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REPORTS OF CASES

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OF THE

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FROM

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 153788. November 27, 2009]

ROGER V. NAVARRO, *petitioner, vs.* **HON. JOSE L. ESCOBIDO, Presiding Judge, RTC Branch 37, Cagayan de Oro City, and KAREN T. GO, doing business under the name KARGO ENTERPRISES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; REAL PARTY-IN-INTEREST; DEFINED.— The 1997 Rules of Civil Procedure requires that every action must be prosecuted or defended in the name of the real party-in-interest, *i.e.*, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

2. ID.; ID.; ID.; ID.; ID.; A SOLE PROPRIETORSHIP CANNOT BE A PARTY TO A CIVIL ACTION; BASIS.— As Navarro correctly points out, Kargo Enterprises is a sole proprietorship, which is neither a natural person, nor a juridical person, as defined by Article 44 of the Civil Code: Art. 44. The following are juridical persons: (1) The State and its political subdivisions; (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law; (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and

distinct from that of each shareholder, partner or member. Thus, pursuant to Section 1, Rule 3 of the Rules, Kargo Enterprises cannot be a party to a civil action. This legal reality leads to the question: who then is the proper party to file an action based on a contract in the name of Kargo Enterprises?

3. ID.; ID.; ID.; ID.; ID.; THE REGISTERED OWNER OF KARGO ENTERPRISES IS THE REAL PARTY-IN-INTEREST; EXPLAINED.— x x x Section 2, Rule 3 of the Rules, x x x states: SEC. 2. *Parties in interest.* – A real party in interest is the party who stands to be **benefited** or **injured** by the judgment in the suit, or the **party entitled to the avails of the suit**. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. As the registered owner of Kargo Enterprises, Karen Go is the party who will directly benefit from or be injured by a judgment in this case. Thus, contrary to Navarro's contention, Karen Go is the real party-in-interest, and it is legally incorrect to say that her Complaint does not state a cause of action because her name did not appear in the Lease Agreement that her husband signed in behalf of Kargo Enterprises. Whether Glenn Go can legally sign the Lease Agreement *in his capacity as a manager* of Kargo Enterprises, a sole proprietorship, is a question we do not decide, as this is a matter for the trial court to consider in a trial on the merits.

4. CIVIL LAW; FAMILY CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; KARGO ENTERPRISES AS A SOLE PROPRIETORSHIP WAS HELD TO BE CONJUGAL PROPERTY IN CASE AT BAR.— The registration of the trade name in the name of one person – a woman – does not necessarily lead to the conclusion that the trade name *as a property* is hers alone, particularly when the woman is married. By law, all property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal *unless the contrary is proved.* Our examination of the records of the case does not show any proof that Kargo Enterprises and the properties or contracts in its name are conjugal. If at all, only the bare allegation of Navarro to this effect exists in the records of the case. As we emphasized in *Castro v. Miat*: Petitioners also overlook Article 160 of the New Civil Code. It

provides that "all property of the marriage is presumed to be conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife." This article **does not require proof that the property was acquired with funds of the partnership**. The presumption applies even when the manner in which the property was acquired does not appear. Thus, for purposes solely of this case and of resolving the issue of whether Kargo Enterprises as a sole proprietorship is conjugal or paraphernal property, we hold that it is conjugal property.

5. ID.; ID.; ID.; ID.; ADMINISTRATION OF CONJUGAL PARTNERSHIP PROPERTY BELONGS TO BOTH SPOUSES JOINTLY; CONSENT OF THE OTHER SPOUSE NOT NECESSARY.— Article 124 of the Family Code, on the administration of the conjugal property, provides: Art. 124. **The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly.** In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision. x x x This provision, by its terms, allows either Karen or Glenn Go to speak and act with authority in managing their conjugal property, *i.e.*, Kargo Enterprises. No need exists, therefore, for one to obtain the consent of the other before performing an act of administration or any act that does not dispose of or encumber their conjugal property.

6. ID.; ID.; ID.; ID.; APPLICABILITY OF THE RULE ON THE CONTRACT OF PARTNERSHIP; EQUAL RIGHT OF SPOUSES TO SEEK POSSESSION OF PARTNERSHIP PROPERTIES.— Under Article 108 of the Family Code, the conjugal partnership is governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements. In other words, the property relations of the husband and wife shall be governed primarily by Chapter 4 on Conjugal Partnership of Gains of the Family Code and, suppletorily, by the spouses' marriage settlement and by the rules on partnership under the Civil Code. In the absence of any evidence of a marriage settlement between the spouses Go, we look at the Civil Code provision on partnership for guidance. A rule on partnership applicable to the spouses' circumstances is Article

1811 of the Civil Code, which states: Art. 1811. A partner is a co-owner with the other partners of specific partnership property. The incidents of this co-ownership are such that: A partner, subject to the provisions of this Title and to any agreement between the partners, **has an equal right with his partners to possess specific partnership property** for partnership purposes; xxx Under this provision, Glenn and Karen Go are effectively co-owners of Kargo Enterprises and the properties registered under this name; hence, both have an equal right to seek possession of these properties.

7. ID.; PROPERTY; CO-OWNERSHIP; ANY OF THE CO-OWNERS MAY BRING AN ACTION IN EJECTMENT WITH RESPECT TO THE CO-OWNED PROPERTY; APPLIED TO CASE AT BAR.— x x x Applying Article 484 of the Civil Code, which states that "*in default of contracts, or special provisions, co-ownership shall be governed by the provisions of this Title*," we find further support in Article 487 of the Civil Code that allows any of the co-owners to bring an action in ejectment with respect to the co-owned property. While ejectment is normally associated with actions involving real property, we find that this rule can be applied to the circumstances of the present case, following our ruling in *Carandang v. Heirs of De Guzman*. In this case, one spouse filed an action for the recovery of credit, a personal property considered conjugal property, without including the other spouse in the action. x x x Under this ruling, either of the spouses Go may bring an action against Navarro to recover possession of the Kargo Enterprises-leased vehicles which they co-own. This conclusion is consistent with Article 124 of the Family Code, supporting as it does the position that either spouse may act on behalf of the conjugal partnership, so long as they do not dispose of or encumber the property in question without the other spouse's consent. On this basis, we hold that since Glenn Go is not strictly an indispensable party in the action to recover possession of the leased vehicles, he only needs to be impleaded as a *pro-forma* party to the suit, based on Section 4, Rule 4 of the Rules, which states: Section 4. *Spouses as parties*. – Husband and wife shall sue or be sued jointly, except as provided by law.

8. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES; MISJOINDER OR NON-JOINDER OF INDISPENSABLE

PARTIES IN A COMPLAINT IS NOT A GROUND FOR DISMISSAL OF ACTION.— Even assuming that Glenn Go is an indispensable party to the action, we have held in a number of cases that the misjoinder or non-joinder of indispensable parties in a complaint is not a ground for dismissal of action. As we stated in *Macababbad v. Masirag*: Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor nonjoinder of parties is a ground for the dismissal of an action, thus: Sec. 11. Misjoinder and non-joinder of parties. Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. In *Domingo v. Scheer*, this Court held that the proper remedy when a party is left out is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff opportunity to amend his complaint in order to include indispensable parties. If the plaintiff to whom the order to include the indispensable party is directed refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion. Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed. In these lights, the RTC Order of July 26, 2000 requiring plaintiff Karen Go to join her husband as a party plaintiff is fully in order.

9. ID.; ID.; PROVISIONAL REMEDIES; REPLEVIN; DEMAND IS NOT REQUIRED PRIOR TO FILING OF REPLEVIN ACTION; BASIS.— In arguing that prior demand is required before an action for a writ of replevin is filed, Navarro apparently likens a replevin action to an unlawful detainer. For a writ of replevin to issue, all that the applicant must do is to file an affidavit and bond, pursuant to Section 2, Rule 60 of the Rules, which states: Sec. 2. Affidavit and bond. The applicant must show by his own affidavit or that of some other person who personally knows the facts: (a) That the **applicant is the owner of the property** claimed, particularly describing it, **or is entitled to the possession** thereof; (b) That the property is **wrongfully detained by the adverse party**, alleging the cause of detention thereof according to the best of his knowledge, information, and belief; (c) That the property has not

been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*, or if so seized, that it is exempt from such seizure or custody; and (d) The actual market value of the property. The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action. We see nothing in these provisions which requires the applicant to make a prior demand on the possessor of the property before he can file an action for a writ of replevin. Thus, prior demand is not a condition precedent to an action for a writ of replevin. More importantly, Navarro is no longer in the position to claim that a prior demand is necessary, as he has already admitted in his Answers that he had received the letters that Karen Go sent him, demanding that he either pay his unpaid obligations or return the leased motor vehicles. Navarro's position that a demand is necessary and has not been made is therefore totally unmeritorious.

APPEARANCES OF COUNSEL

Primitivo S. Bella, Jr. for petitioner.
Lagamon Barba Lupeba & Associates for private respondent.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari*[1] that seeks to set aside the Court of Appeals (*CA*) Decision[2] dated October 16, 2001 and Resolution[3] dated May 29, 2002 in CA-G.R. SP. No.

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure; *rollo*, pp. 11-46.

[2] Penned by Associate Justice Eliezer R. De Los Santos, with the concurrence of Associate Justice Godardo A. Jacinto and Associate Justice Bernardo P. Abesamis (all retired); *id.* at 48-53.

[3] *Id.* at 55.

64701. These CA rulings affirmed the July 26, 2000[4] and March 7, 2001[5] orders of the Regional Trial Court (*RTC*), Misamis Oriental, Cagayan de Oro City, denying petitioner Roger V. Navarro's (*Navarro*) motion to dismiss.

BACKGROUND FACTS

On September 12, 1998, respondent Karen T. Go filed two complaints, docketed as Civil Case Nos. 98-599 (*first complaint*)[6] and 98-598 (*second complaint*),[7] before the RTC for replevin and/or sum of money with damages against Navarro. In these complaints, Karen Go prayed that the RTC issue writs of replevin for the seizure of two (2) motor vehicles in Navarro's possession.

The first complaint stated:

1. That plaintiff **KAREN T. GO** is a Filipino, of legal age, married to GLENN O. GO, a resident of Cagayan de Oro City and **doing business under the trade name KARGO ENTERPRISES**, an entity duly registered and existing under and by virtue of the laws of the Republic of the Philippines, which has its business address at Bulua, Cagayan de Oro City; that defendant ROGER NAVARRO is a Filipino, of legal age, a resident of 62 Dolores Street, Nazareth, Cagayan de Oro City, where he may be served with summons and other processes of the Honorable Court; that defendant "JOHN DOE" whose real name and address are at present unknown to plaintiff is hereby joined as party defendant as he may be the person in whose possession and custody the personal property subject matter of this suit may be found if the same is not in the possession of defendant ROGER NAVARRO;

2. That KARGO ENTERPRISES is in the business of, among others, buying and selling motor vehicles, including hauling trucks and other heavy equipment;

3. That for the cause of action against defendant ROGER NAVARRO, it is hereby stated that on August 8, 1997, the said

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[4] *Id.* at 105-107.

[5] *Id.* at 108-109.

[6] *Id.* at 129-140.

[7] *Id.* at 143-154.

defendant leased [from] plaintiff a certain motor vehicle which is more particularly described as follows –

Make/Type	FUSO WITH MOUNTED CRANE
Serial No.	FK416K-51680
Motor No.	6D15-338735
Plate No.	GHK-378

as evidenced by a **LEASE AGREEMENT WITH OPTION TO PURCHASE** entered into by and between **KARGO ENTERPRISES**, then **represented by its Manager, the aforementioned GLENN O. GO**, and defendant ROGER NAVARRO xxx; that in accordance with the provisions of the above LEASE AGREEMENT WITH OPTION TO PURCHASE, defendant ROGER NAVARRO delivered unto plaintiff six (6) post-dated checks each in the amount of SIXTY-SIX THOUSAND THREE HUNDRED THIRTY-THREE & 33/100 PESOS (₱66,333.33) which were supposedly in payment of the agreed rentals; that when the **fifth and sixth checks**, *i.e.* PHILIPPINE BANK OF COMMUNICATIONS – CAGAYAN DE ORO BRANCH CHECKS NOS. 017112 and 017113, respectively dated January 8, 1998 and February 8, 1998, were presented for payment and/or credit, the same were **dishonored** and/or returned by the drawee bank for the common reason that the current deposit account against which the said checks were issued did not have sufficient funds to cover the amounts thereof; that the total amount of the two (2) checks, *i.e.* the sum of ONE HUNDRED THIRTY-TWO THOUSAND SIX HUNDRED SIXTY-SIX & 66/100 PESOS (₱132,666.66) therefore represents the principal liability of defendant ROGER NAVARRO unto plaintiff on the basis of the provisions of the above LEASE AGREEMENT WITH RIGHT TO PURCHASE; that **demands**, written and oral, **were made of defendant** ROGER NAVARRO to pay the amount of ONE HUNDRED THIRTY-TWO THOUSAND SIX HUNDRED SIXTY-SIX & 66/100 PESOS (₱132,666.66), or to return the subject motor vehicle as also provided for in the LEASE AGREEMENT WITH RIGHT TO PURCHASE, but said demands were, and still are, in vain to the great damage and injury of herein plaintiff; xxx

4. That the aforedescribed motor vehicle has not been the subject of any tax assessment and/or fine pursuant to law, or seized under an execution or an attachment as against herein plaintiff;

xxx xxx xxx

8. That plaintiff hereby respectfully applies for an order of the Honorable Court for the immediate delivery of the above-described motor vehicle from defendants unto plaintiff pending the final determination of this case on the merits and, for that purpose, there is attached hereto an affidavit duly executed and bond double the value of the personal property subject matter hereof to answer for damages and costs which defendants may suffer in the event that the order for replevin prayed for may be found out to having not been properly issued.

The second complaint contained essentially the same allegations as the first complaint, except that the Lease Agreement with Option to Purchase involved is dated October 1, 1997 and the motor vehicle leased is described as follows:

Make/Type	FUSO WITH MOUNTED CRANE
Serial No.	FK416K-510528
Motor No.	6D14-423403

The second complaint also alleged that Navarro delivered three post-dated checks, each for the amount of ₱100,000.00, to Karen Go in payment of the agreed rentals; however, the third check was dishonored when presented for payment.[8]

On October 12, 1998[9] and October 14, 1998,[10] the RTC issued writs of replevin for both cases; as a result, the Sheriff seized the two vehicles and delivered them to the possession of Karen Go.

In his Answers, **Navarro alleged as a special affirmative defense that the two complaints stated no cause of action,** since Karen Go was not a party to the Lease Agreements with Option to Purchase (collectively, the *lease agreements*) – the actionable documents on which the complaints were based.

On Navarro's motion, both cases were duly consolidated on December 13, 1999.

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[8] Philippine Bank of Communications – Cagayan de Oro Branch Check No. 017020 dated January 1, 1998.

[9] *Rollo,* p. 155.

[10] *Id.* at 156.

In its May 8, 2000 order, the RTC dismissed the case on the ground that the complaints did not state a cause of action.

In response to the motion for reconsideration Karen Go filed dated May 26, 2000,[11] the RTC issued another order dated July 26, 2000 setting aside the order of dismissal. Acting on the presumption that Glenn Go's leasing business is a conjugal property, the RTC held that Karen Go had sufficient interest in his leasing business to file the action against Navarro. However, the RTC held that Karen Go should have included her husband, Glenn Go, in the complaint based on Section 4, Rule 3 of the Rules of Court (*Rules*).[12] Thus, the lower court ordered Karen Go to file a motion for the inclusion of Glenn Go as co-plaintiff.

When the RTC denied Navarro's motion for reconsideration on March 7, 2001, Navarro filed a petition for *certiorari* with the CA, essentially contending that the RTC committed grave abuse of discretion when it reconsidered the dismissal of the case and directed Karen Go to amend her complaints by including her husband Glenn Go as co-plaintiff. According to Navarro, a complaint which failed to state a cause of action could not be converted into one with a cause of action by mere amendment or supplemental pleading.

On October 16, 2001, the CA denied Navarro's petition and affirmed the RTC's order.[13] The CA also denied Navarro's motion for reconsideration in its resolution of May 29, 2002,[14] leading to the filing of the present petition.

THE PETITION

Navarro alleges that even if the lease agreements were in the name of Kargo Enterprises, since it did not have the requisite juridical personality to sue, the actual parties to the agreement

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[11] *Id.* at 179-181.

[12] Section 4. *Spouses as parties*. – Husband and wife shall sue or be sued jointly, except as provided by law.

[13] *Supra* note 2.

[14] *Supra* note 3.

are himself and Glenn Go. Since it was Karen Go who filed the complaints and not Glenn Go, she was not a real party-in-interest and the complaints failed to state a cause of action.

Navarro posits that the RTC erred when it ordered the amendment of the complaint to include Glenn Go as a co-plaintiff, instead of dismissing the complaint outright because a complaint which does not state a cause of action cannot be converted into one with a cause of action by a mere amendment or a supplemental pleading. In effect, the lower court created a cause of action for Karen Go when there was none at the time she filed the complaints.

Even worse, according to Navarro, the inclusion of Glenn Go as co-plaintiff drastically changed the theory of the complaints, to his great prejudice. Navarro claims that the lower court gravely abused its discretion when it assumed that the leased vehicles are part of the conjugal property of Glenn and Karen Go. Since Karen Go is the registered owner of Kargo Enterprises, the vehicles subject of the complaint are her paraphernal properties and the RTC gravely erred when it ordered the inclusion of Glenn Go as a co-plaintiff.

Navarro likewise faults the lower court for setting the trial of the case in the same order that required Karen Go to amend her complaints, claiming that by issuing this order, the trial court violated Rule 10 of the Rules.

Even assuming the complaints stated a cause of action against him, Navarro maintains that the complaints were premature because no prior demand was made on him to comply with the provisions of the lease agreements before the complaints for replevin were filed.

Lastly, Navarro posits that since the two writs of replevin were issued based on flawed complaints, the vehicles were illegally seized from his possession and should be returned to him immediately.

Karen Go, on the other hand, claims that it is misleading for Navarro to state that she has no real interest in the subject of

the complaint, even if the lease agreements were signed only by her husband, Glenn Go; she is the owner of Kargo Enterprises and Glenn Go signed the lease agreements merely as the manager of Kargo Enterprises. Moreover, Karen Go maintains that Navarro's insistence that Kargo Enterprises is Karen Go's paraphernal property is without basis. Based on the law and jurisprudence on the matter, all property acquired during the marriage is presumed to be conjugal property. Finally, Karen Go insists that her complaints sufficiently established a cause of action against Navarro. Thus, when the RTC ordered her to include her husband as co-plaintiff, this was merely to comply with the rule that spouses should sue jointly, and was not meant to cure the complaints' lack of cause of action.

THE COURT'S RULING

We find the petition devoid of merit.

Karen Go is the real party-in-interest

The 1997 Rules of Civil Procedure requires that every action must be prosecuted or defended in the name of the real party-in-interest, *i.e.*, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[15]

Interestingly, although Navarro admits that Karen Go is the registered owner of the business name Kargo Enterprises, he still insists that Karen Go is not a real party-in-interest in the case. According to Navarro, while the lease contracts were in Kargo Enterprises' name, this was merely a trade name without a juridical personality, so the actual parties to the lease agreements were Navarro and Glenn Go, to the exclusion of Karen Go.

As a corollary, Navarro contends that the RTC acted with grave abuse of discretion when it ordered the inclusion of Glenn Go as co-plaintiff, since this in effect created a cause of action for the complaints when in truth, there was none.

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[15] RULES OF COURT, Rule 3, Sec. 2.

We do not find Navarro's arguments persuasive.

The central factor in appreciating the issues presented in this case is the business name Kargo Enterprises. The name appears in the title of the Complaint where the plaintiff was identified as "KAREN T. GO doing business under the name KARGO ENTERPRISES," and this identification was repeated in the first paragraph of the Complaint. Paragraph 2 defined the business KARGO ENTERPRISES undertakes. Paragraph 3 continued with the allegation that the defendant "leased from plaintiff a certain motor vehicle" that was thereafter described. Significantly, the Complaint specifies and attaches as its integral part the Lease Agreement that underlies the transaction between the plaintiff and the defendant. Again, the name KARGO ENTERPRISES entered the picture as this Lease Agreement provides:

> This agreement, made and entered into by and between:
>
> GLENN O. GO, of legal age, married, with post office address at xxx, herein referred to as the LESSOR-SELLER; **representing KARGO ENTERPRISES as its Manager**,
>
> xxx xxx xxx

thus, expressly pointing to KARGO ENTERPRISES as the principal that Glenn O. Go represented. In other words, by the express terms of this Lease Agreement, Glenn Go did sign the agreement only as the manager of Kargo Enterprises and the latter is clearly the real party to the lease agreements.

As Navarro correctly points out, Kargo Enterprises is a sole proprietorship, which is neither a natural person, nor a juridical person, as defined by Article 44 of the Civil Code:

> Art. 44. The following are juridical persons:
>
> (1) The State and its political subdivisions;
>
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

Thus, pursuant to Section 1, Rule 3 of the Rules,[16] Kargo Enterprises cannot be a party to a civil action. This legal reality leads to the question: who then is the proper party to file an action based on a contract in the name of Kargo Enterprises?

We faced a similar question in *Juasing Hardware v. Mendoza*,[17] where we said:

Finally, there is no law authorizing sole proprietorships like petitioner to bring suit in court. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual, and requires the proprietor or owner thereof to secure licenses and permits, register the business name, and pay taxes to the national government. It does not vest juridical or legal personality upon the sole proprietorship nor empower it to file or defend an action in court.

Thus, the complaint in the court below should have been **filed in the name of the owner of Juasing Hardware**. The allegation in the body of the complaint would show that the **suit is brought by such person as proprietor or owner of the business conducted under the name and style Juasing Hardware.** The descriptive words "doing business as Juasing Hardware" may be added to the title of the case, as is customarily done.[18] [Emphasis supplied.]

This conclusion should be read in relation with Section 2, Rule 3 of the Rules, which states:

SEC. 2. *Parties in interest.* – A real party in interest is the party who stands to be **benefited** or **injured** by the judgment in the suit, or the **party entitled to the avails of the suit**. Unless otherwise

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[16] Sec. 1. *Who may be parties.* – Only natural or juridical persons or entities authorized by law may be parties in a civil action.

[17] 201 Phil. 369, 372-373 (1982).

[18] *Id.* at 372-373.

authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

As the registered owner of Kargo Enterprises, Karen Go is the party who will directly benefit from or be injured by a judgment in this case. Thus, contrary to Navarro's contention, Karen Go is the real party-in-interest, and it is legally incorrect to say that her Complaint does not state a cause of action because her name did not appear in the Lease Agreement that her husband signed in behalf of Kargo Enterprises. Whether Glenn Go can legally sign the Lease Agreement *in his capacity as a manager* of Kargo Enterprises, a sole proprietorship, is a question we do not decide, as this is a matter for the trial court to consider in a trial on the merits.

Glenn Go's Role in the Case

We find it significant that the business name Kargo Enterprises is in the name of Karen T. Go,[19] who described herself in the Complaints to be "*a Filipino, of legal age, married to GLENN O. GO, a resident of Cagayan de Oro City, and doing business under the trade name KARGO ENTERPRISES.*"[20] That Glenn Go and Karen Go are married to each other is a fact never brought in issue in the case. Thus, the business name KARGO ENTERPRISES is registered *in the name of a married woman*, a fact material to the side issue of whether Kargo Enterprises and its properties are paraphernal or conjugal properties. To restate the parties' positions, Navarro alleges that Kargo Enterprises is Karen Go's paraphernal property, emphasizing the fact that the business is registered solely in Karen Go's name. On the other hand, Karen Go contends that while the business is registered in her name, it is in fact part of their conjugal property.

The registration of the trade name in the name of one person – a woman – does not necessarily lead to the conclusion that the trade name *as a property* is hers alone, particularly when the woman is married. By law, all property acquired during the

[19] *Rollo*, p. 185.

[20] *Id.* at 129 and 143.

marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal *unless the contrary is proved.*[21] Our examination of the records of the case does not show any proof that Kargo Enterprises and the properties or contracts in its name are conjugal. If at all, only the bare allegation of Navarro to this effect exists in the records of the case. As we emphasized in *Castro v. Miat*:[22]

> Petitioners also overlook Article 160 of the New Civil Code. It provides that "all property of the marriage is presumed to be conjugal partnership, unless it be prove[n] that it pertains exclusively to the husband or to the wife." This article **does not require proof that the property was acquired with funds of the partnership.** The presumption applies even when the manner in which the property was acquired does not appear.[23] [Emphasis supplied.]

Thus, for purposes solely of this case and of resolving the issue of whether Kargo Enterprises as a sole proprietorship is conjugal or paraphernal property, we hold that it is conjugal property.

Article 124 of the Family Code, on the administration of the conjugal property, provides:

> Art. 124. **The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly.** In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> xxx xxx xxx

This provision, by its terms, allows either Karen or Glenn Go to speak and act with authority in managing their conjugal property, *i.e.*, Kargo Enterprises. No need exists, therefore, for one to obtain the consent of the other before performing

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[21] FAMILY CODE, Article 116; CIVIL CODE, Article 160.

[22] 445 Phil. 284, 293 (2003).

[23] *Id.* at 293.

an act of administration or any act that does not dispose of or encumber their conjugal property.

Under Article 108 of the Family Code, the conjugal partnership is governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements. In other words, the property relations of the husband and wife shall be governed primarily by Chapter 4 on Conjugal Partnership of Gains of the Family Code and, suppletorily, by the spouses' marriage settlement and by the rules on partnership under the Civil Code. In the absence of any evidence of a marriage settlement between the spouses Go, we look at the Civil Code provision on partnership for guidance.

A rule on partnership applicable to the spouses' circumstances is Article 1811 of the Civil Code, which states:

> Art. 1811. A partner is a co-owner with the other partners of specific partnership property.
>
> The incidents of this co-ownership are such that:
>
> (1) A partner, subject to the provisions of this Title and to any agreement between the partners, **has an equal right with his partners to possess specific partnership property** for partnership purposes; xxx

Under this provision, Glenn and Karen Go are effectively co-owners of Kargo Enterprises and the properties registered under this name; hence, both have an equal right to seek possession of these properties. Applying Article 484 of the Civil Code, which states that "*in default of contracts, or special provisions, co-ownership shall be governed by the provisions of this Title,*" we find further support in Article 487 of the Civil Code that allows any of the co-owners to bring an action in ejectment with respect to the co-owned property.

While ejectment is normally associated with actions involving real property, we find that this rule can be applied to the circumstances of the present case, following our ruling in

Carandang v. Heirs of De Guzman.[24] In this case, one spouse filed an action for the recovery of credit, a personal property considered conjugal property, without including the other spouse in the action. In resolving the issue of whether the other spouse was required to be included as a co-plaintiff in the action for the recovery of the credit, we said:

> Milagros de Guzman, being presumed to be a co-owner of the credits allegedly extended to the spouses Carandang, seems to be either an indispensable or a necessary party. If she is an indispensable party, dismissal would be proper. If she is merely a necessary party, dismissal is not warranted, whether or not there was an order for her inclusion in the complaint pursuant to Section 9, Rule 3.
>
> Article 108 of the Family Code provides:
>
> > Art. 108. The conjugal partnership shall be governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter or by the spouses in their marriage settlements.
>
> This provision is practically the same as the Civil Code provision it superseded:
>
> > Art. 147. The conjugal partnership shall be governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter.
>
> In this connection, Article 1811 of the Civil Code provides that "[a] partner is a co-owner with the other partners of specific partnership property." Taken with the presumption of the conjugal nature of the funds used to finance the four checks used to pay for petitioners' stock subscriptions, and with the presumption that the credits themselves are part of conjugal funds, Article 1811 makes Quirino and Milagros de Guzman co-owners of the alleged credit.
>
> Being co-owners of the alleged credit, Quirino and Milagros de Guzman may separately bring an action for the recovery thereof. In the fairly recent cases of *Baloloy v. Hular* and *Adlawan v. Adlawan*, we held that, **in a co-ownership, co-owners may bring actions for the recovery of co-owned property without the necessity of joining all the other co-owners as co-plaintiffs because the suit is presumed to have been**

[24] G.R. No. 160347, November 29, 2006, 508 SCRA 469.

filed for the benefit of his co-owners. In the latter case and in that of *De Guia v. Court of Appeals*, we also held that **Article 487 of the Civil Code**, which provides that any of the co-owners may bring an action for ejectment, **covers all kinds of action for the recovery of possession**.

In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and relevant jurisprudence, any one of them may bring an action, any kind of action, for the recovery of co-owned properties. Therefore, **only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto.** The other co-owners are not indispensable parties. They are not even necessary parties, for a complete relief can be accorded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.[25] [Emphasis supplied.]

Under this ruling, either of the spouses Go may bring an action against Navarro to recover possession of the Kargo Enterprises-leased vehicles which they co-own. This conclusion is consistent with Article 124 of the Family Code, supporting as it does the position that either spouse may act on behalf of the conjugal partnership, so long as they do not dispose of or encumber the property in question without the other spouse's consent.

On this basis, we hold that since Glenn Go is not strictly an indispensable party in the action to recover possession of the leased vehicles, he only needs to be impleaded as a *pro-forma* party to the suit, based on Section 4, Rule 4 of the Rules, which states:

Section 4. *Spouses as parties*. – Husband and wife shall sue or be sued jointly, except as provided by law.

Non-joinder of indispensable parties not ground to dismiss action

Even assuming that Glenn Go is an indispensable party to the action, we have held in a number of cases[26] that the misjoinder

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[25] *Id.* at 486-488.

[26] *Domingo v. Scheer*, 466 Phil. 235 (2004); *Vesagas, et al. v. Court of Appeals, et al.*, 422 Phil. 860 (2001); *Salvador, et al. v. Court of Appeals, et al.*, 313 Phil. 36 (1995); *Cuyugan v. Dizon*, 79 Phil. 80 (1947); *Alonso v. Villamor*, 16 Phil. 315 (1910).

or non-joinder of indispensable parties in a complaint is not a ground for dismissal of action. As we stated in *Macababbad v. Masirag*:[27]

> Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor nonjoinder of parties is a ground for the dismissal of an action, thus:
>
> > Sec. 11. Misjoinder and non-joinder of parties. Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.
>
> In *Domingo v. Scheer*, this Court held that the proper remedy when a party is left out is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff opportunity to amend his complaint in order to include indispensable parties. If the plaintiff to whom the order to include the indispensable party is directed refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion. Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.

In these lights, the RTC Order of July 26, 2000 requiring plaintiff Karen Go to join her husband as a party plaintiff is fully in order.

Demand not required prior to filing of replevin action

In arguing that prior demand is required before an action for a writ of replevin is filed, Navarro apparently likens a replevin action to an unlawful detainer.

For a writ of replevin to issue, all that the applicant must do is to file an affidavit and bond, pursuant to Section 2, Rule 60 of the Rules, which states:

> Sec. 2. Affidavit and bond.

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[27] G.R. No. 161237, January 14, 2009.

The applicant must show by his own affidavit or that of some other person who personally knows the facts:

(a) That the **applicant is the owner of the property** claimed, particularly describing it, **or is entitled to the possession** thereof;

(b) That the property is **wrongfully detained by the adverse party**, alleging the cause of detention thereof according to the best of his knowledge, information, and belief;

(c) That the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*, or if so seized, that it is exempt from such seizure or custody; and

(d) The actual market value of the property.

The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action.

We see nothing in these provisions which requires the applicant to make a prior demand on the possessor of the property before he can file an action for a writ of replevin. Thus, prior demand is not a condition precedent to an action for a writ of replevin.

More importantly, Navarro is no longer in the position to claim that a prior demand is necessary, as he has already admitted in his Answers that he had received the letters that Karen Go sent him, demanding that he either pay his unpaid obligations or return the leased motor vehicles. Navarro's position that a demand is necessary and has not been made is therefore totally unmeritorious.

WHEREFORE, premises considered, we *DENY* the petition for review for lack of merit. Costs against petitioner Roger V. Navarro.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 154048. November 27, 2009]

STANFILCO EMPLOYEES AGRARIAN REFORM BENEFICIARIES MULTI-PURPOSE COOPERATIVE, *petitioner, vs.* **DOLE PHILIPPINES, INC. (STANFILCO DIVISION), ORIBANEX SERVICES, INC. and SPOUSES ELLY AND MYRNA ABUJOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN PRESENT; CASE AT BAR. — We clarify at the outset that what we are reviewing in this petition is the *legal* question of whether the CA correctly ruled that the RTC committed no grave abuse of discretion in denying SEARBEMCO's motion to dismiss. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to the appellate court; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the RTC ruling before it, not on the basis of whether the RTC ruling on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the challenged RTC ruling. A court acts with grave abuse of discretion amounting to lack or excess of jurisdiction when its action was performed in a capricious and whimsical exercise of judgment equivalent to lack of discretion. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of the law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. **As the CA found, the RTC's action was not attended by any grave abuse of discretion and the RTC correctly ruled in denying SEARBEMCO's motion to dismiss. We fully agree with the CA.**

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); AGRARIAN DISPUTE; DEFINED. — Section 3(d) of RA No. 6657 is clear in defining an agrarian dispute: "any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including dispute concerning farm-workers' associations or representations of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee." RA No. 6657 is procedurally implemented through the 2003 DARAB Rules of Procedure where Section 1, Rule II enumerates the instances where the DARAB shall have primary and exclusive jurisdiction. A notable feature of RA No. 6657 and its implementing rules is the focus on *agricultural lands* and *the relationship over this land* that serves as the basis in the determination of whether a matter falls under DARAB jurisdiction.

3. ID.; ID.; ID.; TENANCY RELATIONSHIP; ELEMENTS. — The case of *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals* lists down the indispensable elements for a tenancy relationship to exist: "(1) the parties are the landowner and the tenant or agricultural lessee; (2) the subject matter of the relationship is an ***agricultural land*;** (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or the agricultural lessee."

4. ID.; ID.; ID.; ID.; INTENT OF THE PARTIES, A PRINCIPAL CONSIDERATION IN DETERMINING WHETHER A TENANCY RELATIONSHIP EXISTS. — We have always held that tenancy relations cannot be presumed. The elements of tenancy must first be proved by substantial evidence which can be shown through records, documents, and written agreements between the parties. A principal factor, too, to

consider in determining whether a tenancy relationship exists is the intent of the parties.

5. ID.; ID.; ID.; ID.; THE REQUIREMENT OF THE EXISTENCE OF TENURIAL RELATIONSHIP, RELAXED IN SEVERAL CASES. — [T]he requirement of the existence of tenurial relationship has been relaxed in the cases of *Islanders CARP-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Dev't. Corporation* and *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.* The Court, speaking through former Chief Justice Panganiban, declared in *Islanders* that: "[The definition of 'agrarian dispute' in RA No. 6657 is] broad enough to include disputes arising from any tenurial arrangement beyond the traditional landowner-tenant or lessor-lessee relationship. xxx [A]grarian reform extends beyond the mere acquisition and redistribution of land, the law acknowledges other modes of tenurial arrangements to effect the implementation of CARP."

6. ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM; JURISDICTION.— The Court declared that when the question involves the rights and obligations of persons engaged in the management, cultivation, and use of an *agricultural land covered by CARP*, the case falls squarely within the jurisdictional ambit of the DAR. Carefully analyzed, the principal issue raised in *Islanders* and *Cubero* referred to the **management, cultivation, and use of the CARP-covered agricultural *land*;** the issue of the nullity of the joint economic enterprise agreements in *Islanders* and *Cubero* would *directly affect the agricultural land covered by CARP*. Those cases significantly did **not** pertain to *post-harvest transactions* involving the *produce* from CARP-covered agricultural lands, as the case before us does now. Moreover, the resolution of the issue raised in *Islanders* and *Cubero* required the interpretation and application of the provisions of RA No. 6657, considering that the farmer-beneficiaries claimed that the agreements contravened specific provisions of that law.

7. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; SUFFICIENCY OF THE ALLEGATIONS OF THE COMPLAINT TO UPHOLD A VALID CAUSE OF ACTION, ELUCIDATED. — In the case of *Jimenez, Jr. v. Jordana*, this Court had the opportunity to discuss the sufficiency of the allegations of the

complaint to uphold a valid cause of action, as follows: "In a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the plaintiff's complaint. This hypothetical admission extends to the relevant and material facts pleaded in, and the inferences fairly deductible from, the complaint. Hence, to determine whether the sufficiency of the facts alleged in the complaint constitutes a cause of action, the test is as follows: admitting the truth of the facts alleged, can the court render a valid judgment in accordance with the prayer? To sustain a motion to dismiss, the movant needs to show that the plaintiff's claim for relief does not exist at all. On the contrary, the complaint is sufficient "if it contains sufficient notice of the cause of action even though the allegations may be vague or indefinite, in which event, the proper recourse would be, not a motion to dismiss, but a motion for a bill of particulars." In applying this authoritative test, we must hypothetically assume the truth of DOLE's allegations, and determine whether the RTC can render a valid judgment in accordance with its prayer. We find the allegations in DOLE's complaint to be sufficient basis for the judgment prayed for. Hypothetically admitting the allegations in DOLE's complaint that *SEARBEMCO sold the rejected bananas to Oribanex, a competitor of DOLE and also an exporter of bananas, through the spouses Abujos,* a valid judgment may be rendered by the RTC holding SEARBEMCO liable for breach of contract.

8. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; DEPARTMENT OF AGRARIAN REFORM; RESOLUTION OF DISPUTES; ARBITRATION PROCEEDINGS; NOT REQUIRED IN CASE AT BAR. — We agree with the CA ruling that the BPPA arbitration clause does not apply to the present case since third parties are involved. Any judgment or ruling to be rendered by the panel of arbitrators will be useless if third parties are included in the case, since the arbitral ruling will not bind them; they are not parties to the arbitration agreement. In the present case, DOLE included as parties the spouses Abujos and Oribanex since they are *necessary parties*, *i.e.*, they were directly involved in the BPPA violation DOLE alleged, and their participation are indispensable for a complete resolution of the dispute. To require the spouses Abujos and Oribanex to submit themselves to arbitration and to abide by whatever judgment or ruling the panel of arbitrators shall make is legally untenable; no law and no agreement made

with their participation can compel them to submit to arbitration. x x x [T]he CA was therefore correct in its conclusion that the parties' agreement to refer their dispute to arbitration applies only where the parties to the BPPA are solely the disputing parties. Additionally, the inclusion of third parties in the complaint supports our declaration that the present case does not fall under DARAB's jurisdiction. DARAB's quasi-judicial powers under Section 50 of RA No. 6657 may be invoked only when there is prior certification from the *Barangay* Agrarian Reform Committee (or BARC) that the dispute has been submitted to it for mediation and conciliation, without any success of settlement. Since the present dispute need not be referred to arbitration (including mediation or conciliation) because of the inclusion of third parties, neither SEARBEMCO nor DOLE will be able to present the requisite BARC certification that is necessary to invoke DARAB's jurisdiction; hence, there will be no compliance with Section 53 of RA No. 6657.

APPEARANCES OF COUNSEL

Cariaga Law Offices for petitioner.

Dominguez Paderna and Tan Law Offices Co. for DOLE Philippines, Inc.

Angara Abello Concepcion Regala and Cruz for Oribanex Services, Inc.

D E C I S I O N

BRION, *J.*:

Before this Court is the petition for review on *certiorari*[1] filed by petitioner Stanfilco Employees Agrarian Reform Beneficiaries Multi-Purpose Cooperative (*SEARBEMCO*). It assails:

(a) the decision[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 66148 dated November 27, 2001; and

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 4-44.

[2] Penned by Associate Justice Romeo J. Callejo (retired Member of this Court), and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Josefina Guevara-Salonga; *id.* at 45-64.

(b) the CA's resolution[3] of June 13, 2002 in the same case, denying SEARBEMCO's motion for reconsideration.

THE FACTUAL ANTECEDENTS

On January 29, 1998, SEARBEMCO, as seller, and respondent DOLE Philippines, Inc. (Stanfilco Division) (*DOLE*), as buyer, entered into a Banana Production and Purchase Agreement[4] (*BPPA*). The BPPA provided that SEARBEMCO shall sell exclusively to DOLE, and the latter shall buy from the former, all Cavendish bananas of required specifications to be planted on the land owned by SEARBEMCO. The BPPA states:

> The SELLER agrees to sell exclusively to the BUYER, and the BUYER agrees to buy all Cavendish Banana of the Specifications and Quality described in EXHIBIT "A" hereof produced on the SELLER'S plantation covering an area of 351.6367 hectares, more or less, and which is planted and authorized under letter of instruction no. 790 as amended on November 6, 1999 under the terms and conditions herein stipulated. The SELLER shall not increase or decrease the area(s) stated above without the prior written approval of the BUYER. However, the SELLER may reduce said area(s) provided that if the SELLER replaces the reduction by planting bananas on an equivalent area(s) elsewhere, it is agreed that such replacement area(s) shall be deemed covered by the Agreement. If the SELLER plants an area(s) in excess of said 351.6367 hectares, the parties may enter into a separate agreement regarding the production of said additional acreage. SELLER will produce banana to the maximum capacity of the plantation, as much as practicable, consistent with good agricultural practices designed to produce banana of quality having the standards hereinafter set forth for the duration of this Banana Production and Purchase Agreement.

SEARBEMCO bound and obliged itself, *inter alia*, to do the following:

> V. SPECIFIC OBLIGATIONS OF THE SELLER
>
> xxx xxx xxx

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[3] *Id.* at 65.

[4] *Id.* at 106-123.

p.) Sell exclusively to the BUYER all bananas produced from the subject plantation, except those rejected by the BUYER for failure to meet the specifications and conditions contained in Exhibit "A" hereof. **In the case of any such rejected bananas, the SELLER shall have the right to sell such rejected bananas to third parties, for domestic non-export consumption.** The SELLER shall only sell bananas produced from the plantation and not from any other source. [Emphasis supplied.]

Any dispute arising from or in connection with the BPPA between the parties shall be finally settled through arbitration. To quote the BPPA:

IX. ARBITRATION OF DISPUTE

All disputes arising in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) Arbitrators appointed in accordance with said Rules. The Arbitration shall be held in a venue to be agreed by the parties. Judgment upon the award rendered may be entered in any Philippine Court having jurisdiction or application may be made to such court for judicial acceptance of the award and as order of enforcement, as the case may be.

On December 11, 2000, DOLE filed a complaint with the Regional Trial Court[5] (*RTC*) against SEARBEMCO, the spouses Elly and Myrna Abujos (*spouses Abujos*), and Oribanex Services, Inc. (*Oribanex*) for specific performance and damages, with a prayer for the issuance of a writ of preliminary injunction and of a temporary restraining order. DOLE alleged that SEARBEMCO sold and delivered to Oribanex, through the spouses Abujos, the bananas rejected by DOLE, in violation of paragraph 5(p), Article V of the BPPA which limited the sale of rejected bananas for "domestic non-export consumption." DOLE further alleged that Oribanex is likewise an exporter of bananas and is its direct competitor.

DOLE narrated in its complaint how SEARBEMCO sold and delivered the rejected bananas to Oribanex through the spouses Abujos:

[5] RTC, Branch 34, Panabo City.

9.) That, however, on April 12, 2000 at about 5:00 o'clock in the afternoon, [DOLE] through its authorized security personnel discovered that defendant SEARBEMCO, in violation of Section 5(p) Article V of the Banana Production and Purchase Agreement, packed the bananas rejected by [DOLE] in boxes marked "CONSUL" in Packing Plant 32 in DAPCO Panabo and sold and delivered them to defendant Abujos;

10.) That about 373 "CONSUL" marked boxes were packed and knowingly sold by defendant SEARBEMCO to ORIBANEX SERVICES, INC. through defendants Abujos who carried and loaded the same on board a blue Isuzu Canter bearing plate no. LDM 976 and delivered to defendant ORIBANEX for export at the TEFASCO Wharf covered by Abujos Delivery Receipt, a copy of which is hereto attached as Annex "B";

11.) That the following day, April 13, 2000, again the same security found that defendant SEARBEMCO continued to pack the bananas rejected by plaintiff in boxes marked as "CONSUL" and, in violation of paragraph 5(p) Article V of the Banana Production and Purchase Agreement, sold and delivered them to defendant ORIBANEX SERVICES, INC., for export, through defendants Abujos;

12.) That about 648 "CONSUL" marked boxes were packed and knowingly sold by defendant SEARBEMCO to ORIBANEX SERVICES, INC., through defendants Abujos who carried and loaded the same on board a red Isuzu Forwarder, bearing plate no. LCV 918, and delivered to defendant ORIBANEX for export at the TEFASCO Wharf covered by Abujos Delivery Receipt, a copy of which is hereto attached and marked as Annex "C";

13.) That the sale of a total of 712 boxes of rejected bananas covering April 12 and 13, 2000, or any other dates prior thereto or made thereafter by defendant SEARBEMCO to defendant ORIBANEX SERVICES, INC. through defendant Abujos is in utter violation of the Agreement between plaintiff [DOLE] and defendant SEARBEMCO that SEARBEMCO may sell bananas rejected by plaintiff to parties for domestic non-export consumption only.

SEARBEMCO responded with a motion to dismiss on the grounds of lack of jurisdiction over the subject matter of the claim, lack of cause of action, failure to submit to arbitration

which is a condition precedent to the filing of a complaint, and the complaint's defective verification and certification of non-forum shopping.[6] SEARBEMCO argued that:

1) the Department of Agrarian Reform Adjudication Board (*DARAB*) has exclusive jurisdiction over the action filed by DOLE, pursuant to Sections 1 and 3(e) of Administrative Order No. 09, Series of 1998[7] (*AO No. 9-98*) and Section 5(a) and (c) of Administrative Order No. 02, Series of 1999[8] (*AO No. 2-99*) of the Department of Agrarian Reform (*DAR*), since the dispute between the parties is an agrarian dispute within the exclusive competence of the DARAB to resolve;

2) the filing of the complaint is premature, as the dispute between DOLE and SEARBEMCO has not been

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[6] Dated December 15, 2000; *rollo,* pp. 147-157.

[7] Section 1. Coverage – This administrative order shall apply to all commercial farms defined under Section 11 of RA 6657, as amended by Section 3 of RA 7881.

x x x x x x x x x

Section 3. Definition of Terms – As used in this Order, the following terms shall be defined as follows:

x x x x x x x x x

(e) Contract Growing/Growership Agreement is an agribusiness arrangement where the ARBs own the land and commit, either collectively through their cooperative or individually, to produce certain crops for an investor or agribusiness firm that contracts to buy the produce at pre-arranged terms.

[8] Section 5. Definition of Terms – The terms and concepts used in this Order shall mean as follows:

(a) Agrarian Reform Beneficiaries (ARBs) or Beneficiaries refer to individual beneficiaries under PD 27 or RA 6657, or their cooperative, association, or federation, duly registered with the Securities and Exchange Commission (SEC) or the Cooperative Development Authority (CDA);

x x x x x x x x x

(c) Joint Economic Enterprises generally refer to partnerships or arrangements between beneficiaries and investors to implement an agribusiness enterprise in agrarian reform areas xxx.

referred to and resolved by arbitration, contrary to Article IX of the BPPA and Article V, Sec. 30(g)[9] of AO No. 9-98 of the DAR;

3) it did not violate Section 5(p), Article V of the BPPA, since the rejected bananas were sold to the spouses Abujos who were third-party buyers and not exporters of bananas; and

4) the complaint is fatally defective as the Board of Directors of DOLE did not approve any resolution authorizing Atty. Reynaldo Echavez to execute the requisite Verification and Certification Against Forum Shopping and, therefore, the same is fatally defective.

