that such titles were false or fraudulently acquired. Absent such a finding, we are disinclined to take the ultimate step of annulling those titles.

Said titles have as their origin what we have acknowledged to be a valid mother title – OCT No. 994 dated 3 May 1917. This is in stark contrast with the titles of CLT, the oppositors to the Manotoks, which all advert to an inexistent mother title. On their face, the Manotok titles do not reflect any error or fraud, and certainly the Special Division do not point to any such flaw in these titles. Nothing on the face of the titles gives cause for the Court to annul the same.

It is worth mentioning that the Special Division refused to adopt the Majority Report earlier rendered in the case between

[129] Report, pp. 66-69.

the Manotoks and CLT, said report having exhaustively listed the perceived flaws in the antecedent TCTs from which the Manotoks derived their claim. The Special Division concluded that such findings had been reached by the Commissioners in excess of their original mandate and, thus, *ultra vires*. Assuming that such flaws were extant, they existed on the titles and anteceded the expropriation of the properties by the Government. As stated earlier, such expropriation would have cleansed the titles of the prior flaws. But even if the Manotok titles enumerated in the third recommendation could not be sourced from the titles acquired by the Republic through expropriation, still the rejection of the Majority Report signifies that the flaws adverted to therein could not form the basis for the annulment of the titles involved. Indeed, the Special Division's rejection of the Majority Report further diminishes any ground to annul the Manotok titles referred to in the third recommendation.

Yet, the Court is cognizant that the inability to trace the Manotok titles specified in the third recommendation to those titles acquired by the Government through expropriation puts such titles in doubt somehow. In addition, the Court is aware that the ground utilized by the Special Division in rejecting the Majority Report – that the determinations were made outside the scope of the issues framed and agreed upon by the parties — does not categorically refute the technical findings made therein. Those circumstances, while insufficient for now to annul the Manotoks' titles listed in the third recommendation, should be sufficiently made public.

Hence, in lieu of annulling the Manotok titles per the Special Division's third recommendation, the Court deems it sufficient to require the Registers of Deeds concerned to annotate this Resolution on said titles so as to sufficiently notify the public of their unclear status, more particularly the inability of the Manotoks to trace the titles without any gap back to OCT No. 994 issued on 3 May 1917. If there should be any cause for the annulment of those titles from a proper party's end, then let the proper case be instituted before the appropriate court.

**WHEREFORE,** the Court hereby adopts the Report of the Special Division and issues the following reliefs:

1) The certificates of title of the DIMSONs and CLT including other derivative titles issued to their successors-in-interest, if any, are declared *NULL* and *VOID*, thus invalidating their legal claims over the subject parcels of land;

2) The proprietary claims of the MANOTOKS over the parcels of land covered by the following certificates of title are declared *LEGAL* and *VALID*, to wit:

a) TCT No. 7528 registered in the name of MRI covers Lot No. 2 of consolidation-subdivision plan (LRC) Pcs-1828 which has an area of 4,988 square meters.

b) TCT No. 7762 covering Lot 1-C, with an approximate area of 2,287 square meters.

c) TCT No. 8012 covering Lot No. 12-1 having an area of 20,000 square meters.

d) TCT No. 9866 covering Lot No. 21 and having an approximate area of 23,979 square meters.

e) TCT No. 21107 covering Lot 22 with an approximate area of 2,557 square meters.

f) TCT No. 21485 covering Lot 20 with an approximate area of 25,276 square meters.

g) TCT No. 34255 covering Lot No. 11-Bm, Psd-75797 with an area of 11,000 square meters.

h) TCT No. 254875 covering Lot 55-A with an area of approximately 1,910 square meters.

i) TCT No. C-35267 covering Lot 56-B of subdivision plan (LRC) Psd-292683 with an approximate area of 9,707 square meters.

3) The following certificates of titles in the name of ARANETA are hereby declared *LEGAL* and *VALID*, to wit:

a) TCT No. 13574 covering a parcel of land designated as Section No. 2 of subdivision plan Psd-10114, being a portion of Lot 25-A-3-C with an aggregate area of 581,872 square meters;

b) TCT No. 7784 covering four (4) parcels of land with an aggregate area of 390,383 square meters.

4) On the following titles in the name of Manotok Realty, Inc. or Manotok Estate Corporation, to wit:

a) TCT No. 26405 covering Lot No. 12-E with an area of 1,0000 square meters;

b) TCT No. 26406 covering Lot No. 12-F with an area of 1,000 square meters;

c) TCT No. 26407 covering Lot No. 12-B with an area of 1,000 square meters;

d) TCT No. 33904 covering Lot No. 12-H with an area of 1,802 square meters;

e) TCT No. 53268 covering Lot No. 15 purchased by MRI from one Maria V. Villacorta with an approximate area of 3,163 square meters;

f) TCT No. 55897 covering Lot 3 of consolidation-subdivision plan (LRC) Pcs-1828 of the Maysilo Estate covering an area of more or less 20,531 square meters;

g) TCT No. C-17272 covering Lot 6-C which has an approximate area of 27,850 square meters;

h) TCT No. T-121428 covering Lot No. 5-C of subdivision plan (LRC) psd-315278, which has an approximate area of 4,650 square meters;

i) TCT No. 163902 covering Lot No. 4-B-2 with an area of more or less 6,354 square meters allegedly a by-product of TCT No. 9022, which in turn, cancelled TCT No. 8994/T-45 registered in the name of Filemon S. Custodio;

j) TCT No. 165119 which allegedly cancelled TCT No. C-36960 of the SPOUSES IGNACIO by virtue of a Deed of Sale between said spouses and MRI;

k) TCT No. T-232568 covering Lot No. 19-B of subdivision plan Psd-13011152 with an area of 23,206 square meters.

the Registers of Deeds concerned are ordered to annotate that as determined in the foregoing Resolution, the registered owners of the said titles "failed to make any specific reference to the preceding certificates of title which they cancelled and to whose names they were subsequently transferred and registered," thereby leading the Supreme Court "to find no sufficient basis to make a conclusion as to their origins."[130]

Costs against private respondents.

**SO ORDERED.**

*Quisumbing, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion,* and *Peralta, JJ.,* concur.

*Puno, C.J.,* no part due to relationship to counsel.

*Ynares-Santiago, Carpio,* and *Nachura, JJ.,* no part.

*Austria-Martinez, J.,* on official leave.

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**THIRD DIVISION**

[G.R. No. 151240. March 31, 2009]

**ANGELINE CATORES,** *petitioner, vs.* **MARY D. AFIDCHAO,** *respondent.*

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[130] See note 125.

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT; LIMITED TO REVIEWING AND CORRECTING ERRORS OF LAW COMMITTED BY COURT OF APPEALS. —** Verily, as enunciated in *Lorenzana* and *Misa*, it may be reiterated that under Rule 45 of the 1997 Rules of Civil Procedure, as amended, our jurisdiction over cases brought to us from the CA is limited to reviewing and correcting errors of law committed by said court. This Court is not a trier of facts. Thus, it is not our function to review factual issues and to examine, evaluate or weigh the probative value of the evidence presented by the parties. We are not bound to analyze and weigh all over again the evidence already considered in the proceedings below. Necessarily, the jurisprudential doctrine that findings of the CA are conclusive on the parties and carry even more weight when they coincide with the factual findings of the trial court must remain undisturbed.

**2. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS. —** In this case, it is evident that petitioner asks this Court to undertake the re-examination and re-evaluation of the pieces of evidence presented before the courts below, and reverse the uniform factual findings of both the RTC and the CA in favor of respondent. However, we can do so only in any of the following instances: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record and petitioner has failed to show that this case falls within any of the aforementioned exceptions.

**3. CIVIL LAW; LAND TITLES AND DEEDS; CERTIFICATE OF TITLE; NOT SUBJECT TO A COLLATERAL ATTACK. —** The petitioner posits that the resolution of the issue will involve the alteration, correction or modification of TCT No. T-27839 issued in the name of respondent. However, the rectification of the title may be made only through a proper action filed for that purpose. It should be borne in mind that Section 48, Presidential Decree (P.D.) No. 1529, provides that "a certificate of title shall not be subject to collateral attack." It cannot be altered, modified, or cancelled except in a direct proceeding filed in accordance with law. This was our pronouncement in *De Pedro v. Romasan Development Corporation*, and in *Caraan v. Court of appeals*, we defined a collateral attack in this wise: When is an action an attack on a title? It is when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of an action or proceeding is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, **the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.**

**4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; COURT OF APPEALS; CASE ON APPEAL IS THROWN WIDE OPEN FOR REVIEW BY CA, AS IT HAS THE POWER TO REVIEW FACTUAL MATTERS. —** Moreover, the CA did not err when it partially relied on the Report of the Clerk of Court, the duly appointed hearing officer for the ocular inspection by virtue of RTC Order dated November 10, 1989, upon agreement of all parties. Petitioner did not interpose any objection to such appointment nor to the conduct of the inspection, as it is on record that petitioner's counsel participated in said inspection. When the Clerk of Court made her observation that the boundaries pointed to by petitioner were within the area of respondent's property, petitioner's counsel did not object to such observation. The RTC's failure to mention the Report in its Decision is of no moment. When petitioner appealed to the CA, the appealed case was thereby thrown wide open for review by the CA. Given this power, the CA has the authority to either affirm, reverse or modify the appealed decision of the trial court, because, unlike this Court, the CA has the power to review factual matters. The Report forms part of the records of this case which must have been

taken into consideration by the CA in its resolution of the case filed before it.

**APPEARANCES OF COUNSEL**

*Fornier Fornier & Lagumbay* for petitioner.
*Domogan Orate Dao-Yan & Associates Law Office* for 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 October 23, 2000, which affirmed the Decision[3] of the Regional Trial Court (RTC) of Baguio City, dated June 6, 1990.

The facts as narrated by the CA are as follows:

Plaintiff-appellee, Mary D. Afidchao [respondent], is the registered owner of a parcel of land with an area of 8,383 sq. meters situated in Residence Section "J", Sto. Tomas, Barangay Dontogan, Baguio City and covered by [Transfer Certificate of Title] TCT No. T-27839. The said parcel of land was purchased by plaintiff-appellee from its previous registered owners, spouses Isidoro and Nellie Balinsat on August 29, 1977.

Immediately thereafter, plaintiff-appellee declared the aforesaid property for tax purposes in her name under Tax Declaration No. 23347 and paid religiously the realty taxes thereon.

Sometime in June 1984, defendant-appellant, Angeline Catores [petitioner], occupied and entered a portion of the subject property

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[1] Dated January 17, 2002; *rollo*, pp. 3-37.

[2] Particularly docketed as CA-G.R. CV No. 29528; penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Quirino D. Abad Santos, Jr. and Salvador J. Valdez, Jr., concurring; *rollo*, pp. 127-136.

[3] Particularly docketed as Civil Case No. 640-R; *rollo*, pp. 66-75.

by building her house thereon and making improvements therein such as levellings, riprapping, planting trees, fencing, *etc*. Thus, on August 2, 1984, plaintiff-appellee filed a case for Forcible Entry against defendant-appellant with the Municipal Trial Court [MTC] of Baguio which ordered a verification relocation survey of the subject property on January 7, 1985. Without, however, waiting for the result of the relocation survey, the MTC dismissed the complaint on February 5, 1985 on the ground that the real issue is one of legal possession and that the remedy is *accion publiciana*, adding that an administrative action like a verification relocation survey might resolve the matter.

The verification and relocation survey conducted by the Office of the Bureau of Lands of Baguio City pursuant to the aforementioned Order dated January 7, 1985 confirmed the allegation of plaintiff-appellee that defendant-appellant encroached on the former's titled property by constructing a house with a calculated size of 8' x 10' and by destroying some of the stonewallings within the subject property. Hence, plaintiff-appellee required defendant-appellant to vacate the portion illegally occupied and to remove the improvements made thereon, which the latter refused.

Consequently, on August 13, 1985, plaintiff-appellee filed a complaint for *Accion Publiciana* against defendant-appellant.

In her Answer, defendant-appellant raised the defenses *inter alia* that she has been in possession of the land in question as early as 1977; that the land in question is not within the property of anybody, including the plaintiff-appellee; and that her possession of the land in question is with color of title.[4]

### *The RTC's Ruling*

On June 6, 1990, the RTC ruled in favor of respondent, giving great weight to the findings of Mr. Edilberto R. Quiaoit (Quiaoit), head of the survey team of the Bureau of Lands, who conducted the relocation verification survey of the subject property. Further, the RTC said that these findings of Quiaoit were corroborated by the geodetic engineer, Venancio Figueres[5] (Engr. Figueres), who conducted the subdivision survey of the subject property for respondent in December 1977. Hence, the

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[4] *Rollo*, pp. 128-130. (Citations omitted.)

[5] Also referred to as Venancio Figuerres in other pleadings and documents.

trial court declared that these findings ought to prevail over those of geodetic engineer Jose Fernandez (Engr. Fernandez), petitioner's expert witness. The RTC also ratiocinated that as between respondent who had a title and a tax declaration over the subject property, who paid the taxes due thereon, and acquired the same by purchase from the original registered landowners, and petitioner who had no title or tax declaration, and was not shown to have acquired any title from the Sunrise Village Association, preponderance of evidence was in favor of respondent. Thus, the RTC disposed of this case in this wise:

WHEREFORE, judgment is rendered in favor of the plaintiff Mary Afidchao and against defendant Angeline Catores, as follows:

1. Declaring the land in question consisting of about 2,138 sq. meters located at Residence Section J, Sto. Tomas, Barangay Dontogan, Baguio City, occupied by defendant Angeline Catores as part of the land owned by plaintiff Mary Afidchao covered by TCT 27839 and therefore plaintiff has a better right to possess the same as the owner of the land is entitled to the possession hereof as a consequence of her ownership;

2. Declaring that the house, the levellings, plants, trees, fence, garden, riprapping and other improvements of defendant Angeline Catores on the land in question are inside the titled land of plaintiff Mary Afidchao covered by TCT 27839 and therefore defendant must vacate the premises of the land in question and restore possession thereof to plaintiff and remove her house and other structures provided the same can be done without damage to the plaintiff's titled land within 30 days from the time this Judgment becomes final and executory;

3. Ordering defendant Angeline Catores to cease and desist from further disturbing the ownership and possession of plaintiff of the land in question which is part of plaintiff's titled land covered by TCT 27839 described in paragraph 2 of the Complaint.

4. Dismissing the claim for Exemplary damages, Attorney's fees and litigation expenses of plaintiff there being no gross and evident bad faith shown on the part of defendant Angeline Catores;

5. Dismissing the counterclaim of defendant Angeline Catores for Moral damages, Attorney's fees and litigation expenses for lack of merit; and

6. Ordering defendant Angeline Catores to pay the costs of the suit.

SO ORDERED.[6]

Petitioner filed a Motion for Reconsideration,[7] which was, however, denied by the RTC because the matters treated therein had been fully considered, discussed and resolved in the RTC decision and the RTC found no cogent reason to change or disturb the same.[8] Aggrieved, petitioner appealed to the CA.[9]

After both parties had filed their respective briefs, on July 18, 1992, petitioner filed an Urgent Motion for New Trial and/or Reception of New Evidence[10] before the CA claiming that these pieces of newly discovered evidence could not have been discovered and produced before the RTC. Petitioner alleged that she did not get any cooperation from the Bureau of Lands-Baguio City. Respondent filed her Opposition[11] thereto, arguing that the pieces of evidence sought to be introduced were not, at all, newly discovered evidence for they were the same pieces of evidence submitted before the RTC. Moreover, respondent opined that the Motion was filed out of time because it should had been filed after judgment by the trial court but before the lapse of the period for perfecting an appeal, and not after the appealed case had already been submitted for resolution. Finding merit in respondent's Opposition, the CA denied petitioner's Motion.[12]

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[6] *Rollo*, pp. 74-75.

[7] Records, pp. 216-219.

[8] *Id.* at 223.

[9] *Id.* at 224.

[10] CA *rollo*, pp. 119-125.

[11] *Id.* at 190-196.

[12] *Id.* at 198.

### *The CA's Ruling*

On October 23, 2000, the CA affirmed the RTC's ruling, holding that:

> Admittedly, there is evidence to support the allegation of discrepancy in the technical description of the plaintiff-appellee's title. But this does not mean that the property covered by the title cannot be concretely located as to warrant the dismissal of the case. The title is just an evidence of ownership but it does not vest ownership. Moreover, it is an undisputed fact that other than the title itself, the actual location of a given property can still be identified by referring to the control map of the Bureau of Lands and/or by relocating the same using at least three existing monuments which are verified to be correct.
>
> The foregoing may explain why despite the conflicting testimonies of Quiaoit and Engr. Figueres on whether or not there was a discrepancy in the technical description of plaintiff-appellee's title, they still arrived at the same conclusion – that the questioned lot being occupied by defendant-appellant is within the property of plaintiff-appellee. Quiaoit used both the control map of the Bureau of Lands and the existing monuments in making his findings, while Engr. Figueres, though he relied on the plaintiff-appellee's title, still made use of the existing monuments. Thus, plaintiff-appellee was able to concretely identify her property and accordingly proved that the questioned lot being occupied by defendant-appellant is within her property. The testimony of defendant-appellant's witness, Medino Balusdan, that the questioned lot being occupied by defendant-appellant is within the land owned by one Balinsat from whom, indisputably, plaintiff-appellee acquired the subject property, corroborates the said findings.
>
> What further wreck havoc in the case of defendant-appellant are the admissions on cross-examination of her expert witness, Engr. Fernandez, that the subject properties adjoin each other thereby recanting his earlier testimony to the contrary; that he failed to conduct an ocular inspection on the subject properties and that he likewise failed to take into account the actual location of the monuments in formulating his findings.[13]

The CA likewise referred to the Report[14] of the ocular inspection of the subject property conducted on February 16, 1990, made

[13] *Rollo*, pp. 132-133. (Citations omitted.)

[14] Records, pp. 194-195.

by Atty. Ma. Clarita C. Tabin, Branch Clerk of Court of the RTC (Clerk of Court), in support of the CA's finding that indeed petitioner encroached into the property of respondent.

Petitioner filed a Motion for Reconsideration[15] which the CA denied in its Resolution[16] dated December 19, 2001 for lack of merit.

Hence, this Petition raising the following grounds:

A.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN BASING ITS DECISION IN FAVOR OF AFIDCHAO ON THE PRINCIPLE THAT THE TITLE IS JUST AN EVIDENCE OF OWNERSHIP BUT DOES NOT VEST OWNERSHIP, WHICH PRINCIPLE IS TOTALLY IRRELEVANT TO THE CONTROVERSY.

B.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN DECIDING IN FAVOR OF AFIDCHAO, DESPITE THE FATAL DEFECT IN THE TECHNICAL DESCRIPTION OF AFIDCHAO'S TORRENS TITLE, THEREBY CONTRADICTING THE DOCTRINAL RULINGS OF THE SUPREME COURT IN *MISA VS. COURT OF APPEALS (212 SCRA 217)* AND *LORENZANA FOOD CORPORATION VS. COURT OF APPEALS* (231 SCRA 713).

C.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN HOLDING THAT TITLED PROPERTY CAN STILL BE IDENTIFIED BY MEANS OTHER THAN THE DEFECTIVE TECHNICAL DESCRIPTION THEREOF.

D.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN HOLDING THAT AFIDCHAO'S PROPERTY WAS IDENTIFIED BY REFERRING TO A SUPPOSED CONTROL MAP OF THE BUREAU OF LANDS, WHICH, HOWEVER, WAS NOT INTRODUCED AS EVIDENCE IN THE CASE.

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[15] CA *rollo,* pp. 225-246.

[16] *Id.* at 256.

E.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR [OF] LAW IN HOLDING THAT AFIDCHAO'S PROPERTY WAS IDENTIFIED BY WAY OF RELOCATION BASED ON THREE (3) EXISTING MONUMENTS THE INTEGRITY OF WHICH, HOWEVER, WAS ADMITTEDLY NEGATED.

F.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN HOLDING THAT AFIDCHAO'S PROPERTY WAS IDENTIFIED BY THE OBSERVATIONS OF THE BRANCH CLERK OF COURT IN A SUPPOSED REPORT THAT WAS NOT EVEN MENTIONED BY THE TRIAL COURT IN ITS DECISION.

G.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN FOCUSING AND RELYING ON SUPPOSED WEAKNESSES IN THE TESTIMONIES OF CATORES' WITNESSES, THEREBY CONTRADICTING THE DOCTRINAL RULING OF THE SUPREME COURT IN *MISA VS. COURT OF APPEALS* (212 SCRA 217) TO THE EFFECT THAT A PLAINTIFF WHO SEEKS TO RECOVER PROPERTY MUST RELY ON THE STRENGTH OF HIS TITLE AND NOT ON THE SUPPOSED WEAKNESS OF THE DEFENDANT'S CLAIM.

H.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN DECIDING IN FAVOR OF AFIDCHAO ON THE BASIS OF SUPPOSED BUT NON-EXISTENT WEAKNESS IN THE EVIDENCE OF CATORES.

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN CLOSING ITS EYES TO THE NEWLY-DISCOVERED [PIECES OF] EVIDENCE OF CATORES WHICH FURTHER STRENGTHEN HER POSITION THAT HER LOT IS NOT WITHIN THE LAND OF AFIDCHAO.

J.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR OF LAW IN AFFIRMING INSTEAD OF REVERSING THE DECISION

OF THE TRIAL COURT, ON THE BASIS OF THE AFORESTATED REVERSIBLE ERRORS OF LAW.[17]

Petitioner asseverates that a certificate of title is conclusive evidence, not only of ownership of the land referred to but also of the land's location, metes and bounds; that per testimony of Quiaoit, there was a discrepancy in the tie line as appearing in the technical description of respondent's title; that such discrepancy would mean the failure to locate respondent's property with precision and exactitude, fatal to the identification of the property, and consequently, to respondent's cause; that in foreign jurisdictions, the certificate of title does not vest in the registered owner the title over the property in respect to which a wrong description was made; and that respondent should have first filed the proper application and/or petition for the administrative and/or judicial correction of the erroneous tie line. Petitioner claims that the survey and sketch plans made by Quiaoit were worthless, as the latter was not a geodetic engineer and he did not use the Original Plan Psu 184580 of Nellie Balinsat (Balinsat) which was not presented before the RTC. Rather, he used the Projection Map of the Bureau of Lands-Baguio City which did not show the tie points and tie lines of all properties in Baguio City. Further, the Report made by the Clerk of Court was unreliable as no hearing was conducted thereon by the RTC; hence, the parties were not able to interpose their respective objections thereto. The monuments referred to were also unreliable, as there were discrepancies in the testimonies of witnesses. Thus, the monuments in respondent's property had lost their integrity. Moreover, petitioner submits that the CA gravely erred in the appreciation of the pieces of evidence and the testimonies of witnesses. Finally, petitioner, citing *Lorenzana Food Corporation v. Court of Appeals*[18] and *Misa v. Court of Appeals*,[19] submits that errors in technical description and location

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[17] *Supra* note 1, at 17-19.

[18] G.R. No. 105027, April 22, 1994, 231 SCRA 713.

[19] G.R. No. 97291, August 5, 1992, 212 SCRA 217.

impugn the integrity of Torrens titles and that, in an action for recovery, the property must be identified, and the plaintiff must rely on the strength of his title, and not on the weakness of the defendant's claim.[20]

For her part, respondent argues that the findings of fact of the RTC, as affirmed by the CA, must be accorded respect and great weight; that respondent concretely established that the subject property was well within her titled property; that petitioner merely quoted portions of the testimonies of witnesses to suit her claims and utterly disregarded the whole substance of said testimonies; that the entire testimony of Quiaoit revealed that, while there was an error in the tie line as appearing in the technical description of respondent's title, the area occupied by petitioner was within the property of respondent; that such factual finding was corroborated by Engr. Figueres' testimony; that petitioner herself and her witnesses, in their respective testimonies, established said finding because the names of the owners of the adjoining properties, as testified to by petitioner herself, tallied with the names of the owners of the adjoining properties of respondent's titled property; that petitioner's witness Medino Balusdan pointed out that the area claimed and occupied by petitioner was between the lot claimed by one R. Villena and Balinsat; and that petitioner did not dispute the fact that respondent acquired the subject property from the late Balinsat, hence, the area testified to by petitioner's witness was actually respondent's property. Respondent adds that the testimonies of Quiaoit and Engr. Figueres were confirmed during the ocular inspection conducted by the RTC, with the Clerk of Court as hearing officer. Respondent concludes that the subject property occupied and claimed by petitioner was well within the titled property of respondent by preponderance of evidence. While respondent reiterates her prayer before the RTC for the payment of damages, she prays for the denial of the instant Petition.[21]

***Our Ruling***

The instant Petition is bereft of merit.

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[20] Petitioner's Memorandum dated July 18, 2007; *rollo*, pp. 233-283.

[21] Respondent's Memorandum dated July 30, 2007; *rollo*, pp. 347-360.

Petitioner's reliance on *Lorenzana* and *Misa* is unavailing inasmuch as the facts therein are not similar to the facts in the case at bar. It must be noted that the actions filed in *Lorenzana* and *Misa* were for quieting of title, while here it is for *accion publiciana*. In *Lorenzana*, petitioners prayed that their error-filled titles should be adjudged superior to the regularly issued titles of the private respondents. On the other hand, *Misa* involved unregistered properties which were partitioned but, due to lack of evidence, were not particularly identified. Conversely, the subject property in this case is covered by TCT No. T-27839 issued in the name of respondent. To highlight the disparity, petitioner is not even a holder of any title over the subject property as duly observed by the RTC.

Verily, as enunciated in *Lorenzana*[22] and *Misa*,[23] it may be reiterated that under Rule 45 of the 1997 Rules of Civil Procedure, as amended, our jurisdiction over cases brought to us from the CA is limited to reviewing and correcting errors of law committed by said court. This Court is not a trier of facts. Thus, it is not our function to review factual issues and to examine, evaluate or weigh the probative value of the evidence presented by the parties. We are not bound to analyze and weigh all over again the evidence already considered in the proceedings below.[24] Necessarily, the jurisprudential doctrine that findings of the CA are conclusive on the parties and carry even more weight when they coincide with the factual findings of the trial court must remain undisturbed.[25]

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[22] *Supra* note 18, at 722.

[23] *Supra* note 19, at 221.

[24] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. Nos. 123346, 134385, and 148767, November 29, 2005, 476 SCRA 305, 334-335, citing *Asia Trust Development Bank v. Concepts Trading Corporation*, 404 SCRA 449 (2003); *Omandam v. Court of Appeals*, 349 SCRA 483 (2001).

[25] *Valdez v. Reyes*, G.R. No. 152251, August 17, 2006, 499 SCRA 212, 215, citing *Development Bank of the Philippines v. Perez*, 442 SCRA 238 (2004); *Morandarte v. Court of Appeals*, 436 SCRA 213 (2004); *Pleyto v. Lomboy*, 432 SCRA 329 (2004); *Mindanao State University v. Roblett Industrial & Construction Corp.*, 431 SCRA 458 (2004).

In this case, it is evident that petitioner asks this Court to undertake the re-examination and re-evaluation of the pieces of evidence presented before the courts below, and reverse the uniform factual findings of both the RTC and the CA in favor of respondent. However, we can do so only in any of the following instances:

> (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record[26]

and petitioner has failed to show that this case falls within any of the aforementioned exceptions.

Notwithstanding the apparently numerous issues raised by petitioner, the ultimate question is simply: Did petitioner encroach on the subject property covered by respondent's title?

The petitioner posits that the resolution of the issue will involve the alteration, correction or modification of TCT No. T-27839 issued in the name of respondent. However, the rectification of the title may be made only through a proper action filed for that purpose. It should be borne in mind that Section 48, Presidential Decree (P.D.) No. 1529, provides that "a certificate of title shall not be subject to collateral attack." It cannot be altered, modified, or cancelled except in a direct proceeding filed in accordance with law. This was our pronouncement in *De Pedro v. Romasan Development Corporation*,[27] and in *Caraan*

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[26] *Sps. Casimiro v. Court of Appeals*, 433 Phil. 219, 224-225 (2002).

[27] G.R. No. 158002, February 28, 2005, 452 SCRA 564, 575.

*v. Court of Appeals*,[28] we defined a collateral attack in this wise:

> When is an action an attack on a title? It is when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of an action or proceeding is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, **the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof**.[29]

In the action for recovery filed by respondent in the trial court, petitioner's Answer[30] did not directly impugn the validity of respondent's title. Rather, she alleged that the area which she occupied was not within the titled property of respondent. Thus, her petition in the instant case is replete with claims of errors in the technical description as appearing in the title of respondent and even in that of her predecessors-in-interest. However, these allegations constitute a collateral attack against respondent's title, which cannot be allowed in an *accion publiciana*. In sum, the defenses and grounds raised by petitioner ascribe errors in respondent's title that would require a review of the registration decree made in respondent's favor.[31] Unfortunately for the petitioner, we cannot do so in the present action which is simply for recovery of possession.

What we said in *De Pedro* and *Caraan*, citing *Ybañez v. Intermediate Appellate Court*,[32] is squarely in point:

> It was erroneous for petitioners to question the Torrens Original Certificate of Title issued to private respondent over Lot No. 986 in Civil Case No. 671, an ordinary civil action for recovery of possession filed by the registered owner of the said lot, by invoking

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[28] G.R. No. 140752, November 11, 2005, 474 SCRA 543.

[29] *Caraan v. Court of Appeals*, *id.* at 549, citing *Mallilin, Jr. v. Castillo*, 389 Phil. 153 (2000). (Emphasis supplied.)

[30] Records, pp. 16-17.

[31] *Mallilin, Jr. v. Castillo*, *supra* note 28, at 165.

[32] G.R. No. 68291, March 6, 1991, 194 SCRA 743.

as affirmative defense in their answer the Order of the Bureau of Lands, dated July 19, 1978, issued pursuant to the investigatory power of the Director of Lands under Section 91 of Public Land Law (C.A. 141 as amended). Such a defense partakes of the nature of a collateral attack against a certificate of title brought under the operation of the Torrens system of registration pursuant to Section 122 of the Land Registration Act, now Section 103 of P.D. 1259. The case law on the matter does not allow a collateral attack on the Torrens certificate of title on the ground of actual fraud. The rule now finds expression in Section 48 of P.D. 1529 otherwise known as the Property Registration Decree.[33]

Moreover, the CA did not err when it partially relied on the Report of the Clerk of Court, the duly appointed hearing officer for the ocular inspection by virtue of RTC Order[34] dated November 10, 1989, upon agreement of all the parties. Petitioner did not interpose any objection to such appointment nor to the conduct of the inspection, as it is on record that petitioner's counsel participated in said inspection.[35] When the Clerk of Court made her observation that the boundaries pointed to by petitioner were within the area of respondent's property, petitioner's counsel did not object to such observation.[36] The RTC's failure to mention the Report in its Decision is of no moment. When petitioner appealed to the CA, the appealed case was thereby thrown wide open for review by the CA. Given this power, the CA has the authority to either affirm, reverse or modify the appealed decision of the trial court,[37] because, unlike this Court, the CA has the power to review factual matters. The Report forms part of the records of this case which must have been taken into consideration by the CA in its resolution of the case filed before it.

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[33] *Id.* at 748. (Citations omitted.)

[34] Records, p. 181.

[35] TSN, February 16, 1990.

[36] *Id.* at 17.