DOLE opposed SEARBEMCO's motion to dismiss alleging, among others, that:

1) the dispute between the parties is not an agrarian dispute within the exclusive jurisdiction of the DARAB under Republic Act No. 6657[10] (*RA No. 6657*); and

2) the Arbitration Clause of the BPPA is not applicable as, aside from SEARBEMCO, DOLE impleaded other parties (*i.e.*, the spouses Abujos and Oribanex who are not parties to the BPPA) as defendants.[11]

Subsequently, DOLE filed on February 2, 2001 an amended complaint,[12] the amendment consisting of the Verification and

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[9] (g) Arbitration Clause - Agribusiness venture agreements shall include provisions for mediation/conciliation and arbitration as a means of resolving disputes arising from the interpretation or enforcement thereof. Mediation/conciliation may be undertaken by duly trained DAR mediators or conciliators acceptable to both parties. Arbitration shall be conducted pursuant to RA 876 otherwise known as the "Philippine Arbitration Law." These alternative dispute resolution strategies shall first be availed of before the parties may seek judicial relief. The costs of arbitration shall be shouldered by the contracting parties.

[10] Otherwise known as "The Comprehensive Agrarian Reform Law."

[11] Opposition dated January 10, 2001.

[12] *Rollo,* pp. 112-122.

Certification against forum shopping for DOLE executed by Danilo C. Quinto, DOLE's Zone Manager.

THE RTC RULING

The RTC denied SEARBEMCO's motion to dismiss in an Order dated May 16, 2001.[13] The trial court stated that the case does not involve an agrarian conflict and is a judicial matter that it can resolve.

SEARBEMCO moved for the reconsideration of the RTC Order.[14] The RTC denied the motion for lack of merit in its Order of July 12, 2001.[15]

THE CA RULING

On July 26, 2001, SEARBEMCO filed a **special civil action for *certiorari***[16] with the CA alleging grave abuse of discretion on the part of the RTC for denying its motion to dismiss and the subsequent motion for reconsideration.

SEARBEMCO argued that the BPPA the parties executed is an agri-business venture agreement contemplated by DAR's AO No. 9-98. Thus, any dispute arising from the interpretation and implementation of the BPPA is an agrarian dispute within the exclusive jurisdiction of the DARAB.

In a decision dated November 27, 2001,[17] the CA found that the RTC did not gravely abuse its discretion in denying SEARBEMCO's motion to dismiss and motion for reconsideration.

The CA ruled that "the [DAR] has no jurisdiction, under said [AO No. 9-98], over actions between [SEARBEMCO] and [DOLE] for enforcement of the said Agreement when one commits a breach thereof and for redress by way of specific

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[13] Issued by Judge Gregorio A. Palabrica; *id.* at 66.

[14] *Id.* at 101-111.

[15] *Id.* at 78.

[16] Docketed as CA-G.R. SP No. 66148; *id.* at 79-100.

[17] *Supra* note 2.

performance and damages inclusive of injunctive relief."[18] It held that the case is not an agrarian dispute within the purview of Section 3(d) of RA No. 6657,[19] but is an action to compel SEARBEMCO to comply with its obligations under the BPPA; it called for the application of the provisions of the Civil Code, not RA No. 6657.

The CA likewise disregarded SEARBEMCO's emphatic argument that DOLE's complaint was prematurely filed because of its failure to first resort to arbitration. The arbitration clause under the BPPA, said the CA, applies only when the parties involved are parties to the agreement; in its complaint, DOLE included the spouses Abujos and Oribanex as defendants. According to the CA, "if [DOLE] referred its dispute with [SEARBEMCO] to a Panel of Arbitrators, any judgment rendered by the latter, whether for or against [DOLE] will not be binding on the [spouses Abujos] and [Oribanex], as case law has it that only the parties to a suit, as well as their successors-in-interest, are bound by the judgment of the Court or quasi-judicial bodies."[20]

On SEARBEMCO's argument that the Verification and Certification Against Forum Shopping under DOLE's amended complaint is defective for failure to state that this was based on "personal knowledge," the CA ruled that the omission of the word "personal" did not render the Verification and Certification defective.

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[18] *Id.* at p. 54.

[19] "Agrarian dispute" as referring to any controversy relating to tenurial agreements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including dispute concerning farmworkers' association or representations of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial agreements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, lessor and lessee.

[20] *Supra* note 2, p. 58.

SEARBEMCO moved for reconsideration of the decision, but the CA denied the motion for lack of merit in its resolution of June 13, 2002.[21]

ASSIGNMENT OF ERRORS

In the present petition, SEARBEMCO submits that the CA erred in ruling that:

1.) the RTC has jurisdiction over the subject matter of the complaint of DOLE, considering that the case involves an agrarian dispute within the exclusive jurisdiction of the DARAB;

2.) the complaint of DOLE states a cause of action, despite the fact that SEARBEMCO has not violated any provision of the BPPA; and

3.) the filing of the complaint is not premature, despite DOLE's failure to submit its claim to arbitration – a condition precedent to any juridical recourse.

THE COURT'S RULING

We do not find the petition meritorious.

DOLE's complaint falls within the jurisdiction of the regular courts, not the DARAB.

SEARBEMCO mainly relies on Section 50[22] of RA No. 6657 and the characterization of the controversy as an agrarian dispute or as an agrarian reform matter in contending that the present controversy falls within the competence of the DARAB and not of the regular courts. The BPPA, SEARBEMCO claims,

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[21] *Supra* note 3.

[22] Section 50. *Quasi-Judicial Powers of the DAR.* – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources.

is a joint venture and a production, processing and marketing agreement, as defined under Section 5 (c) (i) and (ii) of DAR AO No. 2-99;[23] hence, any dispute arising from the BPPA is within the exclusive jurisdiction of the DARAB. SEARBEMCO also asserts that the parties' relationship in the present case is not only that of buyer and seller, but also that of supplier of land covered by the CARP and of manpower on the part of SEARBEMCO, and supplier of agricultural inputs, financing and technological expertise on the part of DOLE. Therefore, SEARBEMCO concludes that the BPPA is not an ordinary contract, but one that involves an agrarian element and, as such, is imbued with public interest.

We clarify at the outset that what we are reviewing in this petition is the *legal* question of whether the CA correctly ruled that the RTC committed no grave abuse of discretion in denying SEARBEMCO's motion to dismiss. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to the appellate court; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the RTC ruling before it, not on the basis of whether the RTC ruling on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the challenged RTC ruling. A court acts with grave abuse of discretion amounting to lack or excess of

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[23] Sec. 5. Definition of Terms x x x (c) Joint Economic Enterprises x x x

(i) Joint venture whereby the beneficiaries contribute use of the land held individually or in common and the facilities and improvements, if any. On the other hand, the investor furnishes capital and technology for production, processing and marketing of agricultural goods, or construction, rehabilitation, upgrading and operation of agricultural capital assets, infrastructure, and facilities. It has a personality separate and distinct from its components;

(ii) Production, Processing and Marketing Agreement whereby the beneficiaries engage in the production and processing of agricultural products and directly sell the same to the investor who provides loans and technology.

jurisdiction when its action was performed in a capricious and whimsical exercise of judgment equivalent to lack of discretion. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of the law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[24]

As the CA found, the RTC's action was not attended by any grave abuse of discretion and the RTC correctly ruled in denying SEARBEMCO's motion to dismiss. We fully agree with the CA.

Section 3(d) of RA No. 6657 is clear in defining an agrarian dispute: "any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including dispute concerning farmworkers' associations or representations of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."[25]

RA No. 6657 is procedurally implemented through the 2003 DARAB Rules of Procedure where Section 1, Rule II[26] enumerates the instances where the DARAB shall have primary and exclusive jurisdiction. A notable feature of RA No. 6657 and its

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[24] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331; *Marohomsalic v. Cole*, G.R. No. 169918, February 28, 2008, 547 SCRA 98, 105-106; *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650.

[25] *Supra* note 19.

[26] Section 1. *Primary and Exclusive Original Jurisdiction*. The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

implementing rules is the focus on *agricultural lands* and *the relationship over this land* that serves as the basis in the

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1.1. The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands, covered by Republic Act (RA) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), and other related agrarian laws;

1.2. The preliminary administrative determination of reasonable and just compensation of lands acquired under Presidential Decree (PD) No. 27 and the Comprehensive Agrarian Reform Program (CARP);

1.3. The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines (LBP);

1.4. Those cases involving the ejectment and dispossession of tenants and/or leaseholders;

1.5. Those cases involving the sale, alienation, pre-emption, and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

1.6. Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

1.7. Those cases involving the review of leasehold rentals;

1.8. Those cases involving the collection of amortizations on payments for lands awarded under PD No. 27, as amended, RA No. 3844, as amended, and RA No. 6657, as amended, and other related laws, decrees, orders, instructions, rules, and regulations, as well as payment for residential, commercial, and industrial lots within the settlement and resettlement areas under the administration and disposition of the DAR;

1.9. Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as EPs issued under PD 266, Homestead Patents, Free Patents, and miscellaneous sales patents to settlers in settlement and resettlement areas under the administration and disposition of the DAR;

1.10. Those cases involving boundary disputes over lands under the administration and disposition of the DAR and the LBP, which are transferred, distributed, and/or sold to tenant-beneficiaries and are covered by deeds of sale, patents and certificates of title;

1.11. Those cases involving the determination of title to agricultural lands where this issue is raised in an agrarian dispute by any of the parties or a third person in connection with the possession thereof for the purpose

determination of whether a matter falls under DARAB jurisdiction.

In *Heirs of the Late Hernan Rey Santos v. Court of Appeals*,[27] we held that:

> For DARAB to have jurisdiction over a case, **there must exist a tenancy relationship between the parties**. x x x. In *Vda. De Tangub v. Court of Appeals* (191 SCRA 885), we held that the jurisdiction of the Department of Agrarian Reform is limited to the following: a.) adjudication of all matters involving implementation of agrarian reform; b.) resolution of agrarian conflicts and land tenure related problems; and c.) approval and disapproval of the conversion, restructuring or readjustment of agricultural lands into residential, commercial, industrial, and other non-agricultural uses. [Emphasis supplied].

The case of *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*[28] lists down the indispensable elements for a tenancy relationship to exist: "(1) the parties are the landowner and the tenant or agricultural lessee; (2) **the subject matter of the relationship is an *agricultural land***; (3) there is consent between the parties to the relationship; (4) the purpose of the relationship is to bring about agricultural production; (5) there is personal cultivation on the part of the tenant or agricultural lessee; and (6) the harvest is shared between the landowner and the tenant or the agricultural lessee."

The parties in the present case have no tenurial, leasehold, or any other agrarian relationship that could bring their controversy

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of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding;

1.12. Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of PD No. 946 except those cases falling under the proper courts or other quasi-judicial bodies; and

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

[27] 384 Phil. 26, 33 (2000).

[28] 473 Phil. 64, 98 (2004), citing *Almuete v. Andres*, 421 Phil. 522, 530 (2001).

within the ambit of agrarian reform laws and within the jurisdiction of the DARAB. In fact, SEARBEMCO has no allegation whatsoever in its motion to dismiss regarding any tenancy relationship between it and DOLE that gave the present dispute the character of an agrarian dispute.

We have always held that tenancy relations cannot be presumed. The elements of tenancy must first be proved by substantial evidence which can be shown through records, documents, and written agreements between the parties. A principal factor, too, to consider in determining whether a tenancy relationship exists is the intent of the parties.[29]

SEARBEMCO has not shown that the above-mentioned indispensable elements of tenancy relations are present between it and DOLE. It also cannot be gleaned from the intention of the parties that they intended to form a tenancy relationship between them. In the absence of any such intent and resulting relationship, the DARAB cannot have jurisdiction. Instead, the present petition is properly cognizable by the regular courts, as the CA and the RTC correctly ruled.

Notably, the requirement of the existence of tenurial relationship has been relaxed in the cases of *Islanders CARP-Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Dev't. Corporation*[30] and *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*[31] The Court, speaking through former Chief Justice Panganiban, declared in *Islanders* that:

> [The definition of 'agrarian dispute' in RA No. 6657 is] broad enough to include disputes arising from any tenurial arrangement beyond the traditional landowner-tenant or lessor-lessee relationship. xxx [A]grarian reform extends beyond the mere acquisition and

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[29] *Heirs of Nicolas Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 202, 210.

[30] G.R. No. 159089, May 3, 2006, 489 SCRA 80.

[31] G.R. No. 166833, November 30, 2006, 509 SCRA 410.

redistribution of land, the law acknowledges other modes of tenurial arrangements to effect the implementation of CARP.[32]

While *Islanders* and *Cubero* may seem to serve as precedents to the present case, a close analysis of these cases, however, leads us to conclude that significant differences exist in the factual circumstances between those cases and the present case, thus rendering the rulings in these cited cases inapplicable.

Islanders questioned (through a petition for declaration of nullity filed before the RTC of Tagum City) the lack of authority of the farmer-beneficiaries' alleged representative to enter into a Joint Production Agreement with Lapanday. The farmers-beneficiaries assailed the validity of the agreement by additionally claiming that its terms contravened RA No. 6657.

Cubero likewise involved a petition to declare the nullity of a Joint Venture Agreement between the farmer-beneficiaries and Laguna West Multi-Purpose Cooperative, Inc. The successors of the farmer-beneficiaries assailed the agreement before the RTC of Tanauan, Batangas for having been executed within the 10-year prohibitory period under Section 27 of RA No. 6657.

In both cases, the Court ruled that the RTC lacked jurisdiction to hear the complaint and declared the DARAB as the competent body to resolve the dispute. The Court declared that when the question involves the rights and obligations of persons engaged in the management, cultivation, and use of an *agricultural land covered by CARP*, the case falls squarely within the jurisdictional ambit of the DAR.

Carefully analyzed, the principal issue raised in *Islanders* and *Cubero* referred to the **management, cultivation, and use of the CARP-covered agricultural *land*;** the issue of the nullity of the joint economic enterprise agreements in *Islanders* and *Cubero* would *directly affect the agricultural land covered by CARP*. Those cases significantly did **not** pertain to *post-harvest transactions* involving the *produce*

[32] *Supra* note 30, p. 88.

from CARP-covered agricultural lands, as the case before us does now.

Moreover, the resolution of the issue raised in *Islanders* and *Cubero* required the interpretation and application of the provisions of RA No. 6657, considering that the farmer-beneficiaries claimed that the agreements contravened specific provisions of that law. In the present case, DOLE's complaint for specific performance and damages before the RTC did not question the validity of the BPPA that would require the application of the provisions of RA No. 6657; neither did SEARBEMCO's motion to dismiss nor its other pleadings assail the validity of the BPPA on the ground that its provisions violate RA No. 6657. The resolution of the present case would therefore involve, more than anything else, the application of civil law provisions on breaches of contract, rather than agrarian reform principles. Indeed, in support of their arguments, the parties have capitalized and focused on their relationship as buyer and seller. DOLE, the buyer, filed a complaint against SEARBEMCO, the seller, to enforce the BPPA between them and to compel the latter to comply with its obligations. The CA is thus legally correct in its declaration that "the action before the RTC does not involve an agrarian dispute, nor does it call for the application of Agrarian Reform laws. x x x. **The action of [DOLE] involves and calls for the application of the New Civil Code, in tandem with the terms and conditions of the [BPPA] of [SEARBEMCO] and [DOLE].**"[33]

We find SEARBEMCO's reliance on DAR AO No. 9-98 and AO No. 2-99 as bases for DARAB's alleged expanded jurisdiction over all disputes arising from the interpretation of agribusiness ventures to be misplaced. DARAB's jurisdiction under Section 50 of RA No. 6657 should be read in conjunction with the coverage of agrarian reform laws; administrative issuances like DAR AO Nos. 9-98 and 2-99 cannot validly extend the scope of the jurisdiction set by law. In so ruling, however, we do not pass upon the validity of these administrative

[33] *Supra* note 2, p. 56.

issuances. We do recognize the possibility that disputes may exist between parties to joint economic enterprises that *directly* pertain to the management, cultivation, and use of CARP-covered agricultural *land.* Based on our above discussion, these disputes will fall within DARAB's jurisdiction.

Even assuming that the present case can be classified as an agrarian dispute involving the interpretation or implementation of agribusiness venture agreements, DARAB still cannot validly acquire jurisdiction, at least insofar as DOLE's cause of action against the third parties – the spouses Abujos and Oribanex – is concerned. To prevent multiple actions, we hold that the present case is best resolved by the trial court.

DOLE's complaint validly states a cause of action

SEARBEMCO asserts that the pleading containing DOLE's claim against it states no cause of action. It contends that it did not violate any of the provisions of the BPPA, since the bananas rejected by DOLE were sold to the spouses Abujos who are third-party buyers and are not exporters of bananas – transactions that the BPPA allows. Since the sole basis of DOLE's complaint was SEARBEMCO's alleged violation of the BPPA, which SEARBEMCO insists did not take place, the complaint therefore did not state a cause of action.

Due consideration of the basic rules on "lack of cause of action" as a ground for a motion to dismiss weighs against SEARBEMCO's argument.

In the case of *Jimenez, Jr. v. Jordana*,[34] this Court had the opportunity to discuss the sufficiency of the allegations of the complaint to uphold a valid cause of action, as follows:

> In a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the plaintiff's complaint. This hypothetical admission extends to the relevant and material facts pleaded in, and the inferences fairly deductible from, the complaint. Hence, to

[34] 486 Phil. 452 (2004).

determine whether the sufficiency of the facts alleged in the complaint constitutes a cause of action, the test is as follows: admitting the truth of the facts alleged, can the court render a valid judgment in accordance with the prayer?

To sustain a motion to dismiss, the movant needs to show that the plaintiff's claim for relief does not exist at all. On the contrary, the complaint is sufficient "if it contains sufficient notice of the cause of action even though the allegations may be vague or indefinite, in which event, the proper recourse would be, not a motion to dismiss, but a motion for a bill of particulars."[35]

In applying this authoritative test, we must hypothetically assume the truth of DOLE's allegations, and determine whether the RTC can render a valid judgment in accordance with its prayer.

We find the allegations in DOLE's complaint to be sufficient basis for the judgment prayed for. Hypothetically admitting the allegations in DOLE's complaint that *SEARBEMCO sold the rejected bananas to Oribanex, a competitor of DOLE and also an exporter of bananas, through the spouses Abujos,* a valid judgment may be rendered by the RTC holding SEARBEMCO liable for breach of contract. That the sale had been to the spouses Abujos who are not exporters is essentially a denial of DOLE's allegations and is not therefore a material consideration in weighing the merits of the alleged "lack of cause of action." What SEARBEMCO stated is a counter-statement of fact and conclusion, and is a defense that it will have to prove at the trial. At this point, the material consideration is merely what the complaint expressly alleged. Hypothetically assuming DOLE's allegations of ultimate sale to Oribanex, through the spouses Abujos, to be true, we hold – following the test of sufficiency in *Jordana* – that DOLE's prayer for specific performance and damages may be validly granted; hence, a cause of action exists.

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[35] *Id.* at 465-466.

The filing of the complaint is not premature since arbitration proceedings are not necessary in the present case

SEARBEMCO argues that DOLE failed to comply with a condition precedent before the filing of its complaint with the RTC, *i.e.*, DOLE did not attempt to settle their controversy through arbitration proceedings. SEARBEMCO relies on Article V, Section 30(g) of DAR AO No. 9-98[36] and Section 10 of DAR AO No. 2-99[37] which provide that "as a rule, voluntary methods such as mediation or conciliation, shall be preferred in resolving disputes involving joint economic enterprises." SEARBEMCO also cites Section IX of the BPPA which provides that all disputes arising out of or in connection with their agreement shall be finally settled through arbitration.

Following our conclusion that agrarian laws find no application in the present case, we find – as the CA did – that SEARBEMCO's arguments anchored on these laws are completely baseless. Furthermore, the cited DAR AO No. 2-99, on its face, only mentions a "preference," not a strict requirement of referral to arbitration. The BPPA-based argument deserves more and closer consideration.

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[36] *Supra* note 9.

[37] Section 10. *Resolution of Disputes*. – As a rule, voluntary methods, such as mediation or conciliation and arbitration, shall be preferred in resolving disputes involving joint economic enterprises. The specific modes of resolving disputes shall be stipulated in the contract, and should the parties fail to do so, the procedures herein shall apply.

The aggrieved party shall first request the other party to submit the matter to mediation or conciliation by trained mediators or conciliators from DAR, non-government organizations (NGOs), or the private sector chosen by them.

Where the dispute cannot be resolved through mediation or conciliation, it may be submitted to arbitration by the parties in accordance with RA 876, as amended, also known as the "Arbitration Law," unless otherwise specified by the parties. The decision of the arbitrators shall be binding upon them as agreed by the parties. They may opt to submit the dispute directly to arbitration without going through mediation or conciliation xxx.

We agree with the CA ruling that the BPPA arbitration clause does not apply to the present case since third parties are involved. Any judgment or ruling to be rendered by the panel of arbitrators will be useless if third parties are included in the case, since the arbitral ruling will not bind them; they are not parties to the arbitration agreement. In the present case, DOLE included as parties the spouses Abujos and Oribanex since they are *necessary parties, i.e.*, they were directly involved in the BPPA violation DOLE alleged, and their participation are indispensable for a complete resolution of the dispute. To require the spouses Abujos and Oribanex to submit themselves to arbitration and to abide by whatever judgment or ruling the panel of arbitrators shall make is legally untenable; no law and no agreement made with their participation can compel them to submit to arbitration.

In support of its position, SEARBEMCO cites the case of *Toyota Motor Philippines Corp. v. Court of Appeals*[38] which holds that, "the contention that the arbitration clause has become dysfunctional because of the presence of third parties is untenable. Contracts are respected as the law between the contracting parties. As such, the parties are thereby expected to abide with good faith in their contractual commitments." SEARBEMCO argues that the presence of third parties in the complaint does not affect the validity of the provisions on arbitration.

Unfortunately, the ruling in the *Toyota* case has been superseded by the more recent cases of *Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation*[39] and *Del Monte Corporation-USA v. Court of Appeals.*[40]

Heirs of Salas involved the same issue now before us: whether or not the complaint of petitioners-heirs in that case should be dismissed for their failure to submit the matter to arbitration before filing their complaint. The petitioners-heirs included as respondents third persons who were not parties to the original

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[38] G.R. No. 102881, December 7, 1992, 216 SCRA 236, 246.

[39] 378 Phil. 369 (1999).

[40] 404 Phil. 192 (2001).

agreement between the petitioners-heirs and respondent Laperal Realty. In ruling that prior resort to arbitration is not necessary, this Court held:

> Respondent Laperal Realty, as a contracting party to the Agreement, has the right to compel petitioners to first arbitrate before seeking judicial relief. However, to split the proceedings into arbitration for respondent Laperal Realty and trial for the respondent lot buyers, or to hold trial in abeyance pending arbitration between petitioners and respondent Laperal Realty, would in effect result in multiplicity of suits, duplicitous procedure and unnecessary delay. On the other hand, it would be in the interest of justice if the trial court hears the complaint against all herein respondents and adjudicates petitioner's rights as against theirs in a single and complete proceeding.[41]

The case of *Del Monte* is more direct in stating that the doctrine held in the *Toyota* case has already been abandoned:

> The Agreement between petitioner DMC-USA and private respondent MMI is a contract. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract and is itself a contract. As a rule, contracts are respected as the law between the contracting parties and produce effect as between them, their assigns and heirs. **Clearly, only parties to the Agreement, *i.e.*, petitioners DMC-USA and its Managing Director for Export Sales Paul E. Derby, and private respondents MMI and its Managing Director Lily Sy are bound by the Agreement and its arbitration clause as they are the only signatories thereto.** Petitioners Daniel Collins and Luis Hidalgo, and private respondent SFI, not parties to the Agreement and cannot even be considered assigns or heirs of the parties, are not bound by the Agreement and the arbitration clause therein. Consequently, referral to arbitration in the State of California pursuant to the arbitration clause and the suspension of the proceedings in Civil Case No. 2637-MN pending the return of the arbitral award could be called for *but only* as to petitioners DMC-USA and Paul E. Derby, Jr., and private respondents MMI and Lily Sy, and not as to other parties in this case, in accordance with the recent case of *Heirs of Augusto L. Salas, Jr. v. Laperal Realty Corporation*, which superseded that of [sic] *Toyota Motor Philippines Corp. v. Court of Appeals.*

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[41] *Supra* note 37, p. 376.

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The object of arbitration is to allow the expeditious determination of a dispute. Clearly, the issue before us could not be speedily and efficiently resolved in its entirety if we allow simultaneous arbitration proceedings and trial, or suspension of trial pending arbitration. Accordingly, the interest of justice would only be served if the trial court hears and adjudicates the case in a single and complete proceeding.[42]

Following these precedents, the CA was therefore correct in its conclusion that **the parties' agreement to refer their dispute to arbitration applies only where the parties to the BPPA are solely the disputing parties.**

Additionally, the inclusion of third parties in the complaint supports our declaration that the present case does not fall under DARAB's jurisdiction. DARAB's quasi-judicial powers under Section 50 of RA No. 6657 may be invoked only when there is prior certification from the *Barangay* Agrarian Reform Committee (or BARC) that the dispute has been submitted to it for mediation and conciliation, without any success of settlement.[43] Since the present dispute need not be referred to arbitration (including mediation or conciliation) because of the inclusion of third parties, neither SEARBEMCO nor DOLE will be able to present the requisite BARC certification that is necessary to invoke DARAB's jurisdiction; hence, there will be no compliance with Section 53 of RA No. 6657.

WHEREFORE, premises considered, we hereby *DENY* the petition for *certiorari* for lack of merit. The Regional Trial Court, Branch 34, Panabo City, is hereby directed to proceed with the case in accordance with this Decision. Costs against petitioner SEARBEMCO.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

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[42] *Supra* note 38, pp. 201-202.

[43] RA No. 6657, Section 53.

SECOND DIVISION

[G.R. No. 160046. November 27, 2009]

BANK OF THE PHILIPPINE ISLANDS (Successor-in-interest of Citytrust Banking Corporation), *petitioner, vs.* **EVANGELINE L. PUZON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS. — Although Section 1 of Rule 45 states that the petition should raise only questions of law, this rule is subject to several exceptions as enumerated by this Court in *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*: "The settled rule is that issues of fact are not proper subjects of a petition for review before this Court. Nonetheless, there are recognized exceptions to this rule, among which are: (1) **the conclusion is grounded on speculations, surmises or conjectures;** (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties." We find that the conclusion of the trial court and the appellate court regarding petitioner's non-compliance with the statutory requirements on posting and publication of the auction sale is speculative. In concluding that the foreclosure sale was not valid, both the trial court and the appellate court disregarded petitioner's evidence and relied mainly on the wordings of the Sheriff's Certificate of Posting. For this reason, a review of this case is imperative.

2. ID.; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; PREVAILS IN THE ABSENCE OF CONTRARY EVIDENCE IN FORECLOSURE PROCEEDINGS; CASE AT BAR. — The Court of Appeals held that there was no proof that the conspicuous places where the notices of sale were posted were indeed public places as contemplated by law. The Court of Appeals mainly relied on the wordings of the Certificate of Posting which used the adjective "conspicuous" instead of "public" to define the places where the notices were posted. However, the Certificate of Posting also states that the copies of the Notice of Sheriff's Sale have been posted "in accordance with the provisions of Act 3135, as amended by Act 4118." Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed, unless contradicted and overcome by other evidence. Foreclosure proceedings have in their favor the presumption of regularity and the party who seeks to challenge the proceedings has the burden of evidence to rebut the same. In this case, respondent failed to prove her allegation that there was no compliance with the posting requirement. There was no evidence that the "conspicuous places" where the notices were posted were not "public places." In the absence of contrary evidence, the presumption prevails that the Sheriff performed his official duty of posting the notices of sale in 3 public places for no less than 20 days before the sale. Furthermore, the date of the Notice of Sheriff's Sale was 29 January 1992, which is more that 20 days from the scheduled public auction of the foreclosed property on 26 February 1992.

3. MERCANTILE LAW; ACT 3135, AS AMENDED BY ACT 4118; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGES; NOTICES OF SALE; PUBLICATION OF THE NOTICE OF SALE IS SUFFICIENT COMPLIANCE WITH THE STATUTORY REQUIREMENT ON NOTICE-POSTING. — [E]ven if the notices of sale were not posted in public places, this does render the foreclosure sale invalid. As held in *Development Bank of the Philippines v. Aguirre*, the failure to post a notice is not a ground for invalidating the sale as long as the notice is duly published in a newspaper of general circulation. Thus, publication of the notice of sale is sufficient compliance with the statutory requirement on notice-posting.

4. ID.; ID.; ID.; ID.; PUBLICATION REQUIREMENT; IN EXTRAJUDICIAL FORECLOSURE OF MORTGAGE, THE PARTY ALLEGING NON-COMPLIANCE WITH THE PUBLICATION REQUIREMENT HAS THE BURDEN OF PROVING THE SAME; CASE AT BAR. — [T]he evidence presented by Citytrust sufficiently proves that it had complied with the statutory requirements on the publication of the notice of auction sale. In extrajudicial foreclosure of mortgage, the party alleging non-compliance with the publication requirement has the burden of proving the same. In this case, the records are bereft of any evidence to prove that Citytrust did not comply with the requisite publication. Neither was there evidence disproving the qualification of "The Guardian" newspaper to publish the notice of auction sale. We find that the evidence submitted by Citytrust sufficiently established compliance with the statutory requirements on posting and publication of notice of auction sale of a mortgaged property.

APPEARANCES OF COUNSEL

Benedicto Verzosa Felipe and Burkley for petitioner.
Joanes G. Caacbay for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Decision[2] dated 20 December 2002 and the Resolution dated 17 September 2003 of the Court of Appeals in CA-G.R. CV No. 68903.

The Facts

Respondent Evangeline L. Puzon (respondent) was the registered owner of a residential lot (property) covered by

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Mariano C. Del Castillo (now Supreme Court Associate Justice) with Associate Justices Buenaventura J. Guerrero and Teodoro P. Regino, concurring.

Transfer Certificate of Title No. 13517 (TCT No. 13517) and located at Ifugao Street, La Vista, Quezon City. In April 1990, respondent applied for a ₱4,200,000 loan from the Citytrust Banking Corporation (Citytrust). To secure the loan, respondent executed in favor of Citytrust a First Real Estate Mortgage[3] over the property and issued a promissory note[4] covering the amount of the loan. When respondent failed to pay her loan, Citytrust applied for extrajudicial foreclosure and a Notice of Sheriff's Sale was issued thereafter. The Notice of Sheriff's Sale dated 29 January 1992, scheduling the auction sale of the mortgaged property on 26 February 1992, was published in three consecutive issues of "The Guardian" newspaper for the weeks 1-7 February 1992, 8-14 February 1992, and 15-21 February 1992. The Sheriff issued a Certificate of Posting[5] dated 26 February 1992 stating that the Notice of Sheriff's Sale was posted in three conspicuous places in Quezon City.

During the auction sale on 26 February 1992, Citytrust Realty Corporation was declared the highest bidder and a certificate of sale was issued in its favor and registered with the Register of Deeds. Respondent failed to redeem the property and Citytrust Realty Corporation consolidated its title with the Register of Deeds. TCT No. 13517 was cancelled and replaced by Transfer Certificate of Title No. 95232 (TCT No. 95232) in the name of Citytrust Realty Corporation.

On 14 March 1994, respondent filed with the trial court a petition for annulment of the extrajudicial foreclosure. Respondent alleged that she was not in default because the mortgage account was not yet due and demandable at the time of foreclosure since no specific interest rate was agreed upon or fixed and no notice was sent to her after the lapse of the first interest term stipulated in the promissory note. Furthermore, respondent claimed that the sheriff who conducted the extrajudicial foreclosure violated the provision on posting and publication of

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[3] Exhibit "B"; Exhibit "2".

[4] Exhibit "C"; Exhibit "1".

[5] Exhibit "F"; Exhibit "15".

notice of sale and venue under Act No. 3135,[6] as amended by Act No. 4118. Besides, the notice of the sheriff's sale intended for respondent was sent to her office and not to her residence. Respondent also alleged that the extrajudicial foreclosure sale was held at the main entrance of the Regional Trial Court Offices at Vargas Building I and not at the Quezon City Hall.

Citytrust countered that respondent's account was already in default when the application to foreclose the mortgaged property was filed. Citytrust claimed that respondent was aware of the application for foreclosure and that she even requested for its postponement. Citytrust maintained that there was compliance with the requirements for the extrajudicial foreclosure proceedings and that respondent is barred by laches and estopped from questioning the validity of the foreclosure proceedings.

On 14 January 2000, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1) Declaring as null and void the extrajudicial foreclosure sale of the property covered by Transfer Certificate of Title No. 13517 without prejudice to the foreclosure of the mortgage constituted thereon strictly in accordance with law, as well as the Sheriff's certificate of sale and Transfer Certificate of Title No. 95232 issued to Citytrust Realty Corporation pursuant thereto; and
>
> 2) Ordering the Register of Deeds to reinstate Transfer Certificate of Title No. 13517 in the name of petitioner [Evangeline L. Puzon] with force and effect as if not cancelled.
>
> SO ORDERED.[7]

Citytrust moved for reconsideration, which the trial court denied in its Order dated 22 May 2000. Citytrust appealed to the Court of Appeals, which affirmed the trial court's decision. When the Court of Appeals denied its motion for reconsideration,

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[6] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

[7] *Rollo,* p. 89.

Bank of Philippine Islands, as the successor-in-interest of Citytrust, filed this petition for review on *certiorari*.

The Trial Court's Ruling

The trial court held that respondent defaulted on her mortgage obligation. The trial court found that the statement of account[8] as of 13 January 1992 shows that respondent was in arrears of her monthly amortizations from 20 October 1990 to 20 December 1991. Such failure was a violation of the terms and conditions stated on the promissory note, which caused the entire obligation secured by the mortgage to become immediately due, payable, and demandable, and entitled Citytrust to foreclose the mortgage in accordance with their stipulation in paragraph 9[9] of the First Real Estate Mortgage. Furthermore, the trial

[8] Exhibit "L".

[9] Paragraph 9 of the First Real Estate Mortgage reads:

9. Any breach or violation, or non-performance of the terms and conditions of the above-mentioned Debt Instrument, this mortgage and/or the separate instruments, under which credits have been or may hereafter be granted by the MORTGAGEE to the MORTGAGOR, including the renewals and extensions of this Mortgage and of the said separate instruments shall cause the entire obligations secured hereby to become immediately due and payable and defaulted. In such event, the MORTGAGEE shall be entitled to foreclose this Mortgage, judicially or extrajudicially, at the option of the MORTGAGEE, or to pursue any and all remedies available to it under the law and the circumstances, successively, simultaneously or separately, without preference as to the time or manner of exercise or enforcement of such remedy or remedies. The exercise of one or more remedies shall not preclude nor prevent the MORTGAGEE from, at the same time or at any other time, resorting to or exercising the same or other rights, privileges or remedies herein or by law granted it or to which it might otherwise legally resort to. Furthermore, in the event the MORTGAGEE is compelled to foreclose this mortgage, or pursue such remedy or remedies as may be available to it under the law and the circumstances, the MORTGAGOR shall pay to the MORTGAGEE, as and for collection and/or attorney's fees a sum equivalent to 25% of the principal and interest then due and unpaid which in no case to be less than ₱5,000.00, plus the cost of suit and other litigation expenses and in addition, a further sum of ten (10%) per cent of the said amount which shall in no case be less than ₱1,000.00, for liquidated damages, the payment of which amounts shall likewise be secured by this mortgage.

court noted that in her letter[10] dated 23 May 1991 addressed to the Vice President of Citytrust, respondent admitted her inability to pay her account with Citytrust.

However, the trial court held that the extrajudicial foreclosure sale of the property was void because respondent was not able to prove compliance with the requirements on posting and publication of notice of auction sale as provided under Act No. 3135 (Act 3135) and Presidential Decree No. 1079[11] (PD 1079).

The Court of Appeals' Ruling

The Court of Appeals held that Citytrust had the right to foreclose the mortgage upon the property considering that respondent's obligation to Citytrust which was secured by the mortgage remained unsettled. However, the Court of Appeals affirmed the trial court's ruling that there was no valid extrajudicial foreclosure sale. The Court of Appeals noted that the Sheriff's Certificate of Posting stated that the Notice of Sheriff's Sale was posted in three "conspicuous places" in Quezon City and not in "public places" as required under the law. There was no proof that the conspicuous places where the notices of sale were posted were indeed public places as contemplated by law. Furthermore, it was not stated in the Sheriff's Certificate of Posting that the posting was made at least 20 days prior to the foreclosure sale as provided under Section 3 of Act 3135. Although the Court of Appeals agreed with Citytrust that "The Guardian," which published the auction sale, is a newspaper of general circulation, it however held that there was no proof that "The Guardian" was qualified to publish the auction sale in accordance with the provisions of PD 1079. The Court of Appeals held that statutory provisions governing the publication of notice of mortgage foreclosure sale must be strictly complied

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[10] Exhibit "8".

[11] REVISING AND CONSOLIDATING ALL LAWS AND DECREES REGULATING PUBLICATION OF JUDICIAL NOTICES, ADVERTISEMENTS FOR PUBLIC BIDDINGS, NOTICES OF AUCTION SALES AND OTHER SIMILAR NOTICES.

with and even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

The Issues

Petitioner raises the following issues:

1. WHETHER THE HONORABLE COURT OF APPEALS HAD DEPARTED FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS, OR HAD SANCTIONED SUCH DEPARTURE BY THE TRIAL COURT, IN DECLARING AS NULL AND VOID THE SUBJECT FORECLOSURE SALE BASED ON MATTERS NOT RAISED AS ISSUES IN THE PLEADINGS, NOR PROVEN IN THE TRIAL;
2. WHETHER THE PRESUMPTION OF REGULARITY OF A FORECLOSURE SALE MAY BE OVERCOME BY IMPERFECTIONS IN THE MERE WORDINGS OF A CERTIFICATE OF POSTING WITHOUT EVIDENCE ALIUNDE;
3. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE WHEN IT DECLARED NULL AND VOID THE SUBJECT FORECLOSURE SALE SIMPLY BECAUSE: (1) THE CERTIFICATE OF POSTING IS WORDED IN THE "PAST TENSE"; (2) THE CERTIFICATE OF POSTING DOES NOT STATE THAT "IT WAS POSTED NOT LESS THAN TWENTY DAYS BEFORE THE AUCTION SALE"; (3) THE CERTIFICATE OF POSTING STATES MERELY THAT "IT WAS POSTED ONLY IN THREE CONSPICUOUS PLACES; AND (4) THERE IS NO PROOF THAT THE NEWSPAPER THROUGH WHICH THE SHERIFF'S NOTICE OF SALE WAS PUBLISHED WAS ACCREDITED BY THE EXECUTIVE JUDGE;
4. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE IN NOT HOLDING THAT PUBLICATION ALONE IS SUFFICIENT COMPLIANCE WITH THE NOTICE-POSTING REQUIREMENT OF THE LAW IN ACCORDANCE WITH THE DECISIONS OF THIS HONORABLE COURT IN THE CASES OF *OLIZON V. THE HONORABLE COURT OF APPEALS* [236 SCRA 148] AND

DEVELOPMENT BANK OF THE PHILIPPINES V. AGUIRRE [G.R. 144877, SEPTEMBER 7, 2001];

5. WHETHER THE HONORABALE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE WHEN IT HELD THAT IT WAS STILL NECESSARY TO PROVE THE ACCREDITATION OF THE NEWSPAPER AND/OR RAFFLE THERETO OF THE SHERIFF'S NOTICE OF SALE IN THE ABSENCE OF ISSUE THEREON OR OF EVIDENCE TO THE CONTRARY;
6. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED AND DECIDED IN A MANNER CONTRARY TO JURISPRUDENCE IN NOT HOLDING THAT RESPONDENT'S ACT OF ASKING FOR EXTENSION OF THE PERIOD TO REDEEM HER MORTGAGED PROPERTY HAD ESTOPPED HER FROM QUESTIONING THE VALIDITY OF THE FORECLOSURE PROCEEDINGS IN ACCORDANCE WITH THE FINDINGS OF THIS HONORABLE COURT IN THE CASE OF *VALMONTE ET AL. V. THE HONORABLE COURT OF APPEALS* [G.R. NO. L-41621, FEBRUARY 18, 1999].[12]

The Ruling of the Court

We find the petition meritorious.

The main issue in this case is whether there was compliance with the statutory requirements on posting and publication of notice of auction sale of the mortgaged property. We rule in the affirmative.

Respondent insists that the issues raised by petitioner are factual and therefore not proper subjects in a petition for review under Rule 45. Although Section 1 of Rule 45 states that the petition should raise only questions of law, this rule is subject to several exceptions as enumerated by this Court in *Royal Cargo Corporation v. DFS Sports Unlimited, Inc.*:[13]

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[12] *Rollo, pp. 8-9.*

[13] G.R. No. 158621, 10 December 2008, 573 SCRA 414.

The settled rule is that issues of fact are not proper subjects of a petition for review before this Court. Nonetheless, there are recognized exceptions to this rule, among which are: (1) **the conclusion is grounded on speculations, surmises or conjectures;** (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[14] (Emphasis supplied)

We find that the conclusion of the trial court and the appellate court regarding petitioner's non-compliance with the statutory requirements on posting and publication of the auction sale is speculative. In concluding that the foreclosure sale was not valid, both the trial court and the appellate court disregarded petitioner's evidence and relied mainly on the wordings of the Sheriff's Certificate of Posting. For this reason, a review of this case is imperative.

The pertinent provisions of Act 3135 and PD 1079, regulating notice of auction sale and its posting and publication, read:

Act 3135

SEC. 3. **Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.**

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

PD 1079

SECTION 1. **All notices of auction sales in extrajudicial foreclosure of real estate mortgage under Act No. 3135 as amended,** judicial notices such as notices of sale on execution of real properties, notices in special proceedings, court orders and summonses and all similar announcements arising from court litigation **required by law to be published in a newspaper or periodical of general circulation in particular provinces and/or cities shall be published in newspapers or publications published, edited and circulated in the same city and/or province where the requirement of general circulation applies**: *Provided*, That the province or city where the publication's principal office is located shall be considered the place where it is edited and published: *Provided, further*, That in the event there is no newspaper or periodical published in the locality, the same may be published in the newspaper or periodical published, edited and circulated in the nearest city or province: *Provided, finally*, That no newspaper or periodical which has not been authorized by law to publish and which has not been regularly published for at least one year before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices.

SEC. 2. **The executive judge of the court of first instance shall designate a regular working day and a definite time each week during which the said judicial notices or advertisements shall be distributed personally by him for publication to qualified newspapers or periodicals as defined in the preceding section, which distribution shall be done by raffle:** *Provided*, That should the circumstances require that another day be set for the purpose, he shall notify in writing the editors and publishers concerned at least three (3) days in advance of the designated date: *Provided, further*, That the distribution of the said notices by raffle shall be dispensed with in case only one newspaper or periodical is in operation in a particular province or city. (Emphasis supplied)

The Court of Appeals held that there was no proof that the Notice of Sheriff's Sale was posted in public places considering that the Sheriff's Certificate of Posting stated that the Notice of Sheriff's Sale was posted in three "conspicuous places" in Quezon City and it was not stated that the posting was made at least 20 days prior to the foreclosure sale as provided under Section 3 of Act 3135.

The Sheriff's Certificate of Posting reads:

CERTIFICATE OF POSTING

THIS IS TO CERTIFY, that three (3) copies of the Notice of Sheriff's Sale issued in the above-entitled case have been **posted in three (3) conspicuous places in Quezon City**, where the property is located and where the auction sale took place, **in accordance with the provisions of Act 3135, as amended by Act 4118**.

Quezon City, Metro Manila. February 26, 1992.[15] (Emphasis supplied)

The Court of Appeals held that there was no proof that the conspicuous places where the notices of sale were posted were indeed public places as contemplated by law. The Court of Appeals mainly relied on the wordings of the Certificate of Posting which used the adjective "conspicuous" instead of "public" to define the places where the notices were posted. However, the Certificate of Posting also states that the copies of the Notice of Sheriff's Sale have been posted "in accordance with the provisions of Act 3135, as amended by Act 4118." Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed, unless contradicted and overcome by other evidence. Foreclosure proceedings have in their favor the presumption of regularity and the party who seeks to challenge the proceedings has the burden of evidence to rebut the same.[16] In this case, respondent failed to prove her allegation that there was no compliance with the posting requirement. There was no evidence that the "conspicuous places" where the notices were posted were not "public places." In the absence of contrary evidence, the presumption prevails that the Sheriff performed his official duty of posting the notices of sale in 3 public places for no less than

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[15] Exhibit "F", Exhibit "15".

[16] *Consuelo Metal Corporation v. Planters Development Bank*, G.R. No. 152580, 26 June 2008, 555 SCRA 465.

20 days before the sale.[17] Furthermore, the date of the Notice of Sheriff's Sale[18] was 29 January 1992, which is more that 20 days from the scheduled public auction of the foreclosed property on 26 February 1992.

Besides, even if the notices of sale were not posted in public places, this does render the foreclosure sale invalid. As held in *Development Bank of the Philippines v. Aguirre*,[19] the failure to post a notice is not a ground for invalidating the sale as long as the notice is duly published in a newspaper of general circulation. Thus, publication of the notice of sale is sufficient compliance with the statutory requirement on notice-posting.[20]

As regards the publication requirements, although the Court of Appeals held that "The Guardian" newspaper which published the auction sale is a newspaper of general circulation, it however held that there was no proof that "The Guardian" was qualified to publish the notice of auction sale in accordance with the provisions of PD 1079.

To prove compliance with the requisites for valid publication of the notice of sale, Citytrust offered the following evidence: (1) Notice of Sheriff's Sale, stating its publication at "The Guardian" newspaper on 1, 8, and 15 February 1992; (2) Copies of "The Guardian" newspaper, for the issues dated 1-7 February 1992,[21] 8-14 February 1992,[22] and 15-21 February 1992,[23] where the Notice of Sheriff's Sale was published; and (3) Affidavit

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[17] *Baluyut v. Poblete,* G.R. No. 144435, 6 February 2007, 514 SCRA 370; *Development Bank of the Phil. v. Court of Appeals,* 451 Phil. 563 (2003).

[18] Exhibit "E", Exhibit "10".

[19] 417 Phil. 235 (2001).

[20] *China Banking Corporation v. Sps. Wenceslao & Marcelina Martir,* G.R. No. 184252, 11 September 2009.

[21] Exhibit "11".

[22] Exhibit "12".

[23] Exhibit "13".

of Publication[24] by the General Manager of "The Guardian" newspaper stating that "The Guardian" is a weekly newspaper, published and circulated in the Philippines and that the foreclosure sale was published in "The Guardian" on 1, 8, and 15 February 1992. Moreover, in its motion for reconsideration filed with the Court of Appeals, Citytrust attached a Certification issued on 25 April 2003 by the Office of the Clerk of Court of the Regional Trial Court of Quezon City, attesting and confirming the qualification of "The Guardian" newspaper to publish the Notice of Sheriff's Sale. The Certification reads:

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that for the period February 1-21, 1992, "*THE GUARDIAN"* was a newspaper duly accredited by this Office to participate in the raffle of judicial notices including extra-judicial notices of foreclosure.

x x x x x x x x x[25]

Clearly, the evidence presented by Citytrust sufficiently proves that it had complied with the statutory requirements on the publication of the notice of auction sale.

In extrajudicial foreclosure of mortgage, the party alleging non-compliance with the publication requirement has the burden of proving the same.[26] In this case, the records are bereft of any evidence to prove that Citytrust did not comply with the requisite publication. Neither was there evidence disproving the qualification of "The Guardian" newspaper to publish the notice of auction sale.

We find that the evidence submitted by Citytrust sufficiently established compliance with the statutory requirements on posting and publication of notice of auction sale of a mortgaged property.

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[24] Exhibit "14".

[25] *Rollo,* p. 94.

[26] *Metropolitan Bank and Trust Company, Inc. v. Peñafiel,* G.R. No. 173976, 27 February 2009, 580 SCRA 352.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 20 December 2002 and the Resolution dated 17 September 2003 of the Court of Appeals in CA-G.R. CV No. 68903. We hold that the extrajudicial foreclosure sale of the property covered by TCT No. 13517, as well as the Sheriff's Certificate of Sale and TCT No. 95232 issued to Cityrust Realty Corporation pursuant thereto, is *VALID*.