[37] *Heirs of Carlos Alcaraz v. Republic*, G.R. No. 131667, July 28, 2005, 464 SCRA 280, 294-295.

As the registered owner is entitled to the possession of the property from the time the title thereof was issued in her favor,[38] and preponderance of evidence being in favor of respondent, there can be no other conclusion but that respondent should be placed in possession thereof. All told, the CA committed no reversible error in rendering the assailed Decision.

**WHEREFORE,** the instant Petition is *DENIED*. This is without prejudice to the filing by petitioner of the appropriate action before the proper forum for the correction of what she claims are errors in the certificate of title. No costs.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Carpio Morales,*[*] *Chico-Nazario,* and *Peralta, JJ.,* concur.

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[38] *Apostol v. Court of Appeals*, G.R. No. 125375, June 17, 2004, 432 SCRA 351, 359.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 602 dated March 20, 2009.

**SPECIAL SECOND DIVISION**

[G.R. No. 164267. March 31, 2009]

**PHILIPPINE AIRLINES, INC.,** *petitioner, vs.* **HEIRS OF BERNARDIN J. ZAMORA,**[*] *respondents*.

[G.R. No. 166996. March 31, 2009]

**PHILIPPINE AIRLINES, INCORPORATED, FRANCISCO X. YNGENTE IV, PAG-ASA C. RAMOS, JESUS FEDERICO V. VIRAY, RICARDO D. ABUYUAN,** *petitioners, vs.* **BERNARDIN J. ZAMORA,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; SERVICE BY REGISTERED MAIL; TWO SITUATIONS CONTEMPLATED.—** The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.

**2. ID.; ID.; ID.; ID.; ID.; IN INSTANT CASE, THERE IS NO POSTMASTER'S CERTIFICATION OF NOTICE GIVEN TO THE ADDRESSEE.—** In the instant case, there is no postmaster's certification to the effect that the registered mail containing the NLRC decision was unclaimed by the addressee

[*] *Rollo* (G.R. No. 164267), pp. 691-692. Bernardin J. Zamora died on January 9, 2005 due to cardio pulmonary arrest and was substituted by his wife, Marlyn T. Zamora, and children, Moshe Dayan T. Zamora and Jessamyn T. Zamora.

and thus returned to sender, after first notice was sent to and received by the addressee on a specified date. All that appears from the records are the envelopes containing the NLRC decision with the stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED."

**3. ID.; ID.; ID.; ID.; ID.; ID.; STILL, THE COURT RULES THAT SERVICE UPON PAL AND THE OTHER PETITIONERS WAS COMPLETE. —** Still, we must rule that service upon PAL and the other petitioners was complete. *First*, the NLRC Deputy Executive Clerk issued a Certification that the envelopes containing the NLRC decision addressed to Mr. Jose Pepiton Garcia and Atty. Bienvenido T. Jamoralin, Jr. were returned to the NLRC with the notation "RTS" and "MOVED." Yet, they and the other petitioners, including PAL, have not filed any notice of change of address at any time prior to the issuance of the NLRC decision up to the date when the Certification was issued on January 24, 2000. *Second*, the non-receipt by PAL and the other petitioners of the copies of the NLRC decision was due to their own failure to immediately file a notice of change of address with the NLRC, which they expressly admitted.

**4. ID.; ID.; ID.; ID.; IT IS SETTLED THAT WHERE A PARTY APPEARS BY AN ATTORNEY IN AN ACTION IN A COURT OF RECORD, ALL NOTICES ARE REQUIRED TO BE GIVEN TO THE ATTORNEY OF RECORD. —** It is settled that where a party appears by attorney in an action or proceeding in a court of record, all notices or orders required to be given therein must be given to the attorney of record. Accordingly, notices to counsel should be properly sent to his address of record, and, unless the counsel files a notice of change of address, his official address remains to be that of his address of record.

**APPEARANCES OF COUNSEL**

*Bienvenido T. Jamoralin* for petitioner.
*Rico and Associates* for respondents.

## D E C I S I O N

**QUISUMBING, *J.*:**

Before this Court are two petitions, now consolidated. The first petition, docketed as **G.R. No. 164267**, filed by Philippine Airlines, Inc., assails the Decision[1] dated April 27, 2004 and the Resolution[2] dated June 29, 2004, of the Court of Appeals in CA-G.R. SP No. 56428.

The second petition, docketed as **G.R. No. 166996**, filed by Philippine Airlines, Inc., Francisco X. Yngente IV, Pag-asa C. Ramos, Jesus Federico V. Viray, and Ricardo D. Abuyuan, assails the Decision[3] dated August 13, 2004 and the Amended Decision[4] dated February 1, 2005, of the Court of Appeals in CA-G.R. SP No. 68795.

The records reveal the following antecedent proceedings:[5]

Bernardin J. Zamora was a cargo representative assigned at the International Cargo Operations-Import Operations Division (ICO-IOD) of petitioner Philippine Airlines, Inc. (PAL). He alleged that sometime in December 1993, his immediate supervisor, petitioner Ricardo D. Abuyuan, instructed him to alter some entries in the Customs Boatnote and Inbound Handling Report to conceal Abuyuan's smuggling and pilferage activities. When he refused to follow this order, Abuyuan concocted charges of insubordination and neglect of customers against him.

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[1] *Id.* at 11-24. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Sergio L. Pestaño and Vicente Q. Roxas concurring.

[2] *Id.* at 34-35. Penned by Associate Justice Roberto A. Barrios, with Associate Justices Edgardo P. Cruz and Vicente Q. Roxas concurring.

[3] *Rollo* (G.R. No. 166996), pp. 78-89. 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.

[4] *Id.* at 92-94.

[5] See *Philippine Airlines, Inc. v. Heirs of Bernardin J. Zamora*, G.R. No. 164267, November 23, 2007, 538 SCRA 456; *Philippine Airlines, Incorporated v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584.

On November 6, 1995, Zamora received a Memorandum informing him of his temporary transfer to the Domestic Cargo Operations (DCO) effective November 13, 1995. Zamora refused to follow the directive because: *first*, there was no valid and legal reason for his transfer; *second*, the transfer violated the collective bargaining agreement between the management and the employees union that no employee shall be transferred without just and proper cause; and *third*, the transfer did not comply with the 15-day prior notice rule.

Meantime, Zamora wrote to the management requesting that an investigation be conducted on the smuggling and pilferage activities. He disclosed that he has a telex from Honolulu addressed to Abuyuan to prove Abuyuan's illegal activities. As a result, the management invited Zamora to several conferences to substantiate his allegations. Zamora claimed that during these conferences, he was instructed to continue reporting to the ICO-IOD to observe the activities therein. Even so, his salaries were withheld starting December 15, 1995.

For its part, PAL claimed that sometime in October 1995, Zamora had an altercation with Abuyuan to the point of a fistfight. The management requested Zamora to explain in writing the incident. It found his explanation unsatisfactory.

To diffuse the tension between the parties, the management decided to temporarily transfer Zamora to the DCO. It issued several directives informing Zamora of his transfer. However, Zamora refused to receive these and continued reporting to the ICO-IOD. Consequently, he was reported absent at the DCO since November 13, 1995. His salaries were subsequently withheld. He also ignored the management's directive requiring him to explain in writing his continued absence.

Meanwhile, the management acted on Zamora's letter exposing the smuggling and pilferage activities. Despite several notices, however, Zamora failed to appear during the conferences.

On February 22, 1996, the management served Zamora a Notice of Administrative Charge for Absence Without Official Leave (AWOL). Then on January 30, 1998, he was informed

of his termination due to Insubordination/Neglect of Customer, Disrespect to Authority, and AWOL.

On March 12, 1996, Zamora filed a complaint[6] for illegal dismissal, unfair labor practice, non-payment of wages, and damages.

On September 28, 1998, the Labor Arbiter dismissed the complaint for lack of merit. The Labor Arbiter ruled that Zamora's transfer was temporary and intended only to diffuse the tension between Zamora and Abuyuan. The Labor Arbiter also said that the 15-day prior notice did not apply to Zamora since it is required only in transfers involving change of domicile. Furthermore, Zamora's refusal to report to the DCO was a clear case of insubordination and utter disregard of the management's directive. Thus, the Labor Arbiter ordered Zamora to report to his new assignment at the DCO.

On July 26, 1999, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter's decision and declared Zamora's transfer illegal. It ruled that there was no valid and legal reason for the transfer other than Zamora's report of the smuggling and pilferage activities. The NLRC disposed as follows:

> WHEREFORE, in the light of the foregoing, the instant appeal is hereby GRANTED. The assailed Decision dated September 28, 1998 is hereby ordered SET ASIDE and a new one is hereby entered declaring complainant's transfer at the Domestic Cargo Operations on November 13, 1996 illegal.
>
> Moreover, respondents are hereby ordered to immediately reinstate complainant Bernardin J. Zamora to his former position as Cargo Representative at the Import Operations Division of respondent PAL without loss of seniority rights and other privileges and to pay him back salaries and backwages beginning December 15, 1995 until his actual reinstatement, inclusive of allowances and other benefits and increases thereto.
>
> All other reliefs herein sought and prayed for are hereby DENIED for lack of merit.
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> SO ORDERED.[7]

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[6] *Rollo* (G.R. No. 164267), pp. 184-185.

[7] *Id.* at 168-169.

Thereafter, Zamora's counsel demanded from PAL execution of the NLRC decision with respect to his reinstatement and various monetary benefits on the ground that it has become final and executory.[8]

PAL filed a motion to be furnished with a copy of the NLRC decision. Zamora opposed the motion alleging that the record of the NLRC indicated that copies of the NLRC decision were sent *via* registered mail on August 11, 1999 to PAL and its counsel, but the same remained unclaimed for a time and were later on returned to sender. He added that as of August 16, 1999, or five days later, service upon PAL of copies of the NLRC decision was deemed completed. Zamora also filed a motion for partial entry of judgment with respect to his reinstatement and various monetary benefits.

PAL opposed the motion for partial entry of judgment and moved for reconsideration of the NLRC decision. Zamora opposed the motion and moved to have it expunged from the record of the case on the ground that the NLRC decision had long become final and executory.

The NLRC denied reconsideration of its decision. Undeterred, PAL filed a petition for *certiorari* docketed as CA-G.R. SP No. 56428 before the Court of Appeals.

Meanwhile, Zamora filed anew a motion for partial execution reiterating his prayer for the execution of the NLRC decision with respect to his reinstatement and various monetary benefits. Later, he filed a motion for contempt before the Labor Arbiter praying that PAL be declared in contempt for refusing to physically reinstate him to his former position or in the payroll. PAL opposed the motion.

On January 8, 2001, the Labor Arbiter issued an Order[9] citing PAL for indirect contempt for its failure to comply with the directive contained in the NLRC decision and ordering the issuance of a writ of execution. The dispositive portion of the Order provides:

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[8] *Rollo* (G.R. No. 166996), pp. 213-214.

[9] *Id.* at 378-380.

WHEREFORE, finding the motion to be well taken and in order, the same is granted and respondents are hereby cited for indirect contempt for their failure to comply with the order of the Hon. Commission. They are directed anew to reinstate complainant immediately to his former position as Cargo Representative, physically or in the payroll, and fined an amount of ₱100.00 per day from 16 August 1999 until compliance.

Further, let a writ of execution be issued.

SO ORDERED.

PAL appealed to the NLRC praying for the reversal of the Order and the suspension of the proceedings due to PAL's rehabilitation.

On April 27, 2001, the NLRC issued a Resolution[10] setting aside the Order of the Labor Arbiter and ordering the issuance of a writ of execution implementing, albeit with modification, the Labor Arbiter's decision. The NLRC relied on the copy of the structural organization of PAL's Cargo Services Sub-Department showing that as of June 30, 2000, the ICO-IOD had already been abolished. Instead of ordering Zamora's reinstatement, it awarded separation pay equivalent to one month's salary for every year of service, *i.e.*, from February 9, 1981 to June 30, 2000. It also computed the award of backwages from December 15, 1995 until June 30, 2000. The *fallo* of the Resolution reads:

WHEREFORE, the Order appealed from is hereby SET ASIDE.

The Labor Arbiter is hereby advised to forthwith issue a Writ of Execution which, due to a supervening event, the abolition of PAL's Import Operations Division - must vary the terms of the final judgment to the extent that: (1) the complainant must be awarded, in lieu of reinstatement, separation pay equivalent to one month's salary for every year of service from February 9, 1981 to June 30, 2000; and (2) the award of backwages must be computed from December 15, 1995 to June 30, 2000.

SO ORDERED.

[10] *Id.* at 168-173.

Both parties moved for reconsideration. Zamora disputed the finding that the ICO-IOD had already been abolished as of June 30, 2000. On the other hand, PAL argued that the NLRC erred in ordering the issuance of a writ of execution considering that it was undergoing rehabilitation.

On October 31, 2001, the NLRC disposed of the motions in this wise:

> WHEREFORE, complainant's Motion for Partial Reconsideration is DENIED for lack of merit. Respondent's Partial Motion for Reconsideration is GRANTED. The instant case is hereby referred to the permanent rehabilitation receiver and the proceedings hereon are deemed SUSPENDED while respondent Philippine Airlines, Inc. is under rehabilitation receivership.
>
> SO ORDERED.[11]

Zamora questioned the NLRC resolutions before the Court of Appeals *via* a petition for *certiorari* docketed as CA-G.R. SP No. 68795.

On April 27, 2004, the appellate court resolved CA-G.R. SP No. 56428 and affirmed the NLRC Decision dated July 26, 1999 declaring Zamora's transfer at the DCO illegal and ordering his immediate reinstatement and payment of various monetary benefits. It disposed thus:

> WHEREFORE, the petition is **DENIED DUE COURSE** and **DISMISSED**.
>
> SO ORDERED.[12]

On June 29, 2004, the appellate court denied reconsideration.

On August 13, 2004, the appellate court resolved CA-G.R. SP No. 68795 and set aside the NLRC Resolution dated April 27, 2001 which awarded Zamora separation pay in lieu of reinstatement due to the abolition of the ICO-IOD. The appellate court ruled that the NLRC gravely abused its discretion when it varied the terms of its decision by suspending the proceedings

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[11] *Id.* at 176.

[12] *Rollo* (G.R. No. 164267), p. 23.

and referring the case to PAL's rehabilitation receiver instead of ordering Zamora's reinstatement. The appellate court also rejected PAL's evidence which supposedly showed that Zamora's former position had already been abolished.

PAL moved for reconsideration and manifested that Zamora has been detained in jail for the crime of murder since October 2, 2000. On February 1, 2005, the appellate court amended its decision and recalled its order of reinstatement in view of Zamora's incarceration. The Court of Appeals dispositive portion of the amended decision reads:

WHEREFORE, this Court's August 13, 2004 decision is hereby **AMENDED**, the dispositive portion to read as follows:

"WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The NLRC resolution dated April 27, 2001 is **MODIFIED**. Considering that petitioner is a detention prisoner making reinstatement impossible, **PAL is hereby ordered to pay petitioner Zamora his separation pay, in lieu of reinstatement**, to be computed at one month salary for every year of service **from February 9, 1981** and backwages to be computed **from December 15, 1995**, both **up to October 1, 2000**, the date of his incarceration.

"SO ORDERED."

Considering that PAL is still under receivership, the monetary claims of petitioner Zamora must be presented to the PAL Rehabilitation Receiver, subject to the rules on preference of credits.

SO ORDERED.[13]

From the Court of Appeals' decision in CA-G.R. SP No. 56428, PAL filed a petition with this Court docketed as **G.R. No. 164267** raising the following procedural and substantive issues.

THE PROCEDURAL ISSUES:

I.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE 26 JULY 1999 NLRC DECISION BECAME FINAL AND EXECUTORY BASED SOLELY ON THE

[13] *Rollo* (G.R. No. 166996), pp. 93-94.

CERTIFICATIONS ISSUED BY THE DEPUTY EXECUTIVE CLERK OF THE NLRC.

II.

WHETHER OR NOT THE NLRC MAY TAKE COGNIZANCE OF A SEASONABLY FILED MOTION FOR RECONSIDERATION FROM A DECISION A COPY OF WHICH WAS PREVIOUSLY STAMPED "MOVED" AND "RETURN TO SENDER" BUT WAS THEREAFTER OFFICIALLY SERVED and OFFICIALLY RECEIVED BY THE PARTY SEEKING RECONSIDERATION.

III.

MAY A COUNSEL FOR JUSTIFIABLE REASON DEFER THE FILING OF A NOTICE OF CHANGE OF ADDRESS.

THE SUBSTANTIVE ISSUES[:]

I.

MAY AN EMPLOYER BE REQUIRED TO STATE IN WRITING THE REASON FOR TRANSFERRING AN EMPLOYEE DESPITE THE ABSENCE OF SUCH REQUIREMENT IN THE CBA.

II.

MAY AN EMPLOYER BE REQUIRED TO OBSERVED A 15-DAY PRIOR NOTICE BEFORE EFFECTING AN EMPLOYEE TRANSFER NOTWITHSTANDING THE FACT THAT UNDER THE CBA SAID NOTICE IS REQUIRED ONLY IN CASE THE TRANSFER INVOLVES A CHANGE IN DOMICILE.

III.

MAY AN EMPLOYER SEEKING TO TRANSFER AN EMPLOYEEE FOR THE PURPOSE OF DIFFUSING ESCALATING HOSTILITY BETWEEN AN EMPLOYEE AND HIS SUPERVISOR BE REQUIRED TO WAIT FOR FIFTEEN (15) DAYS BEFORE EFFECTING THE EMPLOYEE TRANSFER.

IV.

MAY A COURT VALIDLY ORDER THE REINSTATEMENT OF AN EMPLOYEE AS WELL AS GRANT MONETARY AWARD NOTWITHSTANDING THE ABSENCE OF FACTUAL FINDING AS TO THE LEGALITY OR ILLEGALITY OF THE DISMISSAL IN THE DECISION ITSELF.[14]

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[14] *Rollo* (G.R. No. 164267), pp. 716-717.

On the other hand, from the Court of Appeals' amended decision in CA-G.R. SP No. 68795, PAL, *et al*., filed a petition, which this Court docketed as **G.R. No. 166996,** raising the following issues:

I.

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN DECLARING ILLEGAL THE DISMISSAL OF RESPONDENT ZAMORA AND THE DECISION OF THE NLRC DATED JULY 26, 1999 FINAL AND EXECUTORY. IN SO DOING, THE COURT OF APPEALS PREMATURELY RULED ON THE MERITS OF THE CASE.

II.

THE COURT OF APPEALS COMMITTED A PALPABLE ERROR IN ORDERING PAL TO PAY RESPONDENT ZAMORA HIS "SEPARATION PAY, IN LIEU OF REINSTATEMENT, TO BE COMPUTED AT ONE MONTH SALARY FOR EVERY YEAR OF SERVICE FROM FEBRUARY 9, 1981 AND BACKWAGES TO BE COMPUTED FROM DECEMBER 15, 1995, BOTH UP TO OCTOBER 12 (sic), 2000, THE DATE OF HIS INCARCERATION."

III.

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR IN ORDERING THAT RESPONDENT ZAMORA'S MONETARY CLAIM BE PRESENTED TO THE PAL REHABILITATION RECEIVER, SUBJECT TO THE RULES ON PREFERENCE OF CREDITS.[15]

In our Resolutions dated February 6, 2007 and November 23, 2007, we suspended the proceedings in **G.R. No. 166996** and **G.R. No. 164267**, respectively, and directed PAL to submit a status report on its then on-going rehabilitation. Pursuant to our directive, PAL submitted a Manifestation and Compliance,[16] informing us that the Securities and Exchange Commission granted

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[15] *Rollo* (G.R. No. 166996), p. 58.

[16] Dated December 19, 2007, *Rollo* (G.R. No. 164267), pp. 831-832; Dated October 19, 2007, *Rollo* (G.R. No. 166996), pp. 901-902.

its request to exit from the rehabilitation proceedings on September 28, 2007.[17] In view of this development, we shall now resolve the instant consolidated petitions.

Simply, the issues are: (1) Did the Decision dated July 26, 1999 of the NLRC become final and executory? (2) Was PAL's motion for reconsideration of the Labor Arbiter's decision seasonably filed? (3) Was Zamora's transfer legal? (4) Was Zamora's dismissal legal? (5) Should PAL pay Zamora separation pay in lieu of reinstatement due to his incarceration? and (6) Should Zamora present his monetary claim to PAL's rehabilitation receiver?

The consolidated petitions have no merit.

Anent the *first* and *second* issues, PAL contends that other than the Certification[18] issued by the NLRC Deputy Executive Clerk, there was no evidence that service of the NLRC decision *via* registered mail was deemed completed as of August 16, 1999, or five days after the first notice on August 11, 1999. It adds that a certification from the postmaster was the best evidence to prove completeness of the service by mail.

PAL also avers that when it received a copy of the NLRC resolution denying Zamora's motion for partial reconsideration of the NLRC decision, it immediately filed a motion to be furnished with a copy of the NLRC decision. Acting on the motion, the NLRC furnished it with a copy of the NLRC decision which it received on October 26, 1999. Since it filed its motion for reconsideration on October 29, 1999, PAL argues that its motion was seasonably filed and the NLRC decision did not become final and executory.

Zamora counters that the Certification issued by the NLRC Deputy Executive Clerk was reinforced by the stamped markings and notation[19] on the face and dorsal sides of the envelopes

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[17] *Rollo* (G.R. No. 164267), pp. 833-838; *Rollo* (G.R. No. 166996), pp. 903-908.

[18] *Id.* at 638.

[19] *Id.* at 639-640.

containing the NLRC decision. He adds that at the time service of the NLRC decision *via* registered mail was made, PAL moved to a new office address without filing any notice of change of address with the NLRC. Thus, PAL's failure to receive the NLRC decision was due to its own fault.

Zamora also maintains that since PAL only had 10 days from August 16, 1999 to file its motion for reconsideration, the motion filed on October 29, 1999 was late.

The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.[20]

In the instant case, there is no postmaster's certification to the effect that the registered mail containing the NLRC decision was unclaimed by the addressee and thus returned to sender, after first notice was sent to and received by the addressee on a specified date. All that appears from the records are the envelopes containing the NLRC decision with the stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED." Still, we must rule that service upon PAL and the other petitioners was complete.

*First*, the NLRC Deputy Executive Clerk issued a Certification that the envelopes containing the NLRC decision addressed to Mr. Jose Pepiton Garcia and Atty. Bienvenido T. Jamoralin, Jr. were returned to the NLRC with the notation "RTS" and

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[20] *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 321-322; *Santos v. Court of Appeals*, G.R. No. 128061, September 3, 1998, 295 SCRA 147, 153-154.

"MOVED." Yet, they and the other petitioners, including PAL, have not filed any notice of change of address at any time prior to the issuance of the NLRC decision up to the date when the Certification was issued on January 24, 2000.

*Second*, the non-receipt by PAL and the other petitioners of the copies of the NLRC decision was due to their own failure to immediately file a notice of change of address with the NLRC, which they expressly admitted. It is settled that where a party appears by attorney in an action or proceeding in a court of record, all notices or orders required to be given therein must be given to the attorney of record. Accordingly, notices to counsel should be properly sent to his address of record, and, unless the counsel files a notice of change of address, his official address remains to be that of his address of record.[21]

PAL's argument that its chaotic situation due to its rehabilitation rendered the filing of a notice of change of address impractical does not merit consideration. Since moving out from its office at Allied Bank Center, where the NLRC decision was sent, PAL occupied four different office addresses. Yet these office addresses could be found in the same building, the PAL Center Building in Makati City. PAL merely moved from one floor to another. To our mind, it would have been more prudent had PAL informed the NLRC that it has moved from one floor to another rather than allowed its old address at Allied Bank Center to remain as its official address. To rule in favor of PAL considering the circumstances in the instant case would negate the purpose of the rules on completeness of service and the notice of change of address, which is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure.[22]

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[21] *National Power Corporation v. Tac-an*, G.R. No. 155172, February 14, 2003, 397 SCRA 477, 483. See *Philemploy Services and Resources, Inc. v. Rodriguez*, *supra* at 325.

[22] *Aguilar v. Court of Appeals*, G.R. No. 120972, July 19, 1999, 310 SCRA 393, 402; *NIAConsult, Inc. v. National Labor Relations Commission*, G.R. No. 108278, January 2, 1997, 266 SCRA 17, 22.

Resultantly, service of the NLRC decision *via* registered mail was deemed completed as of August 16, 1999, or five days after the first notice on August 11, 1999. As such, PAL only had 10 days from August 16, 1999 to file its motion for reconsideration. Its motion filed on October 29, 1999 was therefore late. Hence the NLRC decision became final and executory.

With this conclusion, it is no longer necessary to dwell on the other issues raised.

One final note. In CA-G.R. SP No. 68795, PAL conceded that Zamora's reinstatement is no longer possible due to his detention in jail for the crime of murder since October 2, 2000. As such, we defer to the order of the Court of Appeals which mandated the payment of separation pay instead.

**WHEREFORE,** the consolidated petitions are *DENIED*. The Amended Decision dated February 1, 2005 of the Court of Appeals in CA-G.R. SP No. 68795 is hereby *AFFIRMED*. The Decision dated April 27, 2004 in CA-G.R. SP No. 56428 is *AFFIRMED with the modification* that the order for immediate reinstatement is deleted.

Costs against the petitioners.

**SO ORDERED.**

*Carpio, Carpio Morales, Tinga,* and *Velasco, Jr., JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 166519. March 31, 2009]

**NIEVES PLASABAS and MARCOS MALAZARTE,** *petitioners, vs.* **COURT OF APPEALS (Special Former Ninth Division), DOMINADOR LUMEN, and AURORA AUNZO,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; PROPERTY; ARTICLE 487 OF THE CIVIL CODE APPLIES TO EJECTMENT AND ALL KINDS OF ACTIONS FOR RECOVERY OF POSSESSION.—** Article 487 of the Civil Code provides that any one of the co-owners may bring an action for ejectment. The article covers all kinds of actions for the recovery of possession, including an *accion publiciana* and a reivindicatory action. A co-owner may file suit without necessarily joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all. Any judgment of the court in favor of the plaintiff will benefit the other co-owners, but if the judgment is adverse, the same cannot prejudice the rights of the unimpleaded co-owners. With this disquisition, there is no need to determine whether petitioners' complaint is one for ejectment or for recovery of title. To repeat, Article 487 of the Civil Code applies to both actions.

**2. ID.; ID.; ID.; ID.; EXCEPTION TO THE RULE THAT PETITIONERS DO NOT HAVE TO IMPLEAD THEIR CO-OWNERS AS PARTIES.—** Thus, petitioners, in their complaint, do not have to implead their co-owners as parties. The only exception to this rule is when the action is for the benefit of the plaintiff alone who claims to be the sole owner and is, thus, entitled to the possession thereof. In such a case, the action will not prosper unless the plaintiff impleads the other co-owners who are indispensable parties.

**3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; NON-JOINDER OF INDISPENSABLE PARTIES; REMEDY.—** The rule is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/petitioner's failure to comply therewith.

**APPEARANCES OF COUNSEL**

*Baduel Espina and Associates* for petitioners.
*Rodolfo C. Acido* for private respondents.

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

**NACHURA, *J.*:**

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the May 12, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 43085 and the December 1, 2004 Resolution[2] denying reconsideration of the challenged decision.

The pertinent facts and proceedings follow.

In 1974, petitioners[3] filed a complaint for recovery of title to property with damages before the Court of First Instance (now, Regional Trial Court [RTC]) of Maasin, Southern Leyte against respondents. The case was docketed as Civil Case No. R-1949. The property subject of the case was a parcel of coconut land in Canturing, Maasin, Southern Leyte, declared under Tax Declaration No. 3587 in the name of petitioner Nieves with an area of 2.6360 hectares.[4] In their complaint, petitioners prayed that judgment be rendered confirming their rights and legal title to the subject property and ordering the defendants to vacate the occupied portion and to pay damages.[5]

Respondents, for their part, denied petitioners' allegation of ownership and possession of the premises, and interposed, as

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[1] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices B.A. Adefuin-de la Cruz and Perlita J. Tria Tirona, concurring; *rollo*, pp. 25-42.

[2] Penned by Associate Justice Arturo D. Brion (now a member of this Court), with Associate Justices Perlita J. Tria Tirona and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 43-46.

[3] Substituted by their heirs. (Records, p. 87.)

[4] *Id.* at 1-2.

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

their main defense, that the subject land was inherited by all the parties from their common ancestor, Francisco Plasabas.[6]

Revealed in the course of the trial was that petitioner Nieves, contrary to her allegations in the complaint, was not the sole and absolute owner of the land. Based on the testimonies of petitioners' witnesses, the property passed on from Francisco to his son, Leoncio; then to Jovita Talam, petitioner Nieves' grandmother; then to Antonina Talam, her mother; and then to her and her siblings—Jose, Victor and Victoria.[7]

After resting their case, respondents raised in their memorandum the argument that the case should have been terminated at inception for petitioners' failure to implead indispensable parties, the other co-owners – Jose, Victor and Victoria.

In its April 19, 1993 Order,[8] the trial court, without ruling on the merits, dismissed the case without prejudice, thus:

> This Court, much as it wants to decide the instant case on the merits, being one of the old inherited cases left behind, finds difficulty if not impossibility of doing so at this stage of the proceedings when both parties have already rested their cases. Reluctantly, it agrees with the defendants in the observation that some important indispensable consideration is conspicuously wanting or missing.
>
> It is not the Court's wish to turn its back on the crucial part of the case, which is the pronouncement of the judgment to settle the issues raised in the pleadings of the parties once and for all, after all the time, effort and expense spent in going through the trial process.
>
> But, rules are rules. They have to be followed, to arrive at a fair and just verdict. Section 7, Rule 3 of the Rules of Court provides:
>
> > "x x x Compulsory joinder of indispensable parties. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants."
>
> What the Court wants to say here is that the instant case should have been dismissed without prejudice a long time ago for lack of cause

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[6] *Id*. at 13-19.

[7] *Id*. at 213-214.

[8] *Id*. at 213-218.

of action as the plaintiffs spouses Marcos Malazarte and Nieves Plasabas Malazarte have no complete legal personality to sue by themselves alone without joining the brothers and sisters of Nieves who are as INDISPENSABLE as the latter in the final determination of the case. Not impleading them, any judgment would have no effectiveness.

They are that indispensable that a final decree would necessarily affect their rights, so that the Court cannot proceed without their presence. There are abundant authorities in this regard. Thus –

> "The general rule with reference to the making of parties in a civil action requires the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* of the exercise of judicial power. (*Borlasa v. Polistico*, 47 Phil. 345, 348) For this reason, our Supreme Court has held that when it appears of record that there are other persons interested in the subject matter of the litigation, who are not made parties to the action, it is the duty of the court to suspend the trial until such parties are made either plaintiffs or defendants. (*Pobre, et al. v. Blanco*, 17 Phil. 156). x x x Where the petition failed to join as party defendant the person interested in sustaining the proceeding in the court, the same should be dismissed. x x x When an indispensable party is not before the court, the action should be dismissed. (*People, et al. v. Rodriguez, et al.*, G.R. Nos. L-14059-62, September 30, 1959) (sic).
>
> "Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. (Sec. 7, Rule 3, Rules of Court). The burden of procuring the presence of all indispensable parties is on the plaintiff. (39 Amjur [sic] 885). The evident purpose of the rule is to prevent the multiplicity of suits by requiring the person arresting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation. (*Palarca v. Baginsi*, 38 Phil. 177, 178).
>
> "An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without inquiring or affecting

> such interest; a party who has not only an interest of such a nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. (67 C.J.S. 892). Indispensable parties are those without whom no action can be finally determined." (*Sanidad v. Cabataje*, 5 Phil. 204)

WHEREFORE, IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, both the complaint and the counterclaim in the instant case are ordered DISMISSED without prejudice. No pronouncement as to costs.