SO ORDERED.

Leonardo-De Castro,[*] *Brion, Peralta,*[**] and *Abad, JJ.*, concur.

SECOND DIVISION

[G.R. No. 160394. November 27, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **AGUSTIN C. DIZON,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); REGIONAL TRIAL COURT, ACTING AS A SPECIAL AGRARIAN COURT; EXERCISES ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS UNDER THE LAND REFORM PROGRAM.— Section 57 of RA 6657 clearly provides that RTC-SACs have **original and exclusive jurisdiction** over all petitions for the determination of just compensation payable to landowners under the land reform program. The RTC-SAC is not an appellate court that passes upon DARAB decisions determining just compensation under the land reform program. x x x Consequently, although the

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[*] Designated additional member per Serial Order No. 776.

[**] Designated additional member per Raffle dated 19 November 2009.

new rules speak of directly appealing the decision of adjudicators to the RTC-SACs, the jurisdiction of these designated courts to determine just compensation under Section 57 of RA 6657 is *original* and *exclusive*. Any effort to transfer this original jurisdiction to the adjudicators and to confer appellate jurisdiction on the RTC-SACs would be contrary to Section 57 and would result in void rulings. **What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question on the merits.** Thus, the RTC-SAC should have conducted its own independent and thorough investigation of the evidence submitted before it by the parties; the case should have been accorded its hearing and reception of evidence, and independent consideration of the facts and the law on the matter of just compensation. The RTC-SAC could not simply rely on and adopt the decision of the DARAB, an administrative body that *preliminarily* determines the reasonable compensation to be paid to landowners.

2. ID.; ID.; ID.; ID.; REQUIRED TO CONDUCT A FULL-BLOWN TRIAL IN JUST COMPENSATION CASES; RATIONALE. — We emphasized the reason for requiring a full-blown trial in just compensation cases in *Land Bank of the Philippines v. Spouses Banal*, a case similar to the present case, where we said: "Here, the RTC failed to observe the basic rules of procedure and the fundamental requirements in determining just compensation for the property. *Firstly*, it dispensed with the hearing and merely ordered the parties to submit their respective memoranda. Such action is grossly erroneous since the determination of just compensation involves the examination of the following factors specified in Section 17 of RA 6657, as amended: 1. the cost of the acquisition of the land; 2. the current value of like properties; 3. its nature, actual use and income; 4. the sworn valuation by the owner, the tax declarations; 5. the assessment made by government assessors; 6. the social and economic benefits contributed by the farmers and the farmworkers and by the government to the property, and; 7. the non-payment of taxes or loans secured from any government financing institution on the said land, if any. **Obviously, these factors involve *factual* matters which can be established only during a hearing wherein the contending parties present their respective evidence**. In fact, to underscore the intricate nature of determining the valuation

of the land, Section 58 of the same law even authorizes the Special Agrarian Courts to appoint commissioners for such purpose."

3. ID.; ID.; ID.; JUST COMPENSATION CASES; IN CASE OF FAILURE TO MAKE A COMPLETE AND PROPER DETERMINATION OF JUST COMPENSATION DUE, THE ONLY RECOURSE IS TO REMAND THE CASE TO THE REGIONAL TRIAL COURT, ACTING AS A SPECIAL AGRARIAN COURT, FOR TRIAL ON THE MERITS; CASE AT BAR. – The RTC-SAC x x x (and the CA by affirming *in toto* the RTC-SAC ruling) erred in determining the just compensation due Dizon for his land. The LBP, on the other hand, did not present sufficient evidence for the RTC-SAC (and for this Court in this appeal) to make a complete and proper determination of just compensation due. Thus, the only recourse for us is to remand this case to the RTC, acting as SAC, for trial on the merits. This is in accord with our previous ruling in *Land Bank of the Philippines v. Heirs of Eleuterio Cruz* where we stated: "A perusal of the PARAD decision, which was adopted by both the SAC and the CA, shows that **its valuation of ₱80,000.00 per hectare is sorely lacking in evidentiary and legal basis.** While the Court wants to fix just compensation due to respondents if only to write *finis* to the controversy, **the evidence on record is not sufficient for the Court to do so in accordance with DAR AO No. 5, series of 1998."**

APPEARANCES OF COUNSEL

Piczon Beramo & Associates for petitioner.
Pejo Aquino & Associates for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] filed by the Land Bank of the Philippines (*LBP*), assailing the decision[2] of

[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 17-31.

[2] Penned by Associate Justice Eliezer R. De los Santos (retired), and concurred in by Associate Justice Romeo A. Brawner (deceased) and Associate Justice Jose C. Mendoza; *id.* at 32-37.

the Court of Appeals (*CA*) dated July 31, 2003 in CA-G.R. CV No. 68428, as well as the resolution[3] dated October 8, 2003, denying its motion for reconsideration. The assailed decision dismissed the LBP's petition for *certiorari.*

THE FACTUAL ANTECEDENTS

Respondent Agustin Dizon (*Dizon*) was the owner of an unirrigated land situated in Aranguren, Capas, Tarlac, with an area of 25.0 hectares and covered by Transfer Certificate of Title No. 85458. On May 25, 1995, the Department of Agrarian Reform (*DAR*) sent Dizon a Notice of Acquisition informing him that the government was taking over his property for distribution to twelve (12) qualified farmer-beneficiaries under the compulsory acquisition scheme of the Comprehensive Agrarian Reform Program (*CARP*), and that the LBP would determine the value of the property pursuant to Executive Order No. 405[4] dated June 14, 1990.

After ocular inspection, the DAR sent Dizon on September 19, 1995 a Notice of Land Valuation and Acquisition. The value of his property, as determined by the LBP, was ₱24,638.09 per hectare, or ₱582,917.57 for the CARP-covered portion of 23.6590 hectares, based on the formula provided in DAR Administrative Order No. 11, series of 1994.[5]

The DARAB Ruling

On January 22, 1996, Dizon rejected the LBP valuation and elevated the matter to the Tarlac DAR Adjudication Board (*DARAB*). Thus, a summary administrative proceeding was conducted by the DARAB to determine the proper just

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[3] *Id.* at 38.

[4] Vesting in the Land Bank of the Philippines the Primary Responsibility to Determine the Land Valuation and Compensation for All Lands Covered Under Republic Act No. 6657, known as the Comprehensive Agrarian Reform Law of 1988.

[5] Revising the Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired as Embodied in Administrative Order No. 06, Series of 1992.

compensation pursuant to Section 16 (d)[6] of Republic Act No. 6657[7] (*RA 6657*).

On March 24, 1999, the DARAB, through Regional Agrarian Reform Adjudicator Fe Arche-Manalang, rendered its decision[8] fixing the just compensation at ₱163,911.65 per hectare on the basis of a comparable farmholding owned by the province of Tarlac, located in Barang, Paniqui, Tarlac, which was similarly categorized as rice/camote land and was previously valued by the LBP at the same price. According to the DARAB, the total amount of just compensation should therefore be ₱3,877,985.72 for the entire area of 23.6590 hectares covered by CARP.

The RTC Ruling

The LBP filed a petition on July 7, 1999 before the Regional Trial Court (*RTC*) of Tarlac City, acting as a Special Agrarian Court (*RTC-SAC*) under Section 57[9] of RA 6657, for judicial determination of just compensation for Dizon's landholding. The case was docketed as Agrarian Case No. 156 before Branch 63 of the Tarlac RTC-SAC.

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[6] Section 16. *Procedure for Acquisition of private lands.* – For purposes of acquisition of private lands, the following procedures shall be followed:

x x x x x x x x x

> (d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation of the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

x x x x x x x x x

[7] Otherwise known as "The Comprehensive Agrarian Reform Law of 1988."

[8] *Rollo*, pp. 53-57.

[9] Section 57. *Special Jurisdiction*. – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal

The LBP showed how it arrived at the valuation of ₱24,638.09 per hectare by presenting, among others, a valuation worksheet that used the average gross production and the market value *per* tax declaration as the factors to determine just compensation. Dizon, on the other hand, did not adduce any evidence before the RTC-SAC and merely relied on the DARAB resolution that he cited.

In a decision[10] dated July 20, 2000, the RTC-SAC affirmed the DARAB decision and rejected the original LBP valuation of ₱24,638.09 per hectare for being unrealistic and for not being in accord with the factors in determining just compensation, as enumerated in Section 17[11] of RA 6657. According to the RTC, *"with the fast growing population and migration to cities and urban centers, prices of land had increased tremendously. The Court doubts very much if the tenants, had they been the owners, would be willing to sell the land at ₱24,000.00 per hectare and on instalment basis."*[12] Significantly, the RTC-SAC decision simply adopted the resolution of the DARAB and did not bother to receive any evidence from Dizon.

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offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

[10] *Rollo*, pp. 58-60.

[11] Section 17. *Determination of Just Compensation*. - In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farm workers and by government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

[12] *Rollo*, p. 59.

The RTC-SAC thereafter rejected the LBP's motion for reconsideration in a resolution dated August 18, 2000. LBP appealed to the CA.

The CA Ruling

The CA affirmed the RTC-SAC ruling in a decision[13] dated July 31, 2003. The CA agreed with the DARAB and the RTC-SAC that by today's standard, the LBP's quoted price is unrealistic as the land is devoted to agricultural use. The CA likewise held that substantial evidence supported the DARAB's decision since Dizon presented supporting proof – the price the LBP gave for a similar landholding in the same land category, albeit in a different municipality in Tarlac. Citing the definition of "just compensation"[14] in *Manila Railroad Co. v. Velasquez*,[15] the CA thus ruled that the valuation of ₱163,911.65 per hectare, as held by the DARAB and the RTC-SAC, is just.

The LBP moved for reconsideration of the decision, but the CA denied the motion for lack of merit in a resolution dated October 8, 2003.[16]

ASSIGNMENT OF ERRORS

In the present petition, the LBP challenges the CA decision on the basis of the following assigned errors:

1.) the RTC-SAC erroneously relied on the decision of the DARAB regarding the amount of just compensation instead of conducting its own independent evaluation of the facts and evidence presented by the parties; and

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[13] *Supra* note 2.

[14] "The fair and full equivalent for the loss sustained. It refers to the fair market value of the land at the time of its taking; the market value of property is the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it."

[15] 32 Phil. 286 (1915).

[16] *Supra* note 3.

2.) there was no substantial evidence presented before the DARAB to determine the correct amount of just compensation.

THE COURT'S RULING

We find the petition partly meritorious.

The LBP argues that the case before the RTC-SAC is an original action for determination of just compensation in the exercise of that court's original and exclusive jurisdiction; therefore, the RTC-SAC should have conducted its own independent determination of the facts and law involved. The LBP further argues that the RTC-SAC completely disregarded the basic requirements of procedural due process when it merely adopted the decision of the DARAB.

We agree with the LBP.

Section 57 of RA 6657 clearly provides that RTC-SACs have **original and exclusive jurisdiction** over all petitions for the determination of just compensation payable to landowners under the land reform program.[17] The RTC-SAC is not an appellate court that passes upon DARAB decisions determining just compensation under the land reform program. We so ruled in *Republic v. Court of Appeals*[18] where we said:

> In the terminology of Section 57 [of RA 6657], the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." **It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions**. [Emphasis supplied]

We reiterated this ruling in *Philippine Veterans Bank v. Court of Appeals*[19] where we likewise had the occasion to

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[17] *Supra* note 10.

[18] 331 Phil. 1070, 1077-1078 (1996).

[19] 379 Phil. 141, 147-149 (2000).

outline the procedure for cases involving the determination of just compensation of lands acquired under the CARP:

> Under RA 6657, the Land Bank of the Philippines is charged with the preliminary determination of the value of lands placed under land reform program and the compensation to be paid for their taking. It initiates the acquisition of agricultural lands by notifying the landowner of the government's intention to acquire his land and the valuation of the same as determined by the Land Bank. Within 30 days from receipt of notice, the landowner shall inform the DAR of his acceptance or rejection of the offer. In the event the landowner rejects the offer, a summary administrative proceeding is held by the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator, as the case may be, depending on the value of the land, for the purpose of determining the compensation of the land. The landowner, the Land Bank, and other interested parties are then required to submit evidence as to the just compensation for the land. The DAR adjudicator decides the case within 30 days after it is submitted for decision. If the landowner finds the price unsatisfactory, he may bring the matter directly to the appropriate Regional Trial Court.
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> x x x x x x x x x
>
> **The jurisdiction of the Regional Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination.** For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action. [Emphasis supplied]

Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTC-SACs, the jurisdiction of these designated courts to determine just compensation under Section 57 of RA 6657 is *original* and *exclusive.* Any effort to transfer this original jurisdiction to the adjudicators and to confer appellate jurisdiction on the RTC-SACs would be contrary to Section 57 and would result in void rulings. **What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the**

courts the ultimate power to decide this question on the merits.

Thus, the RTC-SAC should have conducted its own independent and thorough investigation of the evidence submitted before it by the parties; the case should have been accorded its hearing and reception of evidence, and independent consideration of the facts and the law on the matter of just compensation. The RTC-SAC could not simply rely on and adopt the decision of the DARAB, an administrative body that *preliminarily* determines the reasonable compensation to be paid to landowners.

We emphasized the reason for requiring a full-blown trial in just compensation cases in *Land Bank of the Philippines v. Spouses Banal*,[20] a case similar to the present case, where we said:

> Here, the RTC failed to observe the basic rules of procedure and the fundamental requirements in determining just compensation for the property. *Firstly*, it dispensed with the hearing and merely ordered the parties to submit their respective memoranda. Such action is grossly erroneous since the determination of just compensation involves the examination of the following factors specified in Section 17 of RA 6657, as amended:
>
> 1. the cost of the acquisition of the land;
> 2. the current value of like properties;
> 3. its nature, actual use and income;
> 4. the sworn valuation by the owner, the tax declarations;
> 5. the assessment made by government assessors;
> 6. the social and economic benefits contributed by the farmers and the farmworkers and by the government to the property, and;
> 7. the non-payment of taxes or loans secured from any government financing institution on the said land, if any.
>
> **Obviously, these factors involve *factual* matters which can be established only during a hearing wherein the contending parties present their respective evidence.** In fact, to underscore the intricate nature of determining the valuation of the land, Section 58 of the

[20] 178 Phil. 701, 711 (2004).

same law even authorizes the Special Agrarian Courts to appoint commissioners for such purpose. [Emphasis supplied].

In the present case, the LBP presented documents as evidence before the RTC-SAC which included a valuation worksheet showing how the ₱24,638.09 valuation per hectare was computed. Dizon, on the other hand, did not adduce any evidence, but instead simply relied on the resolution of the DARAB. The RTC-SAC disregarded the evidence presented by the LBP, stating that it was too unrealistic. Instead, the RTC-SAC, like Dizon, completely relied on the DARAB's findings. It was in this manner that the RTC-SAC affirmed *in toto* the DARAB decision awarding Dizon the amount of ₱163,911.65 per hectare.

The RTC-SAC's procedural lapse led to substantive errors in the decision it rendered (and which the CA affirmed *in toto*).

A basic substantive error – a due process one – is the lack of preponderance of evidence supporting its decision to follow the DARAB ruling pegging the just compensation at ₱163,911.65 per hectare. This conclusion is not supported by evidence because it is wholly based on Dizon's position and the latter cited the DARAB ruling. Significantly, the DARAB merely relied on the allegations made by Dizon in his position paper that a comparable farmholding owned by the Province of Tarlac in Barang, Paniqui, Tarlac, similarly categorized as rice/camote land, was valued at the same price of ₱163,911.65 per hectare. Thus, the compensation was determined on the basis of the bare allegation of Dizon, on the basis of which the DARAB "safely deduced that the said properties share common features and characteristics in terms of soil fertility, productivity, accessibility and climate."

Even if Dizon did not bother to present evidence while the LBP did, the RTC-SAC, to be sure, could have validly entered judgment based on the LBP evidence since Dizon effectively waived his right to present evidence. The LBP, however, also did not present sufficient evidence to support the payment of just compensation at ₱24,638.09 per hectare. While it may be true that LBP conducted an ocular inspection of the subject

land, the bases it used in coming up with its valuation were utterly inadequate. The LBP showed a valuation worksheet that only used two factors in determining the just compensation: average gross production and the market value per tax declaration. This method runs counter to Section 17 of RA 6657 which provides for a number of other factors in determining just compensation, namely: the cost of acquisition of the land, the current value of like properties, sworn valuation by the owner and assessment made by government assessors. In this regard, the RTC-SAC should not have disregarded the guidelines and formula[21] prescribed under DAR Administrative Order No. 5,

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[21] A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:

LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant, and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, this formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of the land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by the LBP within one (1) year from receipt of claimfolder.

Where:

CNI = $\frac{(AGP \times SP) - CO}{.12}$

series of 1998[22] (*AO No. 5-98*), which is the prevailing Administrative Order used in the computation of just compensation. As we held in the recent case of *Lee v. Land Bank of the Philippines*:[23]

> Section 17 of RA 6657 which enumerates the factors to be considered in determining just compensation reads:
>
> xxx xxx xxx
>
> These factors have already been incorporated in a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA 6657. AO No. 5 precisely filled in the details of Section 17, RA 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. This formula has to be considered by the SAC in tandem with all the factors referred to in Section 17 of the law.

The RTC-SAC therefore (and the CA by affirming *in toto* the RTC-SAC ruling) erred in determining the just compensation

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AGP = Average Gross Production corresponding to the latest available 12 months' gross production immediately preceding the date of FI (field investigation)

SP = Selling Price [the average of the latest available 12 months selling prices prior to the date of receipt of the claim folder (CF) by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.]

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of FI shall continue to use the assumed NIR of 70%. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

0.12 = Capitalization Rate

[22] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657.

[23] G.R. No. 170422, March 7, 2008, 548 SCRA 52, 59.

due Dizon for his land. The LBP, on the other hand, did not present sufficient evidence for the RTC-SAC (and for this Court in this appeal) to make a complete and proper determination of just compensation due. Thus, the only recourse for us is to remand this case to the RTC, acting as SAC, for trial on the merits. This is in accord with our previous ruling in *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*[24] where we stated:

> A perusal of the PARAD decision, which was adopted by both the SAC and the CA, shows that **its valuation of ₱80,000.00 per hectare is sorely lacking in evidentiary and legal basis**. While the Court wants to fix just compensation due to respondents if only to write *finis* to the controversy, **the evidence on record is not sufficient for the Court to do so in accordance with DAR AO No. 5, series of 1998.** [Emphasis supplied].

In determining the valuation of the subject property, the RTC-SAC should consider the factors provided under Section 17[25] of RA 6657 mentioned above. We fully explained the current doctrine in the proper determination of just compensation in *Lee v. Land Bank of the Philippines*[26] using the formula provided in AO No. 5-98.[27] Furthermore, upon its own initiative, or at the instance of any of the parties, the RTC-SAC may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute pursuant to Section 58[28] of RA 6657.

WHEREFORE, premises considered, we hereby *DENY* the petition for review on *certiorari* insofar as the Land Bank

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[24] G.R. No. 175175, September 29, 2008, 567 SCRA 31, 41.

[25] *Supra* note 11.

[26] *Supra* note 22.

[27] *Supra* note 21.

[28] SEC. 58. *Appointment of Commissioners.* – The Special Agrarian Courts, upon their own initiative or at the instance of any of the parties, may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute, including the valuation of properties, and to file a written report thereof with the court.

of the Philippines seeks to have its valuation of the subject property sustained. The assailed Decision of the Court of Appeals dated July 31, 2003 and its Resolution dated October 8, 2003 in CA-G.R. CV No. 68428 are likewise *REVERSED* and *SET ASIDE* for lack of factual and legal basis. Agrarian Case No. 156 is *REMANDED* to the Regional Trial Court, Branch 63, Tarlac City for trial on the merits using the appropriate procedures and applying the mandated standards in the determination of just compensation.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 165199. November 27, 2009]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **INOCENCIO B. BERBANO, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS REQUIRED BEFORE THE REMEDY OF A PETITION FOR *CERTIORARI* MAY BE AVAILED OF; EXCEPTION; PRESENT IN CASE AT BAR. — The New Rules of Procedure of the NLRC mandate that a motion for reconsideration of the NLRC decision must be filed within 10 calendar days from receipt of said decision, otherwise, the decision shall become final and executory. A motion for reconsideration of the NLRC decision must be filed before the remedy of a petition for *certiorari* may be availed of, to enable the commission to pass upon and correct its mistakes without the intervention of the courts. Failure to file a motion for reconsideration of the decision is a procedural

defect that generally warrants a dismissal of the petition for *certiorari*. However, in *Surima v. NLRC*, we held that despite procedural lapses, fundamental consideration of substantial justice may warrant this Court to decide a case on the merits rather than dismiss it on a technicality. In so doing, we exercise our prerogative in labor cases that no undue sympathy is to be accorded to any claim of procedural misstep, the idea being that our power must be exercised according to justice and equity and substantial merits of the controversy. In the instant case, we are persuaded that the rigid rules of procedure must give way to the demands of substantial justice, and that the case must be decided on the merits. Moreover, the petition filed with the Court of Appeals sought the issuance of a writ of *certiorari* which is a prerogative writ, not demandable as a matter of right, but issued in the exercise of judicial discretion. Thus, the Court of Appeals committed no error when it admitted the petition for *certiorari* filed by respondent, and had jurisdiction over said petition.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL FROM EMPLOYMENT, WHEN VALID. — [D]ismissal from service of an employee is valid if the following requirements are complied with: (a) substantive due process which requires that the ground for dismissal is one of the just or authorized causes enumerated in the Labor Code, and (b) procedural due process which requires that the employee be given an opportunity to be heard and defend himself. The employee must be furnished two written notices — the first notice apprises the employee of the particular act or omission for which his dismissal is sought, and the second notice informs the employee of the employer's decision to dismiss him.

3. ID.; ID.; ID.; JUST CAUSES; SERIOUS MISCONDUCT; ELUCIDATED. — Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment. Ordinary misconduct would not justify the termination of services of the employee as the Labor Code is explicit that the misconduct must be serious. To be serious, the misconduct must be of such grave and aggravated character

and not merely trivial and unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation. As amplified by jurisprudence, misconduct, to be a just cause for dismissal, must (a) be serious; (b) relate to the performance of the employee's duties; and (c) show that the employee has become unfit to continue working for the employer. Moreover, in *National Labor Relations Commission v. Salgarino*, this Court stressed that "[i]n order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent."

4. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT; DOES NOT MERIT TERMINATION OF EMPLOYMENT; CASE AT BAR. — We believe that the misconduct of respondent is not of serious nature as to warrant respondent's dismissal from service. The records of this case are bereft of any showing that the alleged misconduct was performed by respondent with wrongful intent. On the contrary, respondent readily admitted having installed the service features in his brother-in-law's telephone line for purposes of study and research which could have benefitted petitioner. x x x Moreover, as pointed out by the appellate court, respondent's misconduct did not result in any economic loss on the part of petitioner since the service features were not yet available in the market at the time respondent caused its unauthorized installation. We also note that respondent's dedicated service to petitioner for almost six (6) years, prior to his commission of the misconduct, is apparent from the records. His employment was untainted with any irregularity. He had been promoted several times, and had been chosen by petitioner on several occasions to attend various trainings to improve his craft. He conducted advance research based on his training background and technical expertise, and had even compiled a service feature manual which served as quick reference guide of his colleagues for inquiries regarding "subscriber operation of special (or service) features." Based on the foregoing, we consider respondent's offense to be a simple misconduct which does not merit termination of his employment. The penalty of dismissal from service is not commensurate to respondent's

offense. Although petitioner, as an employer, has the right to discipline its erring employees, exercise of such right should be tempered with compassion and understanding. The magnitude of the infraction committed by an employee must be weighed and equated with the penalty prescribed and must be commensurate thereto, in view of the gravity of the penalty of dismissal or termination from the service. The employer should bear in mind that in termination cases, what is at stake is not simply the employee's job or position but his very livelihood.

5. ID.; ID.; ID.; ILLEGAL DISMISSAL; RELIEFS OF ILLEGALLY DISMISSED EMPLOYEE. — [A]n illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages. These reliefs are given to alleviate the economic damage suffered by the illegally dismissed employee.

6. ID.; ID.; LABOR STANDARDS; WAGES; PAYMENT OF WAGES; ATTORNEY'S FEES; AWARDED IN ACTIONS FOR RECOVERY OF WAGES. — In *San Miguel Corporation v. Aballa*, we held that in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code; Section 8, Rule VIII of Book III of the Omnibus Rules Implementing the Labor Code; and paragraph 7, Article 2208 of the Civil Code. The award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.

APPEARANCES OF COUNSEL

Nicanor G. Nuevas for petitioner.
Ricardo M. Perez for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 21 January 2004 and Resolution dated 9 September 2004 in CA-G.R. SP No. 75125. The Court of Appeals reversed the Decision[3] dated 29 May 2002 and Resolution dated 29 October 2002 of the National Labor Relations Commission (NLRC).

The Antecedent Facts

The facts, as summarized by the Labor Arbiter and adopted by the NLRC and the Court of Appeals, are as follows:

In his position paper, complainant [Inocencio B. Berbano, Jr.] alleged that he was hired by the respondent Philippine Long Distance [Telephone] Company (PLDT, for brevity) on June 1, 1988 as Engineering Assistant. After his probationary period of three months, he was issued an appointment letter with a status of a regular employee of respondent. After several promotions, complainant finally held the position of Computer Assistant M-2 on June 16, 1993 in the Sampaloc Exchange Department/Operation and Maintenance Center of the respondent. Although his function is "Computer Assistant M-2," complainant further alleges that he performed the functions of a Specialist for EWSD who was responsible for handling, operations and maintenance of the whole EWSD Network handling network database, fault clearance, database modification alarm monitoring, traffic routing, trunk administration, password and tariff administration and others.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 28-35. Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring.

[3] *Id.* at 37-47. Penned by Commissioner Angelita A. Gacutan, with Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay, concurring.

Being trained as EW[S]D OMC Specialist, complainant claims that respondent expected him to have "depth of understanding" in continuous painstaking research and study. Thus, he initiated a study of "hi-tech EWSD Switching Equipment," a part of which is the software installation of various subscriber service features and control operation. It is at this time that complainant tapped his brother-in-law's number (911-8234) without the latter's knowledge and installed service features in it for study. Such service features included:

1. Security Code
2. Conference Call Three (Three-way calling)
3. Abbreviated Dialing
4. Hot Line Delayed
5. Call Diversion Immediate
6. Call Diversion Don't Answer
7. Call Hold
8. Non-Changeable

Later, on April 21, 1994, complainant learned that the phone number 911-8234 is under investigation by the Quality Control Inspection Office due to the unauthorized installation of service features thereto. Complainant admitted that he was responsible for such installation for purposes of study and testing.

Formal investigation ensued on April 22, 1994 and subsequently, on July 6, 1994, complainant received a Memorandum from the Department Head of the Sampaloc Exchange asking him to explain within 72 hours upon receipt why an [a]dministrative [a]ction should not be taken against complainant regarding the matter of the unauthorized installations mentioned at the phone number 911-8234.

On July 11, 1994, complainant submitted a written explanation claiming that the aforementioned installation of service features was for purposes of study and research.

Finding unacceptable the complainant's explanation, respondent PLDT dismissed complainant from the service effective August 16, 1994.

On the other hand, respondent submits that upon discovery of the installation of service features to the phone number 911-8234 without the authorization and approval of the respondent, and after investigation, complainant readily admitted having programmed the said features and that this installation was without prior authorization. Respondent's position paper further avers that having worked as

[a] Computer Assistant, complainant took advantage of his position and his access to respondent company's computer to favor his brother-in-law's telephone by irregularly providing it with special features. Such special features included the following:

1. Push Button
2. Test Call Only
3. Malicious Call Identification
4. Non-chargeable (Calls to subscriber with this class of service are free of charge for the caller)
5. Three-way Calling (Allows a third party to be linked to an existing call)
6. Call Hold
7. Abbreviated dialing 90 numbers
8. Hotline delay
9. Pin Code
10. Call Diversion Immediate
11. Call Diversion to Fixed Announcement
12. Traffic Restr. Class Act Auth. (Authorization to activate traffic restriction classes)
13. Call Diversion Don't Answer (Authorization to enter a destination no. for call diversion on no answer)
14. Traffic Restriction Class 1
15. Abbreviated Dial Number Mod. Auth. (Authorization for subs controlled entry and modification of abbreviated nos.)
16. Call Diversion Immediate (Modification Authorization)
17. Hotline Delay Mod. Auth.(Modification Authorization)

Respondent also found complainant's explanation that the installment was for testing purposes, unmeritorious and unjustified considering that said special features were only deleted upon discovery, two months after their installations. Further, testings, according to the respondent company's rules should only last for one day.[4]

On 28 September 1998, the Labor Arbiter[5] rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering the reinstatement of the complainant to his previous position

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[4] *Rollo*, pp. 29-31, 38-40 and 48-52.

[5] Labor Arbiter Romulus S. Protasio.

of Computer Assistant M-2 without loss of seniority rights. Furthermore, respondent is hereby ordered to pay to the complainant the amount of FIVE HUNDRED THIRTY SEVEN THOUSAND FOUR HUNDRED TWENTY PESOS (₱537,420.00) representing the backwages of the complainant from the time that he was terminated in August 1994 up to the present, minus any possible income earned elsewhere since complainant's dismissal. The equivalent ten (10%) percent attorney's fees of the total award in the amount of ₱53,742.00 is also granted.

SO ORDERED.[6]

On 29 May 2002, the NLRC rendered a Decision reversing that of the Labor Arbiter, with the following dispositive portion:

WHEREFORE, premises considered, the assailed decision is hereby reversed and set aside. Respondents are adjudged not guilty of illegal dismissal. Accordingly, the award of backwages and attorney's fees is hereby deleted from the decision.

SO ORDERED.[7]

On 15 August 2002, Berbano filed a Motion for Reconsideration, but this was denied by the NLRC in its Resolution dated 29 October 2002.[8]

The Court of Appeals' Ruling

Berbano filed with the Court of Appeals a Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure. On 21 January 2004, the Court of Appeals rendered judgment granting the petition and reversing the NLRC decision. We quote the dispositive portion of the Court of Appeals' decision below.

WHEREFORE, premises considered, the petition is **GRANTED**. The decision of the public respondent NLRC promulgated on May 29, 2002 is **REVERSED** and **SET ASIDE** and the decision dated September 28, 1998 of the Honorable Labor Arbiter Romulus S.

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[6] *Rollo*, p. 61.

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

[8] CA *rollo*, pp. 106-107.

Prota[s]io is hereby **REINSTATED** in all respect. Private respondent PLDT is ordered to pay the backwages to which the petitioner is entitled from January 15, 2003, the date of his dismissal, until his actual reinstatement.

SO ORDERED.[9]

PLDT filed a Motion for Reconsideration, but this was denied by the Court of Appeals in its Resolution of 9 September 2004.[10]

Hence, this appeal.

The Issues

Petitioner PLDT raises the following issues for our consideration:

1. Whether the Court of Appeals erred in reversing the NLRC decision despite its finding that respondent committed the infraction that caused his dismissal;
2. Whether the Court of Appeals erred in ordering petitioner to pay respondent backwages and attorney's fees;
3. Whether respondent Inocencio Berbano, Jr. was denied due process of law; and
4. Whether the Court of Appeals had jurisdiction over the Petition for *Certiorari* filed by respondent.

The Court's Ruling

We find the appeal without merit.

On whether the Court of Appeals had jurisdiction over the Petition for Certiorari filed by respondent

We first consider the issue on jurisdiction raised by petitioner. Petitioner contends that the NLRC Decision dated 29 May 2002 was received by respondent on 29 June 2002; hence, respondent had only ten (10) days, or up to 09 July 2002, to file

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[9] *Rollo*, p. 35.

[10] *Id.* at 36.

a motion for reconsideration of the NLRC decision. Without a motion for reconsideration timely filed, the NLRC decision would become final and executory, pursuant to Section 2, paragraphs (a), (b) and (c) of Rule VIII [now Section 14 of Rule VII] of the New Rules of Procedure of the NLRC. Petitioner claims that when respondent filed a motion for reconsideration of the NLRC decision on 15 August 2002, which was beyond the 10-day reglementary period imposed by law, the decision was already final and executory. Consequently, the Court of Appeals had no jurisdiction over the petition for *certiorari* (assailing the NLRC decision) filed by respondent on 10 February 2003.

The New Rules of Procedure of the NLRC mandate that a motion for reconsideration of the NLRC decision must be filed within 10 calendar days from receipt of said decision, otherwise, the decision shall become final and executory.[11] A motion for reconsideration of the NLRC decision must be filed before the remedy of a petition for *certiorari* may be availed of, to enable the commission to pass upon and correct its mistakes without

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[11] Sections 14 and 15 of Rule VII of the New Rules of Procedure of the NLRC provide:

Section 14. Finality of Decision of the Commission and Entry of Judgment. - (a) Finality of the Decisions, Resolutions or Orders of the Commission. Except as provided in Rule XI, Section 9, the decisions, resolutions or orders of the Commission/Division shall become executory after ten (10) calendar days from receipt of the same.

(b) Entry of Judgment. - Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this section, the decision/resolution/order shall, as far as practicable, be entered in a book of entries of judgment.

x x x x x x x x x

Section 15. Motions for Reconsideration - Motion for reconsideration of any decision/resolution/order of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision/resolution/order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party, and provided further, that only one such motion from the same party shall be entertained.

the intervention of the courts.[12] Failure to file a motion for reconsideration of the decision is a procedural defect that generally warrants a dismissal of the petition for *certiorari*.[13] However, in *Surima v. NLRC*,[14] we held that despite procedural lapses, fundamental consideration of substantial justice may warrant this Court to decide a case on the merits rather than dismiss it on a technicality. In so doing, we exercise our prerogative in labor cases that no undue sympathy is to be accorded to any claim of procedural misstep, the idea being that our power must be exercised according to justice and equity and substantial merits of the controversy.[15] In the instant case, we are persuaded that the rigid rules of procedure must give way to the demands of substantial justice, and that the case must be decided on the merits. Moreover, the petition filed with the Court of Appeals sought the issuance of a writ of *certiorari* which is a prerogative writ, not demandable as a matter of right, but issued in the exercise of judicial discretion.[16] Thus, the Court of Appeals committed no error when it admitted the petition for *certiorari* filed by respondent, and had jurisdiction over said petition.

On whether the Court of Appeals erred in reversing the NLRC decision despite its finding that respondent committed the infraction that caused his dismissal

Petitioner contends that the Court of Appeals erred when it found respondent to have committed an infraction, *i.e.*, programming and installing special features in his (respondent's) brother-in-law's telephone line without prior authorization from petitioner, but nonetheless ruled that the infraction was not

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[12] *Philippine Long Distance Telephone Company, Inc. v. Imperial*, G.R. No. 149379, 15 June 2006, 490 SCRA 673, 687-688, citing *Philippine National Construction Corporation v. NLRC*, 315 Phil. 746 (1995).

[13] *Id.* citing *Labudahon v. NLRC*, G.R. No. 112206, 11 December 1995, 251 SCRA 129.

[14] 353 Phil. 461, 469 (1998).

[15] *Id*.

[16] *Philippine Long Distance Telephone Company, Inc. v. Imperial*, *supra*, citing *Nayve v. Court of Appeals*, 446 Phil. 473 (2003).

serious enough to warrant respondent's dismissal from service. Petitioner also asserts that, contrary to respondent's claim, due process was observed in the dismissal of respondent.

Well-settled is the rule that no employee shall be validly dismissed from employment without the observance of substantive and procedural due process. The minimum standards of due process are prescribed under Article 277(b) of the Labor Code of the Philippines (Labor Code) to wit:

> Art. 277. Miscellaneous Provisions.—
>
> x x x x x x x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires, in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x

The above provision is implemented by Section 2, Rule XXIII of Book V of the Omnibus Rules Implementing the Labor Code, which states:

> Section 2. *Standards of due process: requirements of notice*.— In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. x x x.

Thus, dismissal from service of an employee is valid if the following requirements are complied with: (a) substantive due process which requires that the ground for dismissal is one of the just or authorized causes enumerated in the Labor Code, and (b) procedural due process which requires that the employee be given an opportunity to be heard and defend himself.[17] The employee must be furnished two written notices — the first notice apprises the employee of the particular act or omission for which his dismissal is sought, and the second notice informs the employee of the employer's decision to dismiss him.[18]

In this case, petitioner formally notified respondent of the complaint against him through an inter-office memorandum dated 6 July 1994. The memorandum enumerated the service features allegedly installed by respondent in his brother-in-law's telephone line (911-8234), and stated the acts of the respondent complained of, *viz*:

You readily admitted to QCI that subscriber of subject telephone is your brother-in-law and that you installed the features claiming it was for testing purposes.

Records show that subject telephone was temporarily disconnected last March 24, 1994 for non-payment, reconnect order was faxed to Data Control Unit of OMCC at 1:30PM. In the process of reconnection at OMCC, subject telephone was found already working.[19]

In the same memorandum, petitioner asked respondent to explain within 72 hours upon receipt thereof why an administrative action should not be imposed against him.[20] On 11 July 1994,

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[17] *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, 23 June 2009.

[18] *Id.* citing *Concorde Hotel v. Court of Appeals*, 414 Phil. 897, 908 (2001).

[19] *Rollo*, p. 283.

[20] *Id*.

respondent submitted his "written explanation" or reply to the complaint against him.[21] More than a month thereafter, or on 9 August 1994, petitioner issued another inter-office memorandum informing respondent that his act of installing special features in his brother-in-law's telephone line without authorization from petitioner constituted "gross misconduct" and was "grossly violative of existing company rules and regulations," hence, warranting his termination from service.[22] Clearly, petitioner complied with the requirement of procedural due process.

As regards substantial due process, the grounds for termination of employment must be based on just or authorized causes. Article 282 of the Labor Code enumerates the just causes for termination of employment by the employer, to wit:

> Art. 282. Termination by employer. —An employer may terminate an employment for any of the following causes:
>
> (a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> (b) Gross and habitual neglect by the employee of his duties;
>
> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
>
> (e) Other causes analogous to the foregoing. (Emphasis supplied)

The notice of termination sent by petitioner to respondent indicated that the latter was dismissed from service due to unauthorized installation of service features in his brother-in-law's telephone line, which allegedly constituted gross misconduct. Thus, we are left with the issue on whether the said unauthorized act of the respondent constitutes a serious misconduct which warrants dismissal from service under Article 282(a) of the Labor Code.

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[21] *Id*. at 286.

[22] *Id*. at 285.

Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error of judgment.[23] Ordinary misconduct would not justify the termination of services of the employee as the Labor Code is explicit that the misconduct must be serious.[24] To be serious, the misconduct must be of such grave and aggravated character and not merely trivial and unimportant.[25] Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation.[26] As amplified by jurisprudence, misconduct, to be a just cause for dismissal, must (a) be serious; (b) relate to the performance of the employee's duties; and (c) show that the employee has become unfit to continue working for the employer.[27] Moreover, in *National Labor Relations Commission v. Salgarino*,[28] this Court stressed that "[i]n order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent."

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[23] *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, 494 Phil. 697, 725 (2005), and *AMA Computer College-East Rizal v. Ignacio*, *supra* note 17.

[24] *Philippine National Bank v. Velasco*, G.R. No. 166096, 11 September 2008, 564 SCRA 512, 530.

[25] *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, *supra*.

[26] *Id.*, citing *Samson v. National Labor Relations Commission*, 386 Phil. 669 (2000).

[27] *Philippine National Bank v. Velasco*, *supra* citing *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*, 387 Phil. 250 (2000).

[28] G.R. No. 164376, 31 July 2006, 497 SCRA 361, 376.

We believe that the misconduct of respondent is not of serious nature as to warrant respondent's dismissal from service. The records of this case are bereft of any showing that the alleged misconduct was performed by respondent with wrongful intent. On the contrary, respondent readily admitted having installed the service features in his brother-in-law's telephone line for purposes of study and research which could have benefitted petitioner. Respondent explained the installation of the service features in the "written explanation" he sent to petitioner as follows:

xxx xxx xxx

There had been a time on that period where I conducted special study on service features of EWSD. It includes testing the integrity of its actual operation in all digital exchanges connected to our OMC.

During which [sic] I conducted my study of these features for Cubao there was no available test number at OMC for code "911" and "912". So to complete my study I decided to use the number 9118234 at home temporarily and remove those features after the test.[29]

Moreover, as pointed out by the appellate court, respondent's misconduct did not result in any economic loss on the part of petitioner since the service features were not yet available in the market at the time respondent caused its unauthorized installation.

We also note that respondent's dedicated service to petitioner for almost six (6) years, prior to his commission of the misconduct, is apparent from the records. His employment was untainted with any irregularity. He had been promoted several times, and had been chosen by petitioner on several occasions to attend various trainings to improve his craft. He conducted advance research based on his training background and technical expertise, and had even compiled a service feature manual which served as quick reference guide of his colleagues for inquiries regarding "subscriber operation of special (or service) features."[30]

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[29] *Rollo*, p. 287.

[30] Based on statements in the Position Paper submitted by respondent to the Labor Arbiter, which were not denied by petitioner. *Rollo*, p. 56.

Based on the foregoing, we consider respondent's offense to be a simple misconduct which does not merit termination of his employment. The penalty of dismissal from service is not commensurate to respondent's offense. Although petitioner, as an employer, has the right to discipline its erring employees, exercise of such right should be tempered with compassion and understanding. The magnitude of the infraction committed by an employee must be weighed and equated with the penalty prescribed and must be commensurate thereto, in view of the gravity of the penalty of dismissal or termination from the service.[31] The employer should bear in mind that in termination cases, what is at stake is not simply the employee's job or position but his very livelihood.

On whether the Court of Appeals erred in ordering petitioner to pay respondent backwages and attorney's fees

Since respondent was illegally dismissed, he is entitled to reinstatement without loss of seniority rights, and to payment of backwages. Article 279 of the Labor Code, as amended by Section 34 of Rep. Act No. 6715, provides as follows:

> Art. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Thus, an illegally dismissed employee is entitled to the twin reliefs of (a) either reinstatement or separation pay, if reinstatement is no longer viable, and (b) backwages.[32] These

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[31] *AMA Computer College-East Rizal v. Ignacio, supra* note 17.

[32] Art. 279. Security of Tenure. — x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation is withheld from him up to the time of his actual reinstatement.

reliefs are given to alleviate the economic damage suffered by the illegally dismissed employee.[33]

Finally, we find no error in the award of attorney's fees. In *San Miguel Corporation v. Aballa*,[34] we held that in actions for recovery of wages or where an employee was forced to litigate and thus incur expenses to protect his rights and interests, a maximum of 10% of the total monetary award by way of attorney's fees is justifiable under Article 111 of the Labor Code;[35] Section 8, Rule VIII of Book III of the Omnibus Rules Implementing the Labor Code;[36] and paragraph 7, Article 2208 of the Civil Code.[37] The award of attorney's fees is proper and there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly.[38]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Appeals' Decision dated 21 January 2004 in CA-G.R. SP No. 75125.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[33] *St. Michael's Institute v. Santos*, 422 Phil. 723, 736 (2001).

[34] G.R. No. 149011, 28 June 2005, 461 SCRA 392, 432.

[35] Art. 111. Attorney's fees — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered. x x x

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

[37] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

x x x x x x x x x

[38] *San Miguel Corporation v. Aballa, supra* note 34, at 433.

[*] Designated additional member per Special Order No. 776.

SECOND DIVISION

[G.R. No. 166682. November 27, 2009]

NOEL B. BAGTAS, *petitioner, vs.* **HON. RUTH C. SANTOS, Presiding Judge of Regional Trial Court, Branch 72, Antipolo City, and ANTONIO and ROSITA GALLARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS;* PETITION FOR *HABEAS CORPUS* INVOLVING MINORS; HAS THE MAIN PURPOSE OF DETERMINING WHO HAS THE RIGHTFUL CUSTODY OVER A CHILD. — Section 1, Rule 102, of the Rules of Court states that the writ of *habeas corpus* shall extend to all cases where the rightful custody of any person is withheld from the persons entitled thereto. In cases involving minors, the purpose of a petition for *habeas corpus* is not limited to the production of the child before the court. The main purpose of the petition for *habeas corpus* is to determine who has the rightful custody over the child. In *Tijing v. Court of Appeals*, the Court held that: "The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. Thus, it is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy. Rather, **it is prosecuted for the purpose of determining the right of custody over a child."**

2. ID.; ID.; ID.; ID.; A TRIAL IS REQUIRED TO DETERMINE WHO HAS THE RIGHTFUL CUSTODY OVER A CHILD. — The RTC erred when it hastily dismissed the action for having become moot after Maryl Joy was produced before the trial court. It should have conducted a trial to determine who had the rightful custody over Maryl Joy. In dismissing the action, the RTC, in

effect, granted the petition for *habeas corpus* and awarded the custody of Maryl Joy to the Spouses Gallardo without sufficient basis. In *Laxamana v. Laxamana*, the Court held that: **"Mindful of the nature of the case at bar, the court *a quo* should have conducted a trial** notwithstanding the agreement of the parties to submit the case for resolution on the basis, *inter alia*, of the psychiatric report of Dr. Teresito. Thus, **petitioner is not estopped from questioning the absence of a trial considering that said psychiatric report, which was the court's primary basis in awarding custody to respondent, is insufficient to justify the decision**. The fundamental policy of the State to promote and protect the welfare of children shall not be disregarded by mere technicality in resolving disputes which involve the family and the youth."

3. ID.; ID.; ID.; ID.; REQUISITES. — Article 214 of the Civil Code states that in case of absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. Article 216 states that in default of parents or a judicially appointed guardian, the surviving grandparent shall exercise substitute parental authority over the child. x x x In determining who has the rightful custody over a child, the child's welfare is the most important consideration. The court is not bound by any legal right of a person over the child. In *Sombong v. Court of Appeals*, the Court held that: "The controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until he attains majority age. In passing on the writ in a child custody case, the court deals with a matter of an equitable nature. **Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just**. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, **the court is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration.** Considering that the child's welfare is an all-

important factor in custody cases, the Child and Youth Welfare Code unequivocally provides that in **all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration.** In the same vein**, the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child or adopt such measures as may be proper under the circumstances."** In *Sombong*, the Court laid down three requisites in petitions for *habeas corpus* involving minors: (1) the petitioner has a right of custody over the minor, (2) the respondent is withholding the rightful custody over the minor, and (3) the best interest of the minor demands that he or she be in the custody of the petitioner.

APPEARANCES OF COUNSEL

William F. De Los Santos for petitioner.
Public Attorney's Office for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 11 June 2004 Decision[2] and 5 January 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 77751. The Court of Appeals affirmed the 9 December 2002[4] and 21 April 2003 Orders of the Regional Trial Court (RTC), Judicial Region 4, Branch 72, Antipolo City, in Special Proceeding Case No. 02-1128.

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[1] *Rollo*, pp. 3-15.

[2] *Id.* at 19-27. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Salvador J. Valdez, Jr. and Aurora Santiago-Lagman, concurring.

[3] *Id.* at 29.

[4] *Id.* at 85-86. Penned by Judge Ruth Cruz-Santos.

The Facts

Antonio and Rosita S. Gallardo (Spouses Gallardo) are the parents of Maricel S. Gallardo (Maricel). Two weeks after graduating from high school in April 2000, Maricel ran away to live with her boyfriend. Maricel became pregnant and gave birth to Maryl Joy S. Gallardo (Maryl Joy). Maricel's boyfriend left her.

In February 2002, Maricel returned to her parents. On the same day, Maricel ran away again and lived with Noel B. Bagtas (Bagtas) and Lydia B. Sioson (Sioson) at Ma. Corazon, Unirock, Barangay Sta. Cruz, Antipolo City. Maricel went to Negros Occidental and left Maryl Joy in the custody of Bagtas and Sioson. In a letter[5] dated 5 February 2001, Maricel relinquished her rights over Maryl Joy to Bagtas and his wife. She stated:

Ako po si Maricel S. Gallardo 18 *taong gulang ay kusang ipinagkaloob ang aking anak sa pagkadalaga sa mag-asawang* Noel B. Bagtas *at* Neneth A. Bagtas *sa kadahilanan pong itinakwil ako ng sarili kong mga magulang at hindi ko po kayang buhayin at dahil po sa tinakbuhan ako ng aking* boyfriend *kaya wala na pong ibang paraan para ako makabangon o makapagsimula ng panibagong buhay kaya para mabigyan ng magandang buhay ang aking anak inisip ko po na ito na ang pinaka madaling paraan para po sa pagbabago ng aking buhay*.

Kaya mula sa araw na ito ay wala na akong karapatan sa aking anak. Sila ang tatayo bilang magulang ng aking anak.

In April 2002, the Spouses Gallardo tried to obtain the custody of Maryl Joy from Bagtas and Sioson. Bagtas and Sioson refused. Unable to settle the matter, the Spouses Gallardo filed with the RTC a petition[6] for *habeas corpus*.

In its Order[7] dated 10 July 2002, the RTC issued a writ of *habeas*[8] *corpus* directing the deputy sheriff to produce Maryl

[5] *Id.* at 39.

[6] *Id.* at 42-44.

[7] *Id.* at 45.

[8] *Id.* at 46.

Joy before it and to summon Bagtas and Sioson to explain why they were withholding the custody of Maryl Joy.

The Spouses Gallardo, Bagtas and Sioson entered into a compromise agreement. In its Order[9] dated 13 September 2002, the RTC stated:

> In today's hearing, both parties appeared with their respective counsels and have agreed on the following:
>
> 1. that the child should be placed in custody of the petitioners on Friday, Saturday and Sunday;
> 2. that the child should be returned to the respondents by the petitioners on Sunday at 8:00 o'clock in the evening subject to visitorial rights of the petitioners anytime of the day; and
> 3. that the child can be brought by the respondents to Valenzuela but should be returned to the petitioners on Friday morning.
>
> The above agreement shall take effect today and parties are ordered to comply strictly with the said agreement under pain of contempt in case of violation thereof.

On 29 September 2002, Bagtas and Sioson learned that Rosita S. Gallardo brought Maryl Joy to Samar. In their motion[10] dated 30 September 2002, Bagtas and Sioson prayed that the Spouses Gallardo be directed to produce Maryl Joy before the RTC, that they be directed to explain why they violated the RTC's 13 September 2002 Order, and that they be cited in contempt. In their motion[11] to dismiss dated 11 October 2002, Bagtas and Sioson prayed that the Spouses Gallardo's action be dismissed pursuant to Section 3, Rule 17, of the Rules of Court. Section 3 states that "If, for no justifiable cause, the plaintiff fails x x x to comply with x x x any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion." Bagtas and Sioson claimed that the Spouses

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[9] *Id.* at 60.

[10] *Id.* at 63-65.

[11] *Id.* at 67-71.

Gallardo failed to comply with the RTC's 13 September 2002 Order.

In its Order[12] dated 15 October 2002, the RTC cited the Spouses Gallardo in contempt, fined them ₱500, and ordered them to produce Maryl Joy before the trial court.

The RTC's Ruling

In its Order[13] dated 9 December 2002, the RTC dismissed the action for having become moot. The RTC stated:

> In this petition, the prayer of the petitioners is to produce the person of Meryl [sic] Joy S. Gallardo before this court to be turned over to herein petitioners who are the maternal [grandparents] of said minor.
>
> **Since the person subject of the petition has already produced** [sic] **to this court and has been turned over to the petitioners, the issue on the petition for *habeas corpus* is now moot and academic** without prejudice to the filing of the proper action to determine as to the rightful custody over the minor child.
>
> In view thereof, x x x the Motion to Dismiss is hereby granted but without prejudice on the petitioners to file proper action for custody of the minor. (Emphasis supplied)

In their motion[14] for reconsideration dated 27 December 2002, Bagtas and Sioson alleged that the ground for the dismissal of the action was erroneous. The action should have been dismissed pursuant to Section 3, Rule 17, of the Rules of Court. They prayed that Maryl Joy be returned to them to preserve the status quo *ante*. Bagtas and Sioson stated:

> 5. Thus, the Honorable Court very clearly issued a conflicting Order because It has cited the [Spouses Gallardo] in contempt of court for violating the previous September 13, 2002 Order that the child should be returned to the respondents in the evening of September 29, 2002 (Sunday), and yet the

[12] *Id. at* 74-76.

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

[14] *Id.* at 87-90.

Honorable Court has dismissed the petition for being moot and academic. This is in effect giving premium to the act of the petitioners of not turning over the child to respondents on September 29, 2002. Likewise, this is tantamount to rewarding them for not producing the child in court in violation of the aforesaid September 13, 2002 Order;

6. Moreover, the Honorable Court has issued an unreasonable Order by stating that the dismissal of the instant case is without prejudice to the filing of the proper action for custody of the minor by the petitioners. Why would the petitioners still file the proper action for custody if they now have the custody of the minor?

P R A Y E R

WHEREFORE, premises considered, it is most respectfully prayed that the December 9, 2002 Order of the Honorable Court be partially reconsidered so that the dismissal of the case will not be based on the ground of being moot and academic but based on failure to comply with the September 13, 2002 pursuant [sic] to Section 3, Rule 17 of the 1997 Rules of Civil Procedure and that petitioners be consequently directed to return the person subject of the petition to the respondents to preserve the status quo *ante*.

In its Order[15] dated 21 April 2003, the RTC denied the motion for reconsideration. The RTC held that the sole purpose of the petition for *habeas corpus* was the production of Maryl Joy and that the Spouses Gallardo exercised substitute parental authority over Maryl Joy. The RTC stated that:

The allegations in the Petition show that the sole purpose for the filing of the Petition is to cause the production before the Court of the person of minor Meryl [sic] **Joy S. Gallardo, not a determination of the legality or illegality of respondents' custody of the child**, petitioners being aware of the fact that the child was left by their (petitioners') daughter to [sic] the custody of the respondents, as stated in par. No. 10 of the Petition.

The instant Petition is therefore, essentially not a petition for *Habeas Corpus* as contemplated in Rule 102, Revised Rules of Court which is resorted to in all cases of illegal confinement by which any

[15] *Id.* at 98-99.

person is deprived of his liberty (*Cruz vs. CA*, 322 SCRA 518), but is resorted to also where the rightful custody of any person is withheld from the person entitled thereto as contemplated in Rule 102, Revised Rules of Court. In order that the special remedy of *Habeas Corpus* maybe [sic] invoked, it is necessary that there should be an actual and effective restraint or deprivation of liberty. A nominal or moral restraint is not sufficient (*Gonzales vs. Viola, et al.*, 61 Phil. 824).

Since therefore, the purpose of the instant Petition has already been served, as the child has been produced and delivered to the petitioners, the instant Petition logically has become moot and academic. Petitioners are, under the law (Art. 214, Family Code), authorized to exercise substitute parental authority over the child in case of death, absence or unsuitability of the parents, the entitlement to the legal custody of the child being necessarily included therein to make possible and/or enable the petitioners to discharge their duties as substitute parents.

There is no inconsistency between the Order dated December 9, 2002 sought to be reconsidered, and the Order dated October 15, 2002, as the latter was issued pursuant to an incident, an interlocutory matter, that is, the failure of the petitioners to comply with the agreement reached between the parties in open court on September 13, 2002. The said Order dated October 15, 2002 is not a resolution of the case in the main, as it did not terminate the case. The Order dated December 9, 2002, on the other hand, terminated the case, and considering that the dismissal of the case was unqualified, the same amounted to an adjudication on the merits pursuant to Sec. 3, Rule 17 of the Revised Rules of Court Procedure, therefore, the agreement earlier entered by and between the herein parties is deemed terminated. (Emphasis supplied)

Bagtas filed with the Court of Appeals a petition[16] for *certiorari* under Rule 65 of the Rules of Court. Bagtas alleged that (1) the RTC erred when it ruled that the sole purpose of the 1 August 2002 petition was the production of Maryl Joy before the trial court, (2) the RTC erred when it ruled that the petition was "essentially not a petition for *Habeas Corpus* as contemplated in Rule 102," (3) the RTC erred when it ruled that there must be actual and effective deprivation of liberty,

[16] CA *rollo*, pp. 2-55.

(4) the RTC erred when it ruled that the action had become moot, (5) the RTC erred when it ruled that the Spouses Gallardo had substitute parental authority over Maryl Joy, and (6) the RTC erred when it ruled that there was no inconsistency between the 15 October and 9 December 2002 Orders.

The Court of Appeals' Ruling

In its Decision dated 11 June 2004, the Court of Appeals dismissed the petition and affirmed the 9 December 2002 and 23 April 2003 Orders of the RTC. The Court of Appeals held that:

> In the second part of [Section 1, Rule 102, of the Rules of Court], x x x *habeas corpus* may be resorted to in cases where the rightful custody of any person is withheld from the person entitled thereto. Accordingly, the writ of *habeas corpus* is the proper remedy to enable herein private respondents to regain the custody of their minor grand daughter Maryl Joy who was admittedly left by her natural mother in the care of petitioner and Lydia Sioson.
>
> Significantly, in custody cases involving minors, the question of illegal or involuntary restraint is not the underlying rationale for the availability of the writ of *habeas corpus* as a remedy; rather, the writ is prosecuted for the purpose of determining the right of custody of a child. By dismissing the petition a *quo*, the trial court in effect upheld private respondents' right of custody over the minor involved as against that of petitioner.
>
> While it cannot be gainsaid that private respondents obtained initial custody of the minor in violation of a valid court order, we nonetheless sustain the judgment a *quo* dismissing the petition and validating such rightful custody over Maryl Joy. This is because private respondents are the grandparents of Maryl Joy, hence, lawfully authorized to exercise substitute parental authority over her in the absence of her parents. What is more, in awarding custody to private respondents, the best welfare of the child was taken into consideration inasmuch as, per report of the Court Social Worker, the implementation of the parties' agreement would cause more psychological damage and traumatic experience to Maryl Joy. To our mind, therefore, the violation of a court order pales in significance when considered alongside the best interest of the minor whose welfare requires that she be in the custody of her grandparents rather than petitioner's. x x x

Under the factual and legal milieux of the case, there is no question that as grandparents of the minor, Maryl Joy, private respondents have a far superior right of custody over her than petitioner.[17]

The Issues

In his petition dated 1 February 2005, Bagtas raised as issues that:

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT FINDING THAT TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THAT THE ALLEGATION IN THE PETITION FOR *HABEAS CORPUS* SHOW THAT THE SOLE PURPOSE FOR THE FILING THEREOF IS TO CAUSE THE PRODUCTION BEFORE THE COURT OF THE PERSON IN WHOSE FAVOR IT WAS FILED.

THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN NOT FINDING THAT THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT WITH THE DELIVERY OF THE CHILD FOR WHOM THE PETITION WAS FILED, THE PETITION FOR *HABEAS CORPUS* HAS BECOME MOOT AND ACADEMIC.

The Court's Ruling

The Court of Appeals erred when it affirmed the RTC's 9 December 2002 and 21 April 2003 Orders. In its Orders, the RTC ruled that, since the sole purpose of the petition for *habeas corpus* was the production of Maryl Joy before the trial court, the action became moot when Maryl Joy was produced. The Court disagrees.

Section 1, Rule 102, of the Rules of Court states that the writ of *habeas corpus* shall extend to all cases where the rightful custody of any person is withheld from the persons entitled thereto. In cases involving minors, the purpose of a petition for *habeas corpus* is not limited to the production of the child before the court. The main purpose of the petition

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[17] *Rollo*, pp. 25-26.

for *habeas corpus* is to determine who has the rightful custody over the child. In *Tijing v. Court of Appeals*,[18] the Court held that:

> The writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. Thus, it is the proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. It may even be said that in custody cases involving minors, the question of illegal and involuntary restraint of liberty is not the underlying rationale for the availability of the writ as a remedy. Rather, **it is prosecuted for the purpose of determining the right of custody over a child**. (Emphasis supplied)

The RTC erred when it hastily dismissed the action for having become moot after Maryl Joy was produced before the trial court. It should have conducted a trial to determine who had the rightful custody over Maryl Joy. In dismissing the action, the RTC, in effect, granted the petition for *habeas corpus* and awarded the custody of Maryl Joy to the Spouses Gallardo without sufficient basis. In *Laxamana v. Laxamana*,[19] the Court held that:

> **Mindful of the nature of the case at bar, the court *a quo* should have conducted a trial** notwithstanding the agreement of the parties to submit the case for resolution on the basis, *inter alia*, of the psychiatric report of Dr. Teresito. Thus, **petitioner is not estopped from questioning the absence of a trial considering that said psychiatric report, which was the court's primary basis in awarding custody to respondent, is insufficient to justify the decision**. The fundamental policy of the State to promote and protect the welfare of children shall not be disregarded by mere technicality in resolving disputes which involve the family and the youth. (Emphasis supplied)

Article 214 of the Civil Code states that in case of absence or unsuitability of the parents, substitute parental authority shall

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[18] 406 Phil. 449, 458 (2001).

[19] 437 Phil. 104, 114-115 (2002).

be exercised by the surviving grandparent. Article 216 states that in default of parents or a judicially appointed guardian, the surviving grandparent shall exercise substitute parental authority over the child. Accordingly, in its 21 April 2003 Order, the RTC held that:

> Petitioners are, under the law (Art. 214, Family Code), authorized to exercise substitute parental authority over the child in case of death, absence or unsuitability of the parents, the entitlement to the legal custody of the child being necessarily included therein to make possible and/or enable the petitioners to discharge their duties as substitute parents.[20]

In its 11 June 2004 Decision, the Court of Appeals held that:

> While it cannot be gainsaid that private respondents obtained initial custody of the minor in violation of a valid court order, we nonetheless sustain the judgment a *quo* dismissing the petition and validating such rightful custody over Maryl Joy. This is because private respondents are the grandparents of Maryl Joy, hence, lawfully authorized to exercise substitute parental authority over her in the absence of her parents.[21]

In determining who has the rightful custody over a child, the child's welfare is the most important consideration. The court is not bound by any legal right of a person over the child. In *Sombong v. Court of Appeals*,[22] the Court held that:

> The controversy does not involve the question of personal freedom, because an infant is presumed to be in the custody of someone until he attains majority age. In passing on the writ in a child custody case, the court deals with a matter of an equitable nature. **Not bound by any mere legal right of parent or guardian, the court gives his or her claim to the custody of the child due weight as a claim founded on human nature and considered generally equitable and just**. Therefore, these cases are decided, not on the legal right of the petitioner to be relieved from unlawful imprisonment or detention, as in the case of adults, but on the court's view of the best interests of those whose welfare requires that they be in custody of one person or another. Hence, **the court**

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[20] *Rollo*, p. 99.

[21] *Id.* at 25.

[22] 322 Phil. 737, 750-751 (1996).

is not bound to deliver a child into the custody of any claimant or of any person, but should, in the consideration of the facts, leave it in such custody as its welfare at the time appears to require. In short, the child's welfare is the supreme consideration.

Considering that the child's welfare is an all-important factor in custody cases, the Child and Youth Welfare Code unequivocally provides that **in all questions regarding the care and custody, among others, of the child, his welfare shall be the paramount consideration**. In the same vein, **the Family Code authorizes the courts to, if the welfare of the child so demands, deprive the parents concerned of parental authority over the child or adopt such measures as may be proper under the circumstances**. (Emphasis supplied)

In *Sombong*,[23] the Court laid down three requisites in petitions for *habeas corpus* involving minors: (1) the petitioner has a right of custody over the minor, (2) the respondent is withholding the rightful custody over the minor, and (3) the best interest of the minor demands that he or she be in the custody of the petitioner. In the present case, these requisites are not clearly established because the RTC hastily dismissed the action and awarded the custody of Maryl Joy to the Spouses Gallardo without conducting any trial.

The proceedings before the RTC leave so much to be desired. While a remand of the case would mean further delay, Maryl Joy's best interest demands that proper proceedings be conducted to determine the fitness of the Spouses Gallardo to take care of her.

WHEREFORE, the Court *REMANDS* the case to the Regional Trial Court, Judicial Region 4, Branch 72, Antipolo City, for the purpose of receiving evidence to determine the fitness of the Spouses Antonio and Rosita S. Gallardo to have custody of Maryl Joy Gallardo.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.*, concur.

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[23] *Id.* at 751.

[*] Designated additional member per Special Order No. 776.

SECOND DIVISION

[G.R. No. 169606. November 27, 2009]

BERNARDO B. JOSE, JR., *petitioner, vs.* **MICHAELMAR PHILS., INC. and MICHAELMAR SHIPPING SERVICES, INC.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE PETITION MUST STATE THE LAW OR JURISPRUDENCE AND THE PARTICULAR RULING OF THE APPELLATE COURT VIOLATIVE OF SUCH LAW OR JURISPRUDENCE. — In a petition for review on *certiorari* under Rule 45 of the Rules of Court, a mere statement that the Court of Appeals erred is insufficient. The petition must state the law or jurisprudence and the particular ruling of the appellate court violative of such law or jurisprudence. In *Encarnacion v. Court of Appeals*, the Court held that: x x x "In a petition for review under Rule 45, Rules of Court, invoking the usual reason, *i.e.,* that the Court of Appeals has decided a question of substance not in accord with law or with applicable decisions of the Supreme Court, a mere statement of the ceremonial phrase is not sufficient to confer merit on the petition. The petition must specify the law or prevailing jurisprudence on the matter and the particular ruling of the appellate court violative of such law or previous doctrine laid down by the Supreme Court." In the present case, Jose, Jr. did not show that the Court of Appeals' ruling is violative of any law or jurisprudence.

2. ID.; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; HEARSAY RULE; EXCEPTIONS; ENTRIES IN THE COURSE OF BUSINESS; REQUISITES. — In *Canque v. Court of Appeals,* the Court laid down the requisites for admission in evidence of entries in the course of business: (1) the person who made the entry is dead, outside the country, or unable to testify; (2) the entries were made at or near the time of the transactions to which they refer; (3) the person who made the entry was in a position to know the facts stated in the entries; (4) the entries

were made in a professional capacity or in the performance of a duty; and (5) the entries were made in the ordinary or regular course of business or duty.

3. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS ARE GENERALLY NOT DISTURBED ON APPEAL. — Factual findings of the Court of Appeals are binding on the Court. Absent grave abuse of discretion, the Court will not disturb the Court of Appeals' factual findings. In *Encarnacion*, the Court held that, "unless there is a clearly grave or whimsical abuse on its part, findings of fact of the appellate court will not be disturbed. The Supreme Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence."

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; SERIOUS MISCONDUCT; DRUG USE IN THE PREMISES OF THE EMPLOYER CONSTITUTES SERIOUS MISCONDUCT. — Article 282(a) of the Labor Code states that the employer may terminate an employment for serious misconduct. Drug use in the premises of the employer constitutes serious misconduct. In *Bughaw, Jr. v. Treasure Island Industrial Corporation*, the Court held that: **"The charge of drug use inside the company's premises and during working hours against petitioner constitutes serious misconduct, which is one of the just causes for termination.** Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not merely an error in judgment. The misconduct to be serious within the meaning of the Act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless, in connection with the work of the employee, constitute just cause for his separation. **This Court took judicial notice of scientific findings that drug abuse can damage the mental faculties of the user. It is beyond question therefore that any employee under the influence of drugs cannot possibly continue doing his duties without posing a serious threat to the lives and property of his co-workers and even his employer."**

5. ID.; ID.; ID.; VALID DISMISSAL; REQUISITES. – There are two requisites for a valid dismissal: (1) there must be just cause, and (2) the employee must be afforded due process. To meet the requirements of due process, the employer must furnish the employee with two written notices — a notice apprising the employee of the particular act or omission for which the dismissal is sought and another notice informing the employee of the employer's decision to dismiss. In *Talidano v. Falcon Maritime & Allied Services, Inc.*, the Court held that: "[R]espondent failed to comply with the procedural due process required for terminating the employment of the employee. Such requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. This is especially true in the case of a vessel on the ocean or in a foreign port. **The minimum requirement of due process termination proceedings, which must be complied with even with respect to seamen on board a vessel, consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side of the alleged offense or misconduct, which led to the management's decision to terminate. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him."**

6. ID.; ID.; ID.; WHEN THE DISMISSAL IS FOR JUST CAUSE, THE LACK OF DUE PROCESS DOES NOT RENDER THE DISMISSAL INEFFECTUAL BUT MERELY GIVES RISE TO THE PAYMENT OF NOMINAL DAMAGES; CASE AT BAR. — In the present case, Jose, Jr. was not given any written notice about his dismissal. However, the propriety of Jose, Jr.'s dismissal is not affected by the lack of written notices. When the dismissal is for just cause, the lack of due process does not render the dismissal ineffectual but merely gives rise to the payment of ₱30,000 in nominal damages.

APPEARANCES OF COUNSEL

Sebastian Office of Legal Aid for petitioner.
Marilyn P. Cacho and Associates for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 11 May 2005 Decision[2] and 5 August 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 83272. The Court of Appeals set aside the 19 January[4] and 22 March[5] 2004 Resolutions of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 036666-03 and reinstated the 18 June 2003 Decision[6] of the Labor Arbiter in NLRC NCR OFW Case No. (M)02-12-3137-00.

The Facts

Michaelmar Philippines, Inc. (MPI) is the Philippine agent of Michaelmar Shipping Services, Inc. (MSSI). In an undertaking[7] dated 2 July 2002 and an employment contract[8] dated 4 July 2002, MSSI through MPI engaged the services of Bernardo B.

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[1] *Rollo,* pp. 9-24.

[2] *Id.* at 30-38. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Rebecca de Guia-Salvador and Santiago Javier Ranada, concurring.

[3] *Id.* at 40.

[4] *Id.* at 49-60. Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring.

[5] *Id.* at 62-63.

[6] *Id.* at 42-48. Penned by Labor Arbiter Roma C. Asinas.

[7] *Id.* at 65.

[8] *Id.* at 66.

Jose, Jr. (Jose, Jr.) as oiler of M/T Limar. The employment contract stated:

> That the employee shall be employed on board under the following terms and conditions:
>
> | | |
> |---|---|
> | 1.1 Duration of Contract | EIGHT (8) MONTHS |
> | 1.2 Position | OILER |
> | 1.3 Basic Monthly Salary | US$ 450.00 & US$ 39.00 TANKER ALLOWANCE |
> | 1.4 Hours of Work | 48 HOURS/WEEK |
> | 1.5 Overtime | US$ 386.00 FIXED OT. 105 HRS/ MOS. |
> | 1.6 Vacation Leave with Pay | US$ 190.00 & US$ 150 OWNERS BONUS |
> | 1.7 Point of Hire | MANILA, PHILIPPINES[9] |

In connection with the employment contract, Jose, Jr. signed a declaration[10] dated 10 June 2002 stating that:

> In order to implement the Drug and Alcohol Policy on board the managed vessels the following with [sic] apply:
>
> All alcoholic beverages, banned substances and unprescribed drugs including but not limited to the following: Marijuana Cocaine Phencyclidine Amphetamines Heroin Opiates are banned from Stelmar Tankers (Management) Ltd. managed vessels.
>
> Disciplinary action up to and including dismissal will be taken against any employee found to be in possession of or impaired by the use of any of the above mentioned substances.
>
> A system of random testing for any of the above banned substances will be used to enforce this policy. Any refusal to submit to such tests shall be deemed as a serious breach of the employment contract and shall result to the seaman's dismissal due to his own offense.
>
> Therefore any seaman will be instantly dismissed if:
>
> xxx xxx xxx

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[9] *Id*.

[10] CA *rollo*, p. 75.

They are found to have positive trace of alcohol or any of the banned substances in any random testing sample.

Jose, Jr. began performing his duties on board the M/T Limar on 21 August 2002. On 8 October 2002, a random drug test was conducted on all officers and crew members of M/T Limar at the port of Curacao. Jose, Jr. was found positive for marijuana. Jose, Jr. was informed about the result of his drug test and was asked if he was taking any medication. Jose, Jr. said that he was taking Centrum vitamins.

Jose, Jr. was allowed to continue performing his duties on board the M/T Limar from 8 October to 29 November 2002. In the Sea Going Staff Appraisal Report[11] on Jose Jr.'s work performance for the period of 1 August to 28 November 2002, Jose, Jr. received a 96% total rating and was described as very hardworking, trustworthy, and reliable.

On 29 December 2002, M/T Limar reached the next port after the random drug test and Jose, Jr. was repatriated to the Philippines. When Jose, Jr. arrived in the Philippines, he asked MPI that a drug test be conducted on him. MPI ignored his request. On his own, Jose, Jr. procured drug tests from Manila Doctors Hospital,[12] S.M. Lazo Medical Clinic, Inc.,[13] and Maritime Clinic for International Services, Inc.[14] He was found negative for marijuana.

Jose, Jr. filed with the NLRC a complaint against MPI and MSSI for illegal dismissal with claim for his salaries for the unexpired portion of the employment contract.

The Labor Arbiter's Ruling

In her 18 June 2003 Decision, the Labor Arbiter dismissed the complaint for lack of merit. The Labor Arbiter held that:

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[11] *Rollo,* pp. 67-68.

[12] *Id.* at 69-70.

[13] *Id.* at 71.

[14] *Id.* at 72.

Based from the facts and evidence, this office inclined [sic] to rule in favor of the respondents: we find that complainant's termination from employment was valid and lawful. It is established that complainant, after an unannounced drug test conducted by the respondent principal on the officers and crew on board the vessel, was found positive of marijuana, a prohibited drug. It is a universally known fact the menace that drugs bring on the user as well as to others who may have got on his way. It is noted too that complainant worked on board a tanker vessel which carries toxic materials such as fuels, gasoline and other combustible materials which require delicate and careful handling and being an oiler, complainant is expected to be in a proper disposition. Thus, we agree with respondents that immediate repatriation of complainant is warranted for the safety of the vessel as well as to complainant's co-workers on board. It is therefore a risk that should be avoided at all cost. Moreover, under the POEA Standard Employment Contract as cited by the respondents (*supra*), violation of the drug and alcohol policy of the company carries with it the penalty of dismissal to be effected by the master of the vessel. It is also noted that complainant was made aware of the results of the drug test as per Drug Test Certificate dated October 29, 2002. He was not dismissed right there and then but it was only on December 29, 2002 that he was repatriated for cause.

As to the complainant's contention that the ship doctor's report can not be relied upon in the absence of other evidence supporting the doctor's findings for the simple reason that the ship doctor is under the control of the principal employer, the same is untenable. On the contrary, the findings of the doctor on board should be given credence as he would not make a false clarification. Dr. A.R.A Heath could not be said to have outrageously contrived the results of the complainant's drug test. We are therefore more inclined to believe the original results of the unannounced drug test as it was officially conducted on board the vessel rather than the subsequent testing procured by complainant on his own initiative. The result of the original drug test is evidence in itself and does not require additional supporting evidence except if it was shown that the drug test was conducted not in accordance with the drug testing procedure which is not obtaining in this particular case. [H]ence, the first test prevails.

We can not also say that respondents were motivated by ill will against the complainant considering that he was appraised to be a good worker. For this reason that respondents would not terminate

[sic] the services of complainant were it not for the fact that he violated the drug and alcohol policy of the company. [T]hus, we find that just cause exist [sic] to justify the termination of complainant.[15]

Jose, Jr. appealed the Labor Arbiter's 18 June 2003 Decision to the NLRC. Jose, Jr. claimed that the Labor Arbiter committed grave abuse of discretion in ruling that he was dismissed for just cause.

The NLRC's Ruling

In its 19 January 2004 Resolution, the NLRC set aside the Labor Arbiter's 18 June 2003 Decision. The NLRC held that Jose, Jr.'s dismissal was illegal and ordered MPI and MSSI to pay Jose, Jr. his salaries for the unexpired portion of the employment contract. The NLRC held that:

Here, a copy of the purported drug test result for Complainant indicates, among others, the following typewritten words "Hoofd: Drs. R.R.L. Petronia Apotheker" and "THC-COOH POS."; the handwritten word "Marihuana"; and the stamped words "Dr. A.R.A. Heath, MD", "SHIP'S DOCTOR" and "29 OKT. 2002." However, said test result does not contain any signature, much less the signature of any of the doctors whose names were printed therein (Page 45, Records). Verily, the veracity of this purported drug test result is questionable, hence, it cannot be deemed as substantial proof that Complainant violated his employer's "no alcohol, no drug" policy. In fact, in his November 14, 2002 message to Stelmar Tanker Group, the Master of the vessel where Complainant worked, suggested that another drug test for complainant should be taken when the vessel arrived [sic] in Curacao next call for final findings (Page 33, Records), which is an indication that the Master, himself, was in doubt with the purported drug test result. Indeed there is reason for the Master of the vessel to doubt that Complainant was taking in the prohibited drug "marihuana." The Sea Going Staff Appraisal Report signed by Appraiser David A. Amaro, Jr. and reviewed by the Master of the vessel himself on complainant's work performance as Wiper from August 1, 2002 to November 28, 2002 which included a two-month period after the purported drug test, indicates that out of a total score of 100% on Safety Consciousness (30%), Ability (30%), Reliability

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

(20%) and Behavior & Attitude (20%), Complainant was assessed a score of 96% (Pages 30-31, Records). Truly, a worker who had been taking in prohibited drug could not have given such an excellent job performance. Significantly, under the category "Behavior & Attitude (20%)," referring to his personal relationship and his interactions with the rest of the ship's staff and his attitude towards his job and how the rest of the crew regard him, Complainant was assessed the full score of 20% (Page 31, Records), which belies Respondents' insinuation that his alleged offense directly affected the safety of the vessel, its officers and crew members. Indeed, if Complainant had been a threat to the safety of the vessel, officers and crew members, he would not be been [sic] allowed to continue working almost three (3) months after his alleged offense until his repatriation on December 29, 2002. Clearly, Respondents failed to present substantial proof that Complainant's dismissal was with just or authorized cause.

Moreover, Respondents failed to accord Complainant due process prior to his dismissal. There is no showing that Complainant's employer furnished him with a written notice apprising him of the particular act or omission for which his dismissal was sought and a subsequent written notice informing him of the decision to dismiss him, much less any proof that Complainant was given an opportunity to answer and rebut the charges against him prior to his dismissal. Worse, Respondents' invoke the provision in the employment contract which allows summary dismissal for cases provided therein. Consequently, Respondents argue that there was no need for him to be notified of his dismissal. Such blatant violation of basic labor law principles cannot be permitted by this Office. Although a contract is law between the parties, the provisions of positive law which regulate such contracts are deemed included and shall limit and govern the relations between the parties (*Asia World Recruitment, Inc. vs. NLRC*, G.R. No. 113363, August 24, 1999).

Relative thereto, it is worth noting Section 10 of Republic Act No. 8042, which provides that "In cases 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 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."[16]

[16] *Id.* at 56-58.

MPI and MSSI filed a motion for reconsideration. In its 22 March 2004 Resolution, the NLRC denied the motion for lack of merit. MPI and MSSI filed with the Court of Appeals a petition[17] for *certiorari* under Rule 65 of the Rules of Court. MPI and MSSI claimed that the NLRC gravely abused its discretion when it (1) reversed the Labor Arbiter's factual finding that Jose, Jr. was legally dismissed; (2) awarded Jose, Jr. his salaries for the unexpired portion of the employment contract; (3) awarded Jose, Jr. $386 overtime pay; and (4) ruled that Jose, Jr. perfected his appeal within the reglementary period.

The Court of Appeals' Ruling

In its 11 May 2005 Decision, the Court of Appeals set aside the 19 January and 22 March 2004 Resolutions of the NLRC and reinstated the 18 June 2003 Decision of the Labor Arbiter. The Court of Appeals held that:

> The POEA standard employment contract adverted to in the labor arbiter's decision to which all seamen's contracts must adhere explicitly provides that the failure of a seaman to obey the policy warrants a penalty of dismissal which may be carried out by the master even without a notice of dismissal if there is a clear and existing danger to the safety of the vessel or the crew. That the petitioners were implementing a *no-alcohol, no drug* policy that was communicated to the respondent when he embarked is not in question. He had signed a document entitled *Drug and Alcohol Declaration* in which he acknowledged that alcohol beverages and unprescribed drugs such as marijuana were banned on the vessel and that any employee found possessing or using these substances would be subject to instant dismissal. He undertook to comply with the policy and abide by all the relevant rules and guidelines, including the system of random testing that would be employed to enforce it.
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> We can hardly belabor the reasons and justification for this policy. The safety of the vessel on the high seas is a matter of supreme and unavoidable concern to all — the owners, the crew and the riding public. In the ultimate analysis, a vessel is only as seaworthy as the men who sail it, so that it is necessary to maintain at every moment the efficiency and competence of the crew. Without an effective *no*

[17] CA *rollo*, pp. 2-13.

alcohol, no drug policy on board the ship, the vessel's safety will be seriously compromised. The policy is, therefore, a reasonable and lawful order or regulation that, once made known to the employee, must be observed by him, and the failure or refusal of a seaman to comply with it should constitute *serious misconduct or willful disobedience* that is a just cause for the termination of employment under the Labor Code (*Aparente vs. National Labor Relations Commission*, 331 SCRA 82). As the labor arbiter has discerned, the seriousness and earnestness in the enforcement of the ban is highlighted by the provision of the POEA Standard Employment Contract allowing the ship master to forego the *notice of dismissal* requirement in effecting the repatriation of the seaman violating it.

xxx xxx xxx

Under legal rules of evidence, not all unsigned documents or papers fail the test of admissibility. There are kinds of evidence known as *exceptions to the hearsay rule* which need not be invariably signed by the author if it is clear that it issues from him because of necessity and under circumstances that safeguard the trustworthiness of the paper. A number of evidence of this sort are called *entries in the course of business*, which are transactions made by persons in the regular course of their duty or business. We agree with the labor arbiter that the drug test result constitutes entries made in the ordinary or regular course of duty of a responsible officer of the vessel. The tests administered to the crew were routine measures of the vessel conducted to enforce its stated policy, and it was a matter of course for medical reports to be issued and released by the medical officer. The ship's physician at Curacao under whom the tests were conducted was admittedly Dr. Heath. It was under his name and with his handwritten comments that the report on the respondent came out, and there is no basis to suspect that these results were issued other than in the ordinary course of his duty. As the labor arbiter points out, the drug test report is evidence in itself and does not require additional supporting evidence except if it appears that the drug test was conducted not in accordance with drug testing procedures. Nothing of the sort, he says, has even been suggested in this particular case.

The regularity of the procedure observed in the administration and reporting of the tests is the very assurance of the report's admissibility and credibility under the laws of the evidence. We see no reason why it cannot be considered substantial evidence, which, parenthetically, is the lowest rung in the ladder of evidence. It is

from the fact that a report or entry is a part of the regular routine work of a business or profession that it derives its value as legal evidence.

Then the respondent was notified of the results and allowed to explain himself. He could not show any history of medication that could account for the traces of drugs in his system. Despite his lack of plausible excuses, the ship captain came out in support of him and asked his superiors to give him another chance. These developments prove that the respondent was afforded due process consistent with the exigencies of his service at sea. For the NLRC to annul the process because he was somehow not furnished with written notice is already being pedantic. What is the importance to the respondent of the difference between a written and verbal notice when he was actually given the opportunity to be heard? x x x

The working environment in a seagoing vessel is *sui generis* which amply justifies the difference in treatment of seamen found guilty of serious infractions at sea. The POEA Standard Employment Contract allows the ship master to implement a repatriation for just cause without a notice of dismissal if this is necessary to avoid a clear and existing danger to the vessel. The petitioners have explained that that [sic] it is usually at the next port of call where the offending crewman is made to disembark. In this case, a month had passed by after the date of the medical report before they reached the next port. We may not second-guess the judgment of the master in allowing him to remain at his post in the meantime. It is still reasonable to believe that the proper safeguards were taken and proper limitations observed during the period when the respondent remained on board.

Finally, the fact that the respondent obtained negative results in subsequent drug tests in the Philippines does not negate the findings made of his condition on board the vessel. A drug test can be negative if the user undergoes a sufficient period of abstinence before taking the test. Unlike the tests made at his instance, the drug test on the vessel was unannounced. The credibility of the first test is, therefore, greater than the subsequent ones.[18]

Jose, Jr. filed a motion[19] for reconsideration. In its 5 August 2005 Resolution, the Court of Appeals denied the motion for lack of merit. Hence, the present petition.

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[18] *Rollo,* pp. 33-37.

[19] CA *rollo,* pp. 125-130.

In a motion[20] dated 1 August 2007, MPI and MSSI prayed that they be substituted by OSG Ship Management Manila, Inc. as respondent in the present case. In a Resolution[21] dated 14 November 2007, the Court noted the motion.

The Issues

In his petition dated 13 September 2005, Jose, Jr. claims that he was illegally dismissed from employment for two reasons: (1) there is no just cause for his dismissal because the drug test result is unsigned by the doctor, and (2) he was not afforded due process. He stated that:

> 2. The purported drug test result conducted to petitioner indicates, among others, the following: [sic] typwritten words 'Hool: Drs. R.R.L.. [sic] Petronia Apotheker" [sic] and :THC-COOH POS." [sic]; the handwritten word "Marihuana"; and the stamped words "Dr. A.R.A Heath, MD", "SHIP'S DOCTOR" and "29 OKT. 2002." However, said test result does not contain any signature, much less the signature of any of the doctors whose name [sic] were printed therein. This omission is fatal as it goes to the veracity of the said purported drug test result. Consequently, the purported drug test result cannot be deemed as substantial proof that petitioner violated his employer's "no alcohol, no drug policy' [sic].
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> xxx xxx xxx
>
> Even assuming *arguendo* that there was just cause, respondents miserably failed to show that the presence of the petitioner in the vessel constitutes a clear and existing danger to the safety of the crew or the vessel. x x x
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> xxx xxx xxx
>
> It is a basic principle in Labor Law that in termination disputes, the burden is on the employer to show that the dismissal was for a just and valid cause. x x x
>
> xxx xxx xxx
>
> x x x [T]he Honorable Labor Arbiter as well as the Honorable Court of Appeals clearly erred in ruling that there was just cause for the

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[20] *Rollo*, pp. 154-156.

[21] *Id.* at 159.

termination of petitioner's employment. Petitioner's employment was terminated on the basis only of a mere allegation that is unsubstantiated, unfounded and on the basis of the drug test report that was not even signed by the doctor who purportedly conducted such test.

5. Moreover, respondents failed to observe due process in terminating petitioner's employment. There is no evidence on record that petitioner was furnished by his employer with a written notice apprising him of the particular act or omission which is the basis for his dismissal. Furthermore, there is also no evidence on record that the second notice, informing petitioner of the decision to dismiss, was served to the petitioner. There is also no proof on record that petitioner was given an opportunity to answer and rebut the charges against him prior to the dismissal.[22]

The Court's Ruling

In its 11 May 2005 Decision, the Court of Appeals held that there was just cause for Jose, Jr.'s dismissal. The Court of Appeals gave credence to the drug test result showing that Jose, Jr. was positive for marijuana. The Court of Appeals considered the drug test result as part of entries in the course of business. The Court of Appeals held that:

Under legal rules of evidence, not all unsigned documents or papers fail the test of admissibility. There are kinds of evidence known as *exceptions to the hearsay rule* which need not be invariably signed by the author if it is clear that it issues from him because of necessity and under circumstances that safeguard the trustworthiness of the paper. A number of evidence of this sort are called *entries in the course of business*, which are transactions made by persons in the regular course of their duty or business. We agree with the labor arbiter that **the drug test result constitutes entries made in the ordinary or regular course of duty of a responsible officer of the vessel. The tests administered to the crew were routine measures of the vessel conducted to enforce its stated policy, and it was a matter of course for medical reports to be issued and released by the medical officer. The ship's physician at Curacao under whom the tests were conducted was admittedly Dr. Heath. It was under his name and with his handwritten comments that the report on the respondent**

[22] *Id.* at 16-20.

came out, and there is no basis to suspect that these results were issued other than in the ordinary course of his duty. As the labor arbiter points out, the drug test report is evidence in itself and does not require additional supporting evidence except if it appears that the drug test was conducted not in accordance with drug testing procedures. Nothing of the sort, he says, has even been suggested in this particular case.[23] (Emphasis supplied)

Jose, Jr. claims that the Court of Appeals erred when it ruled that there was just cause for his dismissal. The Court is not impressed. In a petition for review on *certiorari* under Rule 45 of the Rules of Court, a mere statement that the Court of Appeals erred is insufficient. The petition must state the law or jurisprudence and the particular ruling of the appellate court violative of such law or jurisprudence. In *Encarnacion v. Court of Appeals*,[24] the Court held that:

> Petitioner asserts that there is a question of law involved in this appeal. We do not think so. The appeal involves an appreciation of facts, *i.e.*, whether the questioned decision is supported by the evidence and the records of the case. In other words, did the Court of Appeals commit a reversible error in considering the trouble record of the subject telephone? Or is this within the province of the appellate court to consider? Absent grave abuse of discretion, this Court will not reverse the appellate court's findings of fact.
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> **In a petition for review under Rule 45, Rules of Court, invoking the usual reason, *i.e.*, that the Court of Appeals has decided a question of substance not in accord with law or with applicable decisions of the Supreme Court, a mere statement of the ceremonial phrase is not sufficient to confer merit on the petition. The petition must specify the law or prevailing jurisprudence on the matter and the particular ruling of the appellate court violative of such law or previous doctrine laid down by the Supreme Court**. (Emphasis supplied)

In the present case, Jose, Jr. did not show that the Court of Appeals' ruling is violative of any law or jurisprudence. Section 43, Rule 130, of the Rules of Court states:

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[23] *Id.* at 35.

[24] G.R. No. 101292, 8 June 1993, 223 SCRA 279, 282-283.

SEC. 43. *Entries in the course of business*. — Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

In *Canque v. Court of Appeals*,[25] the Court laid down the requisites for admission in evidence of entries in the course of business: (1) the person who made the entry is dead, outside the country, or unable to testify; (2) the entries were made at or near the time of the transactions to which they refer; (3) the person who made the entry was in a position to know the facts stated in the entries; (4) the entries were made in a professional capacity or in the performance of a duty; and (5) the entries were made in the ordinary or regular course of business or duty.

Here, all the requisites are present: (1) Dr. Heath is outside the country; (2) the entries were made near the time the random drug test was conducted; (3) Dr. Heath was in a position to know the facts made in the entries; (4) Dr. Heath made the entries in his professional capacity and in the performance of his duty; and (5) the entries were made in the ordinary or regular course of business or duty.

The fact that the drug test result is unsigned does not necessarily lead to the conclusion that Jose, Jr. was not found positive for marijuana. In *KAR ASIA, Inc. v. Corona*,[26] the Court admitted in evidence unsigned payrolls. In that case, the Court held that:

Entries in the payroll, being entries in the course of business, enjoy the presumption of regularity under Rule 130, Section 43 of the Rules of Court. It is therefore incumbent upon the respondents to adduce clear and convincing evidence in support of their claim. Unfortunately,

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[25] 365 Phil. 124, 131 (1999).

[26] 480 Phil. 627, 636 (2004).

respondents' naked assertions without proof in corroboration will not suffice to overcome the disputable presumption.

In disputing the probative value of the payrolls for December 1994, the appellate court observed that the same contain only the signatures of Ermina Daray and Celestino Barreto, the paymaster and the president, respectively. It further opined that the payrolls presented were only copies of the approved payment, and not copies disclosing actual payment.

The December 1994 payrolls contain a computation of the amounts payable to the employees for the given period, including a breakdown of the allowances and deductions on the amount due, but **the signatures of the respondents are conspicuously missing. Ideally, the signatures of the respondents should appear in the payroll as evidence of actual payment. However, the absence of such signatures does not necessarily lead to the conclusion that the December 1994 COLA was not received**. (Emphasis supplied)

In the present case, the following facts are established (1) random drug tests are regularly conducted on all officers and crew members of M/T Limar; (2) a random drug test was conducted at the port of Curacao on 8 October 2002; (3) Dr. Heath was the authorized physician of M/T Limar; (4) the drug test result of Jose, Jr. showed that he was positive for marijuana; (5) the drug test result was issued under Dr. Heath's name and contained his handwritten comments. The Court of Appeals found that:

The tests administered to the crew were routine measures of the vessel conducted to enforce its stated policy, and it was a matter of course for medical reports to be issued and released by the medical officer. The ship's physician at Curacao under whom the tests were conducted was admittedly Dr. Heath. It was under his name and with his handwritten comments that the report on the respondent came out, and there is no basis to suspect that these results were issued other than in the ordinary course of his duty. As the labor arbiter points out, the drug test report is evidence in itself and does not require additional supporting evidence except if it appears that the drug test was conducted not in accordance with drug testing procedures. Nothing of the sort, he says, has even been suggested in this particular case.[27]

[27] *Rollo,* p. 35.

Factual findings of the Court of Appeals are binding on the Court. Absent grave abuse of discretion, the Court will not disturb the Court of Appeals' factual findings.[28] In *Encarnacion*,[29] the Court held that, "unless there is a clearly grave or whimsical abuse on its part, findings of fact of the appellate court will not be disturbed. The Supreme Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence." Jose, Jr. failed to show that the Court of Appeals gravely abused its discretion.

Article 282(a) of the Labor Code states that the employer may terminate an employment for serious misconduct. Drug use in the premises of the employer constitutes serious misconduct. In *Bughaw, Jr. v. Treasure Island Industrial Corporation*,[30] the Court held that:

> **The charge of drug use inside the company's premises and during working hours against petitioner constitutes serious misconduct, which is one of the just causes for termination**. Misconduct is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not merely an error in judgment. The misconduct to be serious within the meaning of the Act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless, in connection with the work of the employee, constitute just cause for his separation. **This Court took judicial notice of scientific findings that drug abuse can damage the mental faculties of the user. It is beyond question therefore that any employee under the influence of drugs cannot possibly continue doing his duties without posing a serious threat to the lives and property of his co-workers and even his employer**. (Emphasis supplied)

Jose, Jr. claims that he was not afforded due process. The Court agrees. There are two requisites for a valid dismissal: (1) there must be just cause, and (2) the employee must be

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[28] *Encarnacion v. Court of Appeals, supra* note 24, at 282.

[29] *Id.* at 284.

[30] G.R. No. 173151, 28 March 2008, 550 SCRA 307, 319.

afforded due process.[31] To meet the requirements of due process, the employer must furnish the employee with two written notices — a notice apprising the employee of the particular act or omission for which the dismissal is sought and another notice informing the employee of the employer's decision to dismiss. In *Talidano v. Falcon Maritime & Allied Services, Inc.*,[32] the Court held that:

> [R]espondent failed to comply with the procedural due process required for terminating the employment of the employee. Such requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. The Labor Code does not, of course, require a formal or trial type proceeding before an erring employee may be dismissed. This is especially true in the case of a vessel on the ocean or in a foreign port. **The minimum requirement of due process termination proceedings, which must be complied with even with respect to seamen on board a vessel, consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side of the alleged offense or misconduct, which led to the management's decision to terminate. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment can be legally effected, *i.e.*, (1) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him.** (Emphasis supplied)

In the present case, Jose, Jr. was not given any written notice about his dismissal. However, the propriety of Jose, Jr.'s dismissal is not affected by the lack of written notices. When the dismissal is for just cause, the lack of due process does not render the dismissal ineffectual but merely gives rise to the payment of ₱30,000 in nominal damages.[33]

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[31] *Talidano v. Falcon Maritime & Allied Services, Inc.*, G.R. No. 172031, 14 July 2008, 558 SCRA 279, 293.

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

[33] *Merin v. National Labor Relations Commission*, G.R. No. 171790, 17 October 2008, 569 SCRA 576, 582-583.