SO ORDERED.[9]

Aggrieved, petitioners elevated the case to the CA. In the challenged May 12, 2004 Decision,[10] the appellate court affirmed the ruling of the trial court. The CA, further, declared that the non-joinder of the indispensable parties would violate the principle of due process, and that Article 487 of the Civil Code could not be applied considering that the complaint was not for ejectment, but for recovery of title or a reivindicatory action.[11]

With their motion for reconsideration denied in the further assailed December 1, 2004 Resolution,[12] petitioners filed the instant petition.

The Court grants the petition and remands the case to the trial court for disposition on the merits.

Article 487 of the Civil Code provides that any one of the co-owners may bring an action for ejectment. The article covers all kinds of actions for the recovery of possession, including an *accion publiciana* and a reivindicatory action. A co-owner may file suit without necessarily joining all the other co-owners as co-plaintiffs because the suit is deemed to be instituted for the benefit of all. Any judgment of the court in favor of the plaintiff

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[9] *Id.* at 216-218.

[10] *Supra* note 1.

[11] CA *rollo*, pp. 103-111.

[12] *Supra* note 2.

will benefit the other co-owners, but if the judgment is adverse, the same cannot prejudice the rights of the unimpleaded co-owners.[13]

With this disquisition, there is no need to determine whether petitioners' complaint is one for ejectment or for recovery of title. To repeat, Article 487 of the Civil Code applies to both actions.

Thus, petitioners, in their complaint, do not have to implead their co-owners as parties. The only exception to this rule is when the action is for the benefit of the plaintiff alone who claims to be the sole owner and is, thus, entitled to the possession thereof. In such a case, the action will not prosper unless the plaintiff impleads the other co-owners who are indispensable parties.[14]

Here, the allegation of petitioners in their complaint that they are the sole owners of the property in litigation is immaterial, considering that they acknowledged during the trial that the property is co-owned by Nieves and her siblings, and that petitioners have been authorized by the co-owners to pursue the case on the latter's behalf.[15] Impleading the other co-owners is, therefore, not mandatory, because, as mentioned earlier, the suit is deemed to be instituted for the benefit of all.

In any event, the trial and appellate courts committed reversible error when they summarily dismissed the case, after both parties had rested their cases following a protracted trial commencing in 1974, on the sole ground of failure to implead indispensable parties. The rule is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such

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[13] *Baloloy v. Hular*, G.R. No. 157767, September 9, 2004, 438 SCRA 80, 90-91.

[14] *Adlawan v. Adlawan*, G.R. No. 161916, January 20, 2006, 479 SCRA 275, 283.

[15] *Rollo*, pp. 54-59.

times as are just. If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/petitioner's failure to comply therewith.[16]

**WHEREFORE,** premises considered, the instant petition is *GRANTED*, and the case is *REMANDED* to the trial court for appropriate proceedings. The trial court is further *DIRECTED* to decide on the merits of the civil case *WITH DISPATCH*.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Carpio Morales,*[*] *Chico-Nazario,* and *Peralta, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 166562. March 31, 2009]

**BENJAMIN G. TING,** *petitioner, vs.* **CARMEN M. VELEZ-TING,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; DOCTRINE OF ADHERENCE TO PRECEDENTS OR *STARE DECISIS;* ELUCIDATED.—** The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Basically, it is a bar to any attempt to relitigate the same issues, necessary for two simple reasons: economy and

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[16] *PepsiCo, Inc. v. Emerald Pizza, Inc.*, G.R. No. 153059, August 14, 2007, 530 SCRA 58, 67.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 602 dated March 20, 2009.

stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code. In the cases of *Pesca v. Pesca* and in *Antonio v. Reyes*, we explained that the interpretation or construction of a law by courts constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of this Court is overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith, in accordance therewith under the familiar rule of *"lex prospicit, non respicit."*

**2. ID.; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE UNDER ARTICLE 36 THEREOF; PSYCHOLOGICAL INCAPACITY; INAPPROPRIATE FOR THE COURT TO IMPOSE A RIGID SET OF RULES WITH RESPECT THERETO.—** In *Edward Kenneth Ngo Te v. Rowena Ong Gutierrez Yu-Te*, we declared that, in hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. We said that instead of serving as a guideline, *Molina* unintentionally became a straightjacket, forcing all cases involving psychological incapacity to fit into and be bound by it, which is not only contrary to the intention of the law but unrealistic as well because, with respect to psychological incapacity, no case can be considered as on "all fours" with another.

**3. ID.; ID.; ANNULMENT OF MARRIAGE; PSYCHOLOGICAL INCAPACITY; PROOF THEREOF; COURTS MUST BASE THEIR DECISIONS NOT SOLELY ON THE EXPERT OPINIONS BUT ON THE TOTALITY OF EVIDENCE ADDUCED IN THE COURSE OF THE PROCEEDINGS.—** By the very nature of cases involving the application of Article 36, it is logical and understandable to give weight to the expert opinions furnished by psychologists regarding the psychological temperament of parties in order to determine the root cause, juridical antecedence, gravity and incurability of the psychological incapacity. However, such opinions, while highly advisable, are not conditions *sine qua non* in granting petitions for declaration of nullity of marriage. At best, courts must treat such opinions as decisive but not indispensable evidence in determining the merits of a given case. In fact, if the totality of evidence presented is enough to sustain a finding

of psychological incapacity, then actual medical or psychological examination of the person concerned need not be resorted to. The trial court, as in any other given case presented before it, must always base its decision not solely on the expert opinions furnished by the parties but also on the totality of evidence adduced in the course of the proceedings.

**4. ID.; ID.; ID.; ID.; RELAXATION OF STRINGENT REQUIREMENTS IN *MOLINA* CASE ON PRESENTATION OF PSYCHIATRIC EXPERTS; CASE AT BAR.—** Far from abandoning *Molina*, we simply suggested the relaxation of the stringent requirements set forth therein, cognizant of the explanation given by the Committee on the Revision of the Rules on the rationale of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC), *viz.:* "To require the petitioner to allege in the petition the particular root cause of the psychological incapacity and to attach thereto the verified written report of an accredited psychologist or psychiatrist have proved to be too expensive for the parties. They adversely affect access to justice of poor litigants. It is also a fact that there are provinces where these experts are not available. Thus, the Committee deemed it *necessary to relax this stringent requirement enunciated in the Molina Case.* The need for the examination of a party or parties by a psychiatrist or clinical psychologist and the presentation of psychiatric experts shall now be determined by the court during the pre-trial conference." But where, as in this case, the parties had the full opportunity to present professional and expert opinions of psychiatrists tracing the root cause, gravity and incurability of a party's alleged psychological incapacity, then such expert opinion should be presented and, accordingly, be weighed by the court in deciding whether to grant a petition for nullity of marriage.

**5. ID.; ID.; DECLARATION OF NULLITY OF MARRIAGE UNDER ARTICLE 36 THEREOF; CONFINED TO MOST SERIOUS CASES OF PERSONALITY DISORDERS THAT CLEARLY DEMONSTRATE AN INABILITY TO GIVE SIGNIFICANCE TO THE MARRIAGE.—** The intendment of the law has been to confine the application of Article 36 to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. The psychological

illness that must have afflicted a party at the inception of the marriage should be a malady so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond he or she is about to assume.

**6. ID.; ID.; ID.; ID.; PRESUMPTION IS ALWAYS IN FAVOR OF THE VALIDITY OF MARRIAGE; CASE AT BAR.—** Lest it be misunderstood, we are not condoning petitioner's drinking and gambling problems, or his violent outbursts against his wife. There is no valid excuse to justify such a behavior. Petitioner must remember that he owes love, respect, and fidelity to his spouse as much as the latter owes the same to him. Unfortunately, this court finds respondent's testimony, as well as the totality of evidence presented by the respondent, to be too inadequate to declare him psychologically unfit pursuant to Article 36. It should be remembered that the presumption is always in favor of the validity of marriage. *Semper praesumitur pro matrimonio*. In this case, the presumption has not been amply rebutted and must, perforce, prevail.

**APPEARANCES OF COUNSEL**

*Gica Del Socorro Espinoza Teleron Villarama Limkakeng* and *Tan* and *Palma Ybanez & Teleron* for petitioner.

*Dindo Antonio Q. Perez* and *Lawrence L. Fernandez and Associates* for respondent.

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

**NACHURA, *J.*:**

Before us is a petition for review on *certiorari* seeking to set aside the November 17, 2003 Amended Decision[1] of the Court of Appeals (CA), and its December 13, 2004 Resolution[2] in CA-G.R. CV No. 59903. The appellate court, in its assailed

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Rodrigo V. Cosico and Sergio L. Pestaño, concurring; *rollo*, pp. 78-89.

[2] *Rollo*, pp. 110-111.

decision and resolution, affirmed the January 9, 1998 Decision[3] of the Regional Trial Court (RTC), Branch 23, Cebu City, declaring the marriage between petitioner and respondent null and void *ab initio* pursuant to Article 36 of the Family Code.[4]

The facts follow.

Petitioner Benjamin Ting (Benjamin) and respondent Carmen Velez-Ting (Carmen) first met in 1972 while they were classmates in medical school.[5] They fell in love, and they were wed on July 26, 1975 in Cebu City when respondent was already pregnant with their first child.

At first, they resided at Benjamin's family home in Maguikay, Mandaue City.[6] When their second child was born, the couple decided to move to Carmen's family home in Cebu City.[7] In September 1975, Benjamin passed the medical board examinations[8] and thereafter proceeded to take a residency program to become a surgeon but shifted to anesthesiology after two years. By 1979, Benjamin completed the preceptorship program for the said field[9] and, in 1980, he began working for Velez Hospital, owned by Carmen's family, as member of its active staff,[10] while Carmen worked as the hospital's Treasurer.[11]

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[3] *Id.* at 35-45.

[4] Art. 36 of the Family Code provides in full:

Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. [as amended by Executive Order No. 227 dated July 17, 1987]

[5] TSN, December 7, 1994, morning, p. 4.

[6] *Id.* at 12.

[7] *Id.* at 17.

[8] *Id.* at 14; Exhibit "3".

[9] *Id.* at 13, 15.

[10] *Id.* at 21-23.

[11] *Id.* at 10.

The couple begot six (6) children, namely Dennis, born on December 9, 1975; James Louis, born on August 25, 1977; Agnes Irene, born on April 5, 1981; Charles Laurence, born on July 21, 1986; Myles Vincent, born on July 19, 1988; and Marie Corinne, born on June 16, 1991.[12]

On October 21, 1993, after being married for more than 18 years to petitioner and while their youngest child was only two years old, Carmen filed a verified petition before the RTC of Cebu City praying for the declaration of nullity of their marriage based on Article 36 of the Family Code. She claimed that Benjamin suffered from psychological incapacity even at the time of the celebration of their marriage, which, however, only became manifest thereafter.[13]

In her complaint, Carmen stated that prior to their marriage, she was already aware that Benjamin used to drink and gamble occasionally with his friends.[14] But after they were married, petitioner continued to drink regularly and would go home at about midnight or sometimes in the wee hours of the morning drunk and violent. He would confront and insult respondent, physically assault her and force her to have sex with him. There were also instances when Benjamin used his gun and shot the gate of their house.[15] Because of his drinking habit, Benjamin's job as anesthesiologist was affected to the point that he often had to refuse to answer the call of his fellow doctors and to pass the task to other anesthesiologists. Some surgeons even stopped calling him for his services because they perceived petitioner to be unreliable. Respondent tried to talk to her husband about the latter's drinking problem, but Benjamin refused to acknowledge the same.[16]

Carmen also complained that petitioner deliberately refused to give financial support to their family and would even get

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[12] *Rollo*, p. 48.

[13] *Id.* at 35.

[14] TSN, January 6, 1995, pp. 3, 8-9.

[15] *Rollo*, p. 36.

[16] *Id.* at 37.

angry at her whenever she asked for money for their children. Instead of providing support, Benjamin would spend his money on drinking and gambling and would even buy expensive equipment for his hobby.[17] He rarely stayed home[18] and even neglected his obligation to his children.[19]

Aside from this, Benjamin also engaged in compulsive gambling.[20] He would gamble two or three times a week and would borrow from his friends, brothers, or from loan sharks whenever he had no money. Sometimes, Benjamin would pawn his wife's own jewelry to finance his gambling.[21] There was also an instance when the spouses had to sell their family car and even a portion of the lot Benjamin inherited from his father just to be able to pay off his gambling debts.[22] Benjamin only stopped going to the casinos in 1986 after he was banned therefrom for having caused trouble, an act which he said he purposely committed so that he would be banned from the gambling establishments.[23]

In sum, Carmen's allegations of Benjamin's psychological incapacity consisted of the following manifestations:

1. Benjamin's alcoholism, which adversely affected his family relationship and his profession;
2. Benjamin's violent nature brought about by his excessive and regular drinking;
3. His compulsive gambling habit, as a result of which Benjamin found it necessary to sell the family car twice and the property he inherited from his father in order to pay off his debts, because he no longer had money to pay the same; and

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[17] *Id*.

[18] *Id*. at 40.

[19] *Id*. at 44.

[20] *Id*. at 40.

[21] *Id*.

[22] *Id*. at 36.

[23] *Id*. at 40.

4. Benjamin's irresponsibility and immaturity as shown by his failure and refusal to give regular financial support to his family.[24]

In his answer, Benjamin denied being psychologically incapacitated. He maintained that he is a respectable person, as his peers would confirm. He said that he is an active member of social and athletic clubs and would drink and gamble only for social reasons and for leisure. He also denied being a violent person, except when provoked by circumstances.[25] As for his alleged failure to support his family financially, Benjamin claimed that it was Carmen herself who would collect his professional fees from Velez Hospital when he was still serving there as practicing anesthesiologist.[26] In his testimony, Benjamin also insisted that he gave his family financial support within his means whenever he could and would only get angry at respondent for lavishly spending his hard-earned money on unnecessary things.[27] He also pointed out that it was he who often comforted and took care of their children, while Carmen played *mahjong* with her friends twice a week.[28]

During the trial, Carmen's testimony regarding Benjamin's drinking and gambling habits and violent behavior was corroborated by Susana Wasawas, who served as nanny to the spouses' children from 1987 to 1992.[29] Wasawas stated that she personally witnessed instances when Benjamin maltreated Carmen even in front of their children.[30]

Carmen also presented as witness Dr. Pureza Trinidad-Oñate, a psychiatrist.[31] Instead of the usual personal interview, however,

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[24] *Id.* at 48-49.

[25] *Id.* at 42, 49.

[26] *Id.* at 49.

[27] TSN, December 7, 1994, morning, pp. 23-25.

[28] *Id.* at 26.

[29] TSN, August 31, 1995, pp. 5-26.

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

[31] *Rollo*, p. 38.

Dr. Oñate's evaluation of Benjamin was limited to the transcript of stenographic notes taken during Benjamin's deposition because the latter had already gone to work as an anesthesiologist in a hospital in South Africa. After reading the transcript of stenographic notes, Dr. Oñate concluded that Benjamin's compulsive drinking, compulsive gambling and physical abuse of respondent are clear indications that petitioner suffers from a personality disorder.[32]

To refute Dr. Oñate's opinion, petitioner presented Dr. Renato D. Obra, a psychiatrist and a consultant at the Department of Psychiatry in Don Vicente Sotto Memorial Medical Center, as his expert witness.[33] Dr. Obra evaluated Benjamin's psychological behavior based on the transcript of stenographic notes, as well as the psychiatric evaluation report prepared by Dr. A.J.L. Pentz, a psychiatrist from the University of Pretoria in South Africa, and his (Dr. Obra's) interview with Benjamin's brothers.[34] Contrary to Dr. Oñate's findings, Dr. Obra observed that there is nothing wrong with petitioner's personality, considering the latter's good relationship with his fellow doctors and his good track record as anesthesiologist.[35]

On January 9, 1998, the lower court rendered its Decision[36] declaring the marriage between petitioner and respondent null and void. The RTC gave credence to Dr. Oñate's findings and the admissions made by Benjamin in the course of his deposition, and found him to be psychologically incapacitated to comply with the essential obligations of marriage. Specifically, the trial court found Benjamin an excessive drinker, a compulsive gambler, someone who prefers his extra-curricular activities to his family, and a person with violent tendencies, which character traits find root in a personality defect existing even before his marriage to Carmen. The decretal portion of the decision reads:

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[32] *Id.* at 39.

[33] *Id.* at 41.

[34] *Id.* at 54-55.

[35] *Id.* at 42.

[36] *Id.* at 35-45.

WHEREFORE, all the foregoing considered, judgment is hereby rendered declaring the marriage between plaintiff and defendant null and void *ab initio* pursuant to Art. 36 of the Family Code. x x x

x x x x x x x x x

SO ORDERED.[37]

Aggrieved, petitioner appealed to the CA. On October 19, 2000, the CA rendered a Decision[38] reversing the trial court's ruling. It faulted the trial court's finding, stating that no proof was adduced to support the conclusion that Benjamin was psychologically incapacitated at the time he married Carmen since Dr. Oñate's conclusion was based only on theories and not on established fact,[39] contrary to the guidelines set forth in *Santos v. Court of Appeals*[40] and in *Rep. of the Phils. v. Court of Appeals and Molina*.[41]

Because of this, Carmen filed a motion for reconsideration, arguing that the *Molina* guidelines should not be applied to this case since the *Molina* decision was promulgated only on February 13, 1997, or more than five years after she had filed her petition with the RTC.[42] She claimed that the *Molina* ruling could not be made to apply retroactively, as it would run counter to the principle of *stare decisis*. Initially, the CA denied the motion for reconsideration for having been filed beyond the prescribed period. Respondent thereafter filed a manifestation explaining compliance with the prescriptive period but the same was likewise denied for lack of merit. Undaunted, respondent filed a petition for *certiorari*[43] with this Court. In a Resolution[44] dated March 5,

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[37] *Id.* at 45.

[38] *Id.* at 47-65.

[39] *Id.* at 64.

[40] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

[41] 335 Phil. 664 (1997).

[42] *Rollo*, pp. 80-81.

[43] Docketed as G.R. No. 150479.

[44] CA *rollo*, pp. 199-202.

2003, this Court granted the petition and directed the CA to resolve Carmen's motion for reconsideration.[45] On review, the CA decided to reconsider its previous ruling. Thus, on November 17, 2003, it issued an Amended Decision[46] reversing its first ruling and sustaining the trial court's decision.[47]

A motion for reconsideration was filed, this time by Benjamin, but the same was denied by the CA in its December 13, 2004 Resolution.[48]

Hence, this petition.

For our resolution are the following issues:

I. Whether the CA violated the rule on *stare decisis* when it refused to follow the guidelines set forth under the *Santos* and *Molina* cases;

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[45] *Rollo*, pp. 78-79.

[46] *Supra* note 1.

[47] Pertinent portion of the CA's Amended Decision dated November 17, 2003 reads:

The foregoing considered and taking a cue on the adoption x x x of the Honorable Justices of the Supreme Court of the new "Rule On Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages" (A.M. No. 02-11-10-SC) which took effect on March 15, 2003, this Court hereby RECONSIDERS itself and GRANTS the motion for reconsideration filed by the herein petitioner-appellee on November 29, 2000. Consequently, respondent-appellant's appeal is hereby DISMISSED and the DECISION of the court below declaring the marriage between CARMEN M. VELEZ-TING and BENJAMIN G. TING null and void *ab initio* under Article 36 of the Family Code of the Philippines is hereby AFFIRMED.

WHEREFORE, in view thereof, we can not do any less but sustain the decision dated 29 August 2002 of the court below in Civil Case No. CEB-14826 declaring the marriage between petitioner-appellee Carmen Velez-Ting and respondent-appellant Benjamin G. Ting void from the beginning under Article 36, Family Code (as amended by E.O. No. 227 dated 17 July 1987).

Consequently, the Decision of this Court promulgated on October 19, 2000 is hereby SET ASIDE and a new one rendered AFFIRMING the appealed Decision of the Court *a quo*.

SO ORDERED. (*Id.* at 88-89.)

[48] *Rollo*, pp. 110-111.

II. Whether the CA correctly ruled that the requirement of proof of psychological incapacity for the declaration of absolute nullity of marriage based on Article 36 of the Family Code has been liberalized; and

III. Whether the CA's decision declaring the marriage between petitioner and respondent null and void [is] in accordance with law and jurisprudence.

We find merit in the petition.

***I. On the issue of stare decisis.***

The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[49] Basically, it is a bar to any attempt to relitigate the same issues,[50] necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code.[51]

This doctrine of adherence to precedents or *stare decisis* was applied by the English courts and was later adopted by the United States. Associate Justice (now Chief Justice) Reynato S. Puno's discussion on the historical development of this legal principle in his dissenting opinion in *Lambino v. Commission on Elections*[52] is enlightening:

The latin phrase *stare decisis et non quieta movere* means "stand by the thing and do not disturb the calm." The doctrine started with the English Courts. Blackstone observed that at the beginning of the 18th century, "it is an established rule to abide by former precedents where the same points come again in litigation." As the

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[49] *De Mesa v. Pepsi Cola Products Phils., Inc.*, G.R. Nos. 153063-70, August 19, 2005, 467 SCRA 433, 440.

[50] *Id.* at 438.

[51] Art. 8 of the Civil Code provides in full:

Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.

[52] G.R. Nos. 174153 and 174299, October 25, 2006, 505 SCRA 160.

rule evolved, early limits to its application were recognized: (1) it would not be followed if it were "plainly unreasonable"; (2) where courts of equal authority developed conflicting decisions; and, (3) the binding force of the decision was the "actual principle or principles necessary for the decision; not the words or reasoning used to reach the decision."

The doctrine migrated to the United States. It was recognized by the framers of the U.S. Constitution. According to Hamilton, "strict rules and precedents" are necessary to prevent "arbitrary discretion in the courts." Madison agreed but stressed that "x x x once the precedent ventures into the realm of altering or repealing the law, it should be rejected." Prof. Consovoy well noted that Hamilton and Madison "disagree about the countervailing policy considerations that would allow a judge to abandon a precedent." He added that their ideas "reveal a deep internal conflict between the concreteness required by the rule of law and the flexibility demanded in error correction. It is this internal conflict that the Supreme Court has attempted to deal with for over two centuries."

Indeed, two centuries of American case law will confirm Prof. Consovoy's observation although *stare decisis* developed its own life in the United States. Two strains of *stare decisis* have been isolated by legal scholars. The first, known as **vertical *stare decisis*** deals with the duty of lower courts to apply the decisions of the higher courts to cases involving the same facts. The second, known as **horizontal *stare decisis*** requires that high courts must follow its own precedents. Prof. Consovoy correctly observes that vertical *stare decisis* has been viewed as an obligation, while horizontal *stare decisis*, has been viewed as a policy, imposing choice but not a command. Indeed, *stare decisis* is not one of the precepts set in stone in our Constitution.

It is also instructive to distinguish the two kinds of horizontal *stare decisis* — constitutional *stare decisis* and statutory *stare decisis*. **Constitutional *stare decisis*** involves judicial interpretations of the Constitution while **statutory *stare decisis*** involves interpretations of statutes. The distinction is important for courts enjoy more flexibility in refusing to apply *stare decisis* in constitutional litigations. Justice Brandeis' view on the binding effect of the doctrine in constitutional litigations still holds sway today. In soothing prose, Brandeis stated: "*Stare decisis* is not . . . a universal and inexorable command. The rule of *stare decisis* is not inflexible. Whether it

shall be followed or departed from, is a question entirely within the discretion of the court, which is again called upon to consider a question once decided." In the same vein, the venerable Justice Frankfurter opined: "the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it." In contrast, the application of *stare decisis* on judicial interpretation of statutes is more inflexible. As Justice Stevens explains: "after a statute has been construed, either by this Court or by a consistent course of decision by other federal judges and agencies, it acquires a meaning that should be as clear as if the judicial gloss had been drafted by the Congress itself." This stance reflects both respect for Congress' role and the need to preserve the courts' limited resources.

In general, courts follow the *stare decisis* rule for an ensemble of reasons, *viz.*: (1) it legitimizes judicial institutions; (2) it promotes judicial economy; and, (3) it allows for predictability. Contrariwise, courts refuse to be bound by the *stare decisis* rule where (1) its application perpetuates illegitimate and unconstitutional holdings; (2) it cannot accommodate changing social and political understandings; (3) it leaves the power to overturn bad constitutional law solely in the hands of Congress; and, (4) activist judges can dictate the policy for future courts while judges that respect *stare decisis* are stuck agreeing with them.

In its 200-year history, the U.S. Supreme Court has refused to follow the *stare decisis* rule and reversed its decisions in 192 cases. The most famous of these reversals is *Brown v. Board of Education* which junked *Plessy v. Ferguson's* "separate but equal doctrine." Plessy upheld as constitutional a state law requirement that races be segregated on public transportation. In *Brown*, the U.S. Supreme Court, unanimously held that "separate . . . is inherently unequal." Thus, by freeing itself from the shackles of *stare decisis*, the U.S. Supreme Court freed the colored Americans from the chains of inequality. In the Philippine setting, this Court has likewise refused to be straitjacketed by the *stare decisis* rule in order to promote public welfare. In *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, we reversed our original ruling that certain provisions of the Mining Law are unconstitutional. Similarly, in *Secretary of Justice v. Lantion*, we overturned our first ruling and held, on motion for reconsideration, that a private respondent is bereft of the right to notice and hearing during the evaluation stage of the extradition process.

An examination of decisions on *stare decisis* in major countries will show that courts are agreed on the factors that should be considered before overturning prior rulings. These are workability, reliance, intervening developments in the law and changes in fact. In addition, courts put in the balance the following determinants: closeness of the voting, age of the prior decision and its merits.

The leading case in deciding whether a court should follow the *stare decisis* rule in constitutional litigations is *Planned Parenthood v. Casey*. It established a 4-pronged test. The court should (1) determine whether the rule has proved to be intolerable simply in defying practical workability; (2) consider whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; (3) determine whether related principles of law have so far developed as to have the old rule no more than a remnant of an abandoned doctrine; and, (4) find out whether facts have so changed or come to be seen differently, as to have robbed the old rule of significant application or justification.[53]

To be forthright, respondent's argument that the doctrinal guidelines prescribed in *Santos* and *Molina* should not be applied retroactively for being contrary to the principle of *stare decisis* is no longer new. The same argument was also raised but was struck down in *Pesca v. Pesca*,[54] and again in *Antonio v. Reyes*.[55] In these cases, we explained that the interpretation or construction of a law by courts constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of this Court is overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith, in accordance therewith under the familiar rule of "*lex prospicit, non respicit.*"

***II. On liberalizing the required proof for the declaration of nullity of marriage under Article 36.***

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[53] *Id.* at 308-312. (Citations and emphasis omitted.)

[54] 408 Phil. 713 (2001).

[55] G.R. No. 155800, March 10, 2006, 484 SCRA 353.

Now, petitioner wants to know if we have abandoned the *Molina* doctrine.

We have not.

In *Edward Kenneth Ngo Te v. Rowena Ong Gutierrez Yu-Te*,[56] we declared that, in hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. We said that instead of serving as a guideline, *Molina* unintentionally became a straightjacket, forcing all cases involving psychological incapacity to fit into and be bound by it, which is not only contrary to the intention of the law but unrealistic as well because, with respect to psychological incapacity, no case can be considered as on "all fours" with another.[57]

By the very nature of cases involving the application of Article 36, it is logical and understandable to give weight to the expert opinions furnished by psychologists regarding the psychological temperament of parties in order to determine the root cause, juridical antecedence, gravity and incurability of the psychological incapacity. However, such opinions, while highly advisable, are not conditions *sine qua non* in granting petitions for declaration of nullity of marriage.[58] At best, courts must treat such opinions as decisive but not indispensable evidence in determining the merits of a given case. In fact, if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical or psychological examination of the person concerned need not be resorted to.[59] The trial court, as in any other given case presented before it, must always base its decision not solely on the expert opinions furnished by the parties but also on the totality of evidence adduced in the course of the proceedings.

It was for this reason that we found it necessary to emphasize in *Ngo Te* that each case involving the application of Article 36

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[56] G.R. No. 161793, February 13, 2009.

[57] *Supra* note 41, at 680.

[58] *Marcos v. Marcos*, 397 Phil. 840 (2000).

[59] *Id.* at 850.

must be treated distinctly and judged not on the basis of *a priori* assumptions, predilections or generalizations but according to its own attendant facts. Courts should interpret the provision on a case-to-case basis, guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

Far from abandoning *Molina*, we simply suggested the relaxation of the stringent requirements set forth therein, cognizant of the explanation given by the Committee on the Revision of the Rules on the rationale of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC), *viz.*:

> To require the petitioner to allege in the petition the particular root cause of the psychological incapacity and to attach thereto the verified written report of an accredited psychologist or psychiatrist have proved to be too expensive for the parties. They adversely affect access to justice of poor litigants. It is also a fact that there are provinces where these experts are not available. Thus, the Committee deemed it *necessary to relax this stringent requirement enunciated in the Molina Case*. The need for the examination of a party or parties by a psychiatrist or clinical psychologist and the presentation of psychiatric experts shall now be determined by the court during the pre-trial conference.[60]

But where, as in this case, the parties had the full opportunity to present professional and expert opinions of psychiatrists tracing the root cause, gravity and incurability of a party's alleged psychological incapacity, then such expert opinion should be presented and, accordingly, be weighed by the court in deciding whether to grant a petition for nullity of marriage.

***III. On petitioner's psychological incapacity.***

Coming now to the main issue, we find the totality of evidence adduced by respondent insufficient to prove that petitioner is psychologically unfit to discharge the duties expected of him as

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[60] Rationale for the New Rules as submitted by the Committee on the Revision of Rules to the Supreme Court, November 11, 2002, p. 3, as cited in *Sta. Maria, Jr.*, Court Procedures in Family Law Cases, 2007 ed., pp. 10-11.

a husband, and more particularly, that he suffered from such psychological incapacity as of the date of the marriage eighteen (18) years ago. Accordingly, we reverse the trial court's and the appellate court's rulings declaring the marriage between petitioner and respondent null and void *ab initio*.

The intendment of the law has been to confine the application of Article 36 to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[61] The psychological illness that must have afflicted a party at the inception of the marriage should be a malady so grave and permanent as to deprive one of awareness of the duties and responsibilities of the matrimonial bond he or she is about to assume.[62]

In this case, respondent failed to prove that petitioner's "defects" were present at the time of the celebration of their marriage. She merely cited that prior to their marriage, she already knew that petitioner would occasionally drink and gamble with his friends; but such statement, by itself, is insufficient to prove any pre-existing psychological defect on the part of her husband. Neither did the evidence adduced prove such "defects" to be incurable.