WHEREFORE, the petition is *DENIED*. The 11 May 2005 Decision and 5 August 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 83272 are *AFFIRMED* with the *MODIFICATION* that OSG Ship Management Manila, Inc. is ordered to pay Bernardo B. Jose, Jr. ₱30,000 in nominal damages.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170023. November 27, 2009]

KINGS PROPERTIES CORPORATION, *petitioner, vs.* **CANUTO A. GALIDO,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; PERFECTED IN CASE AT BAR. — The contract between the Eniceo heirs and respondent executed on 10 September 1973 was a perfected contract of sale. A contract is perfected once there is consent of the contracting parties on the object certain and on the cause of the obligation. In the present case, the object of the sale is the Antipolo property and the price certain is ₱250,000. The contract of sale has also been consummated because the vendors and vendee have performed their respective obligations under the contract. In a contract of sale, the seller obligates himself to transfer the ownership of the determinate thing sold, and to deliver the same to the buyer, who obligates himself to pay a price certain to the seller. The execution of the notarized deed of sale and the delivery of the owner's duplicate copy of OCT No. 535 to respondent is tantamount

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[*] Designated additional member per Special Order No. 776.

to a constructive delivery of the object of the sale. In *Navera v. Court of Appeals*, the Court ruled that since the sale was made in a public instrument, it was clearly tantamount to a delivery of the land resulting in the symbolic possession thereof being transferred to the buyer.

2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; WHOEVER ALLEGES FORGERY HAS THE BURDEN OF PROVING IT; CASE AT BAR. — Petitioner alleges that the deed of sale is a forgery. The Eniceo heirs also claimed in their answer that the deed of sale is fake and spurious. However, as correctly held by the CA, forgery can never be presumed. The party alleging forgery is mandated to prove it with clear and convincing evidence. Whoever alleges forgery has the burden of proving it. In this case, petitioner and the Eniceo heirs failed to discharge this burden.

3. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT), AS AMENDED; APPROVAL OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SECRETARY OF ALIENATION OF HOMESTEAD AFTER THE PROHIBITED PERIOD; FAILURE TO SECURE THE APPROVAL DOES NOT *IPSO FACTO* MAKE THE SALE VOID. — Petitioner invokes the belated approval by the DENR Secretary, made within 25 years from the issuance of the homestead, to nullify the sale of the Antipolo property. The sale of the Antipolo property cannot be annulled on the ground that the DENR Secretary gave his approval after 21 years from the date the deed of sale in favor of respondent was executed. Section 118 of Commonwealth Act No. 141 or the Public Land Act (CA 141), as amended by Commonwealth Act No. 456, reads: "SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of the issuance of the patent or grant x x x No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after the issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds." In *Spouses Alfredo v. Spouses Borras*, the Court

explained the implications of Section 118 of CA 141. Thus: "A grantee or homesteader is prohibited from alienating to a private individual a land grant within five years from the time that the patent or grant is issued. A violation of this prohibition renders a sale void. This prohibition, however, expires on the fifth year. From then on until the next 20 years, the land grant may be alienated provided the Secretary of Agriculture and Natural Resources approves the alienation. The Secretary is required to approve the alienation unless there are "constitutional and legal grounds" to deny the approval. In this case, there are no apparent constitutional or legal grounds for the Secretary to disapprove the sale of the Subject Land. The failure to secure the approval of the Secretary does not *ipso facto* make a sale void. The absence of approval by the Secretary does not nullify a sale made after the expiration of the 5-year period, for in such event the requirement of Section 118 of the Public Land Act becomes merely directory or a formality. The approval may be secured later, producing the effect of ratifying and adopting the transaction as if the sale had been previously authorized."

4. ID.; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; EXTINGUISHMENT OF SALE; CONVENTIONAL REDEMPTION; EQUITABLE MORTGAGE; REQUISITES. — An equitable mortgage is "one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law." The essential requisites of an equitable mortgage are: 1. The parties entered into a contract denominated as a contract of sale; and 2. Their intention was to secure existing debt by way of a mortgage.

5. ID.; ID.; ID.; ID.; ID.; ID.; PRESUMPTION OF EQUITABLE MORTGAGE, WHEN APPLICABLE. — In *Lim v. Calaguas*, the Court held that in order for the presumption of equitable mortgage to apply, there must be: (1) something in the language of the contract; or (2) in the conduct of the parties which shows clearly and beyond doubt that they intended the contract to be a mortgage and not a *pacto de retro* sale. Proof by parol evidence should be presented in court. Parol evidence is admissible to support the allegation that an instrument in writing, purporting on its face to transfer the absolute title to property, was in truth and in fact given merely as security for the payment

of a loan. The presumption of equitable mortgage under Article 1602 of the Civil Code is not conclusive. It may be rebutted by competent and satisfactory proof of the contrary.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A THEORY OF THE CASE NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT WILL NOT BE CONSIDERED BY A REVIEWING COURT. — In *Philippine Ports Authority v. City of Iloilo*, we ruled that a party who adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change the theory on appeal. A theory of the case not brought to the attention of the lower court will not be considered by a reviewing court, as a new theory cannot be raised for the first time at such late stage.

7. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; BUYER IN GOOD FAITH; DEFINED. — In *Agricultural and Home Extension Development Group v. Court of Appeals*, a buyer in good faith is defined as "one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other person in the property."

8. ID.; ID.; ID.; ID.; DOUBLE SALES; THE REGISTRATION OF AN ADVERSE CLAIM PLACES ANY SUBSEQUENT BUYER OF A REGISTERED LAND IN BAD FAITH; EXPLAINED. — In *Balatbat v. Court of Appeals*, the Court held that in the realm of double sales, the registration of an adverse claim places any subsequent buyer of the registered land in bad faith because such annotation was made in the title of the property before the Register of Deeds and he could have discovered that the subject property was already sold. The Court explained further, thus: "A purchaser of a valued piece of property cannot just close his eyes to facts which should put a reasonable man upon his guard and then claim that he acted in good faith and under the belief that there were no defect in the title of the vendor. One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him

upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor."

9. ID.; ID.; ID.; ID.; ID.; FIRST BUYER AND SECOND BUYER, RIGHTS; ELUCIDATED. — In *Carbonell v. Court of Appeals*, this Court ruled that in double sales, the first buyer always has priority rights over subsequent buyers of the same property. Being the first buyer, he is necessarily in good faith compared to subsequent buyers. The good faith of the first buyer remains all throughout despite his subsequent acquisition of knowledge of the subsequent sale. On the other hand, the subsequent buyer, who may have entered into a contract of sale in good faith, would become a buyer in bad faith by his subsequent acquisition of actual or constructive knowledge of the first sale. The separate opinion of then Justice Teehankee is instructive, thus: "The governing principle here is *prius tempore, potior jure*(first in time, stronger in right). Knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except only as provided by the Civil Code and that is where the second buyer first registers in good faith the second sale ahead of the first. Such knowledge of the first buyer does not bar her from availing of her rights under the law, among them, to register first her purchase as against the second buyer. But in converso knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith. This is the price exacted by Article 1544 of the Civil Code for the second buyer being able to displace the first buyer: that before the second buyer can obtain priority over the first, he must show that he acted in good faith throughout (*i.e.*, in ignorance of the first sale and of the first buyer's rights) – from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession. The second buyer must show continuing good faith and innocence or lack of knowledge of the first sale until his contract ripens into full ownership through prior registration as provided by law."

10. REMEDIAL LAW; ACTIONS; LACHES; ESSENCE; CASE AT BAR. — The essence of laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, through due diligence, could have been done earlier, thus giving rise to a presumption that the party entitled to assert it had either abandoned or declined to assert it. Respondent discovered

in 1991 that a new owner's copy of OCT No. 535 was issued to the Eniceo heirs. Respondent filed a criminal case against the Eniceo heirs for false testimony. When respondent learned that the Eniceo heirs were planning to sell the Antipolo property, respondent caused the annotation of an adverse claim. On 16 January 1996, when respondent learned that OCT No. 535 was cancelled and new TCTs were issued, respondent filed a civil complaint with the trial court against the Eniceo heirs and petitioner. Respondent's actions negate petitioner's argument that respondent is guilty of laches.

APPEARANCES OF COUNSEL

De Guzman Celis and Dionisio Law Office for petitioner.
Juvenal F. Agravante for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Kings Properties Corporation (petitioner) filed this Petition for Review on *Certiorari*[1] assailing the Court of Appeals' Decision[2] dated 20 December 2004 in CA-G.R. CV No. 68828 as well as the Resolution[3] dated 10 October 2005 denying the Motion for Reconsideration. In the assailed decision, the Court of Appeals reversed the Regional Trial Court's Decision[4] dated 4 July 2000. This case involves an action for cancellation of certificates of title, registration of deed of sale and issuance of certificates of title filed by Canuto A. Galido (respondent)

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Godardo A. Jacinto and Jose C. Mendoza, concurring.

[3] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Godardo A. Jacinto and Jose C. Mendoza, concurring.

[4] Penned by RTC Judge Felix S. Caballes.

before Branch 71 of the Regional Trial Court of Antipolo City (trial court).

The Facts

On 18 April 1966, the heirs of Domingo Eniceo, namely Rufina Eniceo and Maria Eniceo, were awarded with Homestead Patent No. 112947 consisting of four parcels of land located in San Isidro, Antipolo, Rizal (Antipolo property) and particularly described as follows:

1. Lot No. 1 containing an area of 96,297 square meters;

2. Lot No. 3 containing an area of 25,170 square meters;

3. Lot No. 4 containing an area of 26,812 square meters; and

4. Lot No. 5 containing an area of 603 square meters.

The Antipolo property with a total area of 14.8882 hectares was registered under Original Certificate of Title (OCT) No. 535.[5] The issuance of the homestead patent was subject to the following conditions:

> To have and to hold the said tract of land, with the appurtenances thereunto of right belonging unto the said Heirs of Domingo Eniceo and to his heir or heirs and assigns forever, subject to the provisions of Sections 118, 121, 122 and 124 of Commonwealth Act No. 141, as amended, which provide that except in favor of the Government or any of its branches, units or institutions, the land hereby acquired shall be inalienable and shall not be subject to incumbrance for a period of five (5) years next following the date of this patent, and shall not be liable for the satisfaction of any debt contracted prior to the expiration of that period; that it shall not be alienated, transferred or conveyed after five (5) years and before twenty-five (25) years next following the issuance of title, without the approval of the Secretary of Agriculture and Natural Resources; that it shall not be incumbered, alienated, or transferred to any person, corporation, association, or partnership not qualified to acquire public lands under the said Act and its amendments; x x x[6]

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

[6] *Id.* at 79.

On 10 September 1973, a deed of sale covering the Antipolo property was executed between Rufina Eniceo and Maria Eniceo as vendors and respondent as vendee. Rufina Eniceo and Maria Eniceo sold the Antipolo property to respondent for ₱250,000.[7] A certain Carmen Aldana delivered the owner's duplicate copy of OCT No. 535 to respondent.[8]

Petitioner alleges that when Maria Eniceo died in June 1975, Rufina Eniceo and the heirs of Maria Eniceo (Eniceo heirs),[9] who continued to occupy the Antipolo property as owners, thought that the owner's duplicate copy of OCT No. 535 was lost.[10]

On 5 April 1988, the Eniceo heirs registered with the Registry of Deeds of Marikina City (Registry of Deeds) a Notice of Loss dated 2 April 1988 of the owner's copy of OCT No. 535. The Eniceo heirs also filed a petition for the issuance of a new owner's duplicate copy of OCT No. 535 with Branch 72 of the Regional Trial Court (RTC) of Antipolo, Rizal. The case was docketed as LRC Case No. 584-A.[11]

On 31 January 1989, the RTC rendered a decision finding that the certified true copy of OCT No. 535 contained no annotation in favor of any person, corporation or entity. The RTC ordered the Registry of Deeds to issue a second owner's copy of OCT No. 535 in favor of the Eniceo heirs and declared the original owner's copy of OCT NO. 535 cancelled and considered of no further value.[12]

On 6 April 1989, the Registry of Deeds issued a second owner's copy of OCT No. 535 in favor of the Eniceo heirs.[13]

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[7] *Rollo*, pp. 59-61.

[8] *Id.* at 64-65.

[9] *Id.* at 81-82. The heirs of Eniceo were represented by Rufina Eniceo, daughter of Domingo Eniceo and Leonila Bolinas, granddaughter of Domingo Eniceo and daughter of Maria Eniceo.

[10] *Id.* at 14.

[11] *Id*.

[12] *Id.* at 81-82.

[13] *Id.* at 80 (reverse side).

Petitioner states that as early as 1991, respondent knew of the RTC decision in LRC Case No. 584-A because respondent filed a criminal case against Rufina Eniceo and Leonila Bolinas (Bolinas) for giving false testimony upon a material fact during the trial of LRC Case No. 584-A.[14]

Petitioner alleges that sometime in February 1995, Bolinas came to the office of Alberto Tronio Jr. (Tronio), petitioner's general manager, and offered to sell the Antipolo property. During an on-site inspection, Tronio saw a house and ascertained that the occupants were Bolinas' relatives. Tronio also went to the Registry of Deeds to verify the records on file. Tronio ascertained that OCT No. 535 was clean and had no lien and encumbrances. After the necessary verification, petitioner decided to buy the Antipolo property.[15]

On 14 March 1995, respondent caused the annotation of his adverse claim in OCT No. 535.[16]

On 20 March 1995, the Eniceo heirs executed a deed of absolute sale in favor of petitioner covering lots 3 and 4 of the Antipolo property for ₱500,000.[17]

On the same date, Transfer Certificate of Title (TCT) Nos. 277747 and 277120 were issued. TCT No. 277747 covering lots 1 and 5 of the Antipolo property was registered in the names of Rufina Eniceo, Ambrosio Eniceo, Rodolfo Calove, Fernando Calove and Leonila Calove Bolinas.[18] TCT No. 277120 covering lots 3 and 4 of the Antipolo property was registered in the name of petitioner.[19]

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[14] *Id.* at 62-66. In this decision dated 15 May 1998, Rufina Eniceo and Leonila Bolinas were acquitted.

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

[16] *Id.* at 80 (reverse side).

[17] *Id.* at 115-118.

[18] *Id.* at 119.

[19] *Id.* at 123.

On 5 April 1995, the Eniceo heirs executed another deed of sale in favor of petitioner covering lots 1 and 5 of the Antipolo property for ₱1,000,000. TCT No. 278588 was issued in the name of petitioner and TCT No. 277120 was cancelled.[20]

On 17 August 1995, the Secretary of the Department of Environment and Natural Resources (DENR Secretary) approved the deed of sale between the Eniceo heirs and respondent.[21]

On 16 January 1996, respondent filed a civil complaint with the trial court against the Eniceo heirs and petitioner. Respondent prayed for the cancellation of the certificates of title issued in favor of petitioner, and the registration of the deed of sale and issuance of a new transfer certificate of title in favor of respondent.[22]

On 4 July 2000, the trial court rendered its decision dismissing the case for lack of legal and factual basis.[23]

Respondent appealed to the Court of Appeals (CA). On 20 December 2004, the CA rendered a decision reversing the trial court's decision.[24] Respondent filed a motion for reconsideration, which the CA denied in its Resolution dated 10 October 2005.

Aggrieved by the CA's decision and resolution, petitioner elevated the case before this Court.

The Ruling of the Trial Court

The trial court stated that although respondent claims that the Eniceo heirs sold to him the Antipolo property, respondent did not testify in court as to the existence, validity and genuineness of the purported deed of sale and his possession of the duplicate owner's copy of OCT No. 535. The trial court stated that as

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[20] *Id.* at 120-122, 124-125.

[21] *Id.* at 32.

[22] *Id.* at 17.

[23] *Id.* at 142.

[24] *Id.* at 37.

owner of a property consisting of hectares of land, respondent should have come to court to substantiate his claim and show that the allegations of the Eniceo heirs and petitioner are mere fabrications.[25]

The trial court noticed that respondent did not register the deed of sale with the Register of Deeds immediately after its alleged execution on 10 September 1973. Further, respondent waited for 22 long years before he had the sale approved by the DENR Secretary. The trial court declared that respondent slept on his rights. The trial court concluded that respondent's failure to register the sale and secure the cancellation of OCT No. 535 militates against his claim of ownership. The trial court believed that respondent has not established the preponderance of evidence necessary to justify the relief prayed for in his complaint.[26]

The trial court stated that Bolinas was able to prove that the Eniceo heirs have remained in actual possession of the land. The filing of a petition for the issuance of a new owner's duplicate copy requires the posting of the petition in three different places which serves as a notice to the whole world. Respondent's failure to oppose this petition can be deemed as a waiver of his right, which is fatal to his cause.[27]

The trial court noted that petitioner is a buyer in good faith and for value because petitioner has exercised due diligence in inspecting the property and verifying the title with the Register of Deeds.[28]

The trial court held that even if the court were to believe that the deed of sale in favor of respondent were genuine, still it could not be considered a legitimate disposition of property, but merely an equitable mortgage. The trial court stated that respondent never obtained possession of the Antipolo property

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[25] *Id.* at 139-140.

[26] *Id.* at 140.

[27] *Id.* at 140-141.

[28] *Id.* at 141.

at any given time and a buyer who does not take possession of a property sold to him is presumed to be a mortgagee only and not a vendee.[29]

The Ruling of the Court of Appeals

The CA ruled that the deed of sale in favor of respondent, being a notarized document, has in its favor the presumption of regularity and carries the evidentiary weight conferred upon it with respect to its due execution. The CA added that whoever asserts forgery has the burden of proving it by clear, positive and convincing evidence because forgery can never be presumed. The CA found that petitioner and the Eniceo heirs have not substantiated the allegation of forgery.[30]

The CA pointed out that laches has not set in. One of the requisites of laches, which is injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held to be barred, is wanting in the instant case. The CA added that unrecorded sales of land brought under the Torrens system are valid between parties because registration of the instrument is merely intended to bind third persons.[31]

The CA declared that petitioner's contention regarding the validity of the questioned deed on the ground that it was executed without the approval of the DENR Secretary is untenable. The DENR Secretary approved the deed of sale on 17 August 1995. However, even supposing that the sale was not approved, the requirement for the DENR Secretary's approval is merely directory and its absence does not invalidate any alienation, transfer or conveyance of the homestead after 5 years and before 25 years from the issuance of the title which can be complied with at any time in the future.[32]

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[29] *Id*.

[30] *Id.* at 34.

[31] *Id.* at 34-35.

[32] *Id.* at 35.

The CA ruled that petitioner is a buyer in bad faith because it purchased the disputed properties from the Eniceo heirs after respondent had caused the inscription on OCT No. 535 of an adverse claim. Registration of the adverse claim serves as a constructive notice to the whole world. Petitioner cannot feign ignorance of facts which should have put it on guard and then claim that it acted under the honest belief that there was no defect in the title of the vendors. Knowing that an adverse claim was annotated in the certificates of title of the Eniceo heirs, petitioner was forewarned that someone is claiming an interest in the disputed properties.[33]

The CA found no merit in petitioner's contention that the questioned deed of sale is an equitable mortgage. The CA stated that for the presumption of an equitable mortgage to arise, one must first satisfy the requirement that the parties entered into a contract denominated as a contract of sale and that their intention was to secure an existing debt by way of mortgage.[34]

The CA stated that the execution of the notarized deed of sale, even without actual delivery of the disputed properties, transferred ownership from the Eniceo heirs to respondent. The CA held that respondent's possession of the owner's duplicate copy of OCT No. 535 bolsters the contention that the Eniceo heirs sold the disputed properties to him by virtue of the questioned deed.[35]

The CA reversed the trial court's decision. The dispositive portion of the CA decision reads:

WHEREFORE, the appealed decision of the Regional Trial Court of Rizal (Antipolo, Branch 71) is REVERSED and SET ASIDE and another rendered as follows:

1. Declaring null and void Transfer Certificates of Titles Nos. 277747, 277120 and 278588 of the Registry of Deeds of Marikina City (the last two in the name of defendant-appellee

[33] *Id.* at 35-36.

[34] *Id.* at 36.

[35] *Id.* at 36-37.

Kings Properties Corporation), the derivative titles thereof and the instruments which were the bases of the issuance of said certificates of title; and

2. Declaring plaintiff-appellant Canuto A. Galido the owner of fee simple of Lot Nos. 1, 3, 4, 5 formerly registered under Original Certificate of Title No. 535 in the name of the Heirs of Domingo Eniceo, represented by Rufina Eniceo, and ordering the Register of Deeds of Marikina City to issue new transfer certificates of title for said parcels of land in the name of plaintiff-appellant Canuto A. Galido, upon payment of the proper fees and presentation of the deed of sale dated September 10, 1973 executed by Rufina Eniceo and Maria Eniceo, as sole heirs of the late Domingo Eniceo, in favor of the latter.[36]

The Issues

Petitioner raises two issues in this petition:

1. Whether the adverse claim of respondent over the Antipolo property should be barred by laches;[37] and
2. Whether the deed of sale delivered to respondent should be presumed an equitable mortgage pursuant to Article 1602(2) and 1604 of the Civil Code.[38]

The Ruling of the Court

Validity of the deed of sale to respondent

The contract between the Eniceo heirs and respondent executed on 10 September 1973 was a perfected contract of sale. A contract is perfected once there is consent of the contracting parties on the object certain and on the cause of the obligation.[39] In the present case, the object of the sale is the Antipolo property and the price certain is ₱250,000.

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36 *Id.* at 37.

37 *Id.* at 19.

38 *Id.* at 23.

39 Article 1318 of the Civil Code.

The contract of sale has also been consummated because the vendors and vendee have performed their respective obligations under the contract. In a contract of sale, the seller obligates himself to transfer the ownership of the determinate thing sold, and to deliver the same to the buyer, who obligates himself to pay a price certain to the seller.[40] The execution of the notarized deed of sale and the delivery of the owner's duplicate copy of OCT No. 535 to respondent is tantamount to a constructive delivery of the object of the sale. In *Navera v. Court of Appeals*, the Court ruled that since the sale was made in a public instrument, it was clearly tantamount to a delivery of the land resulting in the symbolic possession thereof being transferred to the buyer.[41]

Petitioner alleges that the deed of sale is a forgery. The Eniceo heirs also claimed in their answer that the deed of sale is fake and spurious.[42] However, as correctly held by the CA, forgery can never be presumed. The party alleging forgery is mandated to prove it with clear and convincing evidence.[43] Whoever alleges forgery has the burden of proving it. In this case, petitioner and the Eniceo heirs failed to discharge this burden.

Petitioner invokes the belated approval by the DENR Secretary, made within 25 years from the issuance of the homestead, to nullify the sale of the Antipolo property. The sale of the Antipolo property cannot be annulled on the ground that the DENR Secretary gave his approval after 21 years from the date the deed of sale in favor of respondent was executed. Section 118 of Commonwealth Act No. 141 or the Public Land Act (CA 141), as amended by Commonwealth Act No. 456,[44] reads:

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[40] Article 1458 of the Civil Code.

[41] G.R. No. 56838, 26 April 1990, 184 SCRA 584, 593.

[42] *Rollo*, p. 32.

[43] *Fernandez v. Fernandez*, 416 Phil. 322, 342 (2001).

[44] CA No. 456 was approved on 8 June 1939.

SEC. 118. Except in favor of the Government or any of its branches, units, or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of the issuance of the patent or grant x x x

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after the issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources,[45] which approval shall not be denied except on constitutional and legal grounds.

In *Spouses Alfredo v. Spouses Borras*,[46] the Court explained the implications of Section 118 of CA 141. Thus:

A grantee or homesteader is prohibited from alienating to a private individual a land grant within five years from the time that the patent or grant is issued. A violation of this prohibition renders a sale void. This prohibition, however, expires on the fifth year. From then on until the next 20 years, the land grant may be alienated provided the Secretary of Agriculture and Natural Resources approves the alienation. The Secretary is required to approve the alienation unless there are "constitutional and legal grounds" to deny the approval. In this case, there are no apparent constitutional or legal grounds for the Secretary to disapprove the sale of the Subject Land.

The failure to secure the approval of the Secretary does not *ipso facto* make a sale void. The absence of approval by the Secretary does not nullify a sale made after the expiration of the 5-year period, for in such event the requirement of Section 118 of the Public Land Act becomes merely directory or a formality. The approval may be secured later, producing the effect of ratifying and adopting the transaction as if the sale had been previously authorized. (Underscoring supplied)

Equitable Mortgage

Petitioner contends that the deed of sale in favor of respondent is an equitable mortgage because the Eniceo heirs remained in

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[45] Now Secretary of Environment and Natural Resources.

[46] 452 Phil. 178, 201-202 (2003).

possession of the Antipolo property despite the execution of the deed of sale.

An equitable mortgage is "one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law."[47] The essential requisites of an equitable mortgage are:

1. The parties entered into a contract denominated as a contract of sale; and
2. Their intention was to secure existing debt by way of a mortgage.[48]

In *Lim v. Calaguas*,[49] the Court held that in order for the presumption of equitable mortgage to apply, there must be: (1) something in the language of the contract; or (2) in the conduct of the parties which shows clearly and beyond doubt that they intended the contract to be a mortgage and not a *pacto de retro* sale.[50] Proof by parol evidence should be presented in court. Parol evidence is admissible to support the allegation that an instrument in writing, purporting on its face to transfer the absolute title to property, was in truth and in fact given merely as security for the payment of a loan. The presumption of equitable mortgage under Article 1602 of the Civil Code is not conclusive. It may be rebutted by competent and satisfactory proof of the contrary.[51]

Petitioner claims that an equitable mortgage can be presumed because the Eniceo heirs remained in possession of the Antipolo property. Apart from the fact that the Eniceo heirs remained

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[47] *Matanguihan v. Court of Appeals*, 341 Phil. 379 (1997).

[48] *Id.* at 389-390.

[49] 45 O.G. No. 8, p. 3394 (1948).

[50] Villanueva, Cesar L., *Philippine Law on Sales*, 1998 edition, p. 273.

[51] *Sps. Austria v. Sps. Gonzales, Jr.*, 465 Phil. 355, 365 (2004).

in possession of the Antipolo property, petitioner has failed to substantiate its claim that the contract of sale was **intended to secure an existing debt by way of mortgage**. In fact, mere tolerated possession is not enough to prove that the transaction was an equitable mortgage.[52]

Furthermore, petitioner has not shown any proof that the Eniceo heirs were indebted to respondent. On the contrary, the deed of sale executed in favor of respondent was drafted clearly to convey that the Eniceo heirs sold and transferred the Antipolo property to respondent. The deed of sale even inserted a provision about defrayment of registration expenses to effect the transfer of title to respondent.

In any event, as pointed out by respondent in his Memorandum, this defense of equitable mortgage is available only to petitioner's predecessors-in-interest who should have demanded, but did not, for the reformation of the deed of sale.[53] A perusal of the records shows that the Eniceo heirs never presented the defense of equitable mortgage before the trial court. In their Answer[54] and Memorandum[55] filed before the trial court, the Eniceo heirs claimed that the alleged deed of sale dated 10 September 1973 between Rufina Eniceo and Maria Eniceo was fake and spurious. The Eniceo heirs contended that even assuming there was a contract, no consideration was involved. It was only in the Appellees' Brief[56] filed before the CA that the Eniceo heirs claimed as an alternative defense that the deed should be presumed as an equitable mortgage.

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[52] *Redondo v. Jimenez*, G.R. No. 161479, 18 October 2007, 536 SCRA 639, 645.

[53] *Rollo*, p. 218. Article 1605 of the Civil Code provides: "In the cases referred to in Articles 1602 and 1604, the apparent vendor may ask for reformation of the instrument."

[54] Records, p. 175. (Answer with Affirmative Defense and Compulsory Counterclaim)

[55] *Id.* at 419.

[56] CA *rollo*, p. 134.

In *Philippine Ports Authority v. City of Iloilo*,[57] we ruled that a party who adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change the theory on appeal. A theory of the case not brought to the attention of the lower court will not be considered by a reviewing court, as a new theory cannot be raised for the first time at such late stage.

Although petitioner raised the defense of equitable mortgage in the lower court, he cannot claim that the deed was an equitable mortgage because petitioner was not a privy to the deed of sale dated 10 September 1973. Petitioner merely stepped into the shoes of the Eniceo heirs. Petitioner, who merely acquired all the rights of its predecessors, cannot espouse a theory that is contrary to the theory of the case claimed by the Eniceo heirs.

The Court notes that the Eniceo heirs have not appealed the CA's decision, hence, as to the Eniceo heirs, the CA's decision that the contract was a sale and not an equitable mortgage is now final. Since petitioner merely assumed the rights of the Eniceo heirs, petitioner is now estopped from questioning the deed of sale dated 10 September 1973.

Petitioner is not a buyer in good faith

Petitioner maintains that the subsequent sale must be upheld because petitioner is a buyer in good faith, having exercised due diligence by inspecting the property and the title sometime in February 1995.

In *Agricultural and Home Extension Development Group v. Court of Appeals*,[58] a buyer in good faith is defined as "one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same at the time of such purchase or before he has notice of the claim or interest of some other person in the property."

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[57] 453 Phil. 927, 934 (2003).

[58] G.R. No. 92310, 3 September 1992, 213 SCRA 563, 565-566 (1992).

In *Balatbat v. Court of Appeals*,[59] the Court held that in the realm of double sales, the registration of an adverse claim places any subsequent buyer of the registered land in bad faith because such annotation was made in the title of the property before the Register of Deeds and he could have discovered that the subject property was already sold.[60] The Court explained further, thus:

> A purchaser of a valued piece of property cannot just close his eyes to facts which should put a reasonable man upon his guard and then claim that he acted in good faith and under the belief that there were no defect in the title of the vendor. One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.[61]

Petitioner does not dispute that respondent registered his adverse claim with the Registry of Deeds on 14 March 1995. The registration of the adverse claim constituted, by operation of law, notice to the whole world.[62] From that date onwards, subsequent buyers were deemed to have constructive notice of respondent's adverse claim.

Petitioner purchased the Antipolo property only on 20 March 1995 and 5 April 1995 as shown by the dates in the deeds of sale. On the same dates, the Registry of Deeds issued new TCTs in favor of petitioner with the annotated adverse claim. Consequently, the adverse claim registered prior to the second sale charged petitioner with constructive notice of the defect in the title of Eniceo heirs. Therefore, petitioner cannot be deemed as a

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[59] 329 Phil. 858 (1996).

[60] Villanueva, *supra* note 50 at 125-126.

[61] *Supra* note 59 at 874.

[62] Section 52 of the Property Registration Decree (PD No. 1529) provides as follows: "Constructive notice upon registration. – Every x x x instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering."

purchaser in good faith when they bought and registered the Antipolo property.

In *Carbonell v. Court of Appeals*,[63] this Court ruled that in double sales, the first buyer always has priority rights over subsequent buyers of the same property. Being the first buyer, he is necessarily in good faith compared to subsequent buyers. The good faith of the first buyer remains all throughout despite his subsequent acquisition of knowledge of the subsequent sale. On the other hand, the subsequent buyer, who may have entered into a contract of sale in good faith, would become a buyer in bad faith by his subsequent acquisition of actual or constructive knowledge of the first sale.[64] The separate opinion of then Justice Teehankee is instructive, thus:

> The governing principle here is *prius tempore, potior jure*(first in time, stronger in right). Knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except only as provided by the Civil Code and that is where the second buyer first registers in good faith the second sale ahead of the first. Such knowledge of the first buyer does not bar her from availing of her rights under the law, among them, to register first her purchase as against the second buyer. But in converso knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith.
>
> This is the price exacted by Article 1544 of the Civil Code for the second buyer being able to displace the first buyer: that before the second buyer can obtain priority over the first, he must show that he acted in good faith throughout (*i.e.*, in ignorance of the first sale and of the first buyer's rights) – from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession. The second buyer must show continuing good faith and innocence or lack of knowledge of the first sale until his contract ripens into full ownership through prior registration as provided by law.[65]

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[63] 161 Phil. 131 (1976).

[64] Villanueva, *supra* note 50 at 127.

[65] *Supra* note 63 at 177.

Laches

Petitioner contends that respondent is guilty of laches because he slept on his rights by failing to register the sale of the Antipolo property at the earliest possible time. Petitioner claims that despite respondent's knowledge of the subsequent sale in 1991, respondent still failed to have the deed of sale registered with the Registry of Deeds.

The essence of laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, through due diligence, could have been done earlier, thus giving rise to a presumption that the party entitled to assert it had either abandoned or declined to assert it.[66]

Respondent discovered in 1991 that a new owner's copy of OCT No. 535 was issued to the Eniceo heirs. Respondent filed a criminal case against the Eniceo heirs for false testimony. When respondent learned that the Eniceo heirs were planning to sell the Antipolo property, respondent caused the annotation of an adverse claim. On 16 January 1996, when respondent learned that OCT No. 535 was cancelled and new TCTs were issued, respondent filed a civil complaint with the trial court against the Eniceo heirs and petitioner. Respondent's actions negate petitioner's argument that respondent is guilty of laches.

True, unrecorded sales of land brought under Presidential Decree No. 1529 or the Property Registration Decree (PD 1529) are effective between and binding only upon the immediate parties. The registration required in Section 51 of PD 1529 is intended to protect innocent third persons, that is, persons who, without knowledge of the sale and in good faith, acquire rights to the property.[67] Petitioner, however, is not an innocent purchaser for value.

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[66] *LICOMCEN, Incorporated v. Foundation Specialists, Inc.* G.R. No. 167022, 31 August 2007, 531 SCRA 705, 724.

[67] *Evangelista v. Montaño*, 93 Phil. 275, 282 (1953).

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 20 December 2004 Decision and 10 October 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 68828.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170906. November 27, 2009]

METROPOLITAN BANK & TRUST CO., *petitioner, vs.* **LAMB CONSTRUCTION CONSORTIUM CORPORATION, represented by Victor T. Nubla and Edgardo C. Santos,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; ACT 3135 (REAL ESTATE MORTGAGE LAW); EXTRA-JUDICIAL FORECLOSURE OF MORTGAGE; FORECLOSURE SALE; WRIT OF POSSESSION; ISSUANCE THEREOF IS MINISTERIAL UPON THE COURT EVEN DURING THE PERIOD OF REDEMPTION; EXCEPTION; WHEN INAPPLICABLE. — In *Sulit v. Court of Appeals,* we withheld the issuance of a writ of possession because the mortgagee failed to deliver the surplus from the proceeds of the foreclosure sale which is equivalent to approximately 40% of the total mortgage debt. *Sulit* was considered as an exception to the general rule that it is ministerial upon the court to issue a writ of possession even during the period of redemption. We explained that equitable considerations prevailing in said case demand that a writ of possession should not issue. x x x In the subsequent case of *Saguan v. Philippine Bank of*

[*] Designated additional member per Special Order No. 776.

Communications, however, we clarified that the exception made in *Sulit* does not apply when the period to redeem has already expired or when ownership over the property has already been consolidated in favor of the mortgagee-purchaser. In other words, even if the mortgagee-purchaser fails to return the surplus, a writ of possession must still be issued. In the instant case, the period to redeem has already lapsed. Thus, following the ruling in *Saguan*, the issuance of a writ of possession in favor of the petitioner is in order.

2. ID.; ID.; ID.; ID.; NOT INVALIDATED BY THE FAILURE OF THE MORTGAGEE TO DELIVER THE SURPLUS PROCEEDS BUT SIMPLY GIVES THE MORTGAGOR A CAUSE OF ACTION TO RECOVER THE SURPLUS; CASE AT BAR. — [W]e held in *Sulit* that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor **a cause of action to recover such surplus.** In the instant case, the cadastral court is without jurisdiction to order petitioner to deliver to respondent the surplus or excess of the purchase price. The only issue in a petition for the issuance of a writ of possession is the purchaser's entitlement to possession. No documentary or testimonial evidence is even required for the issuance of the writ as long as the verified petition states the facts sufficient to entitle the purchaser to the relief requested. As held in *Saguan*, when the mortgagee-purchaser fails to return the surplus, the remedy of a mortgagor "lies in a separate civil action for collection of a sum of money" x x x .

3. ID.; ID.; ID.; ID.; ID.; THE COLLECTION OF SURPLUS IS INCONSISTENT WITH THE ANNULMENT OF FORECLOSURE PROCEEDINGS; REMEDY; CASE AT BAR. — [U]nlike in the case of *Saguan* where the mortgagors did not challenge the validity of the foreclosure but only demanded the return of the surplus, respondent in this case sought to set aside the foreclosure sale. In fact, a Complaint for Nullification of Foreclosure Proceedings and Damages was filed before the RTC of Parañaque docketed as Civil Case No. 00-0513 and raffled to Branch 194. The filing of a separate case for the collection of surplus by respondent would therefore be improper while the annulment case is still pending. It bears stressing that the collection of surplus is inconsistent with the

annulment of foreclosure because in suing for the return of the surplus proceeds, the mortgagor is deemed to have affirmed the validity of the sale since nothing is due if no valid sale has been made. It is only after the dismissal of complaint for annulment or when the foreclosure sale is declared valid that the mortgagor may recover the surplus in an action specifically brought for that purpose. However, to avoid multiplicity of suits, the better recourse is for the mortgagor to file a case for annulment of foreclosure with an alternative cause of action for the return of the surplus, if any. A similar recourse was done by respondent. In its complaint for nullification of foreclosure proceedings and damages pending before Branch 194 of the RTC of Parañaque City, it alleged, among others, that "the payments made by the *[respondent]* on the interest and principal were misapplied and therefore a re-computation is necessary to determine the amount of the obligation." Consequently, there is no need for respondent to file a separate case for collection of surplus in case the court affirms the validity of the foreclosure sale. Once the foreclosure is declared valid and a re-computation of the total amount of obligation is made, the court in the same case may order petitioner to return the surplus, if any, pursuant to the legal maxim, *Nemo cum alterius detrimento locupletari potest* — no person shall be allowed to enrich himself unjustly at the expense of others.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo and Roque Law Offices for petitioner.

Nicanor N. Lonzame and Associates Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A petition for the issuance of a writ of possession is *ex parte*, non-adversarial, and summary in nature because the only issue involved is the purchaser's right to possession. In fact,

Section 7 of Act 3135 (1924)[1] expressly provides that it is the ministerial duty of the cadastral court to issue a writ of possession in favor of the purchaser even during the redemption period, unless the case falls under the exceptions provided by law[2] and jurisprudence.[3] As a rule, mere inadequacy or surplus in the purchase price does not affect the purchaser's entitlement to a writ of possession. In case there is a surplus, the mortgagor is entitled to receive the same from the purchaser. The failure or refusal of the mortgagee-purchaser to return the surplus does not affect the validity of the sale but gives the mortgagor a cause of action against the mortgagee-purchaser.

This Petition for Review[4] on *Certiorari*, under Rule 45 of the Rules of Court, seeks to set aside the September 12, 2005

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[1] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages, Section 7. In any sale made under the provisions of this Act, the purchaser may petition the *[Regional Trial Court]* of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under Section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of Section one hundred and fourteen of Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[2] RULES OF COURT, Rule 39, Section 33, which is made applicable to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135.

[3] See *Cometa v. Intermediate Appellate Court*, 235 Phil. 569 (1987); *Sulit v. Court of Appeals*, 335 Phil. 914 (1997).

[4] *Rollo*, pp. 3-26.

Decision[5] of the Court of Appeals (CA) in CA-G.R. CV No. 72240, insofar as it ordered petitioner to pay respondent the excess of the bid price in the amount of ₱488,289.35 with legal interest from January 27, 2000 until it is fully paid. Likewise assailed is the CA's December 12, 2005 Resolution[6] denying petitioner's Motion for Partial Reconsideration.[7]

Factual antecedents

On March 6, 1998, respondent Lamb Construction Consortium Corporation obtained a ₱5.5 million loan from petitioner Metropolitan Bank & Trust Co., subject to 18% interest per annum.[8] To secure the loan, respondent executed a Real Estate Mortgage[9] in favor of petitioner involving six parcels of land covered by Transfer Certificates of Title Nos. 101233,[10] 101234,[11] 101235,[12] 101236,[13] 101238,[14] and 101248.[15]

Respondent failed to pay the loan upon maturity hence petitioner filed a petition for the extra-judicial foreclosure of the said properties. During the auction sale held on January 27, 2000, petitioner emerged as the highest bidder with the bid amount of ₱6,669,765.75 and was accordingly issued a Certificate of Sale.

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[5] *Id.* at 27-35; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Ruben T. Reyes and Fernanda Lampas-Peralta.

[6] *Id.* at 36-37.

[7] *Id.* at 98-107.

[8] *Id.* at 42.

[9] *Id.* at 43.

[10] *Id.* at 44-45.

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

[12] *Id.* at 48-49.

[13] *Id.* at 50-51.

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

[15] *Id.* at 54-55.

Proceedings before the Regional Trial Court

On June 23, 2000 and during the period of redemption, petitioner filed a verified petition for issuance of a writ of possession. Petitioner alleged that notwithstanding its demands, respondent refused and failed to turn over actual possession of the foreclosed properties. The case was docketed as LRC Case No. 00-0096 and raffled to Branch 257 of the Regional Trial Court (RTC) of Parañaque City. While the petition was pending with the trial court, respondent redeemed the property covered by Transfer Certificate of Title No. 101234.[16]

On May 25, 2001, the RTC rendered a Decision[17] denying petitioner's application for the issuance of a writ of possession because it failed to deposit the surplus proceeds from the foreclosure sale. It ruled that:

> While the outstanding obligation of the corporation as of August 25, 1999 is ₱5,251,705.67 (Exh. C), the property was sold at public auction for ₱6,669,756.75 on January 27, 2000. Under the law, the buyer of the property is obligated to pay the contract price of ₱6,669,756.75 less the obligation of ₱5,251,705.67. Hence, the purchaser of the property should still pay the auctioneer the amount of ₱1,418,060.08. x x x
>
> Metropolitan Bank and Trust Co. has obligation to pay the amount of ₱1,418,060.08, which is the difference of the purchase price to the outstanding obligation. Since the outstanding obligation as of August 25, 1999 was only ₱5,251,705.67 while the purchase price is ₱6,669,765.75, the highest bidder of the property is still obligated to pay the price difference of ₱1,418,060.08. The amount should be deposited at the Office of the Clerk of Court in trust for the mortgagor.
>
> WHEREFORE, for failure of petitioner to deposit the amount of ₱1,418,060.08 to the Clerk of Court in trust for [the] mortgagor, the petition for writ of possession is DENIED.
>
> SO ORDERED.[18]

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[16] *Id.* at 9.

[17] *Id.* at 38-40.

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

Petitioner moved for reconsideration but the same was denied in an Order dated July 18, 2001.[19]

Proceedings before the Court of Appeals

The CA ruled that petitioner is entitled to a writ of possession, the issuance of which is ministerial upon the court.[20] At the same time, the appellate court ruled that petitioner is also obliged to return the excess of the bid price over the outstanding obligation, since the application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by dation. It then found imperative that an assessment of the total outstanding debt be made in order to resolve whether there was any surplus proceeds which must be returned to respondent. Thus, based on its computation, the appellate court held that petitioner must deliver to respondent the surplus proceeds of ₱488,289.35.[21]

The CA disposed of the case in this wise:

> WHEREFOR**E,** the foregoing considered, the appeal is GRANTED and the assailed Decision **REVERSED** and **SET ASIDE.** Let [a] writ of possession issue against respondent.
>
> Accordingly, petitioner is ordered to pay respondent, through the notary public, the excess of its bid price in the sum of ₱488,289.35 with legal interest from 27 January 2000 until it is paid, which amount represents the balance of the obligation as well as interest and penalty charges at the time of foreclosure sale.
>
> SO ORDERED.[22]

Dissatisfied, petitioner filed a Motion for Partial Reconsideration[23] which was denied by the CA in its December 12, 2005 Resolution.[24]

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[19] *Id.* at 41.
[20] *Id.* at 30.
[21] *Id.* at 33.
[22] *Id.* at 34.
[23] *Supra* note 7.
[24] *Supra* note 6.

Issues

Hence, the instant recourse, where petitioner interposes that:

THE COURT *A QUO* HAS DEPARTED FROM THE USUAL COURSE OF PROCEEDING OR SANCTIONED SUCH DEPARTURE BY THE LOWER COURT IN THAT THE PROCEEDINGS IN A PETITION FOR ISSUANCE OF WRIT OF POSSESSION FILED IN ACCORDANCE WITH ACT NO. 3135, AS AMENDED DOES NOT REQUIRE THE PRESENTATION OF EVIDENCE INSOFAR AS THE EXCESS, IF ANY, OF THE PURCHASE PRICE IS CONCERNED, NOR IS IT AN ISSUE IN THE SAME CASE.

THE COURT *A QUO* HAS DECIDED A QUESTION IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HON. SUPREME COURT WHEN IT OVERLOOKED THE FACT THAT NO OTHER MATTER MAY BE PASSED UPON BY THE LOWER COURT EXCEPT TO HAVE THE WRIT OF POSSESSION ISSUED AND IMPLEMENTED.[25]

In essence, petitioner argues that in a petition for the issuance of a writ of possession, it is improper for the RTC and the CA to rule upon the surplus or excess of the purchase price because the only issue that must be resolved is the purchaser's entitlement to the writ. According to petitioner, if there is any surplus or excess, the remedy of the respondent is to file an independent action for collection of surplus.

Our Ruling

The petition is meritorious.

As a general rule, the issuance of a writ of possession is ministerial. Nevertheless, in Sulit v. Court of Appeals, we withheld the issuance of the writ considering the peculiar circumstances prevailing in said case.

[25] *Id.* at 13.

In *Sulit v. Court of Appeals*,[26] we withheld the issuance of a writ of possession because the mortgagee failed to deliver the surplus from the proceeds of the foreclosure sale which is equivalent to approximately 40% of the total mortgage debt. *Sulit* was considered as an exception to the general rule that it is ministerial upon the court to issue a writ of possession even during the period of redemption. We explained that equitable considerations prevailing in said case demand that a writ of possession should not issue. Thus:

> The governing law thus explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.
>
> No discretion appears to be left to the court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8, and it cannot be raised as a justification for opposing the issuance of the writ of possession since, under the Act, the proceeding for this is *ex parte*. Such recourse is available to a mortgagee, who effects the extrajudicial foreclosure of the mortgage, even before the expiration of the period of redemption provided by law and the Rules of Court.
>
> The rule is, however, not without exception. Under Section 35, Rule 39 of the Rules of Court, which is made applicable to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure "unless a third party is actually holding the property adversely to the judgment debtor."
>
> Thus, in the case of *Barican, et al. vs. Intermediate Appellate Court, et al.*, this Court took into account the circumstances that long before the mortgagee bank had sold the disputed property to the respondent therein, it was no longer the judgment debtor who was in possession but the petitioner spouses who had assumed the

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[26] *Supra* at note 3.

mortgage, and that there was a pending civil case involving the rights of third parties. Hence, it was ruled therein that under the circumstances, the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial.

Now, in forced sales low prices are generally offered and the mere inadequacy of the price obtained at the sheriff's sale, unless shocking to the conscience, has been held insufficient to set aside a sale. This is because no disadvantage is caused to the mortgagor. On the contrary, a mortgagor stands to gain with a reduced price because he possesses the right of redemption. When there is the right to redeem, inadequacy of price becomes immaterial since the judgment debtor may reacquire the property or sell his right to redeem, and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale.

However, also by way of an exception, in *Cometa, et al. vs. Intermediate Appellate Court, et al.* where the properties in question were found to have been sold at an unusually lower price than their true value, that is, properties worth at least ₱500,000.00 were sold for only ₱57,396.85, this Court, taking into consideration the factual milieu obtaining therein as well as the peculiar circumstances attendant thereto, decided to withhold the issuance of the writ of possession on the ground that it could work injustice because the petitioner might not be entitled to the same.

The case at bar is quite the reverse, in the sense that instead of an inadequacy in price, there is due in favor of private respondent, as mortgagor, a surplus from the proceeds of the sale equivalent to approximately 40% of the total mortgage debt, which excess is indisputably a substantial amount. Nevertheless, it is our considered opinion, and we so hold, that equitable considerations demand that a writ of possession should also not issue in this case.

Rule 68 of the Rules of Court provides:

> Sec. 4. *Disposition of proceeds of sale*. – The money realized from the sale of mortgaged property under the regulations hereinbefore prescribed shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off such mortgage or other incumbrances, the same shall be paid to the junior incumbrancers in the order of their priority, to be

> ascertained by the court, or if there be no such incumbrancers or there be a balance or residue after payment of such incumbrancers, then to the mortgagor or his agent, or to the person entitled to it.

The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by dation; hence, it is the mortgagee's duty to return any surplus in the selling price to the mortgagor. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund, and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. And even though the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption.

Commenting on the theory that a mortgagee, when he sells under a power, cannot be considered otherwise than as a trustee, the vice-chancellor in *Robertson vs. Norris (1 Giff. 421)* observed: "That expression is to be understood in this sense: that with the power being given to enable him to recover the mortgage money, the court requires that he shall exercise the power of sale in a provident way, with a due regard to the rights and interests of the mortgagor in the surplus money to be produced by the sale.

The general rule that mere inadequacy of price is not sufficient to set aside a foreclosure sale is based on the theory that the lesser the price the easier it will be for the owner to effect the redemption. The same thing cannot be said where the amount of the bid is in excess of the total mortgage debt. The reason is that in case the mortgagor decides to exercise his right of redemption. Section 30 of Rule 39 provides that the redemption price should be equivalent to the amount of the purchase price, plus one percent monthly interest up to the time of the redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate.

Applying this provision to the present case would be highly iniquitous if the amount required for redemption is based on ₱7,000,000.00, because that would mean exacting payment at a price unjustifiably higher than the real amount of the mortgage obligation. We need not elucidate on the obvious. Simply put, such a construction will undeniably be prejudicial to the substantive rights of private respondent and it could even effectively prevent her from exercising the right of redemption.[27]

[27] *Id.* at 924-928.

In the subsequent case of *Saguan v. Philippine Bank of Communications*,[28] however, we clarified that the exception made in *Sulit* does not apply when the period to redeem has already expired or when ownership over the property has already been consolidated in favor of the mortgagee-purchaser. In other words, even if the mortgagee-purchaser fails to return the surplus, a writ of possession must still be issued. In the instant case, the period to redeem has already lapsed. Thus, following the ruling in *Saguan,* the issuance of a writ of possession in favor of the petitioner is in order.

The failure of the mortgagee to deliver the surplus proceeds does not affect the validity of the foreclosure sale. It gives rise to a cause of action for the mortgagee to file an action to collect the surplus proceeds.

Relatedly, we held in *Sulit* that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor **a cause of action to recover such surplus.**[29]

In the instant case, the cadastral court is without jurisdiction to order petitioner to deliver to respondent the surplus or excess of the purchase price. The only issue in a petition for the issuance of a writ of possession is the purchaser's entitlement to possession. No documentary or testimonial evidence is even required for the issuance of the writ as long as the verified petition states the facts sufficient to entitle the purchaser to the relief requested.[30] As held in *Saguan,* when the mortgagee-purchaser fails to return the surplus, the remedy of a mortgagor "lies in a separate civil action for collection of a sum of money," thus:

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[28] G.R. No. 159882, November 23, 2007, 538 SCRA 390.

[29] *Supra* note 3 at 931.

[30] *Spouses Santiago v. Merchants Rural Bank of Talavera, Inc.*, 493 Phil. 862, 870 (2005).

However, petitioners' remedy lies in a separate civil action for collection of a sum of money. We have previously held that where the mortgagee retains more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus. In the same case, both parties can establish their respective rights and obligations to one another, after a proper liquidation of the expenses of the foreclosure sale, and other interests and claims chargeable to the purchase price of the foreclosed property. The court can then determine the proper application of compensation with respect to respondent's claim on petitioners' remaining unsecured obligations. In this regard, respondent is not precluded from itself filing a case to collect on petitioners' remaining debt.[31]

An action to collect the surplus proceeds is improper where there is a pending action for the nullification of the foreclosure proceedings.

However, unlike in the case of *Saguan* where the mortgagors did not challenge the validity of the foreclosure but only demanded the return of the surplus, respondent in this case sought to set aside the foreclosure sale. In fact, a Complaint for Nullification of Foreclosure Proceedings and Damages was filed before the RTC of Parañaque docketed as Civil Case No. 00-0513 and raffled to Branch 194.[32] The filing of a separate case for the collection of surplus by respondent would therefore be improper while the annulment case is still pending.

It bears stressing that the collection of surplus is inconsistent with the annulment of foreclosure because in suing for the return of the surplus proceeds, the mortgagor is deemed to have affirmed the validity of the sale since nothing is due if no valid sale has been made.[33] It is only after the dismissal of complaint for annulment or when the foreclosure sale is declared valid that the mortgagor may recover the surplus in an action specifically

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[31] *Supra* note 28 at 401-402.

[32] *Rollo*, pp. 108-114, 120.

[33] *Sulit v. Court of Appeals, supra* note 3.

brought for that purpose.[34] However, to avoid multiplicity of suits, the better recourse is for the mortgagor to file a case for annulment of foreclosure with an alternative cause of action for the return of the surplus, if any.[35]

A similar recourse was done by respondent. In its complaint for nullification of foreclosure proceedings and damages pending before Branch 194 of the RTC of Parañaque City, it alleged, among others, that "the payments made by the *[respondent]* on the interest and principal were misapplied and therefore a re-computation is necessary to determine the amount of the obligation."[36] Consequently, there is no need for respondent to file a separate case for collection of surplus in case the court affirms the validity of the foreclosure sale. Once the foreclosure is declared valid and a re-computation of the total amount of obligation is made, the court in the same case may order petitioner to return the surplus, if any, pursuant to the legal maxim, *Nemo cum alterius detrimento locupletari potest* — no person shall be allowed to enrich himself unjustly at the expense of others.

WHEREFORE, the petition is hereby *GRANTED.* The Decision of the Court of Appeals in CA-G.R. CV No. 72240 dated September 12, 2005 is *MODIFIED by deleting* the portion ordering petitioner to pay respondent, through the notary public, the excess of its bid price in the sum of ₱488,289.35 with legal interest from January 27, 2000 until it is paid.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

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[34] See *Kleinman v. Neubert,* 172 N.W. 315 (1999).

[35] RULES OF COURT, Rule 8, Sec. 2. See *Keramik Industries, Inc. v. Hon. Guerrero,* 158 Phil. 915, 918 (1974) and *LCK Industries Inc. v. Planters Development Bank,* G.R. No. 170606, November 23, 2007, 538 SCRA 634.

[36] *Rollo,* p. 110.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

SECOND DIVISION

[G.R. No. 171741. November 27, 2009]

METRO, INC. and SPOUSES FREDERICK JUAN and LIZA JUAN, *petitioners, vs.* **LARA'S GIFTS AND DECORS, INC., LUIS VILLAFUERTE, JR. and LARA MARIA R. VILLAFUERTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; WRIT OF PRELIMINARY ATTACHMENT; FRAUD AS A GROUND; CASE AT BAR.— In this case, the basis of respondent's application for the issuance of a writ of preliminary attachment is Section 1 (d), Rule 57 of the Rules of Court which provides: SEC. 1. *Grounds upon which attachment may issue.*— At the commencement of the action or at any time before the entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases: x x x (d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof; x x x

2. ID.; ID.; ID.; ID.; FACTUAL CIRCUMSTANCES OF THE ALLEGED FRAUD MUST BE SUFFICIENTLY SHOWN.— The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. In *Liberty Insurance Corporation v. Court of Appeals*, we explained: To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt

is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case.

3. ID.; ID.; ID.; ID.; ID.; ALLEGATION OF FRAUD; SUFFICIENT; CASE AT BAR.— Respondents' allegation that petitioners undertook to sell exclusively and only through JRP/LGD for Target Stores Corporation but that petitioners transacted directly with respondents' foreign buyer is sufficient allegation of fraud to support their application for a writ of preliminary attachment.

4. ID.; ID.; ID.; ID.; ID.; LIFTING OR DISSOLUTION OF WRIT; ONLY BY A COUNTER-BOND IF THE GROUND IS AT THE SAME TIME APPLICANT'S CAUSE OF ACTION; CASE AT BAR.— Since the writ of preliminary attachment was properly issued, the only way it can be dissolved is by filing a counter-bond in accordance with Section 12, Rule 57 of the Rules of Court. Moreover, the reliance of the Court of Appeals in the cases of *Chuidian v. Sandiganbayan, FCY Construction Group, Inc. v. Court of Appeals, and Liberty Insurance Corporation v. Court of Appeals* is proper. The rule that "when the writ of attachment is issued upon a ground which is at the time the applicant's cause of action, the only other way the writ can be lifted or dissolved is by a counter-bond" is applicable in this case. It is clear that in respondents' amended complaint of fraud is not only alleged as a ground for the issuance of the writ of preliminary attachment, but it is also the core of respondents' complaint. The fear of the Court of Appeals that petitioners could force a trial on the merits of the case on the strength of a mere motion to dissolve the attachment has a basis.

APPEARANCES OF COUNSEL

Atencia & Associates Law Offices for petitioners.
Donato Em Santos Zarate Rodriguez for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 29 September 2004 Decision[2] and 2 March 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 79475. In its 29 September 2004 Decision, the Court of Appeals granted the petition for *certiorari* of respondents Lara's Gifts and Decors, Inc., Luis Villafuerte, Jr., and Lara Maria R. Villafuerte (respondents). In its 2 March 2006 Resolution, the Court of Appeals denied the motion for reconsideration of petitioners Metro, Inc., Frederick Juan and Liza Juan (petitioners).

The Facts

Lara's Gifts and Decors Inc. (LGD) and Metro, Inc. are corporations engaged in the business of manufacturing, producing, selling and exporting handicrafts. Luis Villafuerte, Jr. and Lara Maria R. Villafuerte are the president and vice-president of LGD respectively. Frederick Juan and Liza Juan are the principal officers of Metro, Inc.

Sometime in 2001, petitioners and respondents agreed that respondents would endorse to petitioners purchase orders received by respondents from their buyers in the United States of America in exchange for a 15% commission, to be shared equally by respondents and James R. Paddon (JRP), LGD's agent. The terms of the agreement were later embodied in an e-mail labeled as the "2001 Agreement."[4]

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 36-45. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman, concurring.

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

[4] CA *rollo*, p. 47.

In May 2003, respondents filed with the Regional Trial Court, Branch 197, Las Piñas City (trial court) a complaint against petitioners for sum of money and damages with a prayer for the issuance of a writ of preliminary attachment. Subsequently, respondents filed an amended complaint[5] and alleged that, as of July 2002, petitioners defrauded them in the amount of $521,841.62. Respondents also prayed for ₱1,000,000 as moral damages, ₱1,000,000 as exemplary damages and 10% of the judgment award as attorney's fees. Respondents also prayed for the issuance of a writ of preliminary attachment.

In its 23 June 2003 Order,[6] the trial court granted respondents' prayer and issued the writ of attachment against the properties and assets of petitioners. The 23 June 2003 Order provides:

> WHEREFORE, let a Writ of Preliminary Attachment issue against the properties and assets of Defendant METRO, INC. and against the properties and assets of Defendant SPOUSES FREDERICK AND LIZA JUAN not exempt from execution, as may be sufficient to satisfy the applicants' demand of US$521,841.62 US Dollars or its equivalent in Pesos upon actual attachment, which is about ₱27 Million, unless such Defendants make a deposit or give a bond in an amount equal to ₱27 Million to satisfy the applicants' demand exclusive of costs, upon posting by the Plaintiffs of a Bond for Preliminary Attachment in the amount of twenty five million pesos (₱25,000,000.00), subject to the approval of this Court.
>
> SO ORDERED.[7]

On 26 June 2003, petitioners filed a motion to discharge the writ of attachment. Petitioners argued that the writ of attachment should be discharged on the following grounds: (1) that the 2001 agreement was not a valid contract because it did not show that there was a meeting of the minds between the parties; (2) assuming that the 2001 agreement was a valid contract, the same was inadmissible because respondents failed to authenticate it in accordance with the Rules on Electronic

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[5] *Rollo*, pp. 48-60.

[6] *Id.* at 61-63. Penned by Judge Manuel N. Duque.

[7] *Id.* at 63.

Evidence; (3) that respondents failed to substantiate their allegations of fraud with specific acts or deeds showing how petitioners defrauded them; and (4) that respondents failed to establish that the unpaid commissions were already due and demandable.

After considering the arguments of the parties, the trial court granted petitioners' motion and lifted the writ of attachment. The 12 August 2003 Order[8] of the trial court provides:

> Premises considered, after having taken a second hard look at the Order dated June 23, 2003 granting plaintiff's application for the issuance of a writ of preliminary attachment, the Court holds that the issuance of a writ of preliminary attachment in this case is not justified.
>
> WHEREFORE, the writ of preliminary attachment issued in the instant case is hereby ordered immediately discharged and/or lifted.
>
> SO ORDERED.[9]

Respondents filed a motion for reconsideration. In its 10 September 2003 Order, the trial court denied the motion.

Respondents filed a petition for *certiorari* before the Court of Appeals. Respondents alleged that the trial court gravely abused its discretion when it ordered the discharge of the writ of attachment without requiring petitioners to post a counter-bond.

In its 29 September 2004 Decision, the Court of Appeals granted respondents' petition. The 29 September 2004 Decision provides:

> WHEREFORE, finding merit in the petition, We GRANT the same. The assailed Orders are hereby ANNULLED and SET ASIDE. However, the issued Writ of Preliminary Attachment may be ordered discharged upon the filing by the private respondents of the proper counter-bond pursuant to Section 12, Rule 57 of the Rules of Civil Procedure.

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[8] *Id.* at 64-67.

[9] *Id.* at 67.

SO ORDERED.[10]

Petitioners filed a motion for reconsideration. In its 2 March 2006 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The 12 August 2003 Order of the Trial Court

According to the trial court, respondents failed to sufficiently show that petitioners were guilty of fraud either in incurring the obligation upon which the action was brought, or in the performance thereof. The trial court found no proof that petitioners were motivated by malice in entering into the 2001 agreement. The trial court also declared that petitioners' failure to fully comply with their obligation, absent other facts or circumstances to indicate evil intent, does not automatically amount to fraud. Consequently, the trial court ordered the discharge of the writ of attachment for lack of evidence of fraud.

The 29 September 2004 Decision of the Court of Appeals

According to the Court Appeals, the trial court gravely abused its discretion when it ordered the discharge of the writ of attachment without requiring petitioners to post a counter-bond. The Court of Appeals said that when the writ of attachment is issued upon a ground which is at the same time also the applicant's cause of action, courts are precluded from hearing the motion for dissolution of the writ when such hearing would necessarily force a trial on the merits of a case on a mere motion.[11] The Court of Appeals pointed out that, in this case, fraud was not only alleged as the ground for the issuance of the writ of attachment, but was actually the core of respondents'

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[10] *Id.* at 44.

[11] Citing *Chuidian v. Sandiganbayan*, 402 Phil. 795 (2001); *FCY Construction Group, Inc. v. Court of Appeals*, 381 Phil. 282 (2000); and *Liberty Insurance Corporation v. Court of Appeals*, G.R. No. 104405, 13 May 1993, 222 SCRA 37.

complaint. The Court of Appeals declared that the only way that the writ of attachment can be discharged is by posting a counter-bond in accordance with Section 12,[12] Rule 57 of the Rules of Court.

The Issue

Petitioners raise the question of whether the writ of attachment issued by the trial court was improperly issued such that it may be discharged without the filing of a counter-bond.

The Ruling of the Court

The petition has no merit.

Petitioners contend that the writ of attachment was improperly issued because respondents' amended complaint failed to allege specific acts or circumstances constitutive of fraud. Petitioners insist that the improperly issued writ of attachment may be discharged without the necessity of filing a counter-bond.

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[12] Section 12, Rule 57 of the Rules of Court provides:

SEC. 12. *Discharge of attachment upon giving counter-bond*. - 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. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application was made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.

Petitioners also argue that respondents failed to show that the writ of attachment was issued upon a ground which is at the same time also respondents' cause of action. Petitioners maintain that respondents' amended complaint was not an action based on fraud but was a simple case for collection of sum of money plus damages.

On the other hand, respondents argue that the Court of Appeals did not err in ruling that the writ of attachment can only be discharged by filing a counter-bond. According to respondents, petitioners cannot avail of Section 13,[13] Rule 57 of the Rules of Court to have the attachment set aside because the ground for the issuance of the writ of attachment is also the basis of respondents' amended complaint. Respondents assert that the amended complaint is a complaint for damages for the breach of obligation and acts of fraud committed by petitioners.

In this case, the basis of respondents' application for the issuance of a writ of preliminary attachment is Section 1(d), Rule 57 of the Rules of Court which provides:

SEC. 1. *Grounds upon which attachment may issue*. — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that maybe recovered in the following cases: x x x

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[13] Section 13, Rule 57 of the Rules of Court provides:

SEC. 13. *Discharge of attachment on other grounds*. - The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after a levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

(d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof; x x x

In *Liberty Insurance Corporation v. Court of Appeals*,[14] we explained:

To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case.[15]

The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.[16]

In their amended complaint, respondents alleged the following in support of their prayer for a writ of preliminary attachment:

5. Sometime in early 2001, defendant Frederick Juan approached plaintiff spouses and asked them to help defendants' export business. Defendants enticed plaintiffs to enter into a business deal. He proposed to plaintiff spouses the following:

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[14] *Supra* note 11.

[15] *Id.* at 45.

[16] *Foundation Specialists, Inc. v. Betonval Ready Concrete, Inc.*, G.R. No. 170674, 24 August 2009; *Tanchan v. Allied Banking Corporation*, G.R. No. 164510, 25 November 2008, 571 SCRA 512; *Ng Wee v. Tankiansee*, G.R. No. 171124, 13 February 2008, 545 SCRA 263; and *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, 3 October 2005, 472 SCRA 1.

a. That plaintiffs transfer and endorse to defendant Metro some of the Purchase Orders (PO's) they will receive from their US buyers;

b. **That defendants will sell exclusively and "only thru" plaintiffs for their US buyer**;

x x x x x x x x x

6. After several discussions on the matter and further inducement on the part of defendant spouses, plaintiff spouses agreed. Thus, on April 21, 2001, defendant spouses confirmed and finalized the agreement in a letter-document entitled "2001 Agreement" they emailed to plaintiff spouses, a copy of which is hereto attached as **Annex "A"**.

x x x x x x x x x

20. Defendants are guilty of fraud committed both at the inception of the agreement and in the performance of the obligation. Through machinations and schemes, defendants successfully enticed plaintiffs to enter into the 2001 Agreement. In order to secure plaintiffs' full trust in them and lure plaintiffs to endorse more POs and increase the volume of the orders, defendants during the early part, remitted to plaintiffs shares under the Agreement.

21. However, soon thereafter, just when the orders increased and the amount involved likewise increased, defendants suddenly, without any justifiable reasons and in pure bad faith and fraud, abandoned their contractual obligations to **remit to plaintiffs their shares**. ***And worse, defendants transacted directly with plaintiffs' foreign buyer to the latter's exclusion and damage***. Clearly, defendants planned everything from the beginning, employed ploy and machinations to defraud plaintiffs, and consequently take from them a valuable client.

22. **Defendants are likewise guilty of fraud by violating the trust and confidence reposed upon them by plaintiffs. Defendants received the proceeds of plaintiffs' LCs with the clear obligation of remitting 15% thereof to the plaintiffs. Their refusal and failure to remit the said amount despite demand constitutes a breach of trust amounting to malice and fraud.**[17] (Emphasis and underscoring in the original) (Boldfacing and italicization supplied)

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[17] *Rollo*, pp. 49, 52-53.

We rule that respondents' allegation that petitioners undertook to sell exclusively and only through JRP/LGD for Target Stores Corporation but that petitioners transacted directly with respondents' foreign buyer is sufficient allegation of fraud to support their application for a writ of preliminary attachment. Since the writ of preliminary attachment was properly issued, the only way it can be dissolved is by filing a counter-bond in accordance with Section 12, Rule 57 of the Rules of Court.

Moreover, the reliance of the Court of Appeals in the cases of *Chuidian v. Sandiganbayan*,[18] *FCY Construction Group, Inc. v. Court of Appeals*,[19] and *Liberty Insurance Corporation v. Court of Appeals*[20] is proper. The rule that "when the writ of attachment is issued upon a ground which is at the same time the applicant's cause of action, the only other way the writ can be lifted or dissolved is by a counter-bond"[21] is applicable in this case. It is clear that in respondents' amended complaint of fraud is not only alleged as a ground for the issuance of the writ of preliminary attachment, but it is also the core of respondents' complaint. The fear of the Court of Appeals that petitioners could force a trial on the merits of the case on the strength of a mere motion to dissolve the attachment has a basis.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 29 September 2004 Decision and 2 March 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 79475.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Del Castillo,* and *Abad, JJ.*, concur.

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[18] *Chuidian v. Sandiganbayan, supra* note 11.

[19] *FCY Construction Group, Inc. v. Court of Appeals, supra* note 11.

[20] *Liberty Insurance Corporation v. Court of Appeals, supra* note 11.

[21] *Chuidian v. Sandiganbayan, supra* note 11, at 817-818.

[*] Designated additional member per Special Order No. 776.

SECOND DIVISION

[G.R. No. 174044. November 27, 2009]

GLORIA V. GOMEZ, *petitioner, vs.* **PNOC DEVELOPMENT AND MANAGEMENT CORPORATION (PDMC) — (formerly known as FILOIL DEVELOPMENT AND MANAGEMENT CORPORATION [FDMC]),** *respondent.*

SYLLABUS

1. LABOR LAW AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYEES; ORDINARY EMPLOYEES DIFFERENTIATED FROM CORPORATE OFFICERS.— Ordinary company employees are generally employed not by action of the directors and stockholders but by that of the managing officer of the corporation who also determines the compensation to be paid such employees. Corporate officers, on the other hand, are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws.

2. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP CIRCUMSTANCES ESTABLISHING EXISTENCE OF A REGULAR EMPLOYER- EMPLOYEE RELATIONSHIP BETWEEN PETITIONER AND THE CORPORATION IN CASE AT BAR.— The relationship of a person to a corporation, whether as officer or agent or employee, is not determined by the nature of the services he performs but by the incidents of his relationship with the corporation as they actually exist. Here, respondent PDMC hired petitioner Gomez as an ordinary employee without board approval as was proper for a corporate officer. When the company got her the first time, it agreed to have her retain the managerial rank that she held with Petron. Her appointment paper said that she would be entitled to all the rights, privileges, and benefits that regular PDMC employees enjoyed. This is in sharp contrast to what the former PDMC president's appointment paper stated: he was elected to the position and his compensation depended on the will of the board of directors. What is more, respondent PDMC enrolled petitioner

Gomez with the Social Security System, the Medicare, and the Pag-ibig Fund. It even issued certifications dated October 10, 2008, stating that Gomez was a permanent employee and that the company had remitted combined contributions during her tenure. The company also made her a member of the PDMC's savings and provident plan and its retirement plan. It grouped her with the managers covered by the company's group hospitalization insurance. Likewise, she underwent regular employee performance appraisals, purchased stocks through the employee stock option plan, and was entitled to vacation and emergency leaves. PDMC even withheld taxes on her salary and declared her as an employee in the official Bureau of Internal Revenue forms. These are all *indicia* of an employer-employee relationship which respondent PDMC failed to refute.

3. ID.; ID.; ID.; POSSIBLE FOR ONE TO HAVE A DUAL ROLE OF OFFICER AND EMPLOYEE.— A corporation is not prohibited from hiring a corporate officer to perform services under circumstances which will make him an employee. Indeed, it is possible for one to have a dual role of officer and employee. In *Elleccion Vda. De Lecciones v. National Labor Relations Commission*, the Court upheld NLRC jurisdiction over a complaint filed by one who served both as corporate secretary and administrator, finding that the money claims were made as an employee and not as a corporate officer.

4. CIVIL LAW; CIVIL CODE; ESTOPPEL; APPLIES TO CORPORATIONS; CASE AT BAR.— Estoppel, an equitable principle rooted on natural justice, prevents a person from rejecting his previous acts and representations to the prejudice of others who have relied on them. This principle of law applies to corporations as well. The PDMC in this case is estopped from claiming that despite all the appearances of regular employment that it weaved around petitioner Gomez's position it must have technically hired her only as a corporate officer. The board and its officers made her stay on and work with the company for years under the belief that she held a regular managerial position.

APPEARANCES OF COUNSEL

Puno and Associates Law Office for petitioner.
The Government Corporate Counsel for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about what distinguishes a regular company manager performing important executive tasks from a corporate officer whose election and functions are governed by the company's by-laws.

The Facts and the Case

Petitioner Gloria V. Gomez used to work as Manager of the Legal Department of Petron Corporation, then a government-owned corporation. With Petron's privatization, she availed of the company's early retirement program and left that organization on April 30, 1994. On the following day, May 1, 1994, however, Filoil Refinery Corporation (Filoil), also a government-owned corporation, appointed her its corporate secretary and legal counsel,[1] with the same managerial rank, compensation, and benefits that she used to enjoy at Petron.

But Filoil was later on also identified for privatization. To facilitate its conversion, the Filoil board of directors created a five-member task force headed by petitioner Gomez who had been designated administrator.[2] While documenting Filoil's assets, she found several properties which were not in the books of the corporation. Consequently, she advised the board to suspend the privatization until all assets have been accounted for.

With the privatization temporarily shelved, Filoil underwent reorganization and was renamed Filoil Development Management Corporation (FDMC), which later became the respondent PNOC Development Management Corporation (PDMC). When this happened, Gomez's task force was abolished and its members, including Gomez, were given termination notices on March 5, 1996.[3]

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[1] *Rollo*, p. 206.

[2] *Id.* at 346-347.

[3] *Id.* at 221.

The matter was then reported to the Department of Labor and Employment on March 7, 1996.[4]

Meantime, petitioner Gomez continued to serve as corporate secretary of respondent PDMC. On September 23, 1996 its president re-hired her as administrator and legal counsel of the company.[5] In accordance with company guidelines, it credited her the years she served with the Filoil task force. On May 24, 1998, the next president of PDMC extended her term as administrator beyond her retirement age,[6] pursuant to his authority under the PDMC Approvals Manual.[7] She was supposed to serve beyond retirement from August 11, 1998 to August 11, 2004. Meantime, a new board of directors for PDMC took over the company.

On March 29, 1999 the new board of directors of respondent PDMC removed petitioner Gomez as corporate secretary. Further, at the board's meeting on October 21, 1999 the board questioned her continued employment as administrator. In answer, she presented the former president's May 24, 1998 letter that extended her term. Dissatisfied with this, the board sought the advice of its legal department, which expressed the view that Gomez's term extension was an *ultra vires* act of the former president. It reasoned that, since her position was functionally that of a vice-president or general manager, her term could be extended under the company's by-laws only with the approval of the board. The legal department held that her "*de facto*" tenure could be legally put to an end.[8]

Sought for comment, the Office of the Government Corporate Counsel (OGCC) held the view that while respondent PDMC's

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[4] *Id.* at 222.

[5] *Id.* at 223.

[6] *Id.* at 224.

[7] *Id.* at 225. Authority Item 17 (f), Subject 1, Section 4 of the Approvals Manual states that the president is authorized to waive company policy on extension of services of employees beyond normal retirement age.

[8] *Id.* at 515-517.

board did not approve the creation of the position of administrator that Gomez held, such action should be deemed ratified since the board had been aware of it since 1994. But the OGCC ventured that the extension of her term beyond retirement age should have been made with the board's approval.[9]

Petitioner Gomez for her part conceded that as corporate secretary, she served only as a corporate officer. But, when they named her administrator, she became a regular managerial employee. Consequently, the respondent PDMC's board did not have to approve either her appointment as such or the extension of her term in 1998.

Pending resolution of the issue, the respondent PDMC's board withheld petitioner Gomez's wages from November 16 to 30, 1999, prompting her to file a complaint for non-payment of wages, damages, and attorney's fees with the Labor Arbiter on December 8, 1999.[10] She later amended her complaint to include other money claims.[11]

In a special meeting held on December 29, 1999 the respondent PDMC's board resolved to terminate petitioner Gomez's services retroactive on August 11, 1998, her retirement date.[12] On January 5, 2000 the board informed petitioner of its decision.[13] Thus, she further amended her complaint to include illegal dismissal.[14]

Respondent PDMC moved to have petitioner Gomez's complaint dismissed on ground of lack of jurisdiction. The Labor Arbiter granted the motion[15] upon a finding that Gomez was a corporate officer and that her case involved an intra-corporate dispute that fell under the jurisdiction of the Securities and

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[9] *Id.* at 685-690.

[10] *Id.* at 226. Docketed as NLRC NCR (SOUTH) 30-12-00856-99.

[11] *Id.* at 227.

[12] *Id.* at 526-527.

[13] *Id.* at 523-525.

[14] *Id.* at 331.

[15] *Id.* at 332-342. Penned by Labor Arbiter Jose G. De Vera.

Exchange Commission (SEC) pursuant to Presidential Decree (P.D.) 902-A.[16] On motion for reconsideration, the National Labor Relations Commission (NLRC) Third Division set aside the Labor Arbiter's order and remanded the case to the arbitration branch for further proceedings.[17] The Third Division held that Gomez was a regular employee, not a corporate officer; hence, her complaint came under the jurisdiction of the Labor Arbiter.

Upon elevation of the matter to the Court of Appeals (CA) in CA-G.R. SP 88819, however, the latter rendered a decision on May 19, 2006,[18] reversing the NLRC decision. The CA held that since Gomez's appointment as administrator required the approval of the board of directors, she was clearly a corporate officer. Thus, her complaint is within the jurisdiction of the Regional Trial Court (RTC) under P.D. 902-A, as amended by Republic Act (R.A.) 8799.[19] With the denial of her motion for reconsideration,[20] Gomez filed this petition for review on *certiorari* under Rule 45.

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[16] P.D. 902-A states that the following cases fall under the exclusive jurisdiction of the SEC:

x x x x x x x x x

c) Controversies in the election or appointment of directors, trustees, officers, or managers of such corporations, partnerships or associations;

x x x x x x x x x

[17] *Rollo*, pp. 112-119. Penned by Commissioner Ireneo B. Bernardo and concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[18] *Id.* at 70-75. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Marina L. Buzon and Aurora Santiago-Lagman.

[19] Section 5.2 of R.A. 8799 (the Securities Regulation Code, July 19, 2000) provides:

The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases x x x.

[20] *Rollo*, p. 111.

The Issue Presented

The key issue in this case is whether or not petitioner Gomez was, in her capacity as administrator of respondent PDMC, an ordinary employee whose complaint for illegal dismissal and non-payment of wages and benefits is within the jurisdiction of the NLRC.

The Court's Ruling

Ordinary company employees are generally employed not by action of the directors and stockholders but by that of the managing officer of the corporation who also determines the compensation to be paid such employees.[21] Corporate officers, on the other hand, are elected or appointed[22] by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws.[23]

Here, it was the PDMC president who appointed petitioner Gomez administrator, not its board of directors or the stockholders. The president alone also determined her compensation package. Moreover, the administrator was not among the corporate officers mentioned in the PDMC by-laws. The corporate officers proper were the chairman, president, executive vice-president, vice-president, general manager, treasurer, and secretary.[24]

Respondent PDMC claims, however, that since its board had under its by-laws the power to create additional corporate offices, it may be deemed to have simply ratified its president's creation of the corporate position of administrator.[25] But creating

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[21] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 110.

[22] See *Nacpil v. International Broadcasting Corporation*, 429 Phil. 410, 418 (2002).

[23] *Supra* note 21, at 109.

[24] *Rollo*, p. 418.

[25] *Id.* at 419. Under Article VI, Section 1(b) of the by-laws, the board may appoint such other officers as it deems necessary.

an additional corporate office was definitely not respondent PDMC's intent based on its several actions concerning the position of administrator.

Respondent PDMC never told Gomez that she was a corporate officer until the tail-end of her service after the board found legal justification for getting rid of her by consulting its legal department and the OGCC which supplied an answer that the board obviously wanted. Indeed, the PDMC president first hired her as administrator in May 1994 and then as "administrator/legal counsel" in September 1996 without a board approval. The president even extended her term in May 1998 also without such approval. The company's mindset from the beginning, therefore, was that she was not a corporate officer.

Respondent PDMC of course claims that as administrator petitioner Gomez performed functions that were similar to those of its vice-president or its general manager, corporate positions that were mentioned in the company's by-laws. It points out that Gomez was third in the line of command, next only to the chairman and president,[26] and had been empowered to make major decisions and manage the affairs of the company.

But the relationship of a person to a corporation, whether as officer or agent or employee, is not determined by the nature of the services he performs but by the incidents of his relationship with the corporation as they actually exist.[27] Here, respondent PDMC hired petitioner Gomez as an ordinary employee without board approval as was proper for a corporate officer. When the company got her the first time, it agreed to have her retain the managerial rank that she held with Petron. Her appointment paper said that she would be entitled to all the rights, privileges, and benefits that regular PDMC employees enjoyed.[28] This is in sharp contrast to what the former PDMC president's appointment paper

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[26] CA *rollo*, p. 224.

[27] *Supra* note 22, at 418-419.

[28] *Rollo*, p. 223.

stated: he was elected to the position and his compensation depended on the will of the board of directors.[29]

What is more, respondent PDMC enrolled petitioner Gomez with the Social Security System, the Medicare, and the Pag-Ibig Fund. It even issued certifications dated October 10, 2008,[30] stating that Gomez was a permanent employee and that the company had remitted combined contributions during her tenure. The company also made her a member of the PDMC's savings and provident plan[31] and its retirement plan.[32] It grouped her with the managers covered by the company's group hospitalization insurance.[33] Likewise, she underwent regular employee performance appraisals,[34] purchased stocks through the employee stock option plan,[35] and was entitled to vacation and emergency leaves.[36] PDMC even withheld taxes on her salary and declared her as an employee in the official Bureau of Internal Revenue forms.[37] These are all *indicia* of an employer-employee relationship which respondent PDMC failed to refute.

Estoppel, an equitable principle rooted on natural justice, prevents a person from rejecting his previous acts and representations to the prejudice of others who have relied on them.[38] This principle of law applies to corporations as well. The PDMC in this case is estopped from claiming that despite all the appearances of regular employment that it weaved around

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[29] *Id.* at 395.

[30] *Id.* at 800-804.

[31] *Id.* at 663-666.

[32] *Id.* at 652.

[33] *Id.* at 661-662.

[34] *Id.* at 650-651.

[35] *Id.* at 671-672.

[36] *Id.* at 669-670.

[37] *Id.* at 658-660.

[38] *Philippine National Bank v. Palma*, G.R. No. 157279, August 9, 2005, 466 SCRA 307, 324.

petitioner Gomez's position it must have technically hired her only as a corporate officer. The board and its officers made her stay on and work with the company for years under the belief that she held a regular managerial position.

That petitioner Gomez served concurrently as corporate secretary for a time is immaterial. A corporation is not prohibited from hiring a corporate officer to perform services under circumstances which will make him an employee.[39] Indeed, it is possible for one to have a dual role of officer and employee. In *Elleccion Vda. De Lecciones v. National Labor Relations Commission*,[40] the Court upheld NLRC jurisdiction over a complaint filed by one who served both as corporate secretary and administrator, finding that the money claims were made as an employee and not as a corporate officer.

WHEREFORE, the Court *GRANTS* the petition, *REVERSES* and *SETS ASIDE* the decision dated May 19, 2006 and the resolution dated August 15, 2006 of the Court of Appeals in CA-G.R. SP 88819, and *REINSTATES* the resolution dated November 22, 2002 of the National Labor Relations Commission's Third Division in NLRC NCR 30-12-00856-99. Let the records of this case be *REMANDED* to the arbitration branch of origin for the conduct of further proceedings.

SO ORDERED.

Carpio, Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

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[39] *Rural Bank of Coron (Palawan), Inc. v. Cortes*, G.R. No. 164888, December 6, 2006, 510 SCRA 443, 450; citing *Mainland Construction Co., Inc. v. Movilla*, G.R. No. 118088, November 23, 1995, 250 SCRA 290, 296.

[40] G.R. No. 184735, September 17, 2009.

SECOND DIVISION

[G.R. No. 176249. November 27, 2009]

FVC LABOR UNION-PHILIPPINE TRANSPORT AND GENERAL WORKERS ORGANIZATION (FVCLU-PTGWO), *petitioner, vs.* **SAMA-SAMANG NAGKAKAISANG MANGGAGAWA SA FVC-SOLIDARITY OF INDEPENDENT AND GENERAL LABOR ORGANIZATIONS (SANAMA-FVC-SIGLO),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; AMENDED OR EXTENDED TERM OF THE CBA; EFFECT ON THE EXCLUSIVE REPRESENTATION STATUS OF THE INCUMBENT BARGAINING AGENT.— The legal question before us centers on the effect of the amended or extended term of the CBA on the exclusive representation status of the collective bargaining agent and the right of another union to ask for certification as exclusive bargaining agent. The question arises because the law allows a challenge to the exclusive representation status of a collective bargaining agent through the filing of a certification election petition only within 60 days from the expiration of the five-year CBA. Article 253-A of the Labor Code covers this situation and it provides: Terms of a collective bargaining agreement. - Any Collective Bargaining Agreement that the parties may enter into, shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution. Any Agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the date of expiry of

the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the collective bargaining agreement, the parties may exercise their rights under this Code.

2. ID.; ID.; ID.; ID.; ID.; NOT AFFECTED BY THE AMENDMENT, EXTENSION OR RENEWAL OF THE CBA; LABOR CODE PROVISION, ART. 253-A, IS IMPLEMENTED THROUGH BOOK V, RULE VIII OF THE RULES IMPLEMENTING THE LABOR CODE.— This Labor Code provision is implemented through Book V, Rule VIII of the Rules Implementing the Labor Code which states: Sec. 14 Denial of the petition; grounds.— The Med-Arbiter may dismiss the petition on the following grounds: xxx (b) the petition was filed before or after the freedom period of a duly registered collective bargaining agreement; provided that the sixty-day period based on the original collective bargaining agreement shall not be affected by any amendment, extension or renewal of the collective bargaining agreement. x x x

3. ID.; ID.; ID.; ID.; REPRESENTATION STATUS OF INCUMBENT BARGAINING AGENT; A LEGAL MATTER NOT SUBJECT TO AGREEMENT.— While the parties may agree to extend the CBA's original five-year term together with all other CBA provisions, any such amendment or term in excess of five years will not carry with it a change in the union's exclusive collective bargaining status. By express provision of the above-quoted Article 253-A, the exclusive bargaining status cannot go beyond five years and the representation status is a legal matter not for the workplace parties to agree upon. In other words, despite an agreement for a CBA with a life of more than five years, either as an original provision or by amendment, the bargaining union's exclusive bargaining status is effective only for five years and can be challenged within sixty (60) days prior to the expiration of the CBA's first five years. As we said in *San Miguel Corp. Employees Union-PTGWO, et al. v. Confesor, San Miguel Corp., Magnolia Corp. and San Miguel Foods, Inc.*, where we cited the Memorandum of the Secretary of Labor and Employment dated February 24, 1994: In the event however, that the parties, by mutual agreement enter into a renegotiated

contract with a term of three (3) years or one which does not coincide with the said five-year term and said agreement is ratified by majority of the members in the bargaining unit, the subject contract is valid and legal and therefore, binds the contracting parties. The same will however not adversely affect the right of another union to challenge the majority status of the incumbent bargaining agent within sixty (60) days before the lapse of the original five (5) year term of the CBA.

APPEARANCES OF COUNSEL

Jose P. Calinao for petitioner.
Ernesto R. Arellano for respondent.

D E C I S I O N

BRION, *J.*:

We pass upon the petition for review on *certiorari* under Rule 45 of the Rules of Court[1] filed by FVC Labor Union–Philippine Transport and General Workers Organization (*FVCLU-PTGWO*) to challenge the Court of Appeals' (*CA*) decision of July 25, 2006[2] and its resolution rendered on January 15, 2007[3] in C.A. G.R. SP No. 83292.[4]

THE ANTECEDENTS

The facts are undisputed and are summarized below.

On December 22, 1997, the petitioner FVCLU-PTGWO – the recognized bargaining agent of the rank-and-file employees

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[1] *Rollo*, pp. 3-17.

[2] *Id.* at 69-85. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justice Remedios A. Salazar Fernando and Associate Justice Noel G. Tijam.

[3] *Id.* at 94-96.

[4] *Sama-Samang Nagkakaisang Manggagawa sa FVC-Solidarity of Independent and General Labor Organizations (SANAMA-FVC-SIGLO) v. Hon. Patricia Sto. Tomas, Secretary of Labor and Employment, FVC Labor Union-PTGWO and FVC Philippines.*

of the FVC Philippines, Incorporated (*company*) – signed a five-year collective bargaining agreement (*CBA*) with the company. The five-year CBA period was from February 1, 1998 to January 30, 2003.[5] At the end of the 3rd year of the five-year term and pursuant to the CBA, FVCLU-PTGWO and the company entered into the renegotiation of the CBA and modified, among other provisions, the CBA's duration. Article XXV, Section 2 of the renegotiated CBA provides that *"this re-negotiation agreement shall take effect beginning February 1, 2001 and until May 31, 2003"* thus extending the original five-year period of the CBA by four (4) months.

On January 21, 2003, nine (9) days before the January 30, 2003 expiration of the originally-agreed five-year CBA term (*and four [4] months and nine [9] days away from the expiration of the amended CBA period*), the respondent *Sama-Samang Nagkakaisang Manggagawa sa* FVC-Solidarity of Independent and General Labor Organizations (*SANAMA-SIGLO*) filed before the Department of Labor and Employment (*DOLE*) a petition for certification election for the same rank-and-file unit covered by the FVCLU-PTGWO CBA. FVCLU-PTGWO moved to dismiss the petition on the ground that the certification election petition was filed outside the freedom period or outside of the sixty (60) days before the expiration of the CBA on May 31, 2003.

Action on the Petition and Related Incidents

On June 17, 2003, Med-Arbiter Arturo V. Cosuco dismissed the petition on the ground that it was filed outside the 60-day period *counted from the May 31, 2003 expiry date of the amended CBA*.[6] SANAMA-SIGLO appealed the Med-Arbiter's Order to the DOLE Secretary, contending that the filing of the petition on January 21, 2003 was within 60-days *from the January 30, 2003 expiration of the original CBA term.*

DOLE Secretary Patricia A. Sto. Tomas sustained SANAMA-SIGLO's position, thereby setting aside the decision of the Med-

[5] Petition, Annex "A"; *rollo*, pp. 19-35.

[6] Petition, Annex "C"; *id.* at 51-55.

Arbiter.[7] She ordered the conduct of a certification election in the company. FVCLU-PTGWO moved for the reconsideration of the Secretary's decision.

On November 6, 2003, DOLE Acting Secretary Manuel G. Imson granted the motion; he set aside the August 6, 2003 DOLE decision and dismissed the petition as the Med-Arbiter's Order of June 17, 2003 did.[8] The Acting Secretary held that the amended CBA (which extended the representation aspect of the original CBA by four [4] months) had been ratified by members of the bargaining unit some of whom later organized themselves as SANAMA-SIGLO, the certification election applicant. Since these SANAMA-SIGLO members fully accepted and in fact received the benefits arising from the amendments, the Acting Secretary rationalized that they also accepted the extended term of the CBA and cannot now file a petition for certification election based on the original CBA expiration date.

SANAMA-SIGLO moved for the reconsideration of the Acting Secretary's Order, but Secretary Sto. Tomas denied the motion in her Order of January 30, 2004.[9]

SANAMA-SIGLO sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court based on the grave abuse of discretion the Labor Secretary committed when she reversed her earlier decision calling for a certification election. SANAMA-SIGLO pointed out that the Secretary's new ruling is patently contrary to the express provision of the law and established jurisprudence.

THE CA DECISION

The CA found SANAMA-SIGLO's petition meritorious on the basis of the applicable law[10] and the rules,[11] as interpreted

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[7] Dated August 6, 2003; Petition, Annex "D"; *id.* at 56-60.

[8] Petition, Annex "E"; *id.* at 61-64.

[9] Petition, Annex "F"; *id.* at 65-67.

[10] LABOR CODE, Article 253-A.

[11] Omnibus Rules Implementing the Labor Code, Book V, Rule XI, Section 11(11b).

in the congressional debates. It set aside the challenged DOLE Secretary decisions and reinstated her earlier ruling calling for a certification election. The appellate court declared:

> It is clear from the foregoing that while the parties may renegotiate the other provisions (economic and non-economic) of the CBA, this should not affect the five-year representation aspect of the original CBA. If the duration of the renegotiated agreement does not coincide with but rather exceeds the original five-year term, the same will not adversely affect the right of another union to challenge the majority status of the incumbent bargaining agent within sixty (60) days before the lapse of the original five (5) year term of the CBA. In the event a new union wins in the certification election, such union is required to honor and administer the renegotiated CBA throughout the excess period.

FVCLU-PTGWO moved to reconsider the CA decision but the CA denied the motion in its resolution of January 15, 2007.[12] With this denial, FVCLU-PTGWO now comes before us to challenge the CA rulings.[13] It argues that in light of the peculiar attendant circumstances of the case, the CA erred in strictly applying Section 11 (11b), Rule XI, Book V of the Omnibus Rules Implementing the Labor Code, as amended by Department Order No. 9, s. 1997.[14]

Apparently, the "peculiar circumstances" the FVCLU-PTGWO referred to relate to the economic and other provisions of the February 1, 1998 to January 30, 2003 CBA that it renegotiated with the company. The renegotiated CBA changed the CBA's remaining term from February 1, 2001 to May 31, 2003. To FVCLU-PTGWO, this extension of the CBA term also changed the union's exclusive bargaining representation status and effectively moved the reckoning point of the 60-day freedom period from January 30, 2003 to May 30, 2003. FVCLU-PTGWO thus moved to dismiss the petition for certification election filed on January 21, 2003 (9 days before the expiry

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[12] *Supra* note 3.

[13] *Supra* note 1.

[14] *Supra* note 11.

date on January 30, 2003 of the original CBA) by SANAMA-SIGLO on the ground that the petition was filed outside the authorized 60-day freedom period.

It also submits in its petition that the SANAMA-SIGLO is estopped from questioning the extension of the CBA term under the amendments because its members are the very same ones who approved the amendments, including the expiration date of the CBA, and who benefited from these amendments.

Lastly, FVCLU-PTGWO posits that the representation petition had been rendered moot by a new CBA it entered into with the company covering the period June 1, 2003 to May 31, 2008.[15]

Required to comment by the Court[16] and to show cause for its failure to comply,[17] SANAMA-SIGLO manifested on October 10, 2007 that: since the promulgation of the CA decision on July 25, 2006 or three years after the petition for certification election was filed, the local leaders of SANAMA-SIGLO had stopped reporting to the federation office or attending meetings of the council of local leaders; the SANAMA-SIGLO counsel, who is also the SIGLO national president, is no longer in the position to pursue the present case because the local union and its leadership, who are principals of SIGLO, had given up and abandoned their desire to contest the representative status of FVCLU-PTGWO; and a new CBA had already been signed by FVCLU-PTGWO and the company.[18] Under these circumstances, SANAMA-SIGLO contends that pursuing the case has become futile, and accordingly simply adopted the CA decision of July 25, 2006 as its position; its counsel likewise asked to be relieved from filing a comment in the case. We granted the request for relief and dispensed with the filing of a comment.[19]

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[15] Petition, Annex "J"; *rollo*, pp. 97-120.

[16] Resolution dated February 26, 2007; *id.* at 127.

[17] Resolution dated July 16, 2007; *id.* at 138.