The evaluation of the two psychiatrists should have been the decisive evidence in determining whether to declare the marriage between the parties null and void. Sadly, however, we are not convinced that the opinions provided by these experts strengthened respondent's allegation of psychological incapacity. The two experts provided diametrically contradicting psychological evaluations: Dr. Oñate testified that petitioner's behavior is a positive indication of a personality disorder,[63] while Dr. Obra maintained that there is nothing wrong with petitioner's personality. Moreover, there appears to be greater weight in Dr. Obra's opinion because, aside from analyzing the transcript of Benjamin's deposition similar to what Dr. Oñate did, Dr. Obra also took

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[61] *Supra* note 40, at 34.

[62] *Marcos v. Marcos*, *supra* note 58, at 850-851.

[63] *Rollo*, p. 39.

into consideration the psychological evaluation report furnished by another psychiatrist in South Africa who personally examined Benjamin, as well as his (Dr. Obra's) personal interview with Benjamin's brothers.[64] Logically, therefore, the balance tilts in favor of Dr. Obra's findings.

Lest it be misunderstood, we are not condoning petitioner's drinking and gambling problems, or his violent outbursts against his wife. There is no valid excuse to justify such a behavior. Petitioner must remember that he owes love, respect, and fidelity to his spouse as much as the latter owes the same to him. Unfortunately, this court finds respondent's testimony, as well as the totality of evidence presented by the respondent, to be too inadequate to declare him psychologically unfit pursuant to Article 36.

It should be remembered that the presumption is always in favor of the validity of marriage. *Semper praesumitur pro matrimonio*.[65] In this case, the presumption has not been amply rebutted and must, perforce, prevail.

**WHEREFORE,** premises considered, the petition for review on *certiorari* is *GRANTED*. The November 17, 2003 Amended Decision and the December 13, 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 59903 are accordingly *REVERSED* and *SET ASIDE*.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Carpio Morales,*[*] *Chico-Nazario,* and *Peralta, JJ.,* concur.

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[64] *Id.* at 54-55.

[65] *Carating-Siayngco v. Siayngco*, G.R. No. 158896, October 27, 2004, 441 SCRA 422, 437.

[*] Additional member in lieu of Associate Justice Ma. Alicia Austria-Martinez per Special Order No. 602 dated March 20, 2009.

**THIRD DIVISION**

[G.R. No. 168544. March 31, 2009]

**LINDA CADIAO-PALACIOS,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CRIMINAL LAW; SPECIAL LAWS; SECTION 3 (b) OF R.A. NO. 3019; ELEMENTS.—** To be convicted of violation of Section 3(b) of R.A. No. 3019, the prosecution has the burden of proving the following elements: 1) the offender is a public officer; 2) who requested or received a gift, a present, a share, a percentage, or benefit; 3) on behalf of the offender or any other person; 4) in connection with a contract or transaction with the government; 5) in which the public officer, in an official capacity under the law, has the right to intervene.

**2. ID.; ID.; ID.; ID.; THREE DISTINCT ACTS PENALIZED.—** Section 3(b) of R.A. No. 3019 penalizes three distinct acts – 1) demanding or requesting; 2) receiving; or 3) demanding, requesting and receiving – any gift, present, share, percentage, or benefit for oneself or for any other person, in connection with any contract or transaction between the government and any other party, wherein a public officer in an official capacity has to intervene under the law. Each of these modes of committing the offense is distinct and different from one another. Proof of existence of any of them suffices to warrant conviction.

**3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF SANDIGANBAYAN ARE CONCLUSIVE UPON THE COURT; EXCEPTIONS.—** Well-settled is the rule that factual findings of the Sandiganbayan are conclusive upon this Court save in the following cases: 1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; 2) the inference made is manifestly an error or founded on a mistake; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record; and 6) said findings of fact are conclusions without citation of specific evidence on which they are based. The instant case does not fall under any of the foregoing exceptions.

**4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; PRIMARILY THE FUNCTION OF A TRIAL COURT.—** The assessment of the credibility of a witness is primarily the function of a trial court, which had the benefit of observing firsthand the demeanor or deportment of the witness. It is within the discretion of the Sandiganbayan to weigh the evidence presented by the parties, as well as to accord full faith to those it regards as credible and reject those it considers perjurious or fabricated. Between the Sandiganbayan and this Court, the former was concededly in a better position to determine whether or not a witness was telling the truth.

**5. ID.; ID.; PROOF BEYOND REASONABLE DOUBT; ONLY MORAL CERTAINTY IS REQUIRED.—** Proof beyond reasonable doubt does not mean evidence that which produces absolute certainty; only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.

**APPEARANCES OF COUNSEL**

*Alcantara Law Office* for petitioner.
*Bonifacio Alentajan* for G. Superficial.

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

**NACHURA, *J.*:**

For review is the Decision[1] of the Sandiganbayan dated January 28, 2005 in Criminal Case No. 27434, finding Victor S. Venturanza (Venturanza) and petitioner Linda Cadiao-Palacios guilty beyond reasonable doubt of violation of Section 3(b), Republic Act (R.A.) No. 3019.[2]

Petitioner was the mayor of the Municipality of Culasi, Province of Antique from July 1998 to June 2001.[3] During her

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[1] Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Raoul V. Victorino and Norberto Y. Geraldez, concurring; *rollo*, pp. 76-111.

[2] Otherwise known as the "Anti-Graft and Corrupt Practices Act."

[3] Records, p. 67.

administration, there were infrastructure projects that were initiated during the incumbency of her predecessor, then Mayor Aida Alpas, which remained partially unpaid. These included the Janlagasi Diversion Dam, San Luis Diversion Dam, Caridad-Bagacay Road, and San Juan-Tumao Road which were contracted by L.S. Gamotin Construction (L.S. Gamotin) with a total project cost of ₱2 million. For the said projects, the municipality owed the contractor ₱791,047.00.[4]

Relative to the aforesaid projects, petitioner, together with Venturanza, then the Municipal Security Officer, was indicted in an Information for violation of Section 3(b), R.A. No. 3019, the accusatory portion of which reads:

> That in or about the month of January, 1999, and for sometime prior and subsequent thereto, at the Municipality of Culasi, Province of Antique, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, LINDA CADIAO PALACIOS and VIC VENTURANZA, public officers, being the Municipal Mayor and Security Officer to the Mayor, respectively, of the Municipality of Culasi, Antique, and as such, accused Mayor is the approving authority of contracts involving the Municipality, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent of (sic) gain, did then and there willfully, unlawfully and feloniously demand money from Grace Superficial of L.S. Gamotin Construction, which undertook the construction of the following government projects, for the Municipality of Culasi, Province of Antique, to wit:
>
> a) Rehabilitation of Tumao-San Juan Road;
>
> b) Rehabilitation of Centro Norte-Buenavista Road; and
>
> c) Rehabilitation of Bagacay-Buenavista Road
>
> which projects amounted to TWO MILLION PESOS (₱2,000,000.00), Philippine Currency, which was sourced from the National Disaster Coordinating Council and channeled to the Municipality of Culasi, under condition that the final payments for said projects would not be released, if said amounts would not be given, and consequently received the amounts of FIFTEEN

[4] *Rollo*, p. 87.

THOUSAND PESOS (₱15,000.00) in cash and ONE HUNDRED SIXTY-TWO THOUSAND FOUR HUNDRED PESOS (₱162,400.00) in LBP Check No. 3395274, thus accused Mayor Linda Cadiao Palacios, directly or indirectly through her co-accused Vic Venturanza, demanded or received money from a person, in connection with contracts or transactions between the government, wherein the public officer in her official capacity has to intervene under the law.

CONTRARY TO LAW.[5]

On April 16, 2002, both accused voluntarily surrendered and, upon motion, posted a reduced bail bond of ₱15,000.00 each.[6] They were subsequently arraigned wherein they both pleaded "Not Guilty."[7] Trial thereafter ensued.

During trial, the prosecution presented its sole witness—the private complainant herself, Grace M. Superficial (Superficial). Her testimony may be summarized as follows:

For and on behalf of L.S. Gamotin, she (Superficial) took charge of the collection of the unpaid billings of the municipality.[8] Prior to the full payment of the municipality's obligation, petitioner demanded money from her, under threat that the final payment would not be released unless she complied. Acceding to petitioner's demand, she gave the former's husband ₱15,000.00.[9] Sometime in January 1999, petitioner demanded from Superficial the full payment of her total "kickback" which should be 10% of the project cost. Superficial thus proposed that she would deliver a check in lieu of cash, to which petitioner agreed.[10]

On January 25, 1999, petitioner gave to Neil Superficial, then an incumbent councilor and the husband of private complainant, three checks[11] representing the final payment for

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[5] Records, pp. 1-2.

[6] *Id.* at 26.

[7] *Id.* at 44-45.

[8] *Rollo*, p. 80.

[9] *Id.* at 81.

[10] *Id.* at 81-82.

[11] Land Bank Check No. 0033150 – ₱212,246.59 as final payment for the

the construction projects. The following day, Venturanza picked up the check promised by Superficial as payment for the 10% "kickback." In accordance with petitioner's instruction, the check was made payable to Venturanza in the amount of ₱162,400.00. The check was encashed by Venturanza at the Land Bank of the Philippines (LBP), San Jose, Antique Branch, which is about 90-100 kilometers away from Culasi; and the amount was received by Venturanza.[12] It was Venturanza also who deposited the three checks, representing the full payment of the project, to the account of Superficial.[13]

The prosecution likewise offered the following documentary evidence: 1) Minutes of the Meeting of Pre-Qualification, [Bid] and Award Committee (PBAC) held at the Municipality of Antique;[14] 2) Land Bank Check No. 3395274P dated January 26, 1999 in the amount of ₱162,400.00;[15] 3) Complainant's Consolidated Sur-Reply;[16] and 4) Deposit Slip of the three LBP Checks representing full payment of the project.[17]

The defense, on the other hand, presented the following witnesses: 1) petitioner herself, 2) Venturanza, 3) Engr. Armand Cadigal, 4) petitioner's husband Emmanuel Palacios, 5) petitioner's Executive Assistant Eugene de Los Reyes, and 6) Atty. Rex Suiza Castillon. Their testimonies may be summarized as follows:

Petitioner denied Superficial's allegations. She insisted that she only dealt with the owner of L.S. Gamotin, Engr. Leobardo

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Janlagasi Diversion Dam project;

Land Bank Check No. 3396376 – ₱523,800.00 as final payment for the Caridad-Bagacay Road project;

Land Bank Check No. 033149 – ₱55,000.00 as final payment for the San Luis Diversion Dam project.

[12] *Rollo*, p. 82.

[13] Records, p. 98.

[14] *Id.* at 86-87.

[15] *Id.* at 88.

[16] *Id.* at 89-97.

[17] *Id.* at 98.

S. Gamotin (Engr. Gamotin), relative to the infrastructure projects; thus, she could have made the demand directly from him and not from Superficial. Contrary to Superficial's contention, it was Engr. Gamotin himself who claimed payment through a demand letter addressed to petitioner.[18] She added that she only met Superficial when the latter received the checks representing the final payment. She further testified that she never entrusted any highly sensitive matter to Venturanza since her trusted employee was her chief of staff. She also averred that she was not the only person responsible for the release of the checks since the vouchers also required the signatures of the municipal treasurer, the municipal budget officer, and the municipal accountant.[19] As far as Venturanza was concerned, she denied knowledge of such transaction as he did not ask permission from her when he used the vehicle of the municipality to go to San Jose.[20] Lastly, she claimed that the filing of the case against her was politically motivated.[21]

Emmanuel Palacios likewise denied having received ₱15,000.00 from Superficial. He claimed that he was financially stable, being a Forester; the manager of a 200-hectare agricultural land and of a medium piggery establishment; and the owner of a residential house valued at no less than ₱6 million, a parcel of land and other properties.[22] He also claimed that the institution of the criminal case was ill-motivated as Neil Superficial, in fact, initiated a complaint against him for frustrated murder.[23]

Venturanza, for his part, admitted that he indeed received the check from Superficial but denied that it was "grease money." He claimed that the said amount (₱162,400.00) was received by him in the form of a loan. He explained that he borrowed

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[18] *Rollo*, p. 90.

[19] *Id.* at 88-89.

[20] *Id.* at 89.

[21] She allegedly declined Neil Superficial's proposal to merge forces with him to run as his wife's Vice-Mayor.

[22] *Rollo*, p. 91.

[23] *Id.* at 91-92.

from Superficial ₱150,000.00 to finance his trip to Australia so that he could attend the wedding of his nephew; and asked for an additional amount for his expenses in processing his visa.[24] Venturanza, however, failed to leave for Australia. Of the total amount of his loan, he allegedly spent ₱15,000.00 in processing his visa. Venturanza stated that he was able to repay the entire amount immediately because he obtained a loan from the Rural Bank of Aklan, Pandan Branch, to pay the amount he used in applying for his visa. He further testified that he was persuaded by the Superficials to campaign against petitioner.[25]

On January 28, 2005, the Sandiganbayan rendered a decision convicting both accused of the crime charged, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding accused LINDA CADIAO-PALACIOS and VICTOR S. VENTURANZA **GUILTY** beyond reasonable doubt of violation of Section 3 (b) of Republic Act No. 3019, otherwise known as *The Anti-Graft and Corrupt Practices Act*. Accordingly, in view of the attendant mitigating circumstance of voluntary surrender of both accused, each of them are hereby sentenced to (i) suffer an indeterminate sentence of imprisonment for a period of six (6) years and one (1) month, as minimum, to nine (9) years, as maximum; (ii) suffer all accessory penalties consequent thereto; and (iii) pay the costs.
>
> SO ORDERED.[26]

The Sandiganbayan concluded that the following circumstances established the guilt of both petitioner and Venturanza: 1) that the municipality had outstanding obligations with L.S. Gamotin for the construction of several public works that were completed in 1998; 2) that petitioner was the person authorized to effect the payment of said obligations which, in fact, she did; 3) that Venturanza was a trusted employee of petitioner as he was in charge of the security of the municipal buildings and personnel as well as the adjoining offices; 4) that Venturanza received the

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[24] *Id.* at 85.

[25] *Id.* at 85-87.

[26] *Id.* at 110.

three LBP checks representing the full payment to L.S. Gamotin and the LBP check bearing the amount of ₱162,400.00; 5) that Venturanza went to San Jose, Antique on January 26, 1999 to deposit the three checks and encashed the ₱162,400.00 check; 6) that Venturanza did not receive the above amount by virtue of a loan agreement with Superficial because there was no evidence to prove it; 7) that Venturanza used the vehicle of the municipality to encash the check in San Jose, Antique; and 8) that the amount of ₱15,000.00 initially given to Emmanuel Palacios and the ₱162,400.00 appearing on the check corresponded to the 10% of the total project cost after deducting the 10% VAT and ₱10,000.00 Engineering Supervision Fee.[27]

In arriving at this conclusion, the Sandiganbayan gave credence to the testimony of the lone witness for the prosecution. It added that contrary to the claim of the defense, no ill motive could be attributed to her in testifying against petitioner and Venturanza. This is especially true in the case of the latter, as she was related to him. In finding both accused guilty, the Sandiganbayan concluded that, together, they conspired in committing the offense charged.

Aggrieved, petitioner and Venturanza separately appealed their conviction. The latter petition was docketed as G.R. No. 168548 which was denied by this Court in a Resolution dated September 26, 2005. The former, on the other hand, is now before us, mainly challenging the legal and factual bases of the Sandiganbayan decision.

The petition lacks merit.

Section 3 (b) of the Anti-Graft and Corrupt Practices Act provides:

SEC. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

[27] *Id.* at 105-106.

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

To be convicted of violation of Section 3(b) of R.A. No. 3019, the prosecution has the burden of proving the following elements: 1) the offender is a public officer; 2) who requested or received a gift, a present, a share, a percentage, or benefit; 3) on behalf of the offender or any other person; 4) in connection with a contract or transaction with the government; 5) in which the public officer, in an official capacity under the law, has the right to intervene.[28]

At the time material to the case, petitioner was the mayor of the Municipality of Culasi, Antique. As mayor, her signature, both in the vouchers and in the checks issued by the municipality, was necessary to effect payment to contractors (for government projects).[29] Since the case involved the collection by L.S. Gamotin of the municipality's outstanding obligation to the former, the right of petitioner to intervene in her official capacity is undisputed. Therefore, elements 1, 4 and 5 of the offense are present.[30]

Petitioner's refutation of her conviction focuses on the evidence appreciated by the Sandiganbayan establishing that she demanded and received "grease money" in connection with the transaction/ contract.

Section 3(b) penalizes three distinct acts – 1) demanding or requesting; 2) receiving; or 3) demanding, requesting and receiving – any gift, present, share, percentage, or benefit for oneself or for any other person, in connection with any contract or transaction between the government and any other party, wherein a public officer in an official capacity has to intervene under the law.

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[28] *Garcia v. Sandiganbayan*, G.R. No. 155574, November 20, 2006, 507 SCRA 258, 277-278; *Chang v. People*, G.R. No. 165111, July 21, 2006, 496 SCRA 321, 331-332.

[29] *Rollo*, p. 89.

[30] See *Peligrino v. People*, 415 Phil. 94, 117 (2001).

Each of these modes of committing the offense is distinct and different from one another. Proof of existence of any of them suffices to warrant conviction.[31]

The Sandiganbayan viewed the case as one, the resolution of which hinged primarily on the matter of credibility. It found Superficial and her testimony worthy of credence, that petitioner demanded "grease money" as a condition for the release of the final payment to L.S. Gamotin. Aside from the demand made by petitioner, the Sandiganbayan likewise concluded that, indeed, she received the "grease money" through Venturanza. Therefore, petitioner was convicted both for demanding and receiving "grease money."

We find no cogent reason to disturb the aforesaid conclusions.

Well-settled is the rule that factual findings of the Sandiganbayan are conclusive upon this Court[32] save in the following cases: 1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; 2) the inference made is manifestly an error or founded on a mistake; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record;[33] and 6) said findings of fact are conclusions without citation of specific evidence on which they are based.[34] The instant case does not fall under any of the foregoing exceptions.

The assessment of the credibility of a witness is primarily the function of a trial court, which had the benefit of observing firsthand the demeanor or deportment of the witness.[35] It is within the discretion of the Sandiganbayan to weigh the evidence presented by the parties, as well as to accord full faith to those

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[31] *Id.* at 118.

[32] *Garcia v. Sandiganbayan*, *supra* note 28, at 282.

[33] *Id*.

[34] *Balderama v. People*, G.R. Nos. 147578-85 and 147598-605, January 28, 2008, 542 SCRA 423, 432.

[35] *Peligrino v. People*, *supra* note 30, at 121.

it regards as credible and reject those it considers perjurious or fabricated.[36] Between the Sandiganbayan and this Court, the former was concededly in a better position to determine whether or not a witness was telling the truth.[37]

Petitioner contends that it was improbable for her to have demanded the "grease money" from Superficial, when she could have talked directly to the contractor himself. She insists that Superficial was never a party to the transaction and that Engr. Gamotin was the one who personally facilitated the full payment of the municipality's unpaid obligation.

This contention does not persuade. As held in *Preclaro v. Sandiganbayan*,[38] it is irrelevant from whom petitioner demanded her percentage share of the project cost – whether from the contractor himself or from the latter's representative. That petitioner made such a demand is all that is required by Section 3(b) of R.A. No. 3019, and this element has been sufficiently established by the testimony of Superficial.[39]

Notwithstanding her claim that the prosecution failed to present a special power of attorney to show Superficial's authority to represent L.S. Gamotin, petitioner admitted that it was Superficial (or her husband) who received the three checks representing full payment of the municipality's obligation. Moreover, although the checks were issued to L.S. Gamotin, the deposit slip showed that they were deposited by Venturanza to the account of Superficial. Thus, contrary to petitioner's contention, the evidence clearly shows that Superficial was not a stranger to the transaction between the municipality and L.S. Gamotin, for she, in fact, played an important role in the receipt of the final payment of the government's obligation. It was not, therefore, impossible for petitioner to have demanded the "grease money" from Superficial, for after all, it was the latter who received the proceeds

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[36] *Id*.

[37] *Merencillo v. People*, G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 42.

[38] 317 Phil. 542 (1995).

[39] *Preclaro v. Sandiganbayan*, *id.* at 554.

of the final payment. This was bolstered by the fact that the ₱162,400.00 check in the name of Venturanza was encashed by him on the same day that he deposited the three checks. If indeed the amount given to Venturanza was in the form of a loan to finance his trip to Australia, why was the grant of the loan dependent on the receipt of the final payment to L.S. Gamotin?[40] We cannot fathom how Superficial could lend money out of the proceeds of the checks which admittedly were received by her not in her own capacity but for and on behalf of another person (L.S. Gamotin). The only plausible explanation is that the amount given to Venturanza was "grease money" taken from the proceeds of the checks issued by the municipality.

In holding that petitioner and Venturanza conspired in committing the offense, we agree with the Sandiganbayan that the circumstances enumerated above point to the culpability of the accused. Admittedly, there was no direct evidence showing that petitioner demanded and received the money but the testimony of Superficial, corroborated by the documentary evidence and the admissions of the witnesses for the defense, sufficiently establishes that Venturanza received the money upon orders of petitioner.

The sad reality in cases of this nature is that no witness can be called to testify since no third party is ordinarily involved to witness the same. Normally, the only persons present are the ones who made the demand and on whom the demand was made.[41] In short, like bribery, the giver or briber is usually the only one who can provide direct evidence of the commission of this crime.[42] While it is true that entrapment has been a tried and tested method of trapping and capturing felons in the act of committing clandestine crimes[43] like the instant case, we cannot fault Superficial in not resorting to this method because of the

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[40] Venturanza testified that Superficial told him that if she will be able to collect from her contract with the municipality of Culasi, she would be able to give the amount he wanted to borrow. (*Rollo*, p. 86.)

[41] But see *Sps. Boyboy v. Atty. Yabut, Jr.*, 449 Phil. 664 (2003).

[42] See *Peligrino v. People*, *supra* note 30, at 118.

[43] *Spouses Boyboy v. Atty. Yabut, Jr.*, *supra* note 41, at 675.

position occupied by petitioner during that time, as well as the power attached to her office. This is especially true in the instant case as the person who made the demand assigned another person to receive the "grease money"; and ordered that the check be issued in the name of another person.

One final note. Proof beyond reasonable doubt does not mean evidence that which produces absolute certainty; only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[44] We find that such requirement has been met in the instant case.

**WHEREFORE,** premises considered, the petition is hereby *DENIED* for lack of merit. The Decision of the Sandiganbayan dated January 28, 2005 in Criminal Case No. 27434 is *AFFIRMED*.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Tinga,*[*] and *Peralta, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 172818. March 31, 2009]

**SPOUSES ALWYN ONG LIM and EVELYN LUKANG LIM,** *petitioners, vs.* **LEGAZPI HOPE CHRISTIAN SCHOOL/ RAMON SIA/OMEGA SIA/HELEN SIA/CECILIO K. PEDRO,** *respondents.*

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[44] *Preclaro v. Sandiganbayan*, *supra* note 38, at 554.

[*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 590 dated March 17, 2009.

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYEES; TEACHERS; PERMANENT STATUS; REQUISITES THAT MUST CONCUR.—** In *University of Sto Tomas v. NLRC*, we ruled that for a private school teacher to acquire permanent status in employment, the following requisites must concur: (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory.

**2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN CASE AT BAR, BURDEN IS ON PETITIONERS TO PROVE THEIR AFFIRMATIVE ALLEGATION THAT THEY ARE PERMANENT TEACHING PERSONNEL.—** The burden is on petitioners to prove their affirmative allegation that they are permanent teaching personnel. However, there is not enough evidence on record to show that their total working day is devoted to the school. There is no showing of what the regular work schedule of a regular teacher in respondent school is. What is clear in the records is that Evelyn and Alwyn spent two hours and four hours, respectively, but ***not the entire working day***, at the respondent school. They do not meet requirement "c" of Section 45 of the Manual. Hence, we sustain the findings of the Court of Appeals that the petitioners are part-time teachers. Being part-time teachers, in accordance with *University of Sto. Tomas v. NLRC*, they cannot acquire permanent status.

**APPEARANCES OF COUNSEL**

*Muños Law Office* for petitioners.
*Danilo S. Azaña* for private respondents.

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

**QUISUMBING, *J.*:**

This instant petition for review assails the Decision[1] dated November 30, 2005 of the Court of Appeals in CA-G.R. SP

[1] *Rollo*, pp. 97-105. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Regalado E. Maambong and Lucenito N. Tagle concurring.

No. 88728 and its Resolution[2] dated May 24, 2006 denying the motion for reconsideration. The appellate court had affirmed the Decision[3] dated May 18, 2004 of the National Labor Relations Commission (NLRC) which found that petitioners were not illegally dismissed.

The antecedent facts are as follows:

Petitioner-spouses Alwyn Ong Lim and Evelyn Lukang Lim were hired in June 1999. Alwyn was assigned to teach Mathematics, Geometry, Algebra and Trigonometry subjects in the high school department of Legazpi Hope Christian School. Evelyn, on the other hand, was assigned to teach Chinese Language 1 and 2 and Chinese Math subjects in the elementary department of the same school.[4]

On April 4, 2002, respondent Helen Sia, head teacher of the school's Chinese department, verbally informed petitioners that their employment with the school were to be terminated, without giving the reasons therefor.[5] Thus, petitioners filed their complaints for illegal dismissal and monetary claims against the school and its officials on April 5, 2002.[6] On May 31, 2002, respondent Ramon Sia, Vice Chairman of the school's Board of Directors, sent a letter to the petitioners stating that their three-year probation had expired and that the school management had decided to discontinue their employment.[7]

Before the Labor Arbiter, respondents claimed that petitioners were merely part-time teachers and thus they can be dismissed even without waiting for the three-year probation period to lapse, as they never acquired permanent status.[8]

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[2] *Id.* at 118-119.

[3] *Id.* at 48-59.

[4] *Id.* at 55.

[5] *Id.* at 38.

[6] CA *rollo,* pp. 53-54.

[7] *Id.* at 58.

[8] *Rollo,* pp. 39-40.

The Labor Arbiter ruled in favor of petitioners. The dispositive portion of the Consolidated Decision[9] dated November 7, 2003 reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainants, spouses ALWYN LIM and EVELYN LIM and LIGAYA DEBLOIS, and against the respondents LEGAZPI HOPE CHRISTIAN SCHOOL, CECILIO PEDRO, RAMON SIA, HELEN SIA and OMEGA SIA, ordering the latter to:
>
> 1. Reinstate the three (3) complainants herein to their former position in the respondent school without loss of seniority rights; and
>
> 2. Pay jointly and severally the complainants herein their back wages, 13th month pay, moral and exemplary damages and attorney's fees as computed above.
>
> SO ORDERED.[10]

Respondents appealed the decision of the Labor Arbiter to the NLRC. The NLRC found that petitioners were only part-time teachers who did not acquire permanent status; hence, their dismissal was legal. The dispositive portion of its decision reads:

> WHEREFORE, all the above facts considered, the judgments in favor of Alwyn Ong Lim and Evelyn Lukang Lim in the consolidated decision dated November 7, 2003 are hereby MODIFIED insofar as the award of 13th month and service incentive leave pays are concerned. Accordingly, the respondent Lega[z]pi Hope Christian School is hereby ordered to pay the said complainants their proportionate 13th month and service incentive leave pays for the year 2002, computed up to May 31, 2002, and based on their monthly salaries of PHP7,000.00 and PHP4,925.00, respectively. Their claims for illegal dismissal, and consequently for attorney's fees and damages, are hereby DISMISSED, for lack of merit.
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> SO ORDERED.[11]

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[9] *Id.* at 36-46.

[10] *Id.* at 45.

[11] *Id.* at 58.

Petitioners filed a motion for reconsideration,[12] but it was denied in the Resolution[13] dated November 30, 2004. They then filed a petition for *certiorari* with the Court of Appeals. The Court of Appeals affirmed the NLRC decision and disposed as follows:

> WHEREFORE, in view of the foregoing, the instant petition for *certiorari* is **PARTLY GRANTED.** The assailed decision dated May 18, 2004 of public respondent NLRC insofar as NLRC RAB V Cases Nos. 04-00239-02 and 04-00240-02 involving Alwyn Ong Lim and Evelyn Lukang Lim are concerned is hereby **AFFIRMED.**...
>
> SO ORDERED.[14]

The Court of Appeals denied petitioners' motion for reconsideration. Hence, petitioners now raise the following issues:

I.

WHETHER OR NOT [PETITIONER-SPOUSES LIM] WERE HIRED AS PERMANENT TEACHING PERSONNEL ON THE BASIS OF ESTABLISHED FACTS.

II.

WHETHER OR NOT [PETITIONER-SPOUSES LIM] WERE TERMINATED WITHOUT LAWFUL AND JUST CAUSE OR CAUSES AND IN VIOLATION OF [PETITIONER-SPOUSES LIM'S] RIGHTS TO DUE PROCESS OF LAW.

III.

WHETHER OR NOT [PETITIONER-SPOUSES LIM] ARE ENTITLED TO THE RELIEF OF REINSTATEMENT PLUS BACK WAGES, FROM THE TIME THEY WERE UNLAWFULLY TERMINATED UNTIL ACTUAL REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES INCLUDING WITHOUT LIMITATION TO MORAL/EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.[15]

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[12] *Id.* at 61-69.

[13] *Id.* at 71-74.

[14] *Id.* at 104.

[15] *Id.* at 167.

Petitioners contend that they were not issued any formal written probationary contract. They also contend that they were never informed of reasonable standards under which they would be evaluated or rated in connection with their supposed probationary period of employment. Thus, in the absence of a written contract of employment, upon their satisfactory completion of their three-year probationary period they contend that they are considered as, and became, regular and permanent teaching personnel of the respondent school.[16]

Petitioners further claim that they are full-time, not part-time, teaching personnel. They claim to have no other outside remunerative occupation requiring regular hours of work that will conflict with the working hours of the respondent school,[17] and in addition to their teaching jobs, they were performing non-teaching functions like preparing lesson plans, checking of notebooks and test papers, assisting during enrolment period, attending to school programs and other tasks. They were required to report as early as 7 a.m. until their respective classes ended.[18]

On the other hand, respondents argue that under the Manual of Regulations for Private Schools,[19] a full-time instructor is one who has a teaching load of at least 15 hours a week or is paid on a full salary basis, while a part-time instructor is one who has a teaching load of less than 15 hours a week. Thus, according to respondents, since petitioners have a teaching load that is less than 15 hours a week then they are only part-time instructors and do not enjoy security of tenure.[20]

In resolving the issue of whether or not petitioners were hired as permanent teaching personnel, it is relevant to first determine whether petitioners are part-time or full-time teachers. As found by both the NLRC and the Court of Appeals, petitioners stated

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[16] *Id*.

[17] *Id*. at 172.

[18] *Id*. at 168.

[19] U. SARMIENTO III, *MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS ANNOTATED*, (1st ed., 1995).

[20] *Id*. at 184.

in their complaints that their work schedules are "7:30 a.m. to 9:30 a.m."[21] for Evelyn and "7:00 a.m. to 12:00 noon"[22] for Alwyn.

Relevantly, the Manual of Regulations for Private Schools provides:

Section 45. *Full-time and Part-time Faculty*…

Full-time academic personnel are those meeting all the following requirements:

a. Who possess at least the minimum academic qualifications prescribed by the Department under this Manual for all academic personnel;

b. Who are paid monthly or hourly, based on the regular teaching loads as provided for in the policies, rules and standards of the Department and the school;

c. **Whose total working day** of not more than eight hours a day **is devoted to the school;**

d. Who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school; and

e. Who are not teaching full-time in any other educational institution.

**All teaching personnel who do not meet the foregoing qualifications are considered part-time.** (Emphasis supplied.)

x x x x x x x x x

Section 92. *Probationary Period*. Subject in all instances to compliance with Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels,…

Section 93. *Regular or Permanent Status*. Those who have served the probationary period shall be made regular or permanent. **Full-**

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[21] CA *rollo*, p. 40.

[22] *Id.* at 39.

**time** teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. (Emphasis supplied.)

In *University of Sto. Tomas v. NLRC*,[23] we ruled that for a private school teacher to acquire permanent status in employment, the following requisites must concur: (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory.[24]

The burden is on petitioners to prove their affirmative allegation that they are permanent teaching personnel. However, there is not enough evidence on record to show that their total working day is devoted to the school. There is no showing of what the regular work schedule of a regular teacher in respondent school is. What is clear in the records is that Evelyn and Alwyn spent two hours and four hours, respectively, but ***not the entire working day***, at the respondent school. They do not meet requirement "c" of Section 45 of the Manual. Hence, we sustain the findings of the Court of Appeals that the petitioners are part-time teachers. Being part-time teachers, in accordance with *University of Sto. Tomas v. NLRC*, they cannot acquire permanent status.

In this case, the contracts of employment of the petitioners were not presented. It is in fact claimed that they have no written contracts, and such contracts are not disclosed by the records in the instant case. However on record, attached as part of a pleading of petitioners, is a copy of the "TEACHERS' GUIDELINES"[25] of respondent school which, in part, state:

STATUS & PRIVILEGES OF TEACHERS

1. New Teachers

a. New Teachers are on probation for three (3) years, within the duration, **they must submit a letter of re-application for each school year**. After the expiration date of the contract, a new one must be signed **if** it is sent to you.

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[23] G.R. No. 85519, February 15, 1990, 182 SCRA 371.

[24] *La Consolacion College v. National Labor Relations Commission*, G.R. No. 127241, September 28, 2001, 366 SCRA 226, 230.

[25] CA *rollo*, pp. 41-44.

b. A full time new teacher is under 10-month contract only. If his/her performance is satisfactory, he/she will be rehired and will be entitled to receive the salaries for the 2-month summer vacation. (Emphasis supplied.)

x x x x x x x x x

Considering that petitioners were new teachers, then in accordance with the above-quoted guidelines their unwritten contracts were considered to be for one school year at a time, they being required to submit a letter of re-application for each school year. After the end of each school year, the school did not have any obligation to give them any teaching loads, they being part-time teachers.[26] That respondents did not give any teaching assignment to the petitioners after the school year 2001-2002 did not amount to an actionable violation of petitioners' right. It did not amount to illegal dismissal.[27]

In view of the foregoing finding that petitioners were not illegally dismissed, there is also no basis to order their reinstatement and the payment of damages and attorney's fees to them.[28]

**WHEREFORE,** the petition is *DENIED*. The Decision dated November 30, 2005 of the Court of Appeals in CA-G.R. SP No. 88728 is hereby *AFFIRMED*. No pronouncement as to costs.

**SO ORDERED.**

*Carpio Morales, Tinga, Velasco, Jr.,* and *Peralta,*[*] *JJ.,* concur.

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[26] *Saint Mary's University v. Court of Appeals*, G.R. No. 157788, March 8, 2005, 453 SCRA 61, 68.

[27] *Id*.

[28] *University of Sto. Tomas v. NLRC, supra* note 23 at 379.

[*] Designated member of Second Division per Special Order No. 587 in place of Associate Justice Arturo D. Brion who is on leave.

**EN BANC**

[G.R. No. 174483. March 31, 2009]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RAMON REGALARIO, MARCIANO REGALARIO, SOTERO REGALARIO, BIENVENIDO REGALARIO, and NOEL REGALARIO,** *accused-appellants.*

**SYLLABUS**

**1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; THREE ELEMENTS.—** When self-defense is invoked by an accused charged with murder or homicide he necessarily owns up to the killing but may escape criminal liability by proving that it was justified and that he incurred no criminal liability therefor. Hence, the three (3) elements of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the person defending himself, must be proved by clear and convincing evidence. However, without unlawful aggression, there can be no self-defense, either complete or incomplete.

**2. ID.; ID.; ID.; ID.; WHEN UNLAWFUL AGGRESSION CEASES, THE DEFENDER NO LONGER HAS THE RIGHT TO KILL OR EVEN WOUND THE FORMER AGGRESSOR.—** In *People v. Cajurao*, we held: …The settled rule in jurisprudence is that **when unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor**. Retaliation is not a justifying circumstance. Upon the cessation of the unlawful aggression and the danger or risk to life and limb, the necessity for the person invoking self-defense to attack his adversary ceases. If he persists in attacking his adversary, he can no longer invoke the justifying circumstance of self-defense. **Self-defense does not justify the unnecessary killing of an aggressor who is retreating from the fray**.

**3. REMEDIAL LAW; EVIDENCE; POSITIVE IDENTIFICATION OF ACCUSED; POSITIVE IDENTIFICATION, WHERE CATEGORICAL AND CONSISTENT, PREVAILS**

**OVER UNSUBSTANTIATED DENIALS.—** Elementary is the rule that positive identification, where categorical and consistent, prevails over unsubstantiated denials because the latter are negative and self-serving, and thus, cannot be given any weight on the scales of justice.

**4. CRIMINAL LAW; CONSPIRACY; WHEN PRESENT.—** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of conspiracy is rarely found, for criminals do not write down their lawless plans and plots. The agreement to commit a crime, however, may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of intent. It does not matter who inflicted the mortal wound, as the act of one is the act of all, and each incurs the same criminal liability.

**5. ID.; QUALIFYING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; WHEN APPRECIATED.—** To take advantage of superior strength is to use force out of proportion to the means available to the person attacked to defend himself. In order to be appreciated, it must be clearly shown that there was deliberate intent on the part of the malefactors to take advantage thereof.

**6. ID.; AGGRAVATING CIRCUMSTANCES; SCOFFING AT THE BODY OF THE VICTIM; PRESENT IN CASE AT BAR.—** Also affirmed is the ruling of both courts appreciating the presence of the generic aggravating circumstance of scoffing at the body of the victim. Accused-appellants did not just kill the victim. They tied him hog-style after rendering him immobilized. This action constituted outraging or scoffing at the corpse of the victim. In this connection, we agree with the trial court's observation: …The concerted acts committed by all the accused mostly armed with wooden clubs and one with a 7-inch long knife after the victim fell pummeling him with mortal blows on the forehead and back of his head and stab wounds on his neck and one of them telling his co-accused to kill the victim clearly proved that the Regalarios conspired and took advantage of their strength and number. Not satisfied with delivering mortal blows even when their hapless victim was already immobile, Bienvenido and Sotero, upon order of their co-accused Marciano, tied their victim hog style. The

manner by which Rolando was tied as vividly captured in the picture (Exhs. 'C' & 'D') clearly speaks for itself that it was nothing but to scoff at their victim.

**7. ID.; MITIGATING CIRCUMSTANCE; VOLUNTARY SURRENDER; WHEN APPRECIATED.—** [For] the mitigating circumstance of voluntary surrender x x x to be appreciated, it must be spontaneous, in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense of finding and capturing him.

**8. ID.; PENALTIES; IMPOSITION OF DEATH PENALTY, PROHIBITED; CASE AT BAR.—** The accused-appellants' acts plainly amount to murder, qualified by abuse of superior strength. As the generic aggravating circumstance of scoffing at the body of the victim was alleged and proven, and as there was no mitigating circumstance, the CA correctly sentenced accused-appellants to death in accordance with Art. 248, as amended by Republic Act No. 7659, in relation to Art. 63(1) of the revised Penal Code. In view, however, of the passage of Republic Act No. 9346, the imposition of the death penalty has been prohibited. Thus, the penalty imposed upon accused-appellants should be reduced to *reclusion perpetua*, without eligibility for parole.

**9. ID.; CIVIL INDEMNITY; AWARD IS NOT DEPENDENT ON ACTUAL IMPOSITION OF THE DEATH PENALTY BUT ON THE FACT THAT QUALIFYING CIRCUMSTANCES WARRANT ITS IMPOSITION; CASE AT BAR.—** While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still ₱75,000.00. In *People v. Quiachon*, we explained that even if the penalty of death is not to be imposed on appellant because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 is still proper because, following the ratiocination in *People v. Victor* (292 SCRA 186), the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

**10. CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY DAMAGES; RECENT JURISPRUDENCE ON HEINOUS**

**CRIMES INCREASES AWARDS THEREOF; CASE AT BAR.—** Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. If a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct. However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to Republic Act No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00 while the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.

*Public Attorney's Office* and *Sabio & Pelaez Law Office* for accused-appellants.

## D E C I S I O N

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

For automatic review is the decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 01556 which affirmed with modification, an earlier decision[2] of the Regional Trial Court of Ligao, Albay, Branch 13 in Criminal Case No. 3613, finding accused-appellants Ramon, Marciano, Sotero, Bienvenido, and Noel, all surnamed Regalario guilty of murder and sentencing

[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justice Portia Aliño-Hormachuelos and Associate Justice Amelita G. Tolentino, concurring; *rollo*, pp. 3-29.

[2] Penned by Judge Jose S. Sañez; CA record, pp. 51-84.

them to suffer the penalty of *reclusion perpetua* and to indemnify jointly and severally the heirs of the victim in the amount of ₱50,000.00, and another sum of ₱50,000.00 as moral damages and to pay the costs of the proceedings.

In the court of origin, accused-appellants Ramon, Marciano, Sotero, Bienvenido, and Noel were originally charged with Homicide. However, after reinvestigation of the case, the Panel of Prosecutors of the Department of Justice, Legaspi City, consisting of State Prosecutors Romulo SJ Tolentino, Mary May B. De Leoz and Elmer M. Lanuzo filed an amended information[3] charging the accused-appellants with murder, committed as follows:

> That on February 22, 1997 at about 11:00 in the evening, at Brgy. Natasan, Municipality of Libon, province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously with cruelty, treachery, abuse of superior strength, nighttime attack, assault, strike and hit ROLANDO SEVILLA with wooden clubs (bahi) used as their night sticks, hitting the latter at the different parts of his body and tying down his hands and feet with a rope, thereby inflicting upon the latter serious and mortal wounds which directly caused his death, to the damage and prejudice of his legal heirs.
>
> ACTS CONTRARY TO LAW.

On October 9, 1998, accused-appellants, duly assisted by their counsel, entered a plea of "not guilty" to the offense charged.[4] Thereafter, trial ensued.

The prosecution presented the following as its witnesses: Zaldy Siglos, Nancy Sara, Ryan Sara, Armando Cabais Poblete, Ronnie Siglos, Cynthia Sevilla, Norma Torres, Policeman Jose Gregorio, Cenen Talagtag, Cesar Sazon, and Dr. Mario Cerillo, while Antonio Relato and Nicanor Regonia testified on rebuttal. Nancy Sara, Cynthia Sevilla, and Ryan Sara were presented for a second time also as rebuttal witnesses.

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[3] RTC record, p. 55.

[4] *Id.* at 115-116.

On their part, accused-appellants took the witness stand. All raised the defense of denial except for Ramon who admitted the act charged but claimed self-defense. To corroborate their defense, Jose Poblete and Adonis Velasco were presented. The defense also presented Senior Police Officer 2 (SPO2) Jimmy Colisao, Harold Reolo, Ma. Julieta Razonable, and Dr. Leopoldo Barrosa II.

On August 24, 2000, the trial court rendered its decision[5] giving full faith and credit to the prosecution's evidence. It ruled out accused-appellant Ramon Regalario's claim of self defense, and held that there was conspiracy among the accused-appellants in the commission of the crime as shown in the manner in which all of them inflicted the wounds on the victim's body. It further ruled that the killing was qualified to murder by abuse of superior strength and by their scoffing at the body of the victim. It also appreciated the presence of the mitigating circumstance of voluntary surrender. The pertinent dispositive portion of the said decision reads:

> WHEREFORE, judgment is hereby rendered finding Ramon, Sotero, Bienvenido, Marciano and Noel, all surnamed Regalario, guilty beyond reasonable doubt of the crime of Murder under Par. 1, of Art. 248 of the Revised Penal Code, as amended, with the aggravating circumstance of scoffing at the corpse of the victim. However, accused are entitled to the benefit of the mitigating circumstance of voluntary surrender which offset the aggravating circumstance of scoffing at his corpse, hence, are hereby sentenced to suffer the Penalty of *Reclusion Perpetua* together with the accessory penalties provided for by law.
>
> The accused are hereby ordered to indemnify jointly and severally the heirs of the late Rolando Sevilla the amount of ₱50,000.00 and another sum of ₱50,000.00 as moral damages and to pay the costs.
>
> Pursuant to Supreme Court Administrative Circular No. 2-92 the ₱200,000.00 bail bond put up by accused Marciano Regalario is hereby cancelled and is ordered recommitted to jail.
>
> SO ORDERED.

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[5] CA *rollo* at 51-84.

The record of this case was forwarded to this Court for automatic review, in view of the penalty imposed.

In our Resolution[6] of August 13, 2001, We accepted the appeal and directed the Chief of the Judicial Records Office, to send notices to the parties to file their respective briefs. The Court also required the Jail Warden, Municipal Jail, Polangui, Albay to transfer accused-appellants to the Bureau of Corrections, Muntinlupa City, and make a report of such transfer within ten (10) days from notice. Likewise, the Director of the Bureau of Corrections was required to confirm the detention of accused-appellants. Accused-appellants filed their Appellants' Brief[7] on December 4, 2001, while the People, thru the Office of the Solicitor General, filed its Appellee's Brief[8] on July 30, 2002.

Pursuant to our pronouncement in *People v. Mateo*[9] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases where the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, this case was referred for appropriate action and disposition to the CA where it was docketed as *CA-G.R. No. 01556*.

The evidence for the prosecution is summarized by the Office of the Solicitor General, as follows:

> Accused-appellants, all surnamed Regalario, are *barangay* officials of Natasan, Libon, Albay and related to one another by consanguinity. Marciano, *barangay* chairman, Sotero, *barangay kagawad* and Ramon, *barangay tanod*, are brothers while Bienvenido Regalario, also *barangay tanod*, is their cousin and Noel is the son of Marciano. (*TSN, November 16, 1998, p. 9; RTC Order dated October 9, 1998, pp. 115-117*)
>
> On the night of February 22, 1997, a dance and singing contest was being held in the *barangay* pavilion of Natasan, Libon, Albay.

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[6] *Id.* at 97.

[7] *Id.* at 113-127.

[8] *Id.* at 189-227.

[9] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

At around ten o'clock that evening, Rolando Sevilla and Armando Poblete were enjoying the festivities when appellant Sotero Regalario approached them (*TSN, December 7, 1998, p.4*). To avoid trouble, the two distanced themselves from Sotero. Nevertheless, a commotion ensued. (*ibid., p. 5*). Appellants Sotero and Bienvenido Regalario were seen striking Rolando Sevilla several times with their respective nightsticks, locally known as *bahi*. (*TSN, November 16, 1998, pp. 13-17, 32, 34, 36-37*). The blows caused Sevilla to fall down in a sitting position but after a short while he was able to get up (*ibid., pp. 16-17*). He ran away in the direction of the house of appellant Mariano Regalario, the *barangay* captain (*ibid., pp. 18-38*). Bienvenido and Sotero Regalario chased Sevilla (*ibid., p. 38, TSN, December 7, 1998. p. 6*). When Sevilla was already near Marciano's house, he was waylaid by appellant Ramon Regalario and at this point, Marciano Regalario and his son Noel Regalario came out of their house (*TSN, December 7, 1998, pp. 7-9 and 35*). Noel was carrying a seven-inch knife. The five appellants caught the victim in front of Marciano's house. Armed with their nightsticks, they took turns in hitting the victim until he slumped to the ground face down (*ibid., pp. 8, 35 and 38*). In that position, Sevilla was boxed by Marciano in the jaw. After a while, when Sevilla was no longer moving, Marciano first ordered the others to kill the victim and to tie him up (*ibid., pp. 36-37*). Upon hearing the order, Bienvenido, with the help of Sotero, tied the neck, hands and feet of the victim with a nylon rope used by farmers for tying carabao. The rest of the group just stood by watching. *(ibid., pp. 37-38*).

In the early morning of February 23, 1997, Cynthia Sevilla, the victim's widow, after she was informed of her husband's death, went to the *poblacion* of Libon to report the incident at the town's police station (*TSN, December 8, 1998, pp. 7-8*). However, her statements were not entered in the police blotter because appellant Marciano Regalario had earlier reported to them, at two o'clock in the morning, a different version of the incident, *i.e.*, it was the victim Sevilla who shot Marciano's brother Ramon and that Sevilla, allegedly still alive, was placed under the custody of the *barangay tanods*. (*ibid., p. 7; TSN, November 20, 1998 [A.M. Session], pp. 9-10*). At around eight o'clock of the same morning, SPO4 Jose Gregorio, with some other

police officers and Cynthia Sevilla, left the police station on board a truck and proceeded to the crime scene in Natasan. SPO4 Gregorio conducted an investigation of the incident. (*TSN, November 20, 1998 [A.M. Session], pp. 10-12*). Thereafter, the policemen took the victim's cadaver to the police station in the *poblacion* (*ibid., p. 26*) where pictures were taken showing the victim's hands and legs tied behind him [Exhibits 'C' and 'D'] (*ibid., pp. 14-15; TSN, December 8, 1998, p. 10; TSN, November 20, 1998 [P.M. Session], pp 5-7*). On that same day, SPO4 Gregorio requested the Libon's Rural Health Unit to conduct an autopsy on the victim's body but since the municipal health officer was not around, it was only performed the next day, February 24 (*TSN, November 20, 1998 [A.M. Session], p. 26; TSN, December 8, 1998, pp. 10-11; TSN, November 20, 1998 [P.M. Session], p. 11*). After Dr. Mario Cerillo, Municipal Health Officer of Libon conducted the autopsy, he forthwith issued a Medico-Legal Report dated February 24, 1997 (Exhibit 'B'), the pertinent portions of which read:

Findings:

| | | |
|---|---|---|
| Head | : | Lacerated wound 4 cm frontal area, Right. |
| | : | Lacerated wound 8 cm. occipital area, Right. |
| | : | Lacerated wound 4 cm. with *fractured skull* (post auricular area), Right. |
| | : | Abrasion 4 x 2 cm. eyebrow, Right. |
| | : | Abrasion 2 cm. x 1 cm. with lacerated wound 1 cm. eyebrow, Left. |
| | : | Periorbital Hematoma Left and Right eye. |
| | : | Lacerated wound 1 cm. lower lip, Left. |

| | | |
|---|---|---|
| Neck | : | Stab wound 2 cm. penetrating lateral base of the neck just above the clavicle, Right. |
| | : | Stab wound 2 cm., 6 cm. depth lateral base of the neck just above the clavicle, Right. |
| Trunk | : | Hematoma 10 x 8 cm. clavicular area, Right. |
| | : | Multiple abrasion chest |
| | : | Contusion 7 x 2 cm., 7th Intercorsal space and clavicular line, left. |
| Extremities | : | Multiple abrasion and contusion on both Right and Left arm and forearm. |
| | : | Abrasion (Ropemark) around Right and Left wrist. |
| | : | Abrasion (Ropemark) around distal 3rd of both Right and Left leg. |

x x x x x x x x x

Cause of Death:

Sever (sic) blood loss secondary to stab wound and multiple lacerated wound, probably secondary to intracranial hemorrhage.

On the witness stand, Dr. Cerillo opined that the victim's lacerated wounds could have been caused by a blunt instrument like a hard stick, a stone or iron bar, his stab wounds by a sharp-edged instrument

or knife, his contusions and hematoma by a fist blow or through contact with a blunt instrument. Also according to the physician, the sharp object which caused the victim's stab wounds could have been a knife 2 cm. wide and 6 cm. long because they were clean cut wounds. (*TSN, November 20, 1998 [P.M. Session], pp. 14-15*).[10]

On the other hand, the accused-appellants' Brief presents a different story:

At the time of the incident in question, accused Marciano Regalario was the incumbent *barangay* captain of Natasan, Libon, Albay. Accused Sotero was a *kagawad*, while Ramon and Bienvenido were *barangay tanods* of the same place. Noel Regalario had no public position. He is the son of one of the other accused.

On the night of February 22, 1997, a public dance and singing contest was held in their *barangay*. Naturally, being *barangay* officials, the accused, (except Noel who is not an official and whose wife has just given birth) were at the place of the celebration, discharging their peace-keeping duties. They were posted at different places in that vicinity.

At first, a fire broke out in the toilet of the Day Care Center. It was attended to by the persons assigned in that area. A while later, there was another commotion in the area assigned to accused Ramon Regalario. When he approached the group where the disturbance was taking place and tried to investigate, Rolando Sevilla suddenly emerged from the group and without any ado, fired a shot at him. He was hit at the left shoulder. Instinctively, and in order to disable Sevilla from firing more shots, which might prove fatal, he struck his assailant with his nightstick and hit him at the back of his head. This is the blow which Nancy Sara and Zaldy Siglos said were delivered by Sotero and Bienvenido. This blow caused Sevilla to reel backward and lean on the bamboo fence. To prevent Sevilla from regaining his balance, Ramon pressed his counter-attack by continuing to harass him with blows of his nightstick. As Ramon pressed on forward, Sevilla retreated backward. Ramon kept him busy parrying the blows which hit his arms and front part of the body, as they were face to

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[10] CA *rollo*, pp. 197-204.

face with each other. But even in the course of such harassment, Sevilla was able to fire a second shot which missed Ramon.

When they reached the end of the road pavement, Sevilla lost his footing on edge of the pavement and fell down. At that juncture, Sotero arrived and shouted to Ramon to stop beating Rolando. But Ramon told him that Rolando still had the gun. So, Sotero plunged at Rolando and they wrestled on the ground for the possession of the gun. As they struggled, the gun went off but no one was hurt. When Rolando raised his arms to move the gun away from Sotero, Ramon knocked the gun off his hand and it fell near the place where Jose Poblete was standing. Poblete just arrived at the scene along with Marciano Regalario who was already told that his brother Ramon was shot by Sevilla. Poblete picked up the gun. He was instructed by Marciano to keep it until it is turned over to the authorities.

The wounded Ramon Regalario was brought to town for treatment and later to the provincial hospital. Marciano and Sotero proceeded to the police station to report the shooting of Ramon.

Bienvenido Regalario, the *barangay tanod*, arrived at the scene after the fact. He was instructed by Marciano, the *barangay* captain to effect the arrest of Rolando Sevilla for the crime of shooting Ramon. According to Bienvenido, they were taught in their training seminar to just use a rope in lieu of handcuffs because they could not be supplied with it. So, he tied the hands and feet of Rolando Sevilla for fear that he might be able to escape.

On the early morning of February 23, a team of policemen went to Natasan and found the dead body of Rolando Sevilla. Jose Poblete also turned over to the police, Rolando Sevilla's gun. Meanwhile, Noel Regalario, after learning of the incident, scoured the place where the third shot was fired during the struggle between Sotero and Rolando. He found a .38 caliber slug which was also turned over to the police.[11]

On May 31, 2006, the CA promulgated the herein challenged decision affirming for the most part the decision of the trial court with modification as to the penalty imposed. Unlike the trial court, the CA did not appreciate the mitigating circumstance

[11] *Id.* at 119-121.

of voluntary surrender in favor of the accused-appellants. Thus, the penalty was changed from *reclusion perpetua* to death, and an additional award of ₱25,000.00 as exemplary damages was likewise imposed. Pertinently, the CA decision reads in part:

> WHEREFORE, the assailed decision is AFFIRMED with MODIFICATION. The accused-appellants are hereby sentenced to suffer the penalty of DEATH and to pay, jointly and severally, the heirs of Rolando Sevilla the amount of ₱25,000.00 as exemplary damages.
>
> Let the entire records of this case be elevated to the Supreme Court for its review, pursuant to AM No. 00-5-03-SC (Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases) which took effect on October 15, 2004.
>
> SO ORDERED.[12]

As can be gleaned from the above quote, the CA elevated the instant case to this Court in view of the penalty imposed. In our Resolution[13] dated November 14, 2006, we required the parties to simultaneously submit their respective supplemental briefs. On December 12, 2006, the people filed a manifestation[14] stating that it is waiving the filing of a supplemental brief. Accused-appellants filed their supplemental brief[15] on February 15, 2007.

In their Brief, accused-appellants raise the following assignment of errors:

1. THE TRIAL COURT ERRED IN HOLDING THAT ALL OF THE ACCUSED PARTICIPATED IN THE KILLING OF ROLANDO SEVILLA AND BASING ITS DECISION, NOT ON DIRECT EVIDENCE BUT ON ITS OWN SUPPOSITIONS, CONJECTURES AND INFERENCES;
2. THE TRIAL COURT GRIEVOUSLY MISAPPRECIATED THE EVIDENCE AND DISPLAYED BIAS WHEN IT

[12] *Rollo*, p. 25.

[13] *Id.* at 38.

[14] *Id.* at 42.

[15] *Id.* at 50-61.

LEANED IN FAVOR OF THE PROSECUTION EVIDENCE DESPITE THEIR VITAL CONTRADICTIONS AND OBVIOUS FALSEHOODS;

3. THE TRIAL COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY AMONG THE ACCUSED AND THAT THE COMMISSION OF THE OFFENSE WAS ATTENDED BY THE QUALIFYING CIRCUMSTANCES OF ABUSE OF SUPERIOR STRENGTH AND SCOFFING AT THE BODY OF THE VICTIM;
4. THE LOWER COURT ERRED IN NOT FINDING THAT THE DECEASED WAS KILLED IN SELF-DEFENSE AND/OR DEFENSE OF RELATIVE
5. THE TRIAL COURT ERRED IN AWARDING DAMAGES TO THE HEIRS OF THE DECEASED.[16]

We begin our evaluation with accused-appellant Ramon Regalario's claim of self-defense. Both the CA and the trial court gave no credence to this theory of self-defense.

When self-defense is invoked by an accused charged with murder or homicide he necessarily owns up to the killing but may escape criminal liability by proving that it was justified and that he incurred no criminal liability therefor. Hence, the three (3) elements of self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the person defending himself, must be proved by clear and convincing evidence. However, without unlawful aggression, there can be no self-defense, either complete or incomplete.[17]

Accused-appellant Ramon contends that the victim Rolando Sevilla committed an act of unlawful aggression with no provocation on his [Ramon's] part. Ramon testified that he was trying to investigate a commotion when, without warning, Rolando emerged from the group, thrust and fired his gun at

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[16] CA *rollo*, pp. 121-122.

[17] *People v. More, et al.*, G.R. No. 128820, December 23, 1999, 321 SCRA 538, 543-544.

him, hitting him in the left shoulder. To disable Rolando from firing more shots, Ramon struck the victim's head at the back with his nightstick, causing the victim to reel backward and lean on the bamboo fence. He continued hitting Rolando to prevent the latter from regaining his balance and, as he pressed on farther, the victim retreated backward.

By Ramon's own account, after he was shot, he hit the victim at the back of the latter's head and he continued hitting the victim who retreated backward. From that moment, the inceptive unlawful aggression on the part of the victim ceased to exist and the continuation of the offensive stance of Ramon put ***him*** in the place of an aggressor. There was clearly no longer any danger, but still Ramon went beyond the call of self-preservation. In *People v. Cajurao*,[18] we held:

> …The settled rule in jurisprudence is that **when unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor**. Retaliation is not a justifying circumstance. Upon the cessation of the unlawful aggression and the danger or risk to life and limb, the necessity for the person invoking self-defense to attack his adversary ceases. If he persists in attacking his adversary, he can no longer invoke the justifying circumstance of self-defense. **Self-defense does not justify the unnecessary killing of an aggressor who is retreating from the fray**. (Emphasis supplied)

Ramon's claim of self-defense is further belied by the presence of two (2) stab wounds on the neck, four (4) lacerated wounds on the head, as well as multiple abrasions and contusions on different parts of the victim's body, as shown in the Medico-Legal Report. Dr. Mario Cerillo who conducted the post-mortem examination on the victim revealed that the victim's lacerated wounds could have been caused by a blunt instrument like a hard stick, a stone or an iron bar; his stab wounds by a sharp-edged instrument or knife; his contusions and hematoma by a fist blow or through contact with a blunt instrument. He also declared that the sharp object which caused the victim's stab wounds could have been a knife 2 centimeters (cms.) wide and 6 cms. long because they were clean-cut wounds. Indeed, even

[18] G.R. No. 122767, January 20, 2004, 420 SCRA 207, 214-215.

if it were true that the victim fired a gun at Ramon, the number, nature and severity of the injuries suffered by the victim indicated that the force used against him by Ramon and his co-accused was not only to disarm the victim or prevent him from doing harm to others.

The four (4) other accused-appellants, namely, Sotero, Marciano, Bienvenido and Noel, to exonerate themselves, denied their involvement in inflicting wounds on Rolando.

Sotero claimed that he arrived at the scene of the crime at the time when Rolando lost his footing on the edge of the pavement and fell down. He even shouted at Ramon to stop beating Rolando. However, when Ramon told him that Rolando still had the gun, he jumped on Rolando and they wrestled on the ground for the possession of the gun.

Marciano maintained that he, together with Jose Poblete, arrived at the crime scene when Ramon had already knocked the gun out of Rolando's hand and the gun fell near the place where Jose Poblete was standing. When he went to that place, he already knew that his brother (Ramon) had been shot, so, he told the latter to go to the hospital. Thereafter, he and Sotero proceeded to the police station to report the shooting incident.

Bienvenido asserted that he arrived at the crime scene after the shooting incident. He was asked by Marciano to arrest Rolando.

Lastly, Noel insisted that he was not present when the shooting incident took place. He was inside their house sleeping, as his wife had just given birth.

We are not convinced.

Accused-appellants' denials cannot overcome the positive identification by the prosecution's witnesses. Elementary is the rule that positive identification, where categorical and consistent, prevails over unsubstantiated denials because the latter are negative and self-serving, and thus, cannot be given any weight on the scales of justice.[19] The participation of each of the accused-

[19] *People v. Carullo*, G. R. Nos. 129289-90, July 29, 1999, 311 SCRA 680, 691-692.

appellants can be fully ascertained from the clear, categorical and spontaneous testimony given by prosecution witness, Ronnie Siglos, who was at the scene of the crime, thus:

PROSECUTOR RESARI:

Q While you were walking on your way home, was there an unusual incident and can you recall?

A Yes, ma'am.

Q What was that incident about?

A While I was on my way towards the house of my parents, I just suddenly saw a person being beaten on the road.

Q When you first noticed that there was a man being beaten along the road, how far were you?

A I was about more or less 9 to 10 meters.

x x x x x x x x x

Q When you saw a man being beaten what did you do?

A I continue walking, but upon reaching that place near the person being beaten, I stopped.

Q Why did you stop?

A To verify and know as to who that person being beaten.

x x x x x x x x x

Q And who was that person being beaten?

A Rolando Sevilla.

Q Who were the persons beating Rolando Sevilla?