[18] *Id.* at 140-142.

[19] Resolution dated November 19, 2007; *id.* at 144-145.

THE COURT'S RULING

While SANAMA-SIGLO has manifested its abandonment of its challenge to the exclusive bargaining representation status of FVCLU-PTGWO, we deem it necessary in the exercise of our discretion to resolve the question of law raised since this exclusive representation status issue will inevitably recur in the future as workplace parties avail of opportunities to prolong workplace harmony by extending the term of CBAs already in place.[20]

The legal question before us centers on the effect of the amended or extended term of the CBA on the exclusive representation status of the collective bargaining agent and the right of another union to ask for certification as exclusive bargaining agent. The question arises because the law allows a challenge to the exclusive representation status of a collective bargaining agent through the filing of a certification election petition only within 60 days from the expiration of the five-year CBA.

Article 253-A of the Labor Code covers this situation and it provides:

> Terms of a collective bargaining agreement. – Any Collective Bargaining Agreement that the parties may enter into, shall, insofar as the representation aspect is concerned, be for a term of five (5) years. No petition questioning the majority status of the incumbent bargaining agent shall be entertained and no certification election shall be conducted by the Department of Labor and Employment outside of the sixty day period immediately before the date of expiry of such five-year term of the Collective Bargaining Agreement. All other provisions of the Collective Bargaining Agreement shall be renegotiated not later than three (3) years after its execution.
>
> Any agreement on such other provisions of the Collective Bargaining Agreement entered into within six (6) months from the

[20] *Caneland Sugar Corporation v. Alon, et al.*, G.R. No. 142896, September 12, 2007, 533 SCRA 29; *Manalo v. Calderon*, G.R. No. 178920, October 15, 2007, 536 SCRA 2007; See *Acop v. Guingona*, G.R. No. 134855, July 2, 2002, 383 SCRA 577; 433 Phil. 62 (2002).

date of expiry of the term of such other provisions as fixed in such Collective Bargaining Agreement, shall retroact to the day immediately following such date. If any such agreement is entered into beyond six months, the parties shall agree on the duration of retroactivity thereof. In case of a deadlock in the renegotiation of the collective bargaining agreement, the parties may exercise their rights under this Code.

This Labor Code provision is implemented through Book V, Rule VIII of the Rules Implementing the Labor Code[21] which states:

> Sec. 14. Denial of the petition; grounds. – The Med-Arbiter may dismiss the petition on any of the following grounds:
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> x x x x x x x x x
>
> (b) the petition was filed before or after the freedom period of a duly registered collective bargaining agreement; provided that the sixty-day period based on the original collective bargaining agreement shall not be affected by any amendment, extension or renewal of the collective bargaining agreement (underscoring supplied).
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> x x x x x x x x x

The root of the controversy can be traced to a misunderstanding of the interaction between a union's exclusive bargaining representation status in a CBA and the term or effective period of the CBA.

FVCLU-PTGWO has taken the view that its exclusive representation status should fully be in step with the term of the CBA and that this status can be challenged only within 60 days before the expiration of this term. Thus, when the term of the CBA was extended, its exclusive bargaining status was similarly extended so that the freedom period for the filing of a petition for certification election should be counted back from the expiration of the amended CBA term.

We hold this FVCLU-PTGWO position to be correct, but only with respect to the *original five-year term of the CBA*

[21] *Supra* note 11.

which, by law, is also the effective period of the union's exclusive bargaining representation status. While the parties may agree to extend the CBA's original five-year term together with all other CBA provisions, any such amendment or term in excess of five years will not carry with it a change in the union's exclusive collective bargaining status. By express provision of the above-quoted Article 253-A, the exclusive bargaining status cannot go beyond five years and the representation status is a legal matter not for the workplace parties to agree upon. In other words, despite an agreement for a CBA with a life of more than five years, either as an original provision or by amendment, the bargaining union's exclusive bargaining status is effective only for five years and can be challenged within sixty (60) days prior to the expiration of the CBA's first five years. As we said in *San Miguel Corp. Employees Union–PTGWO, et al. v. Confesor, San Miguel Corp., Magnolia Corp. and San Miguel Foods, Inc.*,[22] where we cited the Memorandum of the Secretary of Labor and Employment dated February 24, 1994:

> In the event however, that the parties, by mutual agreement, enter into a renegotiated contract with a term of three (3) years or one which does not coincide with the said five-year term and said agreement is ratified by majority of the members in the bargaining unit, the subject contract is valid and legal and therefore, binds the contracting parties. The same will however not adversely affect the right of another union to challenge the majority status of the incumbent bargaining agent within sixty (60) days before the lapse of the original five (5) year term of the CBA.

In the present case, the CBA was originally signed for a period of five years, *i.e.*, from February 1, 1998 to January 30, 2003, with a provision for the renegotiation of the CBA's other provisions at the end of the 3rd year of the five-year CBA term. Thus, prior to January 30, 2001 the workplace parties sat down for renegotiation but instead of confining themselves to the economic and non-economic CBA provisions, also extended

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[22] G.R. No. 111262, September 19, 1996, 262 SCRA 81.

the life of the CBA for another four months, *i.e.*, from the original expiry date on January 30, 2003 to May 30, 2003.

As discussed above, this negotiated extension of the CBA term has no legal effect on the FVCLU-PTGWO's exclusive bargaining representation status which remained effective only for five years ending on the original expiry date of January 30, 2003. Thus, sixty days prior to this date, or starting December 2, 2002, SANAMA-SIGLO could properly file a petition for certification election. Its petition, filed on January 21, 2003 or nine (9) days before the expiration of the CBA and of FVCLU-PTGWO's exclusive bargaining status, was seasonably filed.

We thus find no error in the appellate court's ruling reinstating the DOLE order for the conduct of a certification election. If this ruling cannot now be given effect, the only reason is SANAMA-SIGLO's own desistance; we cannot disregard its manifestation that the members of SANAMA themselves are no longer interested in contesting the exclusive collective bargaining agent status of FVCLU-PTGWO. This recognition is fully in accord with the Labor Code's intent to foster industrial peace and harmony in the workplace.

WHEREFORE, premises considered, we *AFFIRM* the correctness of the challenged Decision and Resolution of the Court of Appeals and accordingly *DISMISS* the petition, but nevertheless *DECLARE* that no certification election, pursuant to the underlying petition for certification election filed with the Department of Labor and Employment, can be enforced as this petition has effectively been abandoned.

SO ORDERED.

Carpio (Chairperson), Leonardo-De Castro, Del Castillo, and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 178527. November 27, 2009]

JOVEN YUKI, JR., *petitioner, vs.* **WELLINGTON CO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW TO THE COURT OF APPEALS; SECTION 2, RULE 42; ASIDE FROM DUPLICATE ORIGINAL OR TRUE COPIES OF THE JUDGMENTS OF THE LOWER COURTS, WHAT IS MERELY REQUIRED ARE COPIES OF THE MATERIAL PORTIONS OF THE RECORD AS WOULD SUPPORT THE ALLEGATIONS OF THE PETITION.— Section 2 of Rule 42 does not require that ***all*** the pleadings and documents filed before the lower courts must be attached as annexes to the petition. Aside from clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, it merely requires that the petition be accompanied copies of pleadings and other material portions of the record as would support the allegations of the petition. As to what these pleadings and material portions of the record are, the Rules grants the petitioner sufficient discretion to determine the same. This discretion is of course subject to CA's evaluation whether the supporting documents are sufficient to make out a *prima facie* case. Thus, Section 3 empowers the CA to dismiss the petition where the allegations contained therein are utterly bereft of evidentiary foundation.

2. ID.; ID.; ID.; ID.; ID.; COURTS SHOULD NOT BE SO STRICT ABOUT PROCEDURAL LAPSES THAT DONOT REALLY IMPAIR THE ADMINISTRATION OF JUSTICE.— In *Lanaria v. Planta*, we emphasized that courts should not be so strict about procedural lapses that do not really impair the proper administration of justice, for rules of procedure are intended to promote, and not to defeat, substantial justice.

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; JURISDICTION; ELEMENTARY THAT JURISDICTION OF THE COURT IS DETERMINED BY ALLEGATIONS PLEADED

IN THE COMPLAINT.— It is an elementary rule that the jurisdiction of the court in ejectment cases is determined by the allegations pleaded in the complaint and cannot be made to depend upon the defenses set up in the answer or pleadings filed by the defendant. This principle holds even if the facts proved during trial do not support the cause of action alleged in the complaint. In connection with this, it is well to note that in unlawful detainer cases the elements to be proved and resolved are the facts of lease and expiration or violation of its terms.

4. ID.; ID.; ID.; QUESTION TO BE RESOLVED IS WHO IS ENTITLED TO *DE FACTO* POSSESSION; COVERS *TACITA RECONDUCCION*, AS IT IS DETERMINATIVE OF WHO IS ENTITLED TO *DE FACTO* POSSESSION.— *Tacita reconduccion* refers to the right of the lessee to continue enjoying the material or *de facto* possession of the thing leased within a period of time fixed by law. During its existence, the lessee can prevent the lessor from evicting him from the disputed premises. On the other, it is too well-settled to require a citation that the question to be resolved in unlawful detainer cases is, who is entitled to *de facto* possession. Therefore, since *tacita reconduccion* is determinative of who between the parties is entitled to *de facto* possession, the MeTC has jurisdiction to resolve and pass upon the issue of implied new lease in unlawful detainer case. In *Mid-Pasig Land Development Corporation v. Court of Appeals*, we ruled that the MeTC is clothed with exclusive original jurisdiction over an unlawful detainer case even if the same would entail compelling the plaintiff therein to recognize an implied lease agreement.

5. CIVIL LAW; LEASE; IMPLIED NEW LEASE; CONDITIONS REQUIRED.— Under Article 1670, an implied new lease will set in if it is shown that: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and (c) the lessee continued enjoying the thing leased for 15 days with the acquiescence of the lessor. This acquiescence may be inferred from the failure of the lessor to serve notice to vacate upon the lessee.

6. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; SERVICE OF; REGISTERED MAIL; WHERE ADDRESSEE REFUSES TO ACCEPT DELIVERY, IT IS DEEMED COMPLETED AFTER FIVE

DAYS FROM THE DATE OF FIRST NOTICE.— Under the rules, if the addressee refuses to accept delivery, service by registered mail is deemed complete if the addressee fails to claim the mail from the postal office after five days from the date of first notice of the postmaster.

7. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; THE COURT CANNOT COUNTENANCE THE SITUATION IN AN EVICTION CASE WHERE THE DEFENDANT REFUSES TO ACKNOWLEDGE THE EXISTENCE OF A VALID DEMAND.— In *Co Keng Kian v. Intermediate Appellate Court*, we held that "[t]he Court cannot countenance an unfair situation where the plaintiff in an eviction case suffers further injustice by the unwarranted delay resulting from the obstinate refusal of the defendant to acknowledge the existence of a valid demand."

8. CIVIL LAW; SPECIAL CONTRACTS; LEASE; PRE-EMPTIVE RIGHTS; AVAILABLE ONLY TO LESSEES IF GRANTED IN THE CONTRACT OF LEASE OR GRANTED BY LAW.— Besides, the right of first refusal, also referred to as the preferential right to buy, is available to lessees only if there is a stipulation thereto in the contract of lease or where there is a law granting such right to them (*i.e.*,Presidential Decree No. 1517 (1978), which vests upon urban poor dwellers who merely lease the house where they have been residing for at least ten years, preferential right to buy the property located within an area proclaimed as an urban land reform zone). Unlike co-owners and adjacent lot owners, there is no provision in the Civil Code which grants to lessees preemptive rights. Nonetheless, the parties to a contract of lease may provide in their contract that the lessee has the right of first refusal.

9. ID.; ID.; ID.; ID.; CONTRACT OF SALE ENTERED INTO IN VIOLATION OF PREEMPTIVE RIGHT IS MERELY RESCISSIBLE.— A contract of sale entered into in violation of preemptive right is merely rescissible and the remedy of the aggrieved party whose right was violated is to file an appropriate action to rescind the sale and compel the owner to execute the necessary deed of sale in his favor. In *Wilmon Auto Supply Corp. v. Court of Appeals*, we categorically held that an action for unlawful detainer cannot be abated or suspended by an action filed by the defendant-lessee to judicially enforce his right of preemption.

APPEARANCES OF COUNSEL

J.B. Cumigad Law Office for petitioner.
Cacho and Chua Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The lessee-petitioner's attempt to hold on to the property subject of the instant unlawful detainer case, by resorting to fraudulent machinations such as refusing to receive the notices to vacate, must not be countenanced. His stubborn refusal to receive the notices to vacate should not prejudice the right of the lessor-respondent, to use and enjoy the fruits of his property.

This Petition for Review on *Certiorari*[1] assails the November 23, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 89228 granting respondent's Petition for Review[3] and setting aside the March 7, 2005 Decision[4] of the Regional Trial Court (RTC), Branch 14, Manila. The RTC reversed and set aside the Decision[5] dated September 21, 2004 of the Metropolitan Trial Court (MeTC), Branch 15, Manila, granting respondent's Complaint for unlawful detainer[6] and ordering petitioner to vacate the premises subject matter of this case.

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[1] *Rollo,* pp. 11-27.

[2] *Id.* at 33-43; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (both now members of this Court).

[3] CA *rollo,* pp. 2-32.

[4] *Rollo,* pp. 178-181; penned by Judge Cesar M. Solis.

[5] *Id.* at 131-138; penned by Judge Sarah Alma M. Lim.

[6] *Id.* at 44-49.

Factual Antecedents

Mr. Joseph Chua was the registered owner of a parcel of land, together with a commercial building erected thereon, situated at the corner of España and Instruccion Sts., Sampaloc, Manila. In 1981, he leased a portion of the building to petitioner Joven Yuki, Jr., who put up a business therein under the name and style "Supersale Auto Supply." The contract of lease between Mr. Chua and petitioner had a term of five years but was not reduced into writing. Thereafter, the lease was renewed through a series of verbal and written agreements,[7] the last of which was a written Contract of Lease[8] covering the period of January 1, 2003 to December 31, 2003 at a monthly rental of ₱7,000.00.

In November 2003, Mr. Chua informed petitioner that he sold the property to respondent Wellington Co and instructed petitioner to thenceforth pay the rent to the new owner.

Proceedings before the Metropolitan Trial Court

After the expiration of the lease contract, petitioner refused to vacate and surrender the leased premises. Thus, respondent filed a Complaint for unlawful detainer[9] before the MeTC of Manila. The material allegations of the complaint read as follows:

xxx xxx xxx

3. Plaintiff [herein respondent] is the registered owner of that parcel of land together with the building existing thereon situated at 2051 España St. cor. Instruccion St., Sampaloc, Manila. Plaintiff's title to said property is evidenced by the Transfer Certificate of Title No.

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[7] A written contract of lease with a term of five years commencing in 1987 to 1992 (*rollo*, pp. 94-97), followed by verbal lease contract from 1993 to 1995. Then, petitioner and Mr. Chua entered into a one-year lease contract covering the period January 1996 to December 1996 (*rollo*, pp. 98-99) and another written contract of lease from January 1, 1997 to December 30, 1997 (*rollo*, pp. 100-103). The last verbal contract between them has a term of five years commencing in 1998 until 2002.

[8] CA *rollo*, pp. 55-56.

[9] *Supra* note 6; docketed as Civil Case No. 177321.

261682 of the Registry of Deeds of Manila, photocopy of which is attached hereto as Annex "A" and the tax declarations for the lot and improvement are attached hereto as Annexes "B" and "B-1", respectively;

xxx xxx xxx

5. Prior to the sale of the lot and building by the previous owner to herein plaintiff, Joseph Chua sent a notice to defendant [herein petitioner] informing him that the property is for sale giving the defendant the opportunity to exercise his pre-emptive right. Copy of said Notice is attached hereto as Annex "D";

6. Defendant waived his right to exercise his pre-emptive right and the real property was eventually sold to herein plaintiff;

7. Plaintiff, being the new owner of the lot and building, informed defendant that his Contract of Lease with the former lessor-owner Joseph Chua will no longer be renewed as per letter dated November 3, 2003, copy of which was left at defendant's store, for his refusal to acknowledge the receipt of the same. A copy of said Notice is attached hereto and made an integral part hereof as Annex "E";

8. For failure and refusal of the defendant to vacate and surrender the leased unit to plaintiff, plaintiff's counsel in turn sent a formal demand upon defendant to vacate the leased premises within ten (10) days from receipt of the formal demand in view of the expiration of the contract of lease. Copy of said letter dated January 13, 2004 is attached hereto as Annex "F". A copy was sent by registered mail but defendant failed to claim the same as evidenced by the Certification from the Central Post Office, copy of which is attached hereto as Annex "G". Another copy of the same demand letter was personally served at defendant's address as attested by the sworn statement of Wilberto Co who served the said formal demand as well as the notice earlier sent by plaintiff. Copy of the Affidavit of Wilberto Co is attached hereto as Annex "H";

xxx xxx xxx

Respondent prayed that petitioner's possession of subject premises be declared unlawful and that petitioner be ordered to vacate it. He also sought reasonable compensation for the use of the property until such time that it is surrendered to him and for the petitioner to pay him moral damages and attorney's fees.

In his Answer with Counterclaim,[10] petitioner denied having been served with copies of the alleged notice of sale and notice to vacate. By way of affirmative defenses, he claimed that the complaint should be dismissed for being premature as there was no allegation therein of prior referral to the *barangay*. Petitioner also asserted that since he was not notified by the former owner of the sale, he was deprived of his preemptive rights. Moreover, respondent has no cause of action against him because respondent is not the true owner of the property but merely acts as a representative of persons whom respondent refused to disclose. Further, petitioner argued that there was an implied renewal of lease considering that a) he did not receive a notice to vacate, b) the two months deposit and one month advance payment he gave to Mr. Chua were never returned to him, and c) respondent accepted his payments for the months of January and February 2004.

Petitioner also asserted that his property rights would be violated if he is evicted because he has been operating his business in the premises for more than 20 years and has established goodwill in the area. He thus proposed that he be compensated the amount of not less than ₱1 million or be allowed to dispose of his stocks within a reasonable period of time, before he vacates the premises.

On September 21, 2004, the MeTC-Branch 15 rendered a Decision[11] in favor of the respondent, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the defendant and all persons claiming right under him:
>
> 1. to VACATE and surrender the subject property peacefully to plaintiff;
>
> 2. to PAY the plaintiff reasonable compensation for the use and occupancy of the subject premises in the amount of eight

[10] *Rollo*, pp. 58-66.

[11] *Supra* note 5.

thousand (₱8,000.00) pesos per month from January 1, 2004 until such time that he and all persons claiming rights under him have fully vacated the premises;

3. to PAY the plaintiff thirty thousand (₱30,000.00) pesos as attorney's fees and litigation expenses.

SO ORDERED.[12]

Proceedings before the Regional Trial Court

In time, petitioner went on appeal to the RTC contending that –

A. THE LOWER COURT ERRED WHEN IT RULED THAT THE PLAINTIFF-APPELLEE [herein respondent] HAD A CAUSE OF ACTION TO EVICT HEREIN DEFENDANT-APPELLANT [herein petitioner] FROM THE PREMISES.

B. THE LOWER COURT ERRED WHEN IT RULED THAT THERE WAS NO IMPLIED NEW LEASE CREATED BY PLAINTIFF-APPELLEE'S ACCEPTANCE OF THE RENTALS MADE BY DEFENDANT-APPELLANT.

C. THE LOWER COURT ERRED WHEN IT RULED THAT VALID NOTICE [TO] VACATE WAS SERVED UPON DEFENDANT-APPELLANT BY THE PLAINTIFF-APPELLEE.

D. THE LOWER COURT GRAVELY ERRED WHEN IT RULED THAT DEFENDANT-APPELLANT WAS NOT DENIED HIS PREEMPTIVE RIGHT TO PURCHASE THE PROPERTY HE HAS BEEN OCCUPYING.

E. THE LOWER COURT GRAVELY ERRED WHEN IT DENIED THE MOTION FOR CLARIFICATORY HEARING FILED BY DEFENDANT-APPELLANT AS WELL AS HAVING DENIED THE MOTION FOR VOLUNTARY INHIBITION.

F. THE LOWER COURT ERRED WHEN IT AWARDED ATTORNEY'S FEES AMOUNTING TO THIRTY THOUSAND (₱30,000.00) IN FAVOR OF PLAINTIFF-APPELLEE.

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[12] *Id.* at 138.

On March 7, 2005, the RTC-Branch 14 rendered a Decision[13] with the following disposition:

> WHEREFORE, all premises considered, the Court finds and so holds preponderance of evidence on the part of the defendant-appellant. Accordingly, the Decision appealed from is hereby REVERSED, and the complaint for Unlawful Detainer is dismissed.
>
> Finally, there is on record a defendant-appellant's Motion for Reconsideration as regards the amount of the supersedeas bond. By the dismissal of the case, the resolution thereof is thereby rendered moot and academic.
>
> SO ORDERED.[14]

In reversing the ruling of the MeTC, the RTC found no proof on record that petitioner actually received the notice to vacate, thereby making the Complaint fatally defective. The RTC likewise opined that the resolution of the case hinges on the existence of implied new lease, a question which is incapable of pecuniary estimation and, therefore, beyond the MeTC's jurisdiction.

Proceedings before the Court of Appeals

Respondent filed with the CA a Petition for Review[15] under Rule 42 of the Rules of Court assailing the RTC Decision. On November 23, 2006, the CA promulgated the now assailed Decision[16] granting the petition. Its *fallo* reads:

> WHEREFORE, the instant petition is hereby GRANTED. The Decision dated 7 March 2005 rendered by the Regional Trial Court (RTC) of Manila, Branch 14 is SET ASIDE and the Decision dated 21 September 2004 of the Metropolitan Trial Court (MeTC) of Manila, Branch 15 is REINSTATED.
>
> SO ORDERED.[17]

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[13] *Supra* note 4.

[14] *Id.* at 181.

[15] *Supra* note 3.

[16] CA *rollo*, pp. 288-298.

[17] *Rollo*, p. 297.

Issues

Petitioner interposed the present recourse imputing upon the CA the following errors:

A. x x x THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RULED NOT TO DISMISS THE PETITION INTERPOSED BY RESPONDENT AND INSTEAD PROCEEDED TO REVERSE THE DECISION DATED MARCH 7, 2005 OF THE REGIONAL TRIAL COURT, BRANCH 14 DESPITE RESPONDENT (THEN PETITIONER) HAVING FAILED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS UNDER RULE 42 OF THE 1997 RULES OF CIVIL PROCEDURE.[18]

B. THE COURT OF APPEALS ERRED WHEN IT FOUND ERRORS COMMITTED BY THE RTC IN REVERSING THE DECISION OF THE MTC.[19]

Our Ruling

The petition lacks merit.

The allegations in respondent's petition are supported by material portions of the record.

Petitioner contends that the Petition for Review[20] filed by the respondent with the CA is procedurally infirmed and that the appellate court should have outrightly dismissed the same. Specifically, petitioner points out that while respondent attached to the petition the parties' respective position papers, he failed to attach to said position papers the annexes thereto. This, p etitioner insists, warrants the dismissal of respondent's petition per Section 2,

[18] *Id.* at 433.

[19] *Id.* at 435.

[20] *Supra* note 3.

Rule 42 of the Rules of Court,[21] in relation to Section 3[22] of the same Rule.

We do not agree. Section 2 of Rule 42 does not require that ***all*** the pleadings and documents filed before the lower courts must be attached as annexes to the petition. Aside from clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, it merely requires that the petition be accompanied by copies of pleadings and other material portions of the record as would support the allegations of the petition. As to what these pleadings and material portions of the record are, the Rules grants the petitioner sufficient discretion to determine the same. This discretion is of course subject to CA's evaluation whether the supporting documents are sufficient to make out a *prima facie* case.[23] Thus, Section 3 empowers the CA to dismiss the petition where the allegations contained therein are utterly bereft of evidentiary foundation. Since in this case the CA gave due course to respondent's Petition for Review and proceeded to decide it on the merits,

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[21] SEC. 2. *Form and contents.* – ***The petition shall be filed in seven (7) legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall*** (a) state the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the specific material dates showing that it was filed on time; (c) set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law, or both, allegedly committed by the Regional Trial Court, and the reasons or arguments relied upon for the allowance of the appeal; (d) ***be accompanied by*** clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the Regional Trial Court, the requisite number of plain copies thereof and of ***the pleadings and other material portions of the record as would support the allegations of the petition.*** x x x (Emphasis ours)

[22] SEC. 3. *Effect of failure to comply with requirements.* – ***The failure of the petitioner to comply with any of the foregoing requirements regarding*** the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and ***the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof***. (Emphasis ours)

[23] *Atillo v. Bombay*, 404 Phil. 179, 188 (2001).

it can be fairly assumed that the appellate court is satisfied that respondent has sufficiently complied with Section 2 of Rule 42.

Besides, our own examination of the CA *rollo* reveals that the annexes to the position papers can be found somewhere else in the petition. The annexes to the parties' respective position papers are the same annexes attached to the Complaint and the Answer. In fact, Annexes "A" to "H" of the Complaint respectively pertain to the same documents marked as Annexes "A" to "H" of respondent's Position Paper. And while respondent's Position Paper as attached to the petition does not contain any annexes, said annexes are nonetheless appended to the Complaint which is also attached to the petition.

The same is true with Annexes "1" to "6" of petitioner's Position Paper. Annexes "1", "2", and "3" are attached to the Petition for Review as Annexes "3", "4", and "5", respectively, of the Answer. Annex "4" of petitioner's Position Paper is the Contract of Lease marked as Annex "C" of the Complaint, while Annexes "5" and "6" are marked and attached as Annexes "1" and "2", respectively, of the Answer. To our mind, these are more than substantial compliance with the requirements of the rules. Indeed, if we are to apply the rules of procedure in a very rigid and technical sense as what the petitioner suggests in this case, the ends of justice would be defeated. In *Lanaria v. Planta*,[24] we emphasized that courts should not be so strict about procedural lapses that do not really impair the proper administration of justice, for rules of procedure are intended to promote, and not to defeat, substantial justice.[25]

Allegations of implied new lease or tacita reconduccion cannot oust the MeTC of jurisdiction over unlawful detainer cases.

Petitioner also contends that the CA grievously erred in reversing the Decision of the RTC. He maintains that the RTC

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[24] G.R. No. 172891, November 22, 2007, 538 SCRA 79, 97.

[25] *Navalta v. Muli*, G.R. No. 150642, October 23, 2006, 505 SCRA 66, 75.

correctly held that the key issue to be resolved in this case is the existence of an implied new lease, a matter which is incapable of pecuniary estimation and, therefore, beyond the MeTC's jurisdiction.

The argument is bereft of merit. The allegation of existence of implied new lease or *tacita reconduccion* will not divest the MeTC of jurisdiction over the ejectment case. It is an elementary rule that the jurisdiction of the court in ejectment cases is determined by the allegations pleaded in the complaint[26] and cannot be made to depend upon the defenses set up in the answer or pleadings filed by the defendant.[27] This principle holds even if the facts proved during trial do not support the cause of action alleged in the complaint.[28] In connection with this, it is well to note that in unlawful detainer cases the elements to be proved and resolved are the facts of lease and expiration or violation of its terms.[29]

Here, no interpretative exercise is needed to conclude that respondent has complied with such requirement. In respondent's Complaint, he specifically alleged that (1) the former owner, Mr. Chua, and petitioner entered into a contract of lease; (2) subsequently, respondent purchased the leased premises from Mr. Chua and became the owner thereof; (3) thereafter, the lease contract between Mr. Chua and petitioner expired; and (4) petitioner refused to vacate the premises despite the expiration and non-renewal of the lease.

Besides, we do not agree with the RTC that the MeTC does not have jurisdiction to resolve the issue of existence of implied new lease in the unlawful detainer case. *Tacita reconduccion*

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[26] *Cajayon v. Batuyong*, G.R. No. 149118, February 16, 2006, 482 SCRA 461, 469.

[27] *Santos v. Sps. Ayon*, 497 Phil. 415, 420 (2005); *Roxas v. Court of Appeals*, 439 Phil. 966, 978-979 (2002).

[28] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, 494 Phil. 603, 611(2005).

[29] CIVIL CODE OF THE PHILIPPINES, Article 1673(1); *Manuel v. Court of Appeals*, G.R. No. 95469, July 25, 1991, 199 SCRA 603, 608.

refers to the right of the lessee to continue enjoying the material or *de facto* possession of the thing leased within a period of time fixed by law. During its existence, the lessee can prevent the lessor from evicting him from the disputed premises. On the other hand, it is too well-settled to require a citation that the question to be resolved in unlawful detainer cases is, who is entitled to *de facto* possession. Therefore, since *tacita reconduccion* is determinative of who between the parties is entitled to *de facto* possession, the MeTC has jurisdiction to resolve and pass upon the issue of implied new lease in unlawful detainer case. In *Mid-Pasig Land Development Corporation v. Court of Appeals*,[30] we ruled that the MeTC is clothed with exclusive original jurisdiction over an unlawful detainer case even if the same would entail compelling the plaintiff therein to recognize an implied lease agreement.

Respondent did not acquiesce to petitioner's continued possession of subject premises.

Petitioner likewise claims that the RTC correctly held that there was no sufficient evidence on record that he received the alleged notice to vacate. While he admits that a notice to vacate is no longer necessary when the ground for unlawful detainer is the expiration of the lease, proof that he actually received said notice is still important in this case in view of his allegation of implied new lease. Citing Article 1670 of the Civil Code,[31] petitioner contends that if at the expiration of the contract of lease the lessee continued to enjoy the leased property for 15 days with the acquiescence of the lessor, there is an implied new lease. In this case, the determination of whether or not his continued stay in the leased premises is with the acquiescence

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[30] 459 Phil. 560, 573 (2003).

[31] Art. 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.

of the lessor hinges on whether or not he received the notice to vacate. And, as correctly found by the RTC, he did not receive any notice to vacate.

We are not swayed. Under Article 1670, an implied new lease will set in if it is shown that: (a) the term of the original contract of lease has expired; (b) the lessor has not given the lessee a notice to vacate; and (c) the lessee continued enjoying the thing leased for 15 days with the acquiescence of the lessor. This acquiescence may be inferred from the failure of the lessor to serve notice to vacate upon the lessee.[32]

In the instant case, however, the MeTC and the CA correctly found that there was a valid demand to vacate. Thus:

> Prior to the sale of the property by previous owner Joseph Chua to herein plaintiff, defendant was formally notified by the previous owner in a letter dated September 1, 2003 (Annex "D" of Complaint, Records, p. 12) of his intention to sell the property but herein defendant failed to exercise his pre-emptive right to purchase the property.
>
> Thus, the subject premises was sold to plaintiff who became the registered owner thereof as evidenced by TCT No. 261682 (Annex "A", Complaint, Records, p. 7). Plaintiff, as new owner/vendee, informed defendant through a letter dated November 3, 2003 (Annex "E", Complaint, Records, p. 13), even prior to the expiration of the contract that he will be needing the premises thus the contract will not be renewed or no contract will be executed, and directed defendant to vacate the premises by January 1, 2004. The said notice was sent by registered mail and by personal service. The notice sent by registered mail was returned to sender for failure of the defendant to claim the same at the post office. The unclaimed letter is attached to the plaintiff's position paper as Annex "F" (Records, p. 93). Despite notice given to him, defendant failed to vacate and a formal demand letter dated January 13, 2004 was served to him personally on January 21, 2004 which he refused to acknowledge that he received the same. A copy of that same letter was sent by registered mail but defendant refused to claim the same for which it was returned to sender. The

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[32] *Arevalo Gomez Corporation v. Lao Hian Liong*, 232 Phil. 343, 348 (1987).

unclaimed letter which was returned to sender is attached to the plaintiff's position paper as Annex "G-1" (Records, p. 96) and the certification from the post office attesting to the fact that defendant failed to claim the same is attached to the plaintiff's position paper as Annex "G" (Records, p. 95). The demand letter dated January 13, 2004 pertains to the premises presently occupied by defendant. The Contract of Lease (Annex "C", of Complaint, Records, pp. 10-11) which expired on December 31, 2003 speaks of only one (1) unit which is the subject matter of this case. Defendant failed to show that the portion being occupied by him which is the subject matter of this case is covered by another lease contract.

The Court therefore finds that there was a valid demand to vacate.[33]

This finding of the MeTC, which was affirmed by the CA, is a factual matter that is not ordinarily reviewable in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court. It is settled that in a petition for review on *certiorari*, only questions of law may be raised by the parties and passed upon by this court.

Besides, even if we do review the case, there is no cogent reason to disturb the finding of said courts. Under the rules, if the addressee refuses to accept delivery, service by registered mail is deemed complete if the addressee fails to claim the mail from the postal office after five days from the date of first notice of the postmaster.[34] Further, the absence of personal service of notice to vacate in this case could only be attributed to petitioner's unexplainable refusal to receive the same. In *Co Keng Kian v. Intermediate Appellate Court*,[35] we held that "[t]he Court cannot countenance an unfair situation where the plaintiff in an eviction case suffers further injustice by the unwarranted delay resulting from the obstinate refusal of the defendant to acknowledge the existence of a valid demand."

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[33] *Rollo,* pp. 135-136.

[34] RULES OF COURT, Rule 13, Section 10.

[35] *Co Keng Kian v. Intermediate Appellate Court*, G.R. No. 75676, August 29, 1990, 189 SCRA 112, 116.

The formal demands to vacate sent to petitioner, coupled with the filing of an ejectment suit, are categorical acts on the part of respondent showing that he is not amenable to another renewal of the lease contract. Therefore, petitioner's contention that his stay in the subject premises is with the acquiescence of the respondent, has no leg to stand on.

Petitioner's alleged preferential right to buy subject premises has no basis.

In view of the above disquisition, petitioner's claim that he was deprived of his preemptive rights because he was not notified of the intended sale, likewise crumbles. Besides, the right of first refusal, also referred to as the preferential right to buy, is available to lessees only if there is a stipulation thereto in the contract of lease or where there is a law granting such right to them (*i.e.*, Presidential Decree No. 1517 (1978),[36] which vests upon urban poor dwellers[37] who merely lease the house where they have been residing for at least ten years, preferential right to buy the property located within an area proclaimed as an urban land reform zone). Unlike co-owners and adjacent lot owners,[38] there is no provision in the Civil Code which grants to lessees preemptive rights. Nonetheless, the parties to a contract of lease may provide in their contract that the lessee has the right of first refusal.

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[36] URBAN LAND REFORM ACT. Section 6 thereof provides:

SECTION 6. *Land Tenancy in Urban Land Reform Areas.* Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

[37] See *Inducil v. Tops Taxi, Inc*, 497 Phil. 362 (2005).

[38] See CIVIL CODE OF THE PHILIPPINES, Book IV, Title VI, Chapter 7, Section 2.

In this case, there is nothing in the Contract of Lease which grants petitioner preferential right to buy the subject premises. We are likewise unaware of any applicable law which vests upon him priority right to buy the commercial building subject matter of this case. In fact, aside from the sweeping statement that his preferential right to buy was violated, petitioner failed to cite in his Petition,[39] Reply,[40] or Memorandum[41] any specific provision of a law granting him such right. In other words, petitioner failed to lay the basis for his claim that he enjoys a preferential right to buy.

And even assuming that he has, the same will not prevent the ejectment case filed by the respondent from taking its due course. A contract of sale entered into in violation of preemptive right is merely rescissible and the remedy of the aggrieved party whose right was violated is to file an appropriate action to rescind the sale and compel the owner to execute the necessary deed of sale in his favor. In *Wilmon Auto Supply Corp. v. Court of Appeals*,[42] we categorically held that an action for unlawful detainer cannot be abated or suspended by an action filed by the defendant-lesseee to judicially enforce his right of preemption.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

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[39] *Rollo,* pp. 11-27.

[40] *Id.* at 315-324.

[41] *Id.* at 429-444.

[42] G.R. No. 97637, April 10, 1992, 208 SCRA 108, 115.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.

SECOND DIVISION

[G.R. No. 182585. November 27, 2009]

JOSEPHINE MARMO,[*] NESTOR ESGUERRA, DANILO DEL PILAR and MARISA DEL PILAR, *petitioners, vs.* **MOISES O. ANACAY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; INTERLOCUTORY ORDER NOT APPEALABLE.— At the outset, we call attention to Section 1 of Rule 41 of the Revised Rules of Court governing appeals from the RTC to the CA. This Section provides that an appeal may be taken only from a judgment or final order that completely disposes of the case, or of a matter therein declared by the Rules to be appealable. It explicitly states as well that no appeal may be taken from an interlocutory order.

2. ID.; ID.; "INTERLOCUTORY ORDER," DEFINED.— In law, the word "interlocutory" refers to intervening developments between the commencement of a suit and its complete termination; hence, it is a development that does not end the whole controversy. An "interlocutory order" merely rules on an incidental issue and does not terminate or finally dispose of the case; it leaves something to be done before the case is finally decided on the merits.

3. ID.; ID.; ID.; AN ORDER DENYING A MOTION TO DISMISS IS INTERLOCUTORY.— An Order ***denying*** a Motion to Dismiss is interlocutory because it does not finally dispose of the case, and, in effect, directs the case to proceed until final adjudication by the court. Only when the court issues an order outside or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief, will *certiorari* be considered an appropriate remedy to assail an interlocutory order.

4. ID.; CIVIL ACTIONS; PARTIES; INDISPENSABLE PARTIES, DEFINED .— Section 7, Rule 3 of the Revised Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for

[*] Known as "Josephine Marmo-Esguerra" in other parts of the *rollo.*

this reason, must be joined either as plaintiffs or as defendants. Jurisprudence further holds that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.

5. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; EJECTMENT; "ACTION IN EJECTMENT," DEFINED.— We have explained in *Vencilao v. Camarenta* and in *Sering v. Plazo* that the term "action in ejectment" includes a suit for forcible entry (*detentacion*) or unlawful detainer (*desahucio*). We also noted in *Sering* that the term "action in ejectment" includes "also, an *accion publiciana* (recovery of possession) or *accion reivindicatoria* (recovery of ownership)." Most recently in *Estreller v. Ysmael*, we applied Article 487 to an *accion publiciana* case; in *Plasabas v. Court of Appeals* we categorically stated that Article 487 applies to reivindicatory actions.

6. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; ANY CO-OWNER, WITHOUT REPUDIATING THE CO-OWNERSHIP, MAY BRING AN ACTION IN EJECTMENT.— When the controversy involves a property held in common, Article 487 of the Civil Code explicitly provides that "anyone of the co-owners may bring an action in ejectment." we upheld in several cases the right of a co-owner to file a suit without impleading other co-owners, pursuant to Article 487 of the Civil Code. We made this ruling in *Vencilao*, where the amended complaint for "forcible entry and detainer" specified that the plaintiff is one of the heirs who co-owns the disputed properties. In *Sering*, and *Resuena v. Court of Appeals*, the co-owners who filed the ejectment case did not represent themselves as the exclusive owners of the property. In *Celino v. Heirs of Alejo and Teresa Santiago*, the complaint for quieting of title was brought in behalf of the co-owners precisely to recover lots owned in common. In *Plasabas*, the plaintiffs alleged in their complaint for recovery of title to property (*accion reivindicatoria*) that they are the sole owners

of the property in litigation, but acknowledged during the trial that the property is co-owned with other parties, and the plaintiffs have been authorized by the co-owners to pursue the case on the latter's behalf.

7. ID.; ID.; ID.; ID.; WHERE CO-OWNER REPUDIATES THE CO-OWNERSHIP, THE CO-OWNERS ARE INDISPENSABLE PARTIES.— These cases should be distinguished from *Baloloy v. Hular* and *Adlawan v. Adlawan* where the actions for quieting of title and unlawful detainer, respectively, were brought for the benefit of the plaintiff alone who *claimed to be the sole owner*. We held that the action will not prosper unless the plaintiff impleaded the other co-owners who are indispensable parties. In these cases, the absence of an indispensable party rendered all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. However, where the co-owner repudiates the co-ownership by claiming sole ownership of the property or where the suit is brought against a co-owner, his co-owners are indispensable parties and must be impleaded as party-defendants, as the suit affects the rights and interests of these other co-owners.

8. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— In the present case, the respondent, as the plaintiff in the court below, never disputed the existence of a co-ownership nor claimed to be the sole or exclusive owner of the litigated lot. In fact, he recognized that he is a "*bonafide* co-owner" of the questioned property, along with his deceased wife. Moreover and more importantly, the respondent's claim in his complaint in Civil Case No. 2919-03 is personal to him and his wife, *i.e.*, that his and his wife's signatures in the Deed of Absolute Sale in favor of petitioner Josephine were falsified. The issue therefore is falsification, an issue which does not require the participation of the respondent's co-owners at the trial; it can be determined without their presence because they are not parties to the document; their signatures do not appear therein. Their rights and interests as co-owners are adequately protected by their co-owner and father, respondent Moises O. Anacay, since the complaint was made precisely to recover ownership and possession of the

properties owned in common, and, as such, will redound to the benefit of all the co-owners.

APPEARANCES OF COUNSEL

Beltran, Beltran, Rubrico, Koa and Mendoza for petitioners.
Galvez Law Office for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review on *Certiorari*,[1] filed by the spouses Josephine Marmo and Nestor Esguerra and the spouses Danilo del Pilar and Marisa del Pilar (collectively, the *petitioners*), to reverse and set aside the Decision[2] dated December 28, 2007 and the Resolution[3] dated April 11, 2008 of the Former Special Eleventh Division of the Court of Appeals (*CA*) in CA-G.R. SP No. 94673. The assailed CA Decision dismissed the petitioners' petition for *certiorari* challenging the Orders dated March 14, 2006[4] and May 8, 2006[5] of the Regional Trial Court (*RTC*), Branch 90, Dasmariñas, Cavite in Civil Case No. 2919-03, while the assailed CA Resolution denied the petitioners' motion for reconsideration.

FACTUAL BACKGROUND

The facts of the case, as gathered from the parties' pleadings, are briefly summarized below:

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[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Japar B. Dimaampao and Ramon R. Garcia, concurring; *rollo*, pp. 123-131.

[3] *Id.* at 146.

[4] *Id.* at 82.

[5] *Id.* at 83-88.

On September 16, 2003, respondent Moises O. Anacay filed a case for Annulment of Sale, Recovery of Title with Damages against the petitioners[6] and the Register of Deeds of the Province of Cavite, docketed as Civil Case No. 2919-03.[7] The complaint states, among others, that: the respondent is the *bona-fide* co-owner, together with his wife, Gloria P. Anacay (now deceased), of a 50-square meter parcel of land and the house built thereon, located at Blk. 54, Lot 9, Regency Homes, Brgy. Malinta, Dasmariñas, Cavite, covered by Transfer Certificate of Title (*TCT*) No. T-815595 of the Register of Deeds of Cavite; they authorized petitioner Josephine to sell the subject property; petitioner Josephine sold the subject property to petitioner Danilo for ₱520,000.00, payable in monthly installments of ₱8,667.00 from May 2001 to June 2006; petitioner Danilo defaulted in his installment payments from December 2002 onwards; the respondent subsequently discovered that TCT No. 815595 had been cancelled and TCT No. T-972424 was issued in petitioner Josephine's name by virtue of a falsified Deed of Absolute Sale dated September 20, 2001; petitioner Josephine subsequently transferred her title to petitioner Danilo; TCT No. T-972424 was cancelled and TCT No. T-991035 was issued in petitioner Danilo's name. The respondent sought the annulment of the Deed of Absolute Sale dated September 20, 2001 and the cancellation of TCT No. T-991035; in the alternative, he demanded petitioner Danilo's payment of the balance of ₱347,000.00 with interest from December 2002, and the payment of moral damages, attorney's fees, and cost of suit.

In her Answer, petitioner Josephine averred, among others, that the respondent's children, as co-owners of the subject property, should have been included as plaintiffs because they are indispensable parties.[8] Petitioner Danilo echoed petitioner Josephine's submission in his Answer.[9]

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[6] Excluding petitioner Marisa del Pilar.

[7] *Rollo,* pp. 27-34.

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

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

Following the pre-trial conference, the petitioners filed a Motion to Dismiss the case for the respondent's failure to include his children as indispensable parties.[10]

The respondent filed an Opposition, arguing that his children are not indispensable parties because the issue in the case can be resolved without their participation in the proceedings.[11]

THE RTC RULING

The RTC found the respondent's argument to be well-taken and thus denied the petitioners' motion to dismiss in an Order dated March 14, 2006.[12] It also noted that the petitioners' motion was simply filed to delay the proceedings.

After the denial of their Motion for Reconsideration,[13] the petitioners elevated their case to the CA through a Petition for *Certiorari* under Rule 65 of the Rules of Court.[14] They charged the RTC with grave abuse of discretion amounting to lack of jurisdiction for not dismissing the case after the respondent failed to include indispensable parties.

THE CA RULING

The CA dismissed the petition[15] in a Decision promulgated on December 28, 2007. It found that the RTC did not commit any grave abuse of discretion in denying the petitioners' motion to dismiss, noting that the respondent's children are not indispensable parties.

The petitioners moved[16] but failed[17] to secure a reconsideration of the CA Decision; hence, the present petition.

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[10] *Id.* at 77-79.
[11] *Id.* 80-81.
[12] *Id.* at 82.
[13] *Id.* at 83-88.
[14] *Id.* at 89-104.
[15] *Supra* note 2.
[16] *Rollo*, pp. 132-140.
[17] *Supra* note 3.

Following the submission of the respondent's Comment[18] and the petitioners' Reply,[19] we gave due course to the petition and required the parties to submit their respective memoranda.[20] Both parties complied.[21]

Meanwhile, on April 24, 2009, the petitioners filed with the RTC a Motion to Suspend Proceedings due to the pendency of the present petition. The RTC denied the motion to suspend as well as the motion for reconsideration that followed. The petitioners responded to the denial by filing with us a petition for the issuance of a temporary restraining order (*TRO*) to enjoin the RTC from proceeding with the hearing of the case pending the resolution of the present petition.

THE PETITION and

THE PARTIES' SUBMISSIONS

The petitioners submit that the respondent's children, who succeeded their deceased mother as co-owners of the property, are indispensable parties because a full determination of the case cannot be made without their presence, relying on *Arcelona v. Court of Appeals*,[22] *Orbeta v. Sendiong*,[23] and *Galicia v. Manliquez Vda. de Mindo*.[24] They argue that the non-joinder of indispensable parties is a fatal jurisdictional defect.

The respondent, on the other hand, counters that the respondent's children are not indispensable parties because the issue involved in the RTC – whether the signatures of the respondent and his wife in the Deed of Absolute Sale dated

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[18] *Rollo,* pp. 153-156.

[19] *Id.* at 159.

[20] *Id.* at 163-164.

[21] *Id.* at 165-180, 186-192.

[22] 345 Phil. 250 (1997).

[23] G.R. No. 155236, July 8, 2005, 463 SCRA 180.

[24] G.R. No. 155785, April 13, 2007, 521 SCRA 85.

September 20, 2001 were falsified - can be resolved without the participation of the respondent's children.

THE ISSUE

The core issue is whether the respondent's children are indispensable parties in Civil Case No. 2919-03. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly ruled that the RTC did not commit any grave abuse of discretion in ruling that the respondent's children are not indispensable parties.

OUR RULING

We see no merit in the petition.

General Rule: The denial of a motion to dismiss is an interlocutory order which is not the proper subject of an appeal or a petition for certiorari.

At the outset, we call attention to Section 1 of Rule 41[25] of the Revised Rules of Court governing appeals from the RTC to the CA. This Section provides that an appeal may be taken only from a judgment or final order that completely disposes of the case, or of a matter therein when declared by the Rules to be appealable. It explicitly states as well that no appeal may be taken from an interlocutory order.