A Marciano Regalario, Sotero Regalario, Ramon Regalario, Bienvenido Regalario, Noel Regalario, Ernani Regalario, Reynante Regalario, Jose Poblete, Jose Quinno and Virgilio Rebanal.

Q Who else?

A Cecilio Lunas.

Q If some of the persons you saw beating Rolando Sevilla are present in this court room, will you be able to point and identify them?

A Yes, ma'am.

x x x x x x x x x

PROSECUTOR:

Q You stated that you saw the persons you have just named as beating Rolando Sevilla. Were there weapons used in beating Rolando Sevilla?

A Yes.

Q What kind of weapons (was) used?

A Sotero was armed with bahi wood, and also Ramon. Bienvenido was also armed with bahi, as well as Cecilio Lunas, Jose Quinno were also armed with '*malo-palo.*'

x x x x x x x x x

Q What kind of weapon was being held by Noel Regalario?

A A knife.

x x x x x x x x x

Q Now, when you saw Rolando Sevilla being beaten by the persons you mentioned before, what did you notice on the condition of Rolando Sevilla?

A He was lying on his stomach.

Q Did you see the face of Rolando Sevilla?

A Yes.

Q How were you able to see the face of Rolando Sevilla?

A Because Sotero was holding him by his hair.

Q What was your observation on the condition of Rolando Sevilla?

x x x x x x x x x

WITNESS:

He was already motionless. He is not moving anymore.

PROSECUTOR:

Of the persons you named as holding weapons, you did not mention Marciano Regalario as holding any weapon. What was Marciano Regalario doing then?

A He boxed Rolando Sevilla and Rolando was hit on his jaw.

Q What else did Marciano Regalario do if any?

A After he boxed Rolando Sevilla, he went inside his house but after about one (1) minute he again return(ed) back.

Q After Marciano Regalario returned back, what did he do if any?

A He shouted to kill that.

Q After you heard Marciano Regalario (say) to kill "that," what did you do?

A I proceeded towards home.

Q While you were walking, was there any unusual incident which again happened?

A Yes.

Q And, what was that incident?

A While I was walking towards home, again I heard Marciano Regalario shouted to tie him, that is why I again stopped.

Q When you heard Marciano Regalario to tie him how far were you from him?

A More or less 7 meters.

Q You said that upon hearing Marciano Regalario, you stopped. What else happened?

A Bienvenido Regalario passed by me and went to that sleigh (*pababa*) which is on the lower portion and got a rope.

Q What did Bienvenido Regalario do with the rope?

A He tied Rolando Sevilla by placing he (sic) rope around his neck and tied his hands.

Q Was there somebody who assisted Bienvenido Regalario in tying Rolando Sevilla?

A Yes.

Q Who were the persons, if any?

A Sotero Regalario.

Q Aside from Sotero, was there anybody else who helped Bienvenido Regalario in tying Rolando Sevilla?

A No more.

Q While Rolando Sevilla was being hog tied, where were the persons of Marciano Regalario, Noel Regalario, Ramon Regalario and the rest of the persons whom you just mentioned awhile ago?

A They were there standing beside Rolando Sevilla and they were watching.

Q Did you notice whether Rolando Sevilla was still moving when he was still being tied up by Bienvenido and Sotero?

A He was not moving anymore.[20]

The aforequoted testimony of Ronnie Siglos is corroborated by the following testimony of Armando Poblete:

Q While you were standing by the road, what did you notice?

A Then I saw Rolando Sevilla being chased by Bienvenido and Sotero both surnamed Regalario.

Q To what direction was Rolando Sevilla being chased by Sotero and Bienvenido Regalario?

A Towards the place of *Kapitan*.

x x x x x x x x x

PROSECUTOR RESARI:

Q Considering that was already nighttime, how were you able to know that the person being chased was Rolando Sevilla and the persons chasing him were the two (2) Regalarios which you have identified?

A Because, I was with Sevilla during that time and it was moonlit night.

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[20] TSN, December 7, 1998, pp. 32-38.

Q When the two (2) were chasing Rolando Sevilla, what happened next?

A Ramon waylaid Rolando Sevilla.

x x x x x x x x x

Q After you saw Ramon Regalario waylaid Rolando Sevilla, what else did you see?

A After that I saw the group of Sotero, Regalario, Marciano, Noel, caught up with Rolando.

x x x x x x x x x

PROSECUTOR RESARI:

Q Since Bienvenido Regalario and Sotero Regalario were the ones chasing Rolando Sevilla, from what direction did Ramon Regalario come from when he waylaid Rolando Sevilla?

A That side, left side going towards the house of Kapitan.

Q And where did Marciano and Noel xxx come from?

A From their house.

Q After the five (5) caught up with Rolando Sevilla, what happened to Rolando Sevilla?

A They took turns in beating him.

Q Did they use any weapon in beating Rolando Sevilla?

A Yes, their night sticks.

Q When Bienvenido and Sotero caught up with Rolando Sevilla; and the three (3) other accused also joined the two (2), how far was your distance to them?

A More or less 14 to 15 meters.[21]

We agree with the findings of the two courts below as to the presence of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of conspiracy is rarely found, for criminals do not write down their lawless plans and plots. The agreement to commit a crime, however, may be

[21] TSN, December 7, 1998, pp. 6-9.

deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of intent. It does not matter who inflicted the mortal wound, as the act of one is the act of all, and each incurs the same criminal liability.[22] We quote with approval the findings and observations of the CA, thus:

> The eyewitnesses' account surrounding Rolando Sevilla's death shows that the accused-appellants performed concerted acts in pursuit of a common objective. Sotero, Bienvenido, and Ramon, armed with nightsticks, and Noel armed with a knife, seven inches in length, beat Rolando Sevilla. All five accused-appellants caught up with the victim, blocked all means through which the victim could escape and ensured the achievement of their plan to kill Rolando Sevilla even as the latter already fell to the ground. Accused-appellant Marciano hit the victim on his jaw and later, ordered his co-accused to kill and tie the victim. Upon hearing Marciano's instruction, Bienvenido Regalario tied Rolando's neck, hands and feet with a rope. The collective act of the accused-appellants is sufficient to make them co-principals to the killing.[23]

Considering the foregoing, as well as the manner in which the attack against Rolando was carried out, and the testimonies of the prosecution witnesses positively identifying the accused-appellants as the assailants, we concur in the rulings of the CA, affirming those of the trial court, in (a) disregarding Ramon Regalario's declaration that he attacked the victim in self-defense and (b) holding that all the accused-appellants acted in concert and killed Rolando.

We likewise rule that both the CA and the trial court were correct in appreciating the qualifying circumstance of abuse of superior strength in killing Rolando Sevilla. To take advantage of superior strength is to use force out of proportion to the means available to the person attacked to defend himself. In order to be appreciated, it must be clearly shown that there was deliberate intent on the part of the malefactors to take

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[22] *People v. Cawaling*, G.R. No. 117970, July 28, 1998, 293 SCRA 267, 306-307.

[23] *Rollo*, pp. 14-15.

advantage thereof.[24] In this case, as testified to by the prosecution eyewitnesses, accused-appellants Ramon, Sotero and Bienvenido, with the exception of Marciano, were armed with nightsticks (*bahi*) while Noel was holding a knife. Clearly they took advantage of their superiority in number and arms in killing the victim, as shown by numerous wounds the latter suffered in different parts of his body.

Also affirmed is the ruling of both courts appreciating the presence of the generic aggravating circumstance of scoffing at the body of the victim. Accused-appellants did not just kill the victim. They tied him hog-style after rendering him immobilized. This action constituted outraging or scoffing at the corpse of the victim. In this connection, we agree with the trial court's observation:

> …The concerted acts committed by all the accused mostly armed with wooden clubs and one with a 7-inch long knife after the victim fell pummeling him with mortal blows on the forehead and back of his head and stab wounds on his neck and one of them telling his co-accused to kill the victim clearly proved that the Regalarios conspired and took advantage of their strength and number. Not satisfied with delivering mortal blows even when their hapless victim was already immobile, Bienvenido and Sotero, upon order of their co-accused Marciano, tied their victim hog style. The manner by which Rolando was tied as vividly captured in the picture (Exhs. 'C' & 'D') clearly speaks for itself that it was nothing but to scoff at their victim.[25]

The CA was likewise correct in not appreciating the mitigating circumstance of voluntary surrender in favor of accused-appellants. For said circumstance to be appreciated, it must be spontaneous, in such a manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense of finding and capturing him.[26] In the case

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[24] *People v. Tumanon, et al.*, G.R. No. 135066, February 15, 2001, 351 SCRA 676, 689.

[25] CA *rollo,* p. 83.

[26] *People v. Maalat*, G.R. No. 109814, July 8, 1997, 275 SCRA 206, 213-214.

at bar, accused-appellants remained at large even after Judge Jose S. Sañez issued the warrant for their arrest on February 6, 1998. Accused-appellants surrendered only on September 9, 1998 after several *alias* warrants of arrest were issued against them. Hence, voluntary surrender cannot be appreciated in their favor as mitigating circumstance.

The accused-appellants' acts plainly amount to murder, qualified by abuse of superior strength. As the generic aggravating circumstance of scoffing at the body of the victim was alleged and proven, and as there was no mitigating circumstance, the CA correctly sentenced accused-appellants to death in accordance with Art. 248, as amended by Republic Act No. 7659, in relation to Art. 63(1) of the revised Penal Code.

In view, however, of the passage of Republic Act No. 9346,[27] the imposition of the death penalty has been prohibited. Thus, the penalty imposed upon accused-appellants should be reduced to *reclusion perpetua,* without eligibility for parole.

While the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous.[28] Consequently, the civil indemnity for the victim is still ₱75,000.00. In *People v. Quiachon*,[29] we explained that even if the penalty of death is not to be imposed on appellant because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 is still proper because, following the ratiocination in *People v. Victor* (292 SCRA 186), the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

As to the award of moral and exemplary damages, the CA correctly held accused-appellants jointly and severally liable to

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[27] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[28] *People v. Salome,* G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676. See also *People v. Ranin,* G.R. No. 173023, June 25, 2008 and *People v. Entrialgo,* G.R. No. 177353, November 11, 2008.

[29] G.R. No. 170235, August 31, 2006, 500 SCRA 704, 719.

pay the heirs of Rolando Sevilla for the same. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[30] If a crime is committed with an aggravating circumstance, either qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. This kind of damage is intended to serve as deterrent to serious wrongdoings and as vindication of undue sufferings and wanton invasion of the rights of an injured, or as a punishment for those guilty of outrageous conduct.[31] However, consistent with recent jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to Republic Act No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00[32] while the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.[33]

**WHEREFORE,** the decision of the Court of Appeals dated May 31, 2006 in CA-G.R. CR No. 01556 is hereby *AFFIRMED* with the following modifications: (1) the penalty of death imposed on accused-appellants is *lowered* to *reclusion perpetua* without eligibility for parole; (2) the monetary awards to be paid jointly and severally by accused-appellants are as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages; and (3) interest on all the damages awarded at the legal rate of 6% from this date until fully paid is imposed.[34]

**SO ORDERED.**

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[30] *Ibid.*

[31] *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642, 663.

[32] *People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 547, *People v. Orbita*, G.R. No. 172091, March 31, 2008; *People v. Balobalo*, G.R. No. 177563, October 18, 2008.

[33] *People v. Sia*, G.R. No. 174059, February 27, 2009.

[34] *People v. Guevarra*, G.R. No. 182191, October 29, 2008.

*Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Tinga, Velasco, Jr.,* and *Peralta, JJ.,* concur.

*Nachura, J.,* no part. Signed pleading as Solicitor General.

*Chico-Nazario* and *Brion, JJ.,* on leave.

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**SECOND DIVISION**

[G.R. No. 177162. March 31, 2009]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **ROBERTO PAJABERA *y* DOE,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEST ADDRESSED TO THE TRIAL COURT.—** It is settled that the issue of credibility is a question best addressed to the trial court, and that its findings of fact, especially when affirmed by the appellate court as in the present case, are accorded the greatest respect in the absence of a showing that it ignored, overlooked, or failed to properly appreciate matters of substance or importance likely to affect the results of the litigation.

**2. ID.; ID.; ID.; LACK OF EVIDENCE THAT PROSECUTION WITNESSES WOULD TESTIFY FALSELY AGAINST APPELLANT RENDERS THEIR TESTIMONIES CREDIBLE.—** That there is no evidence of any dubious reason or improper motive why prosecution witnesses would testify falsely against appellant or falsely implicate him in a heinous crime renders their testimonies worthy of full faith and credit.

**3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CASE AT BAR.—** Appellant's attack having been made in a swift and unexpected manner on the unsuspecting

and unarmed victim who did not give the slightest provocation, treachery attended the killing. Perforce, appellant's conviction for Murder stands.

**4. ID.; MURDER; PENALTY FOR MURDER ABSENT ANY AGGRAVATING OR MITIGATING CIRCUMSTANCES; CASE AT BAR.—** Since treachery qualified the killing to Murder and absent any aggravating or mitigating circumstances, the penalty of *reclusion perpetua* is proper, applying Article 63 of the Revised Penal Code. *Reclusion perpetua* carries with it the accessory penalty of perpetual absolute disqualification.

**5. ID.; ID.; CIVIL LIABILITY; TEMPERATE DAMAGES; AWARDED IN CASE AT BAR.—** Instead of actual damages, the Court awards temperate damages of ₱25,000 as the actual damages claimed by the prosecution and admitted by appellant amount to ₱10,000 or less than ₱25,000. In *People v. Villanueva*, G.R. No. 139177, August 11, 2003, 408 SCRA 571, 581-582, the Court held: [W]hen actual damages proven by receipts during the trial amount to less than ₱25,000, *as in this case*, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Public Attorney's Office* for appellant.

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

**CARPIO MORALES, *J.*:**

On appeal is the December 22, 2006 Decision of the Court of Appeals in CA-G.R. CR-H.C. 01437[1] affirming the July 7, 2005 Decision of Branch 63 of the Regional Trial Court of

[1] Penned by Associate Justice Arturo G. Tayag, with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Noel G. Tijam.

Calabanga, Camarines Sur in Criminal Case No. RTC '03-878, finding Roberto Pajabera (appellant) guilty beyond reasonable doubt of Murder.

The Information dated November 5, 2003 charging appellant with Murder reads:

> That on or about the 29th day of May, 2003 at about 2:30 P.M., in Barangay Pag-asa, Tinambac, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent to take the life of one MAJEN B. BOLANOS, with treachery and evident premeditation, did then and there, willfully, unlawfully, feloniously and suddenly attack, assault and stab the latter from behind with a "*balisong*," fatally hitting the latter on his neck and other parts of his body, which caused the instantaneous and direct death of the said MAJEN B. BOLANOS, to the great damage and prejudice of his heirs, in such amount as may be proven in court.[2]

On arraignment, appellant pleaded not guilty.[3]

Culled from the testimonies of Efren Basi (Basi)[4] and Ceferino Barcillano (Barcillano)[5] is the following version of the prosecution:

On May 29, 2003 at around 2:30 in the afternoon, Majen B. Bolanos (the victim) was at the cockpit arena at Barangay Pag-asa, Tinambac, Camarines Sur to watch the scheduled cockfighting event that was part of the *barangay* fiesta celebrations. Appellant, who was also present thereat, called the victim from behind. When the victim turned around, appellant placed one hand on the victim's shoulder. The victim thereafter fell on the ground and blood oozed from his shoulder. Basi, who was standing beside the victim, and Barcillano, soon realized that appellant had stabbed the victim.

Appellant quickly pulled out the knife from the victim's shoulder, and left. At this juncture, the people at the cockpit arena scampered, and the cockfighting event did not push through.

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[2] Records, p. 1.

[3] *Id.* at 28.

[4] TSN, August 3, 2004, pp. 2-6.

[5] TSN, August 17, 2004, pp. 2-5.

Dr. Salvador Betito (Dr. Betito), Municipal Health Officer of Tinambac, Camarines Sur, who conducted a medico-legal necropsy examination on the body of the victim about two or three days after the incident,[6] concluded that the cause of the death of the victim was rapid internal and external hemorrhage secondary to a deep penetrating stab wound measuring 1.5 cm. and .5 cm. on his right shoulder, which could have been caused by anything pointed and sharp like a knife.[7]

Appellant, admitted having stabbed the victim. He, however, claimed self-defense. By his account, he and the victim had wagered with each other for ₱300 on the result of the cockfight, and he won.[8] When he tried to collect his winning, however, the victim refused to pay; instead, the victim pulled out a bladed instrument and attacked him with it.[9]

Continued appellant: While he ran away from the victim, fell on the ground face down, and as he turned around, the victim promptly knelt down and stabbed him.[10] He was able to parry the blow by holding the victim's hand, after which the two of them grappled for possession of the bladed instrument.[11]

Further, appellant related that in the course of the scuffle, while he was lying with his back on the floor and the victim was stooping down on him in a kneeling position, he (appellant), accidentally pushed the bladed instrument being then held by the victim towards the latter.[12] He then saw blood oozing from the victim's body, but he was not sure which part,[13] drawing him to flee out of fear.[14]

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[6] TSN, August 18, 2004, p. 4.

[7] *Id.* at 4-5.

[8] TSN, September 1, 2004, pp. 3-4.

[9] *Id.* at 4-5.

[10] *Ibid.*

[11] *Id.* at 6.

[12] *Ibid.*

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

[14] *Ibid.*

Salvador Habulin (Habulin), who claimed to have witnessed the incident at a distance of about three meters,[15] corroborated appellant's account.

The trial court, crediting the testimonial evidence for the prosecution *vis-a-vis* the findings of Dr. Betito,[16] convicted appellant of Murder, qualified by treachery, disposing as follows:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of accused Roberto Pajabera *y* Doe beyond reasonable doubt, he is hereby found guilty of the crime of murder as charged. He is sentenced to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of Majen Bolanos the amount of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱10,000.00 as actual damages and to pay the costs. Accused is likewise meted the accessory penalty of perpetual absolute disqualification as provided in Article 41 of the Revised Penal Code.
>
> Considering that herein accused has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for in Article 29 of the Revised Penal Code.[17]

Rejecting appellant's claim of self-defense, the trial court found it improbable that the victim could be accidentally hit on the shoulder with the knife during the respective positions of the parties as described by appellant.[18] If, posed the trial court, the victim was indeed kneeling and stooping down on appellant who was lying with his back flat on the ground prior to the fatal blow, the victim could have been hit on the chest or the stomach, but not on the shoulder.[19]

The trial court found that the killing was attended by treachery, the suddenness of the attack having deprived the unarmed victim of any means to defend himself.[20] It ruled out evident

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[15] TSN, September 7, 2004, pp. 3-5.

[16] Records, p. 71.

[17] *Id.* at 77-78.

[18] *Id.* at 74.

[19] *Ibid.*

[20] *Id.* at 76.

premeditation, however, there being no proof of when appellant conceived of killing the victim.[21]

On appeal, the Court of Appeals, by Decision of December 22, 2006,[22] affirmed that of the trial court, holding that appellant failed to discharge the burden of proving self-defense by clear and convincing evidence. Appellant thus comes before this Court.

Both appellant and the Solicitor General manifested that they were dispensing with the filing of supplemental briefs and submitting the case for decision based on the Briefs they had filed with the appellate court.[23]

The appeal fails.

What appellant essentially wants is for this Court to weigh the credibility of the prosecution witnesses against that of the defense witnesses and review the observations and conclusions of the trial and appellate courts.

It is settled that the issue of credibility is a question best addressed to the trial court, and that its findings of fact, especially when affirmed by the appellate court as in the present case, are accorded the greatest respect in the absence of a showing that it ignored, overlooked, or failed to properly appreciate matters of substance or importance likely to affect the results of the litigation.[24]

Independently of the factual findings of the lower courts, this Court, in its review of the records, found the findings in order.

Appellant would have it that he was lying with his back flat on the floor while the victim was kneeling and stooping down on him holding the knife. Given that, the thrust of the knife

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[21] *Id.* at 77.

[22] CA *rollo,* pp. 110-120.

[23] *Rollo,* pp. 17-21.

[24] *Vide De Guia v. Court of Appeals*, G.R. No. 120864, October 8, 2003, 413 SCRA 114, 129; *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 115324, February 19, 2003, 397 SCRA 651, 658-659.

could only have been downwards pointing to appellant. Even assuming that appellant was able to twist the victim's hand which held the knife, it was unlikely that appellant could "accidentally" stab the victim on the right shoulder.

The Court notes that the testimony of Habulin, the defense's so-called "eyewitness," bears lapses on material points:

x x x x x x x x x

DIRECT EXAMINATION:

x x x x x x x x x

Q Then what happened when the two ran after each other?

A Roberto fell down and at that juncture Roberto was able toget hold of the right hand of Majen.

Q Then what happened when Roberto got hold of the right hand of Majen?

A This Majen was hit by the bladed weapon that he himself was holding.

Q When you said Berto and Roberto as you mentioned the person who was ran after by Majen, was he the same Roberto Pajabera the accused in this case?

A Yes, Sir.

Q After that, what happened, after you saw that bladed weapon being held by Majen struck [*sic*] him while the two were grappling with each other, what happened next?

A The people scampered.

x x x x x x x x x

CROSS EXAMINATION:

x x x x x x x x x

Q And how about Roberto, where he was [*sic*], while you were as you said that [*sic*] you are at the fence?

A Roberto was lying back flat on the ground with his enemy on top of him.

x x x x x x x x x

Q And Roberto fell down, when Roberto fell down, did Roberto stood [*sic*] up?

A After the victim was hit that is the time that Roberto left.

Q Just answer my question whether or not when Roberto fell down after which he stood up or not [*sic*]?

A Yes, Sir.

Q Then when he stood up that is the time that you said they grappled with the knife, correct?

A Yes, Sir.

Q And when you said that Majen was hit, they were standing position [*sic*], correct?

A When Majen fell down because he was already hit, Roberto left.

Q So it is clear from your testimony that when they were grappling in a standing position, that's the time when Majen was hit and Majen fell down, correct?

ATTY. NACIONAL:

Misleading, Your Honor. There was no testimony that they were grappling in a standing position.

PROS. OLIVEROS:

Yes, there is already.

COURT:

They were standing. Both of them were standing.

x x x x x x x x x

COURT:

Alright for clarification. Alright, answer. Translate.

A They were both lying on the ground and Roberto was lying flat and Majen on his top when they were grappling for the possession of the deadly weapon.[25] (Underscoring supplied.)

First, on direct examination, Habulin did not positively state that the victim was hit with the knife while grappling with appellant for its possession. The "grappling" part was only inserted in a subsequent question by counsel for the defense.

Second, on cross examination, Habulin was tentative on whether appellant and the victim were lying on the ground or standing while "grappling" for possession of the knife. He only remembered the version of appellant, which he was supposed to corroborate, when counsel for the defense led him to restate the same by objecting to the prosecution's question confirming his most recent statement that the "grappling" took place while appellant and the victim were standing.

To the Court, these lapses in Habulin's testimony cast serious doubt upon his claim that he witnessed the incident. It bears emphasis that the turn of events, particularly the respective position of appellant and the victim before the fatal blow, is crucial in view of appellant's claim of self-defense. Hence, the trial and appellate courts did not err in crediting the version of the prosecution.

That there is no evidence of any dubious reason or improper motive why prosecution witnesses would testify falsely against appellant or falsely implicate him in a heinous crime renders their testimonies worthy of full faith and credit.[26]

Parenthetically, although the incident occurred in a public place, why was appellant only able to present one supposed "eyewitness" who even, as reflected above, contradicted himself?

Appellant's attack having been made in a swift and unexpected manner on the unsuspecting and unarmed victim who did not

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[25] TSN, September 7, 2004, pp. 4-10.

[26] *Vide People v. Bacungay*, G.R. No. 125017, March 12, 2002, 379 SCRA 22, 31.

give the slightest provocation, treachery attended the killing.[27] Perforce, appellant's conviction for Murder stands.

Since treachery qualified the killing to Murder and absent any aggravating or mitigating circumstances, the penalty of *reclusion perpetua* is proper, applying Article 63 of the Revised Penal Code.[28] *Reclusion perpetua* carries with it the accessory penalty of perpetual absolute disqualification.[29]

On the civil aspect of the case, the Court finds the awards of ₱50,000 as civil indemnity and ₱50,000 as moral damages in order based on prevailing jurisprudence.[30] Instead of actual damages, the Court awards temperate damages of ₱25,000[31]

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[27] Vide *People v. Bermas*, G.R. Nos. 76416 and 94312, July 5, 1999, 309 SCRA 741, 778.

[28] ART. 63. Rules for the application of indivisible penalties. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. **When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied**.

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Emphasis supplied)

[29] Art. 41, REVISED PENAL CODE.

[30] *People v. Balais*, G.R. No. 173242, September 17, 2008.

[31] Vide *People v. Villanueva*, G.R. No. 139177, August 11, 2003, 408 SCRA 571, 581-582, wherein the Court held:

[W]hen actual damages proven by receipts during the trial amount to less than ₱25,000, *as in this case*, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely,

as the actual damages claimed by the prosecution and admitted by appellant amount to ₱10,000[32] or less than ₱25,000.

The award of exemplary damages in the amount of ₱25,000 is additionally in order if, as here, there is present an aggravating circumstance (qualifying-treachery) in the commission of the crime.[33] The Court thus grants the same.

**WHEREFORE,** the December 22, 2006 Decision of the Court of Appeals affirming that of Branch 63 of the Regional Trial Court of Calabanga, Camarines Sur is *MODIFIED* in that temperate damages of ₱25,000 in lieu of ₱10,000 actual damages, and exemplary damages of ₱25,000 are *AWARDED*. In all other respects, the challenged Decision is *AFFIRMED*.

**SO ORDERED.**

*Quisumbing (Chairperson), Tinga, Velasco, Jr.,* and *Peralta,* JJ.,* concur.

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**EN BANC**

[G.R. Nos. 178831-32. April 1, 2009]

**JOCELYN SY LIMKAICHONG,** *petitioner, vs.* **COMMISSION ON ELECTIONS, NAPOLEON N. CAMERO and RENALD F. VILLANDO,** *respondents.*

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if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

[32] *Vide* records, p. 43.

[33] *People v. Balais, supra* note 30.

* Additional member per Special Order No. 587 dated March 16, 2009 in lieu of the leave of absence due to sickness of Justice Arturo D. Brion.

[G.R. No. 179120. April 1, 2009]

**LOUIS C. BIRAOGO,** *petitioner, vs.* **HON. PROSPERO NOGRALES, Speaker of the House of Representatives of the Congress of the Philippines, and JOCELYN SY LIMKAICHONG,** *respondents.*

[G.R. Nos. 179132-33. April 1, 2009]

**OLIVIA P. PARAS,** *petitioner, vs.* **HON. PROSPERO NOGRALES, in his capacity as Speaker of the House of Representatives; HON. ROBERTO NAZARENO, in his capacity as Secretary General of the House of Representatives; HON. RHODORA SEVILLA, in her capacity as Deputy Secretary General for Finance of the House of Representatives; THE COMMISSION ON ELECTIONS, and JOCELYN SY LIMKAICHONG,** *respondents.*

[G.R. Nos. 179240-41. April 1, 2009]

**RENALD F. VILLANDO,** *petitioner, vs.* **COMMISSION ON ELECTIONS and JOCELYN SY LIMKAICHONG,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; QUASI-JUDICIAL FUNCTION AND ADMINISTRATIVE INTERPRETATION, DISTINGUISHED.—** [T]he validity of Limkaichong's proclamation is in accordance with COMELEC *En Banc* Resolution No. 8062. x x x Resolution No. 8062 is not only a policy-guideline. It is also an administrative interpretation of the two (2) provisions of the 1987 Constitution, namely: (i) Section 17, Article VI (ii); Section 2(2), Article IX-C; Section 6 of R.A. 6646; and Sections 241 and 243, Article XX of the OEC. As such, it does not have to comply with the due process requirement. The term "administrative" connotes or pertains to "administration, especially management, as by

managing or conducting, directing or superintending, the execution, application, or conduct of persons or things." It does not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon. This is to be distinguished from "quasi-judicial function," a term which applies, among others, to the action or discretion of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.

**2. ID.; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMELEC; RESOLUTION NO. 8062, A VALID EXERCISE OF THE COMELEC'S POWER TO PROMULGATE ITS OWN RULES OF PROCEDURE RELATIVE TO THE CONDUCT OF THE ELECTIONS; CASE AT BAR.—** Resolution No. 8062 is a valid exercise of the COMELEC's constitutionally mandated power to promulgate its own rules of procedure relative to the conduct of the elections. In adopting such policy-guidelines for the May 14, 2007 National and Local Elections, the COMELEC had in mind the objective of upholding the sovereign will of the people and in the interest of justice and fair play. Accordingly, those candidates whose disqualification cases are still pending at the time of the elections, should they obtain the highest number of votes from the electorate, shall be proclaimed but that their proclamation shall be without prejudice to the continuation of the hearing and resolution of the involved cases. Whereas, in this case, the COMELEC Second Division having failed to act on the disqualification cases against Limkaichong until after the conduct of the elections, with her obtaining the highest number of votes from the electorate, her proclamation was properly effected by the PBOC pursuant to Resolution No. 8062.

**3. ID.; ID.; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; JURISDICTION.—** The Court has invariably held that once a winning candidate **has been proclaimed, taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**. It follows then that the proclamation of a winning candidate divests the COMELEC of its jurisdiction over matters pending

before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250 of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.

**4. ID.; ID.; ID.; ID.; NOT PREVENTED FROM ASSUMING JURISDICTION EVEN IF THERE ARE ALLEGATIONS AS TO THE INVALIDITY OF THE PROCLAMATION.—** The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction. x x x [A]ny allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.

**5. ID.; ELECTIONS; ELECTION PROTEST OR PETITION FOR *QUO WARRANTO*; WHEN AVAILABLE.—** [A]fter the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ ineligibility/qualification /disqualification is to file before the HRET a petition for an election protest, or a petition for *quo warranto,* within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections*, we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.

**6. ID.; ID.; ID.; TEN-DAY PRESCRIPTIVE PERIOD; INAPPLICABLE TO DISQUALIFICATION CASES BASED ON CITIZENSHIP.—** The PBOC proclaimed Limkaichong as the winner on May 25, 2007. Thus, petitioners (in G.R. Nos. 179120, 179132-33, and 179240-41) should have filed either an election protest or petition for *quo warranto* within ten days from May 25, 2007. But they did not. In fact, to date, no petition of protest or petition for *quo warranto* has been filed with the HRET. Verily, the ten-day prescriptive period for initiating a contest against Limkaichong has long expired.

However, the said ten-day prescriptive period under the 1998 HRET Rules **does not apply to disqualification cases based on citizenship**. Under the 1987 Constitution, Members of the House of Representatives must be **natural-born citizens not only at the time of their election but during their entire tenure**. Being a continuing requirement, one who assails a member's citizenship or lack of it may still question the same at any time, the ten-day prescriptive period notwithstanding.

**7. ID.; CONSTITUTIONAL LAW; CITIZENSHIP; NATURALIZATION; CERTIFICATE OF NATURALIZATION; IT IS THE STATE THAT MAY QUESTION THE INVALIDLY PROCURED CERTIFICATE OF NATURALIZATION IN THE APPROPRIATE DENATURALIZATION PROCEEDINGS.—** [U]nder law and jurisprudence, it is the State, through its representatives designated by statute, that may question the illegally or invalidly procured certificate of naturalization in the appropriate denaturalization proceedings. It is plainly not a matter that may be raised by private persons in an election case involving the naturalized citizen's descendant.

**8. ID.; ID.; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; THE UNSEATING OF A MEMBER THEREOF SHOULD BE EXERCISED WITH GREAT CAUTION.—** The unseating of a Member of the House of Representatives should be exercised with great caution and after the proper proceedings for the ouster has been validly completed. For to arbitrarily unseat someone, who obtained the highest number of votes in the elections, and during the pendency of the proceedings determining one's qualification or disqualification, would amount to disenfranchising the electorate in whom sovereignty resides.

**VELASCO, JR., *J., dissenting opinion:***

**POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMELEC; FINALITY OF DECISIONS OR RESOLUTIONS OF THE COMMISSION *EN BANC* OR DIVISION; THE COMELEC *EN BANC* RESOLUTION IN CASE AT BAR HAS BECOME FINAL AND EXECUTORY; EXPLAINED.—** COMELEC, on May 7, 2001, issued a Resolution No. 4116 which reads: "This pertains to the finality of the decisions or resolutions of the Commission *en banc* or division, particularly on Special Actions (Disqualification

Cases). ***Special Action cases*** refer to the following: (a) Petition to deny due course to a certificate of candidacy; (b) Petition to declare a candidate as a nuisance candidate (c) Petition to disqualify a candidate; and (d) Petition to postpone or suspend as election. Considering the foregoing and in order to guide field officials on the finality of decisions or resolutions on special action cases (disqualification cases) the Commission, RESOLVES as it is hereby RESOLVED, as follows: (1) *the decision or resolution of the En Banc of the Commission on disqualification cases shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.* The Commission *En Banc* Resolution affirming that of the Second Division was promulgated on June 29, 2007. Petitioner received a copy of the resolution on July 3, 2007 and had until July 8, 2007 within which to obtain a restraining order from this Court to prevent the assailed resolution from attaining finality. Instead of filing a petition before this Court with a prayer for a restraining order, Limkaichong opted to file a Manifestation and Motion for Clarification before the COMELEC *En Banc*. This procedural lapse is fatal as her motion with the COMELEC *En Banc* did not toll the running of the five (5)-day reglementary period. Thus, the June 29, 2007 COMELEC *En Banc* Resolution has become final and executory. x x x [P]etitioner Limkaichong argues that the COMELEC was divested of jurisdiction over the disqualification case when she was proclaimed by the Provincial Board of Canvassers on May 25, 2007. She insists that jurisdiction is now exclusively vested in the HRET under Section 17, Article VI of the 1987 Constitution, which provides: The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x This posture will not also prevent the June 29, 2007 Resolution of the COMELEC *En Banc* from becoming final and executory. When petitioner received a copy of the assailed resolution, she should have instituted an action before the HRET to challenge the legality of the said resolution affirming her disqualification. This, she failed to do. x x x On August 16, 2007, the COMELEC *En Banc* ruled on Limkaichong's manifestation and motion for clarification. x x x Despite the clear direction from the COMELEC *En Banc*, petitioner again failed to institute the necessary action before the HRET to

contest the June 29, 2007 Resolution within ten (10) days from receipt of the August 16, 2007 COMELEC Resolution. Around seven (7) months had lapsed from promulgation of the August 16, 2007 ruling of the COMELEC and petitioner has not lifted a finger to challenge the June 29, 2007 COMELEC *En Banc* Resolution in question. Plainly, said resolution has become final and executory.

**APPEARANCES OF COUNSEL**

*Victor C. Avecilla* for petitioner in G.R. No. 179120.

*George S. Briones* for petitioner in G.R. Nos. 179132-33.

*Defensor Lantion Villamor and Tolentino Law Office* for petitioner in G.R. Nos. 179240-41.

*Pacifico A. Agabin* and *Pete Quirino-Quadra* for J. S. Limkaichong.

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

**PERALTA, *J.*:**

Once a **winning candidate** has been **proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, the **jurisdiction of the House of Representatives Electoral Tribunal begins** over election contests relating to his election, returns, and qualifications, and **mere allegation as to the invalidity of her proclamation does not divest the Electoral Tribunal of its jurisdiction**.

At the core of these contentious consolidated petitions are: (**1**) the Joint Resolution[1] of the Commission on Elections (COMELEC) Second Division dated May 17, 2007, disqualifying Jocelyn D. Sy Limkaichong (Limkaichong) from running as a congressional candidate for the First District of Negros Oriental; (**2**) the COMELEC *En Banc* Resolution[2] dated June 29, 2007,

[1] *Rollo* (G.R. Nos. 178831-32), pp. 24-36.

[2] *Id.* at 53-66.

affirming her disqualification; and (**3**) the COMELEC *En Banc* Resolution[3] dated August 16, 2007, resolving that all pending incidents relating to her qualifications should now be determined by the House of Representatives Electoral Tribunal (HRET).

The facts are uncontroverted. On March 26, 2007, Limkaichong filed with the COMELEC her Certificate of Candidacy[4] (COC) for the position of Representative of the First District of Negros Oriental.

In the following weeks, two (2) petitions for her disqualification were instituted before the COMELEC by concerned citizens coming from her locality. On April 4, 2007, Napoleon Camero, a registered voter of La Libertad, Negros Oriental, filed the petition for her disqualification on the ground that she lacked the citizenship requirement of a Member of the House of Representatives. The petition, which was docketed as SPA No. (PES) A07-006,[5] alleged that she is not a natural-born Filipino because her parents were Chinese citizens at the time of her birth. On April 11, 2007, Renald F. Villando, also a registered voter of the same locality, filed the second petition on the same ground of citizenship, docketed as SPA (PES) No. A07-007.[6] He claimed that when Limkaichong was born, her parents were still Chinese citizens as the proceedings for the naturalization of Julio Ong Sy, her father, never attained finality due to procedural and substantial defects. Both petitions prayed for the cancellation of Limkaichong's COC and for the COMELEC to strike out her name from the list of qualified candidates for the Representative of the First District of Negros Oriental.

In her separate Answers[7] to the petitions, Limkaichong claimed that she is a **natural-born Filipino** since she was born to a **naturalized Filipino father** and a **natural-born Filipino mother,** who had reacquired her status as such due to her husband's

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[3] *Id.* at 181-183.

[4] *Id.* at 74.

[5] *Id.* at 75-77.

[6] *Id.* at 82-87.

[7] *Id.* at 100-144.

naturalization. Thus, at the time of her birth on November 9, 1959, nineteen (19) days had already passed after her father took his Oath of Allegiance on October 21, 1959 and after he was issued a Certificate of Naturalization on the same day. She contended that the COMELEC should dismiss the petitions outright for lack of cause of action. Citing *Salcedo II v. Commission on Elections*,[8] she averred that a petition filed before an election, questioning the qualification of a candidate, should be based on Section 78,[9] in relation to Section 74[10] of

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[8] G.R. No. 135886, August 16, 1999, 312 SCRA 447. The Court held that in order to justify the cancellation of the certificate of candidacy under Section 78 of the Omnibus Election Code, it is essential that: (1) the false representation mentioned therein pertains to a material matter on the contents of the certificate of candidacy as provided in Section 74 (or the qualification for elective office as provided in the Constitution); and (2) the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.

[9] Section 78 of the OEC reads:

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 notice and hearing, not later than fifteen days before the election.

[10] Section 74 of the OEC pertains to the contents of a certificate of candidacy:

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 imposed 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.

the Omnibus Election Code (OEC),[11] and not under Sections 68[12] and 74 thereof in relation to Section 1,[13] Rule 25 of the COMELEC Rules of Procedure[14] and Section 5,[15] paragraph C (3.a) of

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Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality. The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

[11] Batas Pambansa Blg. 881, approved on December 3, 1985.

[12] Section 68 of OEC provides:

SEC. 68. *Disqualifications.*—Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (**a**) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (**b**) committed acts of terrorism to enhance his candidacy; (**c**) spent in his election campaign an amount in excess of that allowed by this Code; (**d**) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (**e**) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be **disqualified from continuing as a candidate, or if he has been elected, from holding the office**. Any person who is a **permanent resident of or an immigrant to a foreign country** shall **not be qualified to run for any elective office under this Code**, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

[13] Section 1, Rule 25, 1993 COMELEC Rules of Procedure reads:

SEC. 1. *Grounds for Disqualification.* — Any candidate who does not possess all the qualifications of a candidate as provided for by the Constitution or by existing law or who commits any act declared by law to be grounds for disqualification may be disqualified from continuing as a candidate.

[14] Approved on February 15, 1993.

[15] Section 5, paragraph C (3.a), COMELEC Resolution No. 7800 states:

COMELEC Resolution No. 7800.[16] She also contended that the petitions were dismissible on the ground that they were in the nature of a collateral attack on her and her father's citizenships, in contravention of the well-established rule that attack on one's citizenship may only be made through a direct action for its nullity.

The COMELEC consolidated the two (2) petitions and re-docketed them as SPA Nos. 07-247[17] and 07-248,[18] entitled *IN THE MATTER OF THE PETITION TO DISQUALIFY JOCELYN SY LIMKAICHONG FROM HER CANDIDACY AS FIRST DISTRICT REPRESENTATIVE OF NEGROS ORIENTAL* (herein referred to as the disqualification cases), which remained pending on May 14, 2007, when the National and Local Elections were conducted.

After the casting, counting and canvassing of votes in the said elections, Limkaichong emerged as the **winner** with 65,708 votes[19] or by a margin of 7,746 votes over another congressional candidate, Olivia Paras[20] (Paras), who obtained 57,962.

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3.a. *Disqualification under existing election laws.*

(a) For not being a citizen of the Philippines;

(b) For being a permanent resident of or an immigrant to a foreign country;

(c) For lack of the required age;

(d) For lack of residence;

(e) For not being a registered voter;

(f) For not being able to read and write;

(g) In case of a party-list nominee, for not being a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days immediately preceding the day of the election.

[16] Entitled "Rules Delegating to the COMELEC Officials the Authority to Hear and Receive Evidence in Disqualification Cases filed in connection with the May 14, 2007 National and Local Elections" dated January 5, 2007.

[17] Entitled *Napoleon Camero, Petitioner, versus Jocelyn S. Limkaichong, Respondent*.

[18] Entitled *Renald F. Villando, Petitioner, versus Jocelyn S. Limkaichong, Respondent*.

[19] *Rollo* (G.R. Nos. 178831-32), p. 152.

[20] *Rollo* (G.R. Nos. 179132-33), p. 103.

On May 15, 2007, Paras filed with the COMELEC a **Very Urgent Motion for Leave to Intervene and to Suspend the Proclamation of Jocelyn Sy Limkaichong as Winning Candidate of the First District of Negros Oriental**.[21]

In a Joint Resolution[22] dated May 17, 2007, the COMELEC Second Division granted the petitions in the disqualification cases, disqualified Limkaichong as a candidate for Representative of the First District of Negros Oriental, directed the Provincial Supervisor of the COMELEC to strike out her name from the list of eligible candidates, and for the Provincial Board of Canvassers (PBOC) to suspend her proclamation. In disposing the cases, the COMELEC Second Division made the following ratiocination:

> On the substantial issue of whether respondent Jocelyn Sy-Limkaichong is disqualified to run for the congressional seat of the First District of Negros Oriental on the ground that she is not a natural-born Filipino, we hold that she is so disqualified.
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> Petitioners have successfully discharged their burden of proof and has convincingly shown with pieces of documentary evidence that **Julio Ong Sy, father of herein respondent Jocelyn Sy-Limkaichong, failed to acquire Filipino citizenship in the naturalization proceedings** which he underwent for the said purpose.
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> An examination of the records of Special Case No. 1043 would reveal that the **Office of the Solicitor General was deprived of its participation in all the stages of the proceedings therein**, as required under Commonwealth Act No. 473 or the Revised Naturalization Law and Republic Act No. 530, An Act Making Additional Provisions for Naturalization.
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> The documents presented by petitioners showed that **the OSG was not furnished copies of two material orders of the trial court in the said proceedings**. One was the **July 9, 1957 Order**

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

[22] *Rollo (*G.R. Nos. 178831-32), pp. 24-35. The *per curiam* Joint Resolution was unanimously signed by Commissioners Florentino A. Tuason, Jr. (ret.), Rene V. Sarmiento and Nicodemo T. Ferrer.

granting his petition for naturalization and the other was the **September 21, 1959 Order** declaring Julio Ong Sy as a Filipino citizen.

Moreover, from a perusal of the same page 171 of the OSG logbook, we have determined that **the OSG did not receive a notice for the hearing conducted by the trial court on July 9, 1959**, prior to its issuance of the September 12, 1959 Order declaring Julio Ong Sy as a Filipino citizen.

As correctly pointed out by petitioners, this was **fatal to the naturalization proceedings of Julio Ong Sy**, and **prevented the same from gaining finality**. The leading case in the matter is *Republic v. Hon. Gabriel V. Valero*, 136 SCRA 617 (May 31, 1985), wherein the Supreme Court declared:

> And as though that was not enough, the hearing prior to the oathtaking of respondent Tan was conducted without the required notice to the Solicitor General. It is true, as it appeared later, that Fiscal Veluz, Jr. was authorized by the Solicitor General to represent the Government in the hearing of the application for naturalization. That authority, however, does not extend to Fiscal [Veluz's] right to appear for the State in the hearing preparatory to the oathtaking. Private respondent Tan was therefore under legal obligation to serve copy of his motion to be allowed to take his oath of allegiance as a Filipino citizen upon the Solicitor General which was not done.

Respondent argues that upon his taking of the Oath of Allegiance, Julio Ong Sy became a Filipino citizen for all intents and purposes, with all the rights appurtenant thereto.

This argument does not hold water, as was held by the Supreme Court in the same case of *Republic v. Valero, supra*:

> That private respondent Tan had already taken his oath of allegiance does not in any way legalize the proceedings relative thereto which is pregnant with legal infirmities. Compounding these irregularities is the fact that Tan was allowed to take his oath even before the expiration of the thirty (30)-day period within which an appeal may be made thus making the said oath not only highly improper but also illegal.

In the same case, the Supreme Court added:

> To sustain the same would be to sanction a monstrosity known as citizenship by estoppel. The grant of naturalization under such circumstances is illegal and cancellation thereof may be had at any time. Neither estoppel nor *res judicata* may be set up as a bar from instituting the necessary proceedings to nullify the certificate of naturalization so issued.

Another glaring defect in the said proceedings was the fact that **Julio Ong Sy took his Oath of Allegiance on October 21, 1959, which was exactly thirty (30) days after his declaration as a naturalized Filipino**.

Even granting that the OSG was notified of the September 21, 1959 Order, this was still one day short of the reglementary period required under Sections 11 and 12 of C.A. No. 473, above-cited.

The thirty-day reglementary period is so required under the law so that the OSG could make known his objections and to appeal from the order of the trial court declaring the petitioner a naturalized Filipino citizen. This is also the reason why a copy of the petitioner's motion to take his oath of allegiance has to be furnished to the OSG.

The respondent insists that naturalization proceedings are *in rem* and are binding on the whole world.

She would have been correct had all the necessary parties to the case been informed of the same. The OSG, being the counsel for the government, has to participate in all the proceedings so that it could be bound by what has transpired therein. Lacking the participation of this indispensable party to the same, the proceedings are null and void and, hence, no rights could arise therefrom.

From all the foregoing, therefore, it could be seen that **Julio Ong Sy did not acquire Filipino citizenship through the naturalization proceedings in Special Case No. 1043**. Thus, **he was only able to transmit to his offspring, Chinese citizenship**.

Respondent Jocelyn Sy-Limkaichong being the **daughter** of Julio Ong Sy, and having been **born on November 9, 1959**, under the 1935 Philippine Constitution, is a **Chinese national**, and is **disqualified** to run as First District Representative of Negros Oriental.

WHEREFORE, the Petitions are GRANTED and Jocelyn D. Sy-Limkaichong is declared as DISQUALIFIED from her candidacy for Representative of the First District of Negros Oriental.

The Provincial Supervisor of the Commission on Elections of Negros Oriental is hereby directed to strike out the name JOCELYN SY-LIMKAICHONG from the list of eligible candidates for the said position, and the concerned Board of Canvassers is hereby directed to hold and/or suspend the proclamation of JOCELYN SY-LIMKAICHONG as winning candidate, if any, until this decision has become final.

SO ORDERED.[23]

The PBOC received the Joint Resolution of the COMELEC Second Division on the evening of May 17, 2007, and accordingly suspended the proclamation of Limkaichong.[24]

The following day, or on May 18, 2007, the COMELEC *En Banc* issued **Resolution No. 8062**[25] adopting the policy-guidelines of **not suspending the proclamation of winning candidates with pending disqualification cases** which shall be without

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[23] *Id.* at 30-35. (Emphasis ours).

[24] *Rollo* (G.R. Nos. 179132-33), pp. 168-169, 201.

[25] *Rollo* (G.R. Nos. 178831-32), pp. 145-146. The resolution is entitled "In the Matter of Adopting the Following Policy-Guidelines on: 1) the Proclamation of Winning Candidates with Pending Disqualification Cases; 2) Suspension of Canvassing and/or Proclamation; and 3) Transfer of Canvassing Venue," the pertinent portion of which is quoted as follows:

The Commission, in upholding the sovereign will of the people and in the interest of justice and fair play, **RESOLVED** as it hereby **RESOLVES**, to adopt the following policy-guidelines in connection with the May 14, 2007 National and Local Elections:

**1. No suspension of proclamation of winning candidates with pending disqualification cases**

There shall be no suspension of proclamation of winning candidates with pending disqualification cases before or after elections, involving issues of citizenship, non-residency, not being a registered voter, nuisance candidate, and/or violation of the election laws under Section 68 of the Omnibus Election Code, Fair Elections Act and other related election laws.

**This policy however shall be without prejudice to the continuation of the hearing and resolution of the involved cases.**

prejudice to the continuation of the hearing and resolution of the involved cases.

On May 20, 2007, Limkaichong filed with the COMELEC a **Motion for Reconsideration of the Joint Resolution of May 17, 2007 and Urgent Motion to Lift the Order Suspending Proclamation**.[26]

On May 22, 2007, Limkaichong filed another motion for the lifting of the directive suspending her proclamation, insisting that she should be proclaimed as the winner in the congressional race pursuant to COMELEC Resolution No. 8062.[27] On same date, Villando, one of the petitioners in the disqualification cases, filed an **Urgent Manifestation Clarifying COMELEC Resolution No. 8062 with Motion**,[28] praying that the COMELEC should not lift the suspension of Limkaichong's proclamation.

On May 25, 2007, the PBOC, in compliance with COMELEC Resolution No. 8062, reconvened and proclaimed Limkaichong as the duly elected Member of the House of Representatives for the First District of Negros Oriental.[29]

Thereafter, or on May 30, 2007, Paras filed with the COMELEC a **Petition to Nullify and/or Annul the Proclamation of Jocelyn Sy-Limkaichong as First District Representative of Negros Oriental in relation to the May 17, 2007 Joint Resolution of the COMELEC Second Division**,[30] stating, among others, that Limkaichong's proclamation violated the earlier order of the COMELEC Second Division suspending her proclamation. The petition, docketed as SPC No. 07-211, was dismissed by the COMELEC First Division,[31] ratiocinating that the disqualification cases were not yet final when Limkaichong

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[26] *Rollo (*G.R. Nos. 179132-33), pp. 37-52

[27] *Id.* at 147-149.

[28] *Rollo* (G.R. Nos. 179132-33), pp. 158-162.

[29] *Rollo (*G.R. Nos. 178831-32), p. 152.

[30] *Rollo* (G.R. Nos. 179132-33), pp. 165-192.

[31] *Id* at 328-334. The Resolution was penned by the late Commissioner Romeo A. Brawner and concurred in by Commissioner Resurreccion Z. Borra (ret.).

was proclaimed. Accordingly, her proclamation which was valid or legal, effectively divested the COMELEC of its jurisdiction over the cases. The COMELEC First Division explained its ruling in this wise:

> The Commission has made its **intention in issuing Resolution No. 8062** very clear in that there shall be **no suspension of proclamation of winning candidates with pending disqualification cases involving, among others, issues of citizenship**. As the disqualification cases involving Limkaichong were still pending reconsideration by the *en banc*, the underlying policy which gave rise to the issuance of the Resolution: to respect the will of the Filipino electorate, applies to the suspension of proclamation of the winning congressional candidate for the First District of Negros Oriental.
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> WHEREFORE, the instant petition is dismissed.
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> SO ORDERED. (Emphasis ours)

Dissatisfied, Paras moved for the reconsideration of the above Resolution.[32]

Meanwhile, in a Resolution[33] dated June 29, 2007, the COMELEC *En Banc*, in an equally divided vote of 3:3, denied Limkaichong's motion for reconsideration of the Joint Resolution of the COMELEC Second Division in the disqualification cases. The pertinent portions of the Resolution denying her motion reads:

> Anent the issue of jurisdiction, *We* rule that the Commission has jurisdiction to rule on Respondent Limkaichong's Motion for Reconsideration notwithstanding her proclamation as it is only this

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[32] *Id.* at 215-236. The COMELEC First Division denied Paras' motion on January 28, 2008 through an Omnibus Order. (*Rollo* [G.R. Nos. 178831-32], pp. 463-467.)

[33] *Rollo* (G.R. Nos. 178831-32), pp. 53-66. In the *per curiam* Resolution, then COMELEC Chairman Benjamin A. Abalos, Sr., Commissioners Rene V. Sarmiento and Nicodemo T. Ferrer voted for the denial of Limkaichong's motion. The late Commissioner Romeo A. Brawner (also a former Presiding Justice of the Court of Appeals) wrote a dissenting opinion, which was concurred with by retired Commissioners Resurreccion Z. Borra and Florentino A. Tuason, Jr., to the effect that Limkaichong's motion should be dismissed by the COMELEC for lack of jurisdiction.

Commission, and not the House of Representatives Electoral Tribunal (HRET), which has jurisdiction to review resolutions or decisions of the COMELEC, whether issued by a division or *en banc*. As stated by the Supreme Court in the leading case of *Codilla v. De Venecia*, G.R. No. 150605, December 10, 2002, respondent herself seasonably challenged the validity of the resolution of the Second Division in her motion for reconsideration. Hence, **the issue of respondent's disqualification was still within the exclusive jurisdiction of the Comelec *En Banc* to resolve, and HRET cannot assume jurisdiction on the matter**, to wit:

> To stress again, at the time of the proclamation of respondent Locsin, the validity of the Resolution of the COMELEC Second Division was seasonably challenged by the petitioner in his Motion for Reconsideration. The issue was still within the exclusive jurisdiction of the Comelec *En Banc* to resolve. Hence, the HRET cannot assume jurisdiction over the matter.
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> In *Puzon v. Cua*, even the HRET ruled that the "doctrinal ruling that once a proclamation has been made and a candidate-elect has assumed office, it is this Tribunal that has jurisdiction over an election contest involving members of the House of Representatives, could not have been immediately applicable due to the issue regarding the validity of the very COMELEC pronouncements themselves." This is because the HRET has no jurisdiction to review resolutions or decisions of the COMELEC, whether issued by a division or *en banc*.

Finally, in disposing the Opposition to the Motion for Reconsideration with Partial Motion for Reconsideration filed by intervenor Olivia P. Paras praying that she be proclaimed as the winning candidate for First District Representative, suffice it to say that in the same case of *Codilla v. De Venecia*, *supra*, the Supreme Court held, thus:

> More brazen is the proclamation of respondent Locsin which violates the settled doctrine that the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified. In every election, the people's choice is the paramount consideration and their expressed will must, at all times, be given effect. When the majority speaks and elects into office a candidate by giving him the highest number of votes cast in the election

for the office, no one can be declared elected in his place. In *Domino v. COMELEC*, this Court ruled, *viz.*:

> It would be extremely repugnant to the basic concept of the constitutionally guaranteed right to suffrage if a candidate who has not acquired the majority or plurality of votes is proclaimed winner and imposed as representative of a constituency, the majority of which have positively declared through their ballots that they do not choose him. To simplistically assume that the second placer would have received that (*sic*) other votes would be to substitute our judgment for the mind of the voters. He could not be considered the first among the qualified candidates because in a field which excludes the qualified candidate, the conditions would have substantially changed.
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> The effect of a decision declaring a person ineligible to hold an office is only that the election fails entirely, that the wreath of victory cannot be transferred from the disqualified winner to the repudiated loser because the law then as now only authorizes a declaration in favor of the person who has obtained a plurality of votes, and does not entitle the candidate receiving the next highest number of votes to be declared elected. In such case, the electors have failed to make a choice and the election is a nullity. To allow the defeated and repudiated candidate to take over the elective position despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice.

All told, We find **no cogent reason to disturb the findings of this Commission (Second Division) in its Joint Resolution promulgated on May 17, 2007**.

WHEREFORE, premises considered, the instant Motion for Reconsideration of Respondent Jocelyn Sy-Limkaichong is hereby **DENIED**.

The Opposition to the Motion for Reconsideration with Partial Motion for Reconsideration filed by Intervenor Olivia P. Paras praying that she be proclaimed as the winning candidate for the First District Representative of Negros Oriental is hereby denied for lack of merit.

SO ORDERED.[34]

On July 3, 2007, Limkaichong filed in the disqualification cases against her a **Manifestation and Motion for Clarification and/or To Declare the Petitions as Dismissed in Accordance with Section 6, Rule 18 of the COMELEC Rules of Procedure**.[35] She contended that, with her proclamation, her having taken her oath of office and her assumption of the position, the COMELEC was divested of jurisdiction to hear the disqualification cases. She further contended that, following Section 6,[36] Rule 18 of the COMELEC Rules of Procedure, the disqualification cases would have to be reheard, and if on rehearing, no decision would be reached, the action or proceedings should be dismissed, because the COMELEC *En Banc* was equally divided in opinion when it resolved her motion for reconsideration.

On an even date, Paras wrote the House of Representatives informing it of the COMELEC *En Banc* Resolution dated June 29, 2007 upholding the Joint Resolution of the COMELEC Second Division dated May 17, 2007, which disqualified Limkaichong as a congressional candidate.[37]

In the *interim*, then Speaker of the House of Representatives Jose de Venecia, Jr. (De Venecia) allowed Limkaichong to

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[34] *Id.* at 61-63. (Emphasis ours).

[35] *Id.* at 159-163.

[36] Section 6, Rule 18, COMELEC Rules of Procedure provides:

SEC. 6. *Procedure if Opinion is Equally Divided.* — When the Commission *en banc* is equally divided in opinion, or the necessary majority cannot be had, the case shall be reheard, and if on rehearing no decision is reached, the action or proceeding shall be dismissed if originally commenced in the Commission; in appealed cases, the judgment or order appealed from shall stand affirmed; and in all incidental matters, the petition or motion shall be denied.

[37] *Rollo (*G.R. Nos. 179132-33), pp. 213-214.

officially assume the office as a Member of the House of Representatives on July 23, 2007, as shown in the Journal of the House of Representatives.[38]

Despite Limkaichong's repeated pleas for the resolution of her manifestation and motion for clarification,[39] the COMELEC did not resolve the same. Hence, on August 1, 2007, she filed with this Court a **Petition for *Certiorari***[40] under Rule 65, in relation to Rule 64 of the 1997 Rules of Civil Procedure docketed as **G.R. Nos. 178831-32** praying for the annulment of the May 17, 2007 Joint Resolution of the COMELEC Second Division and the June 29, 2007 Resolution of the COMELEC *En Banc* in the disqualification cases for having been issued with grave abuse of discretion amounting to lack of jurisdiction. She averred that since she was already proclaimed on May 25, 2007 as Representative of the First District of Negros Oriental, had assumed office on June 30, 2007, and had started to perform her duties and functions as such, the COMELEC had lost its jurisdiction and it is now the HRET which has jurisdiction over any issue involving her qualifications for the said office.

On August 16, 2007, the COMELEC *En Banc* ruled on Limkaichong's manifestation and motion for clarification,[41] with the following disquisition:

> In view of the **proclamation of Limkaichong** and her subsequent **assumption of office on June 30, 2007**, this Commission rules that **all pending incidents relating to the qualifications of Limkaichong should now be determined by the House of Representatives Electoral Tribunal** in accordance with the above-quoted provision of the Constitution.
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> WHEREFORE, premises considered, this Commission resolved, as it hereby resolves, that all pending incidents relating to the

[38] *Id.* at 238-256.

[39] *Rollo* (G.R. Nos. 178831-32), pp. 166-171. On July 5, 2007, Limkaichong filed an Urgent Motion to Resolve the Manifestation and Motion for Clarification. On July 11, 2007, she filed a Second Motion to Resolve said manifestation and motion.

[40] *Id.* at 3-20.

[41] *Id.* at 181-183.

qualifications of Jocelyn S. Limkaichong as Member of the House of Representatives should now be determined by the House of Representatives Electoral Tribunal.

SO ORDERED. (Emphasis ours)

On August 24, 2007, Louis Biraogo (Biraogo), as a citizen and a taxpayer, filed with the Court a **Petition for Prohibition and Injunction with Preliminary Injunction and/or Temporary Restraining Order**[42] under Section 2, Rule 65 of the 1997 Rules of Civil Procedure, docketed as **G.R. No. 179120**, seeking to enjoin and permanently prohibit: (a) De Venecia from allowing Limkaichong to sit in the House of Representatives and participate in all its official activities; and (b) Limkaichong from holding office as its Member.[43]

Meanwhile, on August 28, 2007, Paras has instituted before the Court a **Petition for *Quo Warranto*, Prohibition and *Mandamus* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction**[44] under Rule 65 of the 1997 Rules of Civil Procedure, docketed as **G.R. Nos. 179132-33**, seeking, among others, the ouster of Limkaichong from the House of Representatives on account of her disqualification and for the holding of special elections to fill the vacancy created by such.[45]

On even date, the COMELEC Second Division promulgated a Resolution[46] denying Villando's motion to suspend the proclamation of Limkaichong, which denial was affirmed by the COMELEC *En Banc* in a Resolution[47] dated February 1, 2008.

On September 5, 2008, Villando also filed with this Court a **Petition for *Certiorari* and Injunction with Preliminary**

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[42] *Rollo* (G.R. No. 179120), pp. 3-21.

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

[44] *Rollo* (G.R. Nos. 179132-33), pp. 3-70.

[45] *Id.* at 69-70.

[46] *Rollo (*G.R. Nos. 178831-32), pp. 468-470.

[47] *Id.* at 471-481.

**Injunction and Temporary Restraining Order**[48] under Rule 65 of the 1997 Rules of Civil Procedure, docketed as **G.R. Nos. 179240-41**, contending, among others, that the COMELEC *En Banc* gravely abused its discretion in issuing the August 16, 2007 Resolution[49] because it still acted on Limchaikong's manifestation and motion for clarification, notwithstanding that the same was not set for hearing and considering that its June 29, 2007 Resolution had already become final and executory.

As the four (4) petitions are interrelated, the Court resolved to consolidate them in its Resolutions dated September 4 and 11, 2007.