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

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) An interlocutory order;

In law, the word "interlocutory" refers to intervening developments between the commencement of a suit and its complete termination; hence, it is a development that does not end the whole controversy.[26] An "interlocutory order" merely rules on an incidental issue and does not terminate or finally dispose of the case; it leaves something to be done before the case is finally decided on the merits.[27]

An Order ***denying*** a Motion to Dismiss is interlocutory because it does not finally dispose of the case, and, in effect, directs the case to proceed until final adjudication by the court. Only when the court issues an order outside or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief, will *certiorari*

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, crossclaims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice;

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

[26] See *Ex-Mayor Tambaoan v. Court of Appeals,* 417 Phil. 683, 695 (2001); and *Halili v. Court of Industrial Relations, et al.,* 130 Phil. 806, 811 (1968).

[27] *Repol v. Commission on Elections*, G.R. No. 161418, April 28, 2004, 428 SCRA 321, 327-328.

be considered an appropriate remedy to assail an interlocutory order.[28]

In the present case, since the petitioners did not wait for the final resolution on the merits of Civil Case No. 2919-03 from which an appeal could be taken, but opted to immediately assail the RTC Orders dated March 14, 2006 and May 8, 2006 through a petition for *certiorari* before the CA, the issue for us to address is whether the RTC, in issuing its orders, gravely abused its discretion or otherwise acted outside or in excess of its jurisdiction.

The RTC did not commit grave abuse of discretion in denying the petitioners' Motion to Dismiss; the respondent's co-owners are not indispensable parties.

The RTC grounded its Order dated March 14, 2006 denying the petitioners' motion to dismiss on the finding that the respondent's children, as co-owners of the subject property, are not indispensable parties to the resolution of the case.

We agree with the RTC.

Section 7, Rule 3 of the Revised Rules of Court[29] defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants. Jurisprudence further holds that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a

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[28] ee *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 435 (2005); *Philippine American Life and General Insurance Company v. Valencia-Bagalasca*, 435 Phil. 104, 111 (2002); and *J.L. Bernardo Construction v. Court of Appeals*, 381 Phil. 25 (2000).

[29] SECTION 7. *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.

situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties.[30]

When the controversy involves a property held in common, Article 487 of the Civil Code explicitly provides that "any one of the co-owners may bring an action in ejectment."

We have explained in *Vencilao v. Camarenta*[31] and in *Sering v. Plazo*[32] that the term "action in ejectment" includes a suit for forcible entry (*detentacion*) or unlawful detainer (*desahucio*).[33] We also noted in *Sering* that the term "action in ejectment" includes "also, an *accion publiciana* (recovery of possession) or *accion reivindicatoria*[34] (recovery of ownership)." Most recently in *Estreller v. Ysmael*,[35] we applied Article 487 to an *accion publiciana* case; in *Plasabas v. Court of Appeals*[36] we categorically stated that Article 487 applies to reivindicatory actions.

We upheld in several cases the right of a co-owner to file a suit without impleading other co-owners, pursuant to Article 487 of the Civil Code. We made this ruling in *Vencilao*, where the amended

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[30] See *Moldes v. Villanueva,* G.R. No. 161955, August 31, 2005, 468 SCRA 697, 707-708; *Servicewide Specialists, Inc. v. Court of Appeals*, 376 Phil. 602, 612 (1999).

[31] 140 Phil. 99 (1969).

[32] 298 Phil. 315 (1988).

[33] See also *De Guia v. Court of Appeals*, 459 Phil. 447 (2003).

[34] Other decisions spell it as "*accion reivindicatoria,"* see *Heirs of Tomas Dolleton v. Fil-Estate Management, Inc.***,** G.R. No. 170750, April 7, 2009; *Estate of Soledad Manantan v. Somera*, G.R. No. 145867, April 7, 2009; *Amoroso v. Alegre, Jr.*, G.R. No. 142766, June 15, 2007, 524 SCRA 641*; Valdez, Jr. v. Court of Appeals*, G.R. No. 132424, May 4, 2006, 489 SCRA 369; *Heirs of Demetrio Melchor v. Melchor*, 461 Phil. 437 (2003); and *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83 (1998).

[35] G.R. No. 170264, March 13, 2009.

[36] G.R. No. 166519, March 31, 2009.

complaint for "forcible entry and detainer" specified that the plaintiff is one of the heirs who co-owns the disputed properties. In *Sering*, and *Resuena v. Court of Appeals*,[37] the co-owners who filed the ejectment case did not represent themselves as the exclusive owners of the property. In *Celino v. Heirs of Alejo and Teresa Santiago*,[38] the complaint for quieting of title was brought in behalf of the co-owners precisely to recover lots owned in common.[39] In *Plasabas*, the plaintiffs alleged in their complaint for recovery of title to property (*accion reivindicatoria*) that they are the sole owners of the property in litigation, but acknowledged during the trial that the property is co-owned with other parties, and the plaintiffs have been authorized by the co-owners to pursue the case on the latter's behalf.

These cases should be distinguished from *Baloloy v. Hular*[40] and *Adlawan v. Adlawan*[41] where the actions for quieting of title and unlawful detainer, respectively, were brought for the benefit of the plaintiff alone who *claimed to be the sole owner*. We held that the action will not prosper unless the plaintiff impleaded the other co-owners who are indispensable parties. In these cases, the absence of an indispensable party rendered all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

We read these cases to collectively mean that where the suit is brought by a co-owner, *without repudiating the co-ownership*, then the suit is presumed to be filed for the benefit of the other co-owners and may proceed without impleading the other co-owners. However, where the co-owner repudiates the co-ownership by claiming sole ownership of the property or where the suit is brought against a co-owner, his co-owners are indispensable parties

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[37] G.R. No. 128338, March 28, 2005, 454 SCRA 42.

[38] 479 Phil. 617 (2004).

[39] *Id.* at 624.

[40] 481 Phil. 398 (2004).

[41] G.R. No. 161916, January 20, 2006, 479 SCRA 275.

and must be impleaded as party-defendants, as the suit affects the rights and interests of these other co-owners.

In the present case, the respondent, as the plaintiff in the court below, never disputed the existence of a co-ownership nor claimed to be the sole or exclusive owner of the litigated lot. In fact, he recognized that he is a "*bona-fide* co-owner" of the questioned property, along with his deceased wife. Moreover and more importantly, the respondent's claim in his complaint in Civil Case No. 2919-03 is personal to him and his wife, *i.e.*, that his and his wife's signatures in the Deed of Absolute Sale in favor of petitioner Josephine were falsified. The issue therefore is falsification, an issue which does not require the participation of the respondent's co-owners at the trial; it can be determined without their presence because they are not parties to the document; their signatures do not appear therein. Their rights and interests as co-owners are adequately protected by their co-owner and father, respondent Moises O. Anacay, since the complaint was made precisely to recover ownership and possession of the properties owned in common, and, as such, will redound to the benefit of all the co-owners.[42]

In sum, respondent's children, as co-owners of the subject property, are not indispensable parties to the resolution of the case. We held in *Carandang v. Heirs of De Guzman*[43] that in cases like this, the co-owners are not even necessary parties, for a complete relief can be accorded in the suit even without their participation, since the suit is presumed to be filed for the benefit of all.[44] Thus, the respondent's children need not be impleaded as party-plaintiffs in Civil Case No. 2919-03.

We cannot subscribe to the petitioners' reliance on our rulings in *Arcelona v. Court of Appeals*,[45] *Orbeta v. Sendiong*[46]

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[42] See also *Wee v. De Castro*, G.R. No. 176405, August 20, 2008, 562 SCRA 695, 711; and *Santos v. Heirs of Dominga Ilustre*, G.R. No. 151016, August 6, 2008, 561 SCRA 120, 132.

[43] G.R. No. 160347, November 29, 2006, 508 SCRA 469, 487-488.

[44] *Id.* at 487-488.

[45] *Supra* note 23.

[46] *Supra* note 24.

and *Galicia v. Manliquez Vda. de Mindo*,[47] for these cases find no application to the present case. In these cited cases, the suits were either filed against a co-owner without impleading the other co-owners, or filed by a party claiming sole ownership of a property that would affect the interests of third parties.

Arcelona involved an action for security of tenure filed by a tenant without impleading all the co-owners of a fishpond as party-defendants. We held that a tenant, in an action to establish his status as such, must implead all the *pro-indiviso* co-owners as party-defendants since a tenant who fails to implead all the co-owners as party-defendants cannot establish with finality his tenancy over the entire co-owned land. *Orbeta,* on the other hand, involved an action for recovery of possession, quieting of title and damages wherein the plaintiffs prayed that they be declared "absolute co-owners" of the disputed property, but we found that there were third parties whose rights will be affected by the ruling and who should thus be impleaded as indispensable parties. In *Galicia,* we noted that the complaint for recovery of possession and ownership and annulment of title alleged that the plaintiffs' predecessor-in-interest was deprived of possession and ownership by a third party, but the complaint failed to implead all the heirs of that third party, who were considered indispensable parties.

In light of these conclusions, no need arises to act on petitioners' prayer for a TRO to suspend the proceedings in the RTC and we find no reason to grant the present petition.

WHEREFORE, premises considered, we hereby *DENY* the petition for its failure to show any reversible error in the assailed Decision dated December 28, 2007 and Resolution dated April 11, 2008 of the Court of Appeals in CA-G.R. SP No. 94673, both of which we hereby *AFFIRM*. Costs against the petitioners.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro, Del Castillo, and *Abad, JJ.,* concur.

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[47] *Supra* note 25.

SECOND DIVISION

[G.R. No. 185379. November 27, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ZENAIDA QUEBRAL *y* MATEO, FERNANDO LOPEZ *y* AMBUS and MICHAEL SALVADOR *y* JORNACION,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS SEARCH; VALIDITY THEREOF; PROBABLE CAUSE FOR A WARRANTLESS SEARCH JUSTIFYING THE ARREST WAS SUPPORTED BY SUFFICIENTLY STRONG CIRCUMSTANCES IN CASE AT BAR.— Actually, it was more of a search preceding an arrest. The police officers had information that two men and a woman on board an owner type jeep would arrive in Balagtas and hand over a consignment of *shabu* at a gas station in town to a known drug dealer whose name was on the police watch list. When these things unfolded before their eyes as they watched from a distance, the police came down on those persons and searched them, resulting in the discovery and seizure of a quantity of *shabu* in their possession. In such a case, the search is a valid search justifying the arrest that came after it. x x x As the lower court aptly put it in this case, the law enforcers already had an inkling of the personal circumstances of the persons they were looking for and the criminal act they were about to commit. That these circumstances played out in their presence supplied probable cause for the search. The police acted on reasonable ground of suspicion or belief supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that a crime has been committed or is about to be committed.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE LONE DECLARATION OF AN EYEWITNESS IS SUFFICIENT TO CONVICT IF THE COURT FINDS THE SAME CREDIBLE.— The lone declaration of an eyewitness is sufficient to convict if, as in this case, the court finds the same credible. Credibility

goes into a person's integrity, to the fact that he is worthy of belief, and does not come with the number of witnesses.

3. ID.; ID.; PRESUMPTION OF REGULARITY; THE REPORT OF AN OFFICIAL FORENSIC CHEMIST REGARDING A RECOVERED PROHIBITED DRUG ENJOYS PRESUMPTION OF REGULARITY.— This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal. The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that the proof beyond doubt of the identity of the prohibited drug is essential. Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state.

4. ID.; ID.; DOCUMENTS; INADMISSIBILITY; CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— The familiar rule in this jurisdiction is that the inadmissibility of certain documents, if not urged before the court below, cannot be raised for the first time on appeal.

5. ID.; ID.; CREDIBILITY OF WITNESSES; TRIVIAL INCONSISTENCES ENHANCE THE TRUTHFULNESS OF A TESTIMONY; CASE AT BAR.— The accused-appellants take advantage of PO3 Galvez's testimony that they conducted their operation on September 2, 2002, the date that the informant gave them, and that the following day was September 8, 2002 to attack his credibility. But this inconsistency is trivial and appears to be a pure mistake. Lapses like this even enhance the truthfulness of the testimony of a witness as they erase any suspicion of a rehearsed declaration.

6. CRIMINAL LAW; SPECIAL OFFENSES; DANGEROUS DRUGS ACT OF 2002; REQUIREMENTS OF LAW FOR HANDLING EVIDENCE; FAILURE TO COMPLY WILL NOT RENDER SEIZURE OF PROHIBITED DRUGS INVALID AS LONG AS ITS INTEGRITY IS PROPERLY PRESERVED; CASE AT BAR.— Finally, the accused-appellants contend that the prosecution evidence failed to show compliance with the

requirements of law for handling evidence. But, as has been held in a recent case, failure to comply strictly with those requirements will not render the seizure of the prohibited drugs invalid for so long as the integrity and evidentiary value of the confiscated items are properly preserved by the apprehending officers.

7. REMEDIAL LAW; EVIDENCE; "FRAME-UP"; REQUIRES STRONG AND CONVINCING EVIDENCE; CASE AT BAR.— On the other hand, the accused-appellants' claim of a "frame-up" was easy to concoct and so has been the common line of defense in most cases involving violations of the Dangerous Drugs Act. Such defense requires strong and convincing evidence which the accused-appellants failed to satisfy.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

ABAD, *J.*:

This case is about the requirement of authentication of seized prohibited drugs and the conduct of warrantless search of a suspect by the roadside based on probable cause.

The Facts and the Case

The provincial prosecutor of Bulacan charged the accused Zenaida Quebral, Eusebio Quebral, Fernando Lopez, and Michael Salvador before the Regional Trial Court (RTC) of Malolos, Bulacan, in Criminal Case 3331-M-2002 with violation of Section 5, Article II of Republic Act 9165 or the Comprehensive Dangerous Drugs Act of 2002.

At the trial of this case, the prosecution presented PO3 Cecilio Galvez of the police force of Balagtas, Bulacan, who testified that at 7:00 p.m. on September 7, 2002, the Chief of the Drug Enforcement Unit called him and other police officers to a briefing regarding a police informer's report that two men and a woman

on board an owner type jeep with a specific plate number would deliver *shabu*, a prohibited drug, on the following day at a Petron Gasoline Station in Balagtas to Michael Salvador, a drug pusher in the police watch list.[1]

After a short briefing on the morning of September 8, 2002, PO3 Galvez and six other police officers went to the North Luzon Expressway Balagtas Exit at Burol 2nd, watching out for the owner type jeep mentioned. They got there at around 7:45 a.m. Since the informer did not give the exact time of the delivery of *shabu*, the police officers staked out the expressway exit until late afternoon. At around 4:00 p.m., such a jeep, bearing the reported plate number and with two men and a woman on board, came out of the Balagtas Exit. Galvez identified the two men as accused Eusebio Quebral, who drove the jeep, and accused-appellant Fernando Lopez and the woman as accused-appellant Zenaida Quebral. The police trailed the jeep as it proceeded to the town proper of Balagtas and entered a Petron gas station along the McArthur Highway.

After a few minutes, a Tamaraw FX arrived from which accused-appellant Michael Salvador alighted. He walked towards the jeep and talked to accused Zenaida Quebral, who then handed a white envelope to him. On seeing this, PO3 Galvez, who was watching from about 15 meters in a tinted car, signaled his back-up team to move. The police officers alighted from their vehicles and surrounded the jeep. Galvez took the envelope from Michael, opened it, and saw five plastic sachets containing white crystalline substance which he believed was *shabu*.

The Bulacan Provincial Crime Laboratory Office later examined the substance and submitted a chemistry report,[2] stating that it was *shabu* or methylamphetamine hydrochloride, a prohibited drug.

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[1] Exhibit "D", records, p. 114.

[2] Exhibit "C", *id.* at 116.

Appellants denied having committed the crime, claiming only that PO3 Galvez and his fellow police officers merely framed them up.

On March 18, 2004 the RTC found all four accused guilty of the crime charged and sentenced them to suffer the penalty of life imprisonment and to pay a fine of ₱5 million.

On May 20, 2005, while the Court of Appeals (CA) was reviewing the case on appeal in CA-G.R. CR-HC 01997, accused Eusebio Quebral died, prompting it to dismiss the case against him. On February 13, 2008, the CA rendered judgment,[3] entirely affirming the decision of the RTC. The remaining accused appealed to this Court.

The Issues Presented

Appellants basically raise two issues for this Court's resolution:

1. Whether or not the CA erred in not excluding the evidence of the seized *shabu* on the ground that, having illegally arrested the accused, the police officers' subsequent search of their persons incident to such arrest was also illegal; and

2. Whether or not the prosecution presented ample proof of appellants' guilt beyond reasonable doubt.

The Rulings of the Court

One. The accused claim that since the police did not have valid ground to arrest them, their subsequent search of them was illegal and the evidence of the seized *shabu* cannot be admitted in evidence against them. With the exclusion of the seized drugs, there would not be proof that they were passing them.

The accused-appellants invoke the rule that a person may be arrested even without a warrant only a) if he is caught in the act of committing a crime, b) if he has just committed a crime and the arresting officer pursued him, or c) if he escaped

[3] *Rollo*, p. 2.

from a legal confinement.[4] But in the first two instances, the officer must have personal knowledge of the facts underlying the arrest. The target person's observable acts must clearly spell a crime. If no crime is evident from those acts, no valid arrest can be made. An informant whispering to the police officer's ear that the person walking or standing on the street has committed or is committing a crime will not do. The arresting officer must himself perceive the manifestations of a crime.[5]

The accused-appellants point out that in this case the police officers cannot say that what they saw from a distance constituted a crime. Two men and a woman arrived on board a jeep at the gas station. A third man approached the jeep, spoke to the woman and she handed him a folded white envelope that appeared to contain something. These acts do not constitute a crime *per se*. Consequently, their arrest at this point was illegal. The subsequent search of their persons, not being based on a valid arrest, was itself illegal.

But, actually, it was more of a search preceding an arrest. The police officers had information that two men and a woman on board an owner type jeep would arrive in Balagtas and hand over a consignment of *shabu* at a gas station in town to a known drug dealer whose name was on the police watch list. When these things unfolded before their eyes as they watched from a distance, the police came down on those persons and searched them, resulting in the discovery and seizure of a quantity of *shabu* in their possession. In such a case, the search is a valid search justifying the arrest that came after it.

This Court held in *People v. Bagista*[6] that the NARCOM officers had probable cause to stop and search all vehicles coming from the north at Acop, Tublay, Benguet, in view of the confidential information they received from their regular

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[4] Revised Rules on Criminal Procedure, Rule 113, Section 5.

[5] *People v. Doria*, 361 Phil. 595, 645 (1999), *Concurring Opinion of J. Panganiban*.

[6] G.R. No. 86218, September 18, 1992, 214 SCRA 63.

informant that a woman fitting the description of the accused would be bringing marijuana from up north. They likewise had probable cause to search her belongings since she fitted the given description. In such a case, the warrantless search was valid and, consequently, any evidence obtained from it is admissible against the accused.

As the lower court aptly put it in this case, the law enforcers already had an inkling of the personal circumstances of the persons they were looking for and the criminal act they were about to commit. That these circumstances played out in their presence supplied probable cause for the search. The police acted on reasonable ground of suspicion or belief supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that a crime has been committed or is about to be committed.[7] Since the seized *shabu* resulted from a valid search, it is admissible in evidence against the accused.

It would have been impractical for the police to apply with the appropriate court for a search warrant since their suspicion found factual support only at the moment accused Eusebio Quebral, Fernando Lopez, and Zenaida Quebral rendezvoused with Michael Salvador at the Petron gas station for the hand over of the drugs. An immediate search was warranted since they would have gone away by the time the police could apply for a search warrant.[8] The drugs could be easily transported and concealed with impunity.[9]

The case of *People v. Aminnudin*[10] cannot apply to this case. In *Aminnudin*, the informant gave the police the name and description of the person who would be coming down from a ship the following day carrying a shipment of drugs. In such a case, the Court held that the police had ample time to seek

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[7] *People v. Aruta*, 351 Phil. 868, 881 (1998).

[8] *People v. Court of First Instance of Rizal, Br. IX, Quezon City*, 189 Phil. 75, 90 (1980); citing *Caroll v. United States*, 267 US 131 (1924).

[9] *Caballes v. Court of Appeals*, 424 Phil. 263, 278 (2002).

[10] G.R. No. 74869, July 6, 1988, 163 SCRA 402.

a search warrant against the named person so they could validly search his luggage. In the present case, all the information the police had about the persons in possession of the prohibited drugs was that they were two men and a woman on board an owner type jeep. A search warrant issued against such persons could be used by the police to harass practically anyone.

Two. The accused-appellants point out that the testimony of PO3 Galvez cannot support their conviction since it does not bear the corroboration of the other officers involved in the police operation against them. But the failure of these other officers did not weaken the prosecution evidence. The lone declaration of an eyewitness is sufficient to convict if, as in this case, the court finds the same credible.[11] Credibility goes into a person's integrity, to the fact that he is worthy of belief,[12] and does not come with the number of witnesses.[13]

The accused-appellants also point out that, since the chemist who examined the seized substance did not testify in court, the prosecution was unable to establish the indispensable element of *corpus delicti*. But this claim is unmeritorious. This Court has held that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal.[14] The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.[15]

Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered

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[11] *People of the Philippines v. Coscos*, 424 Phil. 886, 900 (2002).

[12] *Civil Service Commission v. Belagan*, 483 Phil. 601, 616 (2004).

[13] *People v. Hayahay*, 345 Phil. 69, 81 (1997).

[14] *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 781; citing *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570, 586-587.

[15] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632.

prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state.[16] Therefore, the report of Forensic Chemical Officer Sta. Maria that the five plastic sachets PO3 Galvez gave to her for examination contained *shabu* is conclusive in the absence of evidence proving the contrary. At any rate, as the CA pointed out, the defense agreed during trial to dispense with the testimony of the chemist and stipulated on his findings.[17]

Parenthetically, the accused-appellants raised their objection to the police chemist's report only on appeal when such objection should have been made when the prosecution offered the same in evidence. They may, thus, be considered to have waived their objection to such report.[18] The familiar rule in this jurisdiction is that the inadmissibility of certain documents, if not urged before the court below, cannot be raised for the first time on appeal.[19]

The accused-appellants take advantage of PO3 Galvez's testimony that they conducted their operation on September 2, 2002, the date that the informant gave them, and that the following day was September 8, 2002[20] to attack his credibility. But inconsistency is trivial and appears to be a pure mistake. Lapses like this even enhance the truthfulness of the testimony of a witness as they erase any suspicion of a rehearsed declaration.[21] Besides, PO3 Galvez corrected this mistake on cross-examination.

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[16] *People v. Bandang, supra* note 14; citing *People v. Chua-Uy*, 384 Phil. 70, 93-94 (2000).

[17] TSN, February 21, 2003, p. 4.

[18] *Republic of the Philippines v. Court of Appeals*, 402 Phil. 498, 509 (2001); citing *Chua v. Court of Appeals*, G.R. No. 109840, January 21, 1999, 301 SCRA 356, 362.

[19] *People v. Bandang, supra* note 14, at 587.

[20] TSN, February 7, 2003, pp. 2-3.

[21] *People v. Verano*, 332 Phil. 599, 611 (1996).

He said that their informant gave them his tip at 7:00 p.m. of September 7, 2002.[22]

Finally, the accused-appellants contend that the prosecution evidence failed to show compliance with the requirements of law for handling evidence. But, as has been held in a recent case,[23] failure to comply strictly with those requirements will not render the seizure of the prohibited drugs invalid for so long as the integrity and evidentiary value of the confiscated items are properly preserved by the apprehending officers. Besides, the accused-appellants did not raise it before the trial court, hence, they cannot raise it for the first time on appeal.[24]

The CA and the RTC gave credence to the testimony of PO3 Galvez and this Court finds no reason for disagreement. His narration was clear and candid. On the other hand, the accused-appellants' claim of a "frame-up" was easy to concoct and so has been the common line of defense in most cases involving violations of the Dangerous Drugs Act.[25] Such defense requires strong and convincing evidence which the accused-appellants failed to satisfy.

As the trial court correctly observed, the accused-appellants failed to provide any reason why of all the people plying through the roads they had taken, the police chose to frame them up for the crime. They also failed to explain why the police would plant such huge amount of *shabu* if a small quantity would be sufficient to send them to jail.[26] No arresting officer would plant such quantity of *shabu* solely to incriminate the accused who have not been shown to be of good financial standing.[27]

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[22] TSN, February 7, 2003, p. 7.

[23] *People v. Daria*, G.R. No. 186138, September 11, 2009; citing *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595.

[24] *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 634.

[25] *People v. Velasco*, 322 Phil. 146, 153 (1996).

[26] CA *rollo*, p. 25.

[27] *People v. Uy*, 392 Phil. 773, 795 (2000).

WHEREFORE, the Court *DENIES* the appeal and *AFFIRMS* the decision of the Court of Appeals dated February 13, 2008 and of the Regional Trial Court of Malolos dated March 18, 2004.

SO ORDERED.

Carpio, Leonardo-de Castro, Brion, and *Del Castillo, JJ.,* concur.

EN BANC

[G.R. No. 189698. December 1, 2009]

ELEAZAR P. QUINTO and GERINO A. TOLENTINO, JR., *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; PROPER REMEDY TO ASSAIL RESOLUTION ISSUED BY THE COMELEC IN THE EXERCISE OF ITS QUASI-LEGISLATIVE POWER. — What petitioners assail in their petition is a resolution issued by the COMELEC in the exercise of its quasi-legislative power. *Certiorari* under Rule 65, in relation to Rule 64, cannot be availed of, because it is a remedy to question decisions, resolutions and issuances made in the exercise of a judicial or quasi-judicial function. Prohibition is also an inappropriate remedy, because what petitioners actually seek from the Court is a determination of the proper construction of a statute and a declaration of their rights thereunder. Obviously, their petition is one for declaratory relief, over which this Court does not exercise original jurisdiction.

2. ID.; SUPREME COURT; JURISDICTION; WHERE PARTY RAISES A CHALLENGE ON CONSTITUTIONALITY OF A QUESTIONED PROVISION OF A RESOLUTION AND THE LAW; EFFECT. — Petitioners raise a challenge on the constitutionality of the questioned provisions of both the

COMELEC resolution and the law. Given this scenario, the Court may step in and resolve the instant petition. x x x The Court has ample authority to set aside errors of practice or technicalities of procedure and resolve the merits of a case. Repeatedly stressed in our prior decisions is the principle that the Rules were promulgated to provide guidelines for the orderly administration of justice, not to shackle the hand that dispenses it. Otherwise, the courts would be consigned to being mere slaves to technical rules, deprived of their judicial discretion.

3. ID.; CIVIL PROCEDURE; PARTIES; LEGAL STANDING TO QUESTION COMELEC RESOLUTION NO. 8678 (GUIDELINES ON THE FILING OF CERTIFICATES OF CANDIDACY AND NOMINATION OF OFFICIAL CANDIDATES OF REGISTERED POLITICAL PARTIES IN CONNECTION WITH THE MAY 10, 2010 NATIONAL AND LOCAL ELECTIONS). — Pursuant to its constitutional mandate to enforce and administer election laws, COMELEC issued Resolution No. 8678, the Guidelines on the Filing of Certificates of Candidacy (CoC) and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections. Sections 4 and 5 of Resolution No. 8678 provide: SEC. 4. *Effects of Filing Certificates of Candidacy*.—a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy. b) Any person holding an elective office or position shall not be considered resigned upon the filing of his certificate of candidacy for the same or any other elective office or position. SEC. 5. *Period for filing Certificate of Candidacy*.—The certificate of candidacy shall be filed on regular days, from November 20 to 30, 2009, during office hours, except on the last day, which shall be until midnight. x x x Central to the determination of *locus standi* is the question of whether a party has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions. In this case, petitioners allege that they will be directly affected by COMELEC Resolution No. 8678 for they

intend, and they all have the qualifications, to run in the 2010 elections. The OSG, for its part, contends that since petitioners have not yet filed their CoCs, they are not yet candidates; hence, they are not yet directly affected by the assailed provision in the COMELEC resolution. The Court, nevertheless, finds that, while petitioners are not yet candidates, they have the standing to raise the constitutional challenge, simply because they are qualified voters. A restriction on candidacy, such as the challenged measure herein, affects the rights of voters to choose their public officials. The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters. The Court believes that both candidates and voters may challenge, on grounds of equal protection, the assailed measure because of its impact on voting rights. In any event, in recent cases, this Court has relaxed the stringent direct injury test and has observed a liberal policy allowing ordinary citizens, members of Congress, and civil organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.

4. ID.; ID.; ACTIONS; ACTUAL CONTROVERSY; PRESENT IN CASE AT BAR AS PETITIONERS WILL BE DIRECTLY AFFECTED BY THE ENFORCEMENT OF ASSAILED COMELEC RESOLUTION. — We have also stressed in our prior decisions that the exercise by this Court of judicial power is limited to the determination and resolution of actual cases and controversies. The Court, in this case, finds that an actual case or controversy exists between the petitioners and the COMELEC, the body charged with the enforcement and administration of all election laws. Petitioners have alleged in a precise manner that they would engage in the very acts that would trigger the enforcement of the provision—they would file their CoCs and run in the 2010 elections. Given that the assailed provision provides for *ipso facto* resignation upon the filing of the CoC, it cannot be said that it presents only a speculative or hypothetical obstacle to petitioners' candidacy.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF EXPRESSION AND OF ASSOCIATION; BREACH UNDER SECTION 13 OF RA NO. 9369. — It is noteworthy to point out that the right to run for public office touches on two fundamental freedoms, those of expression and

of association. Here, petitioners' interest in running for public office, an interest protected by Sections 4 and 8 of Article III of the Constitution, is breached by the proviso in Section 13 of R.A. No. 9369. It is now the opportune time for the Court to strike down the said proviso for being violative of the equal protection clause and for being overbroad. In considering persons holding appointive positions as *ipso facto* resigned from their posts upon the filing of their CoCs, but not considering as resigned all other civil servants, specifically the elective ones, the law unduly discriminates against the first class. The fact alone that there is substantial distinction between those who hold appointive positions and those occupying elective posts, does not justify such differential treatment.

6. ID.; ID.; ID.; EQUAL PROTECTION OF LAW; VALID CLASSIFICATION; REQUISITES; ELUCIDATED. — In order that there can be valid classification so that a discriminatory governmental act may pass the constitutional norm of equal protection, it is necessary that the four (4) requisites of valid classification be complied with, namely: (1) It must be based upon substantial distinctions; (2) It must be germane to the purposes of the law; (3) It must not be limited to existing conditions only; and (4) It must apply equally to all members of the class. The first requirement means that there must be real and substantial differences between the classes treated differently. As illustrated in the fairly recent *Mirasol v. Department of Public Works and Highways*, a real and substantial distinction exists between a motorcycle and other motor vehicles sufficient to justify its classification among those prohibited from plying the toll ways. Not all motorized vehicles are created equal—a two-wheeled vehicle is less stable and more easily overturned than a four-wheel vehicle. Nevertheless, the classification would still be invalid if it does not comply with the second requirement—if it is not germane to the purpose of the law. Justice Isagani A. Cruz (Ret.), in his treatise on constitutional law, explains, The classification, even if based on substantial distinctions, will still be invalid if it is not germane to the purpose of the law. To illustrate, the accepted difference in physical stamina between men and women will justify the prohibition of the latter from employment as miners or stevedores or in other heavy and strenuous work. On the basis of this same classification, however, the law cannot provide

for a lower passing average for women in the bar examinations because physical strength is not the test for admission to the legal profession. Imported cars may be taxed at a higher rate than locally assembled automobiles for the protection of the national economy, but their difference in origin is no justification for treating them differently when it comes to punishing violations of traffic regulations. The source of the vehicle has no relation to the observance of these rules. The third requirement means that the classification must be enforced not only for the present but as long as the problem sought to be corrected continues to exist. And, under the last requirement, the classification would be regarded as invalid if all the members of the class are not treated similarly, both as to rights conferred and obligations imposed.

7. ID.; ID.; ID.; ID.; ID.; ID.; IT MUST BE GERMANE TO THE PURPOSES OF THE LAW; NOT PRESENT IN CASE AT BAR. — Applying the four requisites to the instant case, the Court finds that the differential treatment of persons holding appointive offices as opposed to those holding elective ones is not germane to the purposes of the law. The obvious reason for the challenged provision is to prevent the use of a governmental position to promote one's candidacy, or even to wield a dangerous or coercive influence on the electorate. The measure is further aimed at promoting the efficiency, integrity, and discipline of the public service by eliminating the danger that the discharge of official duty would be motivated by political considerations rather than the welfare of the public. The restriction is also justified by the proposition that the entry of civil servants to the electoral arena, while still in office, could result in neglect or inefficiency in the performance of duty because they would be attending to their campaign rather than to their office work. If we accept these as the underlying objectives of the law, then the assailed provision cannot be constitutionally rescued on the ground of valid classification. Glaringly absent is the requisite that the classification must be germane to the purposes of the law. Indeed, whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain. For example, the Executive Secretary, or any Member of the Cabinet for that matter, could wield the same influence as the Vice-President who at the same time is appointed to a Cabinet post (in the recent past, elected

Vice-Presidents were appointed to take charge of national housing, social welfare development, interior and local government, and foreign affairs). With the fact that they both head executive offices, there is no valid justification to treat them differently when both file their CoCs for the elections. Under the present state of our law, the Vice-President, in the example, running this time, let us say, for President, retains his position during the entire election period and can still use the resources of his office to support his campaign. As to the danger of neglect, inefficiency or partisanship in the discharge of the functions of his appointive office, the inverse could be just as true and compelling. The public officer who files his certificate of candidacy would be driven by a greater impetus for excellent performance to show his fitness for the position aspired for.

8. ID.; ID.; ID.; ID.; CHALLENGE PROVISION ALSO SUFFERS FROM INFIRMITY OF BEING OVERBROAD. — The challenged provision also suffers from the infirmity of being overbroad. First, the provision pertains to all civil servants holding appointive posts without distinction as to whether they occupy high positions in government or not. Certainly, a utility worker in the government will also be considered as *ipso facto* resigned once he files his CoC for the 2010 elections. This scenario is absurd for, indeed, it is unimaginable how he can use his position in the government to wield influence in the political world. While it may be admitted that most appointive officials who seek public elective office are those who occupy relatively high positions in government, laws cannot be legislated for them alone, or with them alone in mind. For the right to seek public elective office is universal, open and unrestrained, subject only to the qualification standards prescribed in the Constitution and in the laws. These qualifications are, as we all know, general and basic so as to allow the widest participation of the citizenry and to give free rein for the pursuit of one's highest aspirations to public office. Such is the essence of democracy. Second, the provision is directed to the activity of seeking any and all public offices, whether they be partisan or nonpartisan in character, whether they be in the national, municipal or *barangay* level. Congress has not shown a compelling state interest to restrict the fundamental right involved on such a sweeping scale. Specific evils require

specific treatments, not through overly broad measures that unduly restrict guaranteed freedoms of the citizenry. After all, sovereignty resides in the people, and all governmental power emanates from them.

PUNO, *C.J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; CONSTITUTIONAL JUDGMENTS, WHEN JUSTIFIED. —At the outset x x x it must be noted that constitutional judgments are justified only out of the necessity of adjudicating rights in particular cases between the litigants before the Court. This principle reflects the conviction that under our constitutional system, courts are not roving commissions assigned to pass judgment on the validity of the nation's laws on matters which have not been squarely put in issue.

2. ID.; ELECTION LAWS; COMELEC RESOLUTION NO. 8678; SECTION 4 ON EFFECTS OF FILING CERTIFICATES OF CANDIDACY. — Resolution 8678 provides, among others, the effects of filing certificates of candidacy. x x x Under Section 4(a) of said Resolution, incumbent public appointive officials (including active members of the Armed Forces of the Philippines) and other officers and employees in government-owned or controlled corporations are deemed *ipso facto* resigned from their respective offices upon the filing of their respective certificates of candidacy. In contrast, Section 4(b) of the same Resolution provides that incumbent elected officials shall not be considered resigned upon the filing of their respective certificates of candidacy for the same or any other elective office or position.

3. ID.; ID.; ID.; SECTION 4(A) REITERATES PRIOR RULES ON DEEMED RESIGNATIONS OF INCUMBENT PUBLIC OFFICIALS; HARMONIZED WITH LAWS PROHIBITING APPOINTIVE PUBLIC OFFICIALS FROM ENGAGING IN ANY PARTISAN POLITICAL ACTIVITY. — Contrary to petitioners' assertion, Section 4(a) of COMELEC Resolution No. 8678 is a faithful reflection of the present state of the law and jurisprudence on the matter. [D]iscussion on the legislative history of Section 4(a) has shown, the current state of the law on deemed resignations of public officials is as follows: *Incumbent Appointive Official* - Under Section 13 of RA 9369,

which reiterates what is provided in Section 66 of the Omnibus Election Code, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy. *Incumbent Elected Official* – Upon the other hand, pursuant to Section 14 of RA 9006 or the Fair Election Act, which repealed Section 67 of the Omnibus Election Code and rendered ineffective Section 11 of R.A. 8436 insofar as it considered an elected official as resigned only upon the start of the campaign period corresponding to the positions for which they are running, an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position. In effect, an elected official may run for another position without forfeiting his seat. x x x that the second proviso was precisely carved out as an exception to the general rule, in keeping with the principle that appointive officials are prohibited from engaging in any partisan political activity and taking part in any election, except to vote. Specific provisions of a particular law should be harmonized not only with the other provisions of the same law, but with the provisions of other existing laws as well. *Interpretare et concordare leges legibus est optimus interpretandi modus.* In ***Pagano v. Nazarro, Jr., et al.***, we ruled that the act of filing a certificate of candidacy while one is employed in the civil service constitutes a just cause for termination of employment for appointive officials. Section 66 of the Omnibus Election Code, in considering an appointive official *ipso facto* resigned, merely provides for the immediate implementation of the penalty for the prohibited act of engaging in partisan political activity.

4. ID.; ID.; ID.; SECTION 4(A) THEREOF IS NOT VIOLATION OF EQUAL PROTECTION CLAUSE; DISQUISITION IN *FARINAS, ET AL. VS. EXECUTIVE SECRETARY, ET AL.*, ON THE APPARENT UNFAIRNESS OF THE RULES ON DEEMED RESIGNATIONS, NOT AN *OBITER DICTUM*; *OBITER DICTUM*, DISCUSSED. – Section 4(a) is not violative of the Equal Protection Clause of the Constitution x x x [Our] **Pronouncement in *Farinas, et al. v. Executive Secretary, et al.*, Not *obiter dictum.*** An obiter dictum has been defined as

a remark or opinion uttered, 'by the way.' It is a statement of the court concerning a question which was not directly before it. It is language unnecessary to a decision, a ruling on an issue not raised, or an opinion of a judge which does not embody the resolution or determination of the court, and is made without argument or full consideration of the point. It is an expression of opinion by the court or judge on a collateral question not directly involved, or not necessary for the decision. Accordingly, it lacks the force of an adjudication and should not ordinarily be regarded as such. **Prescinding from these principles, our pronouncement on the equal protection issue in *Farinas, et al. v. Executive Secretary, et al.* cannot be characterized as *obiter dictum*.** x x x To be sure, an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*. This rule applies to all pertinent questions, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to the matter on which the decision is predicated. For that reason, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did.

5. ID.; ID.; ID.; ID.; RELIANCE ON CASE OF *MANCUSO V. TAFT*, STRIKING DOWN AS UNCONSTITUTIONAL A SIMILAR DEEMED RESIGNATION PROVISION, THE SAME OVERRULED. — The *ponencia* begins its discussion with the claim that the right to run for public office is "inextricably linked" with two fundamental freedoms – those of freedom and association. It then extensively cites ***Mancuso v. Taft***, a decision of the First Circuit of the United States Court of Appeals promulgated on March 1973, to buttress its ruling. On this point, **Mancuso** asserts that "[c]andidacy is both a protected First Amendment right and a fundamental interest. Hence[,] any legislative classification that significantly burdens that interest must be subjected to strict equal protection review." It must be noted, however, that while the United States Supreme Court has held that the fundamental rights include freedom of speech and freedom of association, **it has never recognized a**

fundamental right to express one's political views through candidacy. x x x [Nevertheless,] three months after **Mancuso**, or on June 1973, the United States Supreme Court decided ***United States Civil Service Commission, et al. v. National Association of Letter Carriers AFL-CIO, et al.*** *and* ***Broadrick, et al. v. State of Oklahoma, et al.*** **x x x [**And later, the case of**]** ***Magill v. Lynch***, a 1977 decision of the First Circuit of the United States Court of Appeals, x x x concerned a similar law, and was decided by the **same court** that decided **Mancuso**. x x x [Thus] **the court, fully cognizant of *Letter Carriers* and *Broadrick*, took the position that *Mancuso* had since lost considerable vitality. It observed that the view that political candidacy was a fundamental interest which could be infringed upon only if less restrictive alternatives were not available, was a position which was no longer viable, since the Supreme Court (finding that the government's interest in regulating both the conduct and speech of its employees differed significantly from its interest in regulating those of the citizenry in general) had given little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of Congress, and applying a "balancing" test to determine whether limits on political activity by public employees substantially served government interests which were "important" enough to outweigh the employees' First Amendment rights. x x x Clearly, *Letter Carriers, Broadrick,* and *Magill* demonstrate beyond doubt that *Mancuso v. Taft,* which was heavily relied upon by the *ponencia,* has effectively been overruled.** As it is no longer good law, the *ponencia's* exhortation that we should follow Mancuso "[since] the Americans, from whom we copied the provision in question, had already stricken down a similar measure for being unconstitutional[,]" is misplaced and unwarranted. Thus, in the instant case, I respectfully submit that Section 13 of RA 9369, which reiterates Section 66 of the Omnibus Election Code, is **not violative of the equal protection clause**. It is crystal clear that these deemed resignation provisions **substantially serve governmental interests** (*i.e.*, (i) efficient civil service faithful to the government and the people rather than to party, (ii) avoiding the appearance of "political justice" as to policy, (iii) avoiding the danger of a powerful political machine, and (iv) ensuring that employees achieve advancement on their merits and that they be free from both

coercion and the prospect of favor from political activity), which are important enough to outweigh the **non-fundamental right of appointive officials and employees to seek elective office**. [That] Instead of the overruled case of Mancuso, we should take heed of the ruling in ***Adams v. Supreme Court of Pennsylvania***.

6. ID.; ID.; ID.; ID.; THE DIFFERENTIAL TREATMENT OF PERSONS HOLDING APPOINTIVE OFFICES AS OPPOSED TO THOSE HOLDING ELECTIVE OFFICES, THE CLASSIFICATION GERMANE TO THE PURPOSE OF THE LAW; EQUAL PROTECTION CLAUSE ACCORDING TO VALID CLASSIFICATION, ELUCIDATED. — Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It does not require the universal application of the laws on all persons or things without distinction. What the clause simply requires is equality among equals as determined according to a valid classification. By classification is meant the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars. The test for a valid classification is reasonableness, which criterion is complied with upon a showing of the following: The classification rests 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 same class. x x x [T]he equal protection clause is satisfied so long as there is a plausible policy reason for the classification. The statute is accorded a strong presumption of validity, and the challenger must bear the burden of showing that the act creates a classification that is "palpably arbitrary or capricious"; otherwise, the legislative determination as to what is a sufficient distinction to warrant the classification will not be overthrown. The challenger must refute **all** possible rational bases for the differing treatment, whether or not the Legislature cited those bases as reasons for the enactment. The case law is to uphold the statute if we "can conceive of any reason to justify the classification"; that the constitutionality of the law must be sustained even if the reasonableness of the classification is "fairly debatable."

7. ID.; ID.; ID.; ID.; ID.; ID.; THAT LEGISLATIVE CLASSIFICATION IS UNDERINCLUSIVE WILL NOT

RENDER IT UNCONSTITUTIONALLY ARBITRARY OR INVIDIOUS. — [T]he fact that a legislative **classification is underinclusive will not render it unconstitutionally arbitrary or invidious**. The Legislature is free to choose to remedy only part of a problem, as it may "select one phase of a field and apply a remedy there, neglecting the others." Stated differently, **there is no constitutional requirement that regulation must reach each and every class to which it might be applied; that the Legislature must be held rigidly to the choice of regulating all or none. The state is free to regulate one step at a time, recognizing degrees of harm and addressing itself to phases of a problem which presently seem most acute to the legislative mind**. For when the Legislature creates a statute, it is not required to solve all the evils of a particular wrong in one fell swoop. x x x **Correspondingly, it is not sufficient grounds for invalidation that we may find that the statute's distinction is unfair, underinclusive, unwise, or not the best solution from a public-policy standpoint; rather, we must find that there is no reasonably rational reason for the differing treatment.**

8. ID.; ID.; ID.; ID.; ID.; JUSTIFICATION THEREOF. — [I]s there a **rational justification** for excluding elected officials from the operation of the deemed resigned provisions? I submit that there is. An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people. It involves the choice or selection of candidates to public office by popular vote. Considering that elected officials are put in office by their constituents **for a definite term**, it may justifiably be said that they were excluded from the ambit of the deemed resigned provisions in utmost respect for the mandate of the sovereign will of the people. In other words, complete deference is accorded to the will of the electorate that they be served by such officials until the end of the term for which they were elected. In contrast, there is no such expectation insofar as appointed officials are concerned. **The dichotomized treatment of appointive and elective officials is therefore germane to the purposes of the law. For the law was made not merely to preserve the integrity, efficiency, and discipline of the public service; the Legislature, whose wisdom is outside the rubric of judicial scrutiny, also thought it wise to balance this with the competing, yet equally compelling, interest of deferring to the sovereign will.**

9. ID.; ID.; SECTION 4(A) OF RESOLUTION 8678, SECTION 13 OF RA 9369 AND SECTION 66 OF THE OMNIBUS ELECTION CODE ARE NOT OVERBROAD. — I respectfully submit that Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code are not unconstitutionally overbroad and must therefore remain fully operative. **i. Limitation on Candidacy Regardless of Incumbent Appointive Official's Position, is Valid. x x x I respectfully submit that the avoidance of such a "politically active public work force" which could give a political machine an "unbreakable grasp on the reins of power" is reason enough to impose a restriction on the candidacies of all appointive public officials without further distinction as to the type of positions being held by such employees or the degree of influence that may be attendant thereto. ii. Limitation on Candidacy Regardless of Type of Office Sought, is Valid.** A careful review of the assailed provisions and related laws on the matter will readily show that the perceived overbreadth is more apparent than real. x x x

CARPIO, *J., dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; RA NO. 8436, AMENDED BY RA NO. 9369; THAT APPOINTIVE PUBLIC OFFICIALS ARE DEEMED AUTOMATICALLY RESIGNED FROM OFFICE UPON FILING THEIR CERTIFICATES OF CANDIDACY. — The law is plain, clear and unequivocal that **appointive public officials** are deemed automatically resigned from office upon filing their certificates of candidacy. Paragraph 3, Section 11 of Republic Act No. 8436, as amended by Republic Act No. 9369, provides: For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period: **Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his/her office and must**

vacate the same at the start of the day of the filing of his/her certificate of candidacy.

2. ID.; CONSTITUTIONAL LAW; THAT APPOINTIVE PUBLIC OFFICIALS ARE CIVIL SERVICE OFFICERS OR EMPLOYEES PROHIBITED FROM ENGAGING IN ANY ELECTIONEERING OR PARTISAN POLITICAL ACTIVITY EXCEPT TO VOTE; IMPLEMENTED IN THE CIVIL SERVICE LAWS AND THE OMNIBUS ELECTION CODE. — Appointive public officials are civil service officers or employees. Section 2(1), Article IX-B of the 1987 Constitution provides: The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. The Constitution expressly prohibits civil service officers and employees from engaging in **any electioneering or partisan political activity.** Section 2(4), Article IX-B of the 1987 Constitution provides: No officer or employee in the civil service shall engage, directly or indirectly, in any electioneering or partisan political activity. Since the Constitution also provides that suffrage "may be exercised by **all** citizens," Section 2(4) of Article IX-B does not prohibit civil service officers and employees from voting. Thus, civil service officers and employees cannot engage in any electioneering or partisan political activity **except to vote.** This is clear from the second paragraph of Section 3(3), Article