The Court heard the parties in oral argument on August 26, 2008, during which the following issues were tackled:

1. Whether the proclamation of Limkaichong by the Provincial Board of Canvassers of Negros Oriental is valid;
2. Whether said proclamation divested the Commission on Elections of jurisdiction to resolve the issue of Limkaichong's citizenship;
3. Whether the House of Representatives Electoral Tribunal shall assume jurisdiction, in lieu of the COMELEC, over the issue of Limkaichong's citizenship;
4. Whether the COMELEC Second Division and the COMELEC *En Banc* correctly ruled that Limkaichong is disqualified from running as a Member of the House of Representatives on the ground that she is not a natural-born citizen;
5. Whether the COMELEC disqualification of Limkaichong is final and executory; and,
6. Whether the Speaker of the House of Representatives may be compelled to prohibit Limkaichong from assuming her duties as aMember of the House of Representatives.

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[48] *Rollo* (G.R. Nos. 179240-41), pp. 3-28.

[49] *Supra* note 41.

On same day, the Court required the parties to simultaneously file within twenty (20) days their respective memoranda, after which the petitions shall be deemed submitted for resolution, with or without the memoranda.

**Section 6**, **Article VI** of the **1987 Philippine Constitution** provides for the qualification of a Member of the House of Representatives, thus:

> **Section 6.** No person shall be a Member of the House of Representatives unless he is a **natural-born citizen of the Philippines** and, on the day of the election, is at least twenty-five years of age, able to read and write, and, except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a period of not less than one year immediately preceding the day of the election.

When Limkaichong filed her COC, she stated therein that she is a natural-born Filipino citizen. It was not true, according to the petitioners in the disqualification cases, because her father remained a Chinese citizen at the time of her birth. The COMELEC Second Division has sided with Camero and Villando, and disqualified Limkaichong to run as a congressional candidate in the First District of Negros Oriental for having failed to comply with the citizenship requirement. Accordingly, her proclamation was ordered suspended notwithstanding that she obtained the highest number of votes during the elections. Nonetheless, she was proclaimed by the PBOC pursuant to the policy guidelines of COMELEC *En Banc* Resolution No. 8062, and she has since assumed her position and performed her functions as a Member of the House of Representatives.

**I**

***Whether Limkaichong's proclamation was valid.***

The proclamation of Limkaichong was valid. The COMELEC Second Division rendered its Joint Resolution dated May 17, 2007. On May 20, 2007, Limkaichong timely filed with the COMELEC *En Banc* her motion for reconsideration as well as for the lifting of the incorporated directive suspending her proclamation. **The filing of the motion for reconsideration**

**effectively suspended the execution of the May 17, 2007 Joint Resolution**.[50] Since the execution of the May 17, 2007 Joint Resolution was suspended, there was no impediment to the valid proclamation of Limkaichong as the winner. Section 2, Rule 19 of the COMELEC Rules of Procedure provides:

> Sec. 2. *Period for Filing Motions for Reconsideration.* – A motion to reconsider a decision, resolution, order or ruling of a Division shall be filed within five (5) days from the promulgation thereof. **Such motion, if not *pro forma*, suspends the execution for implementation of the decision, resolution, order and ruling**.

In **G.R. Nos. 179132-33**, Paras, however, maintained that Limkaichong was a Chinese citizen who was disqualified to run as a congressional candidate by way of a final judgment of the COMELEC. With that, her proclamation was questionable and the same was done in open defiance of the Joint Resolution dated May 17, 2007 of the COMELEC Second Division. She also stressed that Limkaichong's proclamation was procedurally defective, it appearing that one of the PBOC members was not present on May 25, 2007, and that it took place in a restaurant and not at the provincial capitol. Finally, she argued that Limkaichong's proclamation was void in accordance with the Court's pronouncement in the case of *Codilla v. De Venecia*.[51]

The Office of the Solicitor General (OSG) filed its Comment on the petition of Paras, expressing its support for the position taken by the latter.

A perusal of the arguments advanced by Paras and the OSG does not sway the Court to rule against the validity of Limkaichong's proclamation. No less than the COMELEC First Division has sustained the validity of her proclamation when it dismissed, by way of a Resolution dated June 29, 2007, the petition filed by Paras to nullify the proclamation. Not only that. The COMELEC First Division has also adopted Limkaichong's argument that following her valid proclamation, the COMELEC's jurisdiction over the disqualification cases has

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[50] COMELEC Rules of Procedure, Rule 19, Sec. 2.

[51] 442 Phil. 139 (2002).

ceased and that the same should be threshed out in the proper proceedings filed before the HRET. Notably, the dismissal of Paras' petition was affirmed by the COMELEC in its Omnibus Order dated January 28, 2008.

In addition, the validity of Limkaichong's proclamation is in accordance with COMELEC *En Banc* Resolution No. 8062. The disqualification cases filed against her remained pending as a result of her timely motion for reconsideration. Villando (in **G.R. Nos. 179240-41)**, however, maintained that Resolution No. 8062 is invalid; hence, it could not be used as basis to validate Limkaichong's proclamation. He argued that it must be published since it is a "policy-guideline" in the exercise of the COMELEC's rule-making power. As such, it cannot supersede the Joint Resolution of the Second Division which was rendered pursuant to the COMELEC's quasi-judicial power.

His argument is specious. Resolution No. 8062 is not only a policy- guideline. It is also an administrative interpretation of the two (2) provisions of the 1987 Constitution, namely: (i) Section 17,[52] Article VI (ii); Section 2(2),[53] Article IX-C;

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[52] Section 17, Article VI, 1987 Constitution provides:

Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members. Each Electoral Tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior justice in the Electoral Tribunal shall be its Chairman.

[53] Section 2(2), Article IX-C, 1987 Constitution provides:

Sec. 2. The Commission on Elections shall exercise the following powers and functions:

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(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective, regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective *barangay* officials decided by trial courts of limited jurisdiction. Decisions,

Section 6[54] of R.A. 6646; and Sections 241[55] and 243,[56] Article XX of the OEC. As such, it does not have to comply with the due process requirement. The term "administrative" connotes or pertains to "administration, especially management, as by managing or conducting, directing or superintending, the execution, application, or conduct of persons or things." It does

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final orders, or rulings of the Commission on election contests involving elective municipal and *barangay* offices shall be final, executory, and not appealable.

[54] Section 6, RA 6646, otherwise known as "An Act Introducing Additional Reforms in the Electoral System and for other Purposes," states:

SEC. 6. *Effect of Disqualification Case*. — Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of guilt is strong.

[55] Section 241 of the OEC provides:

SEC. 241. *Definition*. — A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of election returns.

[56] Section 243 of the OEC provides:

SEC. 243. *Issues that may be raised in pre-proclamation controversy*. — The following shall be proper issues that may be raised in pre-proclamation controversy:

(a) Illegal composition or proceedings of the board of canvassers.

(b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code.

(c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and

(d) When the substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

not entail an opportunity to be heard, the production and weighing of evidence, and a decision or resolution thereon.[57] This is to be distinguished from "quasi-judicial function," a term which applies, among others, to the action or discretion of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.[58]

Resolution No. 8062 is a valid exercise of the COMELEC's constitutionally mandated power to promulgate its own rules of procedure relative to the conduct of the elections.[59] In adopting such policy-guidelines for the May 14, 2007 National and Local Elections, the COMELEC had in mind the objective of upholding the sovereign will of the people and in the interest of justice and fair play. Accordingly, those candidates whose disqualification cases are still pending at the time of the elections, should they obtain the highest number of votes from the electorate, shall be proclaimed but that their proclamation shall be without prejudice to the continuation of the hearing and resolution of the involved cases. Whereas, in this case, the COMELEC Second Division having failed to act on the disqualification cases against Limkaichong until after the conduct of the elections, with her obtaining the highest number of votes from the electorate, her proclamation was properly effected by the PBOC pursuant to Resolution No. 8062.

The Court has held in the case of *Planas v. COMELEC*,[60] that at the time of the proclamation of Defensor, the respondent

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[57] *Villarosa v. Commission on Elections and Atty. Dan Restor*, 377 Phil. 497, 506 (1999), citing the Concurring Opinion of Justice Antonio in *University of Nueva Caceres v. Martinez*, 56 SCRA 148 (1974).

[58] *Id.* at 507, citing *Midland Insurance Corporation*, 143 SCRA 458 (1986).

[59] Section 3, Article IX-C, 1987 Constitution provides:

Sec. 3. The Commission on Elections may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission *en banc*.

[60] G.R. No. 167594, March 10, 2006, 484 SCRA 529, 537.

therein who garnered the highest number of votes, the Division Resolution invalidating his certificate of candidacy was not yet final. As such, his proclamation was valid or legal, as he had at that point in time remained qualified. Limkaichong's situation is no different from that of Defensor, the former having been disqualified by a Division Resolution on the basis of her not being a natural-born Filipino citizen. When she was proclaimed by the PBOC, she was the winner during the elections for obtaining the highest number of votes, and at that time, the Division Resolution disqualifying her has not yet became final as a result of the motion for reconsideration.

II

***Whether, upon Limkaichong's proclamation, the HRET, instead of the COMELEC, should assume jurisdiction over the disqualification cases.***

In her petition (**G.R. Nos. 178831-32)**, Limkaichong argued that her proclamation on May 25, 2007 by the PBOC divested the COMELEC of its jurisdiction over all issues relating to her qualifications, and that jurisdiction now lies with the HRET.

Biraogo, on the other hand, believed otherwise. He argued (in **G.R. No. 179120**) that the issue concerning Limkaichong's disqualification is still within the exclusive jurisdiction of the COMELEC *En Banc* to resolve because when Limkaichong was proclaimed on May 25, 2007, the matter was still pending resolution before the COMELEC *En Banc*.

We do not agree. The Court has invariably held that once a winning candidate **has been proclaimed**, **taken his oath**, and **assumed office** as a Member of the House of Representatives, **the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins**.[61] It follows then that the proclamation of a winning candidate divests the COMELEC of

[61] *Vinzons-Chato v. Commission on Elections*, G.R. No. 172131, April 2, 2007, 520 SCRA 166, 179, citing *Aggabao v. Commission on Elections*, 449 SCRA 400, 404-405 (2005); *Guerrero v. Commission on Elections*, 391 Phil. 344, 352 (2000).

its jurisdiction over matters pending before it at the time of the proclamation. The party questioning his qualification should now present his case in a proper proceeding before the HRET, the constitutionally mandated tribunal to hear and decide a case involving a Member of the House of Representatives with respect to the latter's election, returns and qualifications. The use of the word "sole" in Section 17, Article VI of the Constitution and in Section 250[62] of the OEC underscores the exclusivity of the Electoral Tribunals' jurisdiction over election contests relating to its members.[63]

**Section 17**, **Article VI** of the **1987 Constitution** provides:

Sec. 17. The Senate and the **House of Representatives** shall each have an Electoral Tribunal which shall be the **sole judge of all contests relating to the election, returns, and qualifications of their respective Members**. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

Corollary thereto is **Rule 14** of the **1998 Rules of the HRET**, as amended, which states:

RULE 14. *Jurisdiction.* — The Tribunal is the **sole judge** of all contests relating to the **election**, **returns**, and **qualifications** of the Members of the House of Representatives.

The COMELEC *En Banc*, in its Resolution dated August 16, 2007, had given paramount consideration to the two (2) aforementioned provisions when it stated that:

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[62] SEC. 250. *Election contests for Batasang Pambansa, regional, provincial and city offices.* — A sworn petition contesting the election of any Member of the Batasang Pambansa or any regional, provincial or city official shall be filed with the Commission by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election.

[63] *Vinzons-Chato v. Commission on Elections*, *supra* note 61, at 178, citing *Rasul v. Commission on Elections*, 371 Phil. 760, 766 (1999).

In view of the **proclamation of Limkaichong** and her s**ubsequent assumption of office on June 30, 2007**, this Commission rules that **all pending incidents relating to the qualifications of Limkaichong should now be determined by the House of Representatives Electoral Tribunal** in accordance with the above-quoted provision of the Constitution.

WHEREFORE, premises considered, this Commission resolved, as it hereby resolves, that all pending incidents relating to the qualifications of Jocelyn S. Limkaichong as Member of the House of Representatives should now be determined by the House of Representatives Electoral Tribunal.

SO ORDERED. (Emphasis supplied)

Worth citing also is the ratiocination of the COMELEC First Division when it dismissed the petition of Paras seeking the nullity of Limkaichong's proclamation, thus:

The present situation is similar not to the factual circumstances of *Codilla*, which Paras invokes, but rather to that in *Planas* which adheres to the general rule giving jurisdiction to the House of Representatives Electoral Tribunal. As at the time of Limkaichong's proclamation, her disqualification was not yet final, her proclamation was valid or legal. This Commission no longer has jurisdiction over the case. This, notwithstanding the Second Division's directive suspending Limkaichong's proclamation.

The Commission has made its intention in issuing Resolution No. 8062 very clear in that there shall be no suspension of proclamation of winning candidates with pending disqualification cases, involving, among others, issues of citizenship. As the disqualification cases involving Limkaichong were still pending reconsideration by the *En Banc*, the underlying policy which gave rise to the issuance of the resolution: to respect the will of the Filipino electorate, applies to the suspension of proclamation of the winning Congressional candidate for the First District of Negros Oriental.

WHEREFORE, the instant petition is DISMISSED.

SO ORDERED.

Petitioners (in G.R. Nos. 179120, 179132-33, and 179240-41) steadfastly maintained that Limkaichong's proclamation was tainted with irregularity, which will effectively prevent the HRET from acquiring jurisdiction.

The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction.[64] The Court has shed light on this in the case of *Vinzons-Chato*,[65] to the effect that:

> In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:
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> > x x x [I]n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.
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> Further, for the Court to take cognizance of petitioner Chato's election protest against respondent Unico would be to usurp the constitutionally mandated functions of the HRET.

In fine, any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.

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[64] *Lazatin v. Commission on Elections*, G.R. No. 80007, January 25, 1988, 157 SCRA 337, 338.

[65] *Supra* note 61, at 180.

The 1998 HRET Rules, as amended, provide for the manner of filing either an election protest or a petition for *quo warranto* against a Member of the House of Representatives, to wit:

> Rule 16. *Election protest.* — A verified petition contesting the election of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten (10) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.
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> Rule 17. *Quo Warranto.* — A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.
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> Rule 19. *Periods Non-Extendible.* — The ten-day period mentioned in Rules 16 and 17 is jurisdictional and cannot be extended.

Accordingly, after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for *quo warranto*, within the period provided by the HRET Rules. In *Pangilinan v. Commission on Elections*,[66] we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.

The PBOC proclaimed Limkaichong as the winner on May 25, 2007. Thus, petitioners (in G.R. Nos. 179120, 179132-33, and 179240-41) should have filed either an election protest or petition for *quo warranto* within ten days from May 25, 2007.

[66] G.R. No. 105278, November 18, 1993, 228 SCRA 36, 44.

But they did not. In fact, to date, no petition of protest or petition for *quo warranto* has been filed with the HRET. Verily, the ten-day prescriptive period for initiating a contest against Limkaichong has long expired.

However, the said ten-day prescriptive period under the 1998 HRET Rules **does not apply to disqualification cases based on citizenship**. Under the 1987 Constitution, Members of the House of Representatives must be **natural-born citizens not only at the time of their election but during their entire tenure**. Being a continuing requirement, one who assails a member's citizenship or lack of it may still question the same at any time, the ten-day prescriptive period notwithstanding.

In *Frivaldo v. Commission on Elections*,[67] the Court held that:

> The argument that the petition filed with the Commission on Elections should be dismissed for tardiness is not well-taken. The herein private respondents are seeking to prevent Frivaldo from continuing to discharge his office as governor because he is disqualified from doing so as a foreigner. **Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. If, say, a female legislator were to marry a foreigner during her term and by her act or omission acquires his nationality, would she have the right to remain in office simply because the challenge to her title may not longer be made within ten days from her proclamation**? x x x
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> **This Court will not permit the anomaly of a person sitting as provincial governor in this country while owing exclusive allegiance to another country.** The fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. **The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this**

[67] G.R. No. 87193, June 23, 1989, 174 SCRA 245. (Emphasis supplied)

**case, that the candidate was qualified. Obviously, this rule requires strict application when the deficiency is lack of citizenship.** If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country alone, abjuring and renouncing all fealty to any other state.

However, in assailing the citizenship of the father, the proper proceeding should be in accordance with Section 18 of Commonwealth Act No. 473 which provides that:

Sec. 18. *Cancellation of Naturalization Certificate Issued*: — **Upon motion made in the proper proceedings by the Solicitor General or his representative, or by the proper provincial fiscal, the competent judge may cancel the naturalization certificate issued and its registration in the Civil Register**:

1. If it is shown that said naturalization certificate was obtained fraudulently or illegally;

2. If the person naturalized shall, within five years next following the issuance of said naturalization certificate, return to his native country or to some foreign country and establish his permanent residence there: Provided, That the fact of the person naturalized remaining more than one year in his native country or the country of his former nationality, or two years in any other foreign country, shall be considered as *prima facie* evidence of his intention of taking up his permanent residence in the same:

3. If the petition was made on an invalid declaration of intention;

4. If it is shown that the minor children of the person naturalized failed to graduate from a public or private high schools recognized by the Office of Private Education [now Bureau of Private Schools] of the Philippines, where Philippine history, government or civics are taught as part of the school curriculum, through the fault of their parents either by neglecting to support them or by transferring them to another school or schools. A certified copy of the decree canceling the naturalization certificate shall be forwarded by the Clerk of Court of the Department of Interior [now Office of the President] and the Bureau of Justice [now Office of the Solicitor General];

5. If it is shown that the naturalized citizen has allowed himself to be used as a dummy in violation of the constitutional or legal provisions requiring Philippine citizenship as a requisite for the exercise, use or enjoyment of a right, franchise or privilege. (Emphasis supplied)

As early as the case of *Queto v. Catolico*,[68] where the Court of First Instance judge *motu proprio* and not in the proper denaturalization proceedings called to court various grantees of certificates of naturalization (who had already taken their oaths of allegiance) and cancelled their certificates of naturalization due to procedural infirmities, the Court held that:

x x x **It may be true that**, as alleged by said respondents, that **the proceedings for naturalization were tainted with certain infirmities, fatal or otherwise,** but that is beside the point in this case. The jurisdiction of the court to inquire into and rule upon such infirmities must be properly invoked in accordance with the procedure laid down by law. Such procedure is the cancellation of the naturalization certificate. [Section 1(5), Commonwealth Act No. 63], in the manner fixed in Section 18 of Commonwealth Act No. 473, hereinbefore quoted, namely, "upon motion made in the proper proceedings by the Solicitor General or his representatives, or by the proper provincial fiscal." **In other words, the initiative must come from these officers, presumably after previous investigation in each particular case.** (Emphasis supplied)

Clearly, under law and jurisprudence, it is the State, through its representatives designated by statute, that may question the illegally or invalidly procured certificate of naturalization in the appropriate denaturalization proceedings. It is plainly not a matter that may be raised by private persons in an election case involving the naturalized citizen's descendant.

**III**

***Whether the COMELEC Second Division and the COMELEC En Banc correctly disqualified Limkaichong on the ground that she is not a natural-born Filipino citizen.***

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[68] G.R. Nos. L-25204 & L-25219, January 23, 1970, 31 SCRA 52, 58.

In resolving the disqualification cases, the COMELEC Second Division relied on the entries in the docket book of the OSG,[69] the only remaining record of the naturalization proceedings,[70] and ruled on the basis thereof that the naturalization proceedings of Julio Ong Sy, Limkaichong's father, in Special Case No. 1043, were null and void. The COMELEC Second Division adopted Villando and Camero's arguments that the OSG was deprived of its participation in the said case for it was not furnished copies of the following: (a) the July 9, 1957 Order of the Court of First Instance (CFI) granting the petition for naturalization; and (b) the September 21, 1959 Order of the CFI declaring Julio Ong Sy a Filipino citizen. Thus, when the latter took his oath of allegiance on October 21, 1959, it was exactly 30 days after his declaration as a naturalized Filipino, or one day short of the reglementary period required under Sections 11 and 12 of Commonwealth Act No. 473. Such defects were fatal to the naturalization proceedings of Julio Ong Sy and prevented the same from gaining finality. The COMELEC Second Division concluded that since Julio Ong Sy did not acquire Philippine citizenship through the said naturalization proceedings, it follows that Limkaichong remains a Chinese national and is disqualified to run as candidate and be elected as a Member of the House of Representatives.

We cannot resolve the matter of Limkaichong's citizenship as the same should have been challenged in appropriate proceedings as earlier stated.

**IV**

***Whether the COMELEC's disqualification of Limkaichong is final and executory.***

In resolving this issue, pertinent is the provision of Section 13(b), Rule 18 of the 1993 COMELEC Rules of Procedure:

Sec. 13. *Finality of Decisions or Resolutions.* – x x x

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[69] *Rollo* p. 97.

[70] *Id.* at 172 and 175.

(b) In Special Actions and Special Cases, a decision or resolution of the Commission *en banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

In his Memorandum dated June 27, 2008, Biraogo stated that the Resolution of the COMELEC *En Banc* in the disqualification cases became final and executory after five (5) days from its promulgation and that the same was not restrained by this Court pursuant to Section 13(b), Rule 18 of the 1993 COMELEC Rules of Procedure. He averred that since Limkaichong received a copy of the COMELEC *En Banc* Resolution dated June 29, 2007 on July 3, 2007, she had until July 8, 2007 within which to obtain a restraining order from the Court to prevent the same from becoming final and executory. However, she did not do anything to that effect. Biraogo also averred that Limkaichong is guilty of forum shopping; hence, her petition must be dismissed by the Court.

Instead of asking the Court for what Biraogo opined as a restraining order, Limkaichong filed with this Court, on August 1, 2007, her petition for *certiorari* assailing the said COMELEC *En Banc* Resolution pursuant to Section 2,[71] Rule 64, in relation to Rule 65, 1997 Rules of Civil Procedure, postulating that she had thirty (30) days from July 4, 2007 within which to file the petition, or until August 3, 2007. She cited Section 7, Article IX of the 1987 Constitution, which prescribes the power of this Court to review decisions of the COMELEC,[72] thus:

**SEC. 7.** Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the

[71] Section 2. *Mode of review*. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

[72] *Soriano, Jr. v. Commission on Elections*, G.R. Nos. 164496-505, April 2, 2007, 520 SCRA 80, 107, citing *Reyes v. RTC of Oriental Mindoro*, 313 Phil. 727, 734 (1995).

rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

In his Comment on the petition, Villando prayed for the outright dismissal of Limkaichong's petition as (a) it was filed beyond the reglementary period; (b) Limkaichong engaged in prohibited forum shopping; and (c) Limkaichong admitted that the issues raised have become moot and academic. He also sought to declare Limkaichong in contempt of court for forum shopping.

The COMELEC, through the OSG, also filed its Comment, praying for the denial of Limkaichong's petition and its dismissal for being moot, contending that: (a) the COMELEC *En Banc* Resolution dated August 16, 2007 has rendered the instant petition moot and academic; and (b) Limkaichong knowingly and intentionally engaged in forum shopping. The OSG argued that, without waiting for the resolution of her Motion for Clarification and two (2) successive motions to resolve said motions which are pending before the COMELEC *En Banc*, Limkaichong filed the present petition to question the Joint Resolution dated May 17, 2007 of the COMELEC Second Division, which issues were pending before the COMELEC *En Banc*. Her act of seeking relief from this Court while there were several other incidents pending before the COMELEC, the final resolution in either one of which will amount to *res judicata* in the other, clearly showed forum shopping on her part.

In her Reply to the above Comments, Limkaichong countered that she did not engage in forum shopping, for had she waited for the COMELEC to rule on her manifestation and other motions, it would have resulted in the expiration of the reglementary period for filing a petition for *certiorari* before the Court.

The May 17, 2007 Joint Resolution of the COMELEC Second Division disqualifying Limkaichong and suspending her proclamation cannot yet be implemented considering that she timely filed a motion for reconsideration. Thus, pursuant to Section 13(c), Rule 18 and Section 2 Rule 19 of the COMELEC

Rules of Procedure, the Joint Resolution has not yet attained finality for it to be implemented.

Notably, the seeming impropriety of the Resolution of the COMELEC *En Banc* dated June 29, 2007 has since been remedied by the promulgation of its Resolution dated August 16, 2007, recognizing that it no longer has jurisdiction over the disqualification cases following the valid proclamation of Limkaichong and her assumption of office as a Member of the House of Representatives.

**V**

***Whether the Speaker of the House of Representatives may be compelled to prohibit Limkaichong from assuming her duties as a Member of the House of Representatives.***

Biraogo's contention was that De Venecia[73] should be stopped from entering Limkaichong's name in the Roll of Members of the House of Representatives because he has no power to allow an alien to sit and continue to sit therein as it would amount to an unlawful exercise of his legal authority. Moreover, Biraogo opposes Limkaichong's assumption of office in the House of Representatives since she is not qualified to sit therein, being a Chinese citizen and, thus, disqualified by virtue of a final and executory judgment of the COMELEC *En Banc*. He relied on the COMELEC *En Banc* Resolution dated June 29, 2007, which affirmed the COMELEC Second Division Joint Resolution dated May 17, 2007 disqualifying Limkaichong from holding public office. He contended that the said Resolution dated June 29, 2007 is already final and executory; hence, it should be respected pursuant to the principle of *res judicata*.

De Venecia, on the other hand, argued that he should not be faulted for honoring the proclamation of Limkaichong, because it had the hallmarks of regularity, and he had no power to exclude any Member of the House of Representatives *motu proprio*.

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[73] When Speaker Jose De Venecia, Jr. was replaced by Speaker Prospero Nograles, petitioner Biraogo filed with the Court a Respectful Manifestation with Motion to Replace Respondent Jose De Venecia, Jr. with Prospero C. Nograles, praying that the latter will replace the former as party-respondent in G.R. No. 179120, which the Court granted in its Resolution dated April 1, 2008.

In their Comment on the petition, respondents De Venecia, *et al*., contended that the enrollment of a Member in the Roll of Members of the House of Representatives and his/her recognition as such becomes the **ministerial duty** of the Secretary General and the House of Representatives **upon presentation by such Member of a valid Certificate of Proclamation and Oath of Office**.

Respondent Nograles, as De Venecia's, substitute, filed a Memorandum dated July 16, 2008 stating that under the circumstances, the House of Representatives, and its officials, are without recourse except to honor the validity of the proclamation of Limkaichong until the same is canceled, revoked or nullified, and to continue to recognize her as the duly elected Representative of the First District of Negros Oriental until it is ordered by this Court, as it was in *Codilla,* to recognize somebody else. He went on to state that after assumption by the Member-elect, or having acquired a presumptively valid title to the office, the House of Representatives cannot, *motu proprio*, cancel, revoke, withdraw any recognition given to a sitting Member or to "remove" his name from its roll, as such would amount to a removal of such Member from his office without due process of law. Verily, it is only after a determination by the appropriate tribunal (as in this case, the HRET), pursuant to a final and executory order, that the Member does not have a right to the office (*i.e.*, not being a duly elected Member), that the House of Representatives is directed to exclude the said Member.

Their contentions are meritorious. The unseating of a Member of the House of Representatives should be exercised with great caution and after the proper proceedings for the ouster has been validly completed. For to arbitrarily unseat someone, who obtained the highest number of votes in the elections, and during the pendency of the proceedings determining one's qualification or disqualification, would amount to disenfranchising the electorate in whom sovereignty resides.[74]

**WHEREFORE,** premises considered, the petition in *G.R. Nos. 178831-32* is *GRANTED* and the Joint Resolution of the

[74] See *Codilla v. De Venecia,* 442 Phil. 139 (2002).

COMELEC Second Division dated May 17, 2007 in SPA Nos. 07-247 and 07-248 is *REVERSED* and *SET ASIDE*. All the other petitions (**G.R. Nos. 179120**, **179132-33**, **179240-41**) are hereby *DISMISSED*.

**SO ORDERED.**

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

*Velasco, Jr., J.,* Re: G.R. Nos. 178831-32 see dissenting opinion.

*Austria-Martinez, J.,* on leave.

## DISSENTING OPINION

**VELASCO, JR., *J.*:**

With due respect to the *ponente*, I register my dissent in G.R. Nos. 178831-32:

COMELEC, on May 7, 2001, issued a Resolution No. 4116 which reads:

This pertains to the finality of the decisions or resolutions of the Commission *en banc* or division, particularly on Special Actions (Disqualification Cases).

***Special Action cases*** refer to the following:

(a) Petition to deny due course to a certificate of candidacy;

(b) Petition to declare a candidate as a nuisance candidate

(c) Petition to disqualify a candidate; and

(d) Petition to postpone or suspend as election.

Considering the foregoing and in order to guide field officials on the finality of decisions or resolutions on special action cases (disqualification cases) the Commission, RESOLVES as it is hereby RESOLVED, as follows:

(1) *the decision or resolution of the En Banc of the Commission on disqualification cases shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.*

The Commission *En Banc* Resolution affirming that of the Second Division was promulgated on June 29, 2007. Petitioner received a copy of the resolution on July 3, 2007 and had until July 8, 2007 within which to obtain a restraining order from this Court to prevent the assailed resolution from attaining finality. Instead of filing a petition before this Court with a prayer for a restraining order, Limkaichong opted to file a Manifestation and Motion for Clarification before the COMELEC *En Banc*. This procedural lapse is fatal as her motion with the COMELEC *En Banc* did not toll the running of the five (5)-day reglementary period. Thus, the June 29, 2007 COMELEC *En Banc* Resolution has become final and executory.

On the other hand, petitioner Limkaichong argues that the COMELEC was divested of jurisdiction over the disqualification case when she was proclaimed by the Provincial Board of Canvassers on May 25, 2007. She insists that jurisdiction is now exclusively vested in the HRET under Section 17, Article VI of the 1987 Constitution, which provides:

The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. x x x

This posture will not also prevent the June 29, 2007 Resolution of the COMELEC *En Banc* from becoming final and executory. When petitioner received a copy of the assailed resolution, she should have instituted an action before the HRET to challenge the legality of the said resolution affirming her disqualification.

This, she failed to do.

On August 16, 2007, the COMELEC *En Banc* ruled on Limkaichong's manifestation and motion for clarification, thus:

In view of the **proclamation of Limkaichong** and her subsequent **assumption of office on June 30, 2007**, this Commission rules that **all pending incidents relating to the qualifications of Limkaichong should now be determined by the House of Representatives Electoral Tribunal** in accordance with the above-quoted provision of the Constitutuion.

WHEREFORE, premises considered, this Commission resolved, as it hereby resolves, that all pending incidents relating to the qualifications of Jocelyn S. Limkaichong as Member of the House of Representatives should now be determined by the House of Representatives Electoral tribunal.

SO ORDERED. (Emphasis ours)

Despite the clear direction from the COMELEC *En Banc*, petitioner again failed to institute the necessary action before the HRET to contest the June 29, 2007 Resolution within ten (10) days from receipt of the August 16, 2007 COMELEC Resolution. Around seven (7) months had lapsed from promulgation of the August 16, 2007 ruling of the COMELEC and petitioner has not lifted a finger to challenge the June 29, 2007 COMELEC *En Banc* Resolution in question. Plainly, said resolution has become final and executory.

I vote to **DISMISS** Limkaichong's petition in **G.R. Nos. 178831-32**.

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*Gross negligence* — Committed in case the errors committed by a judge could have been avoided had he exercised diligence and prudence expected of him before affixing his signature. (Atty. Amante-Descaller *vs*. Judge Ramas, A.M. No. RTJ-08-2142, March 20, 2009) p. 21

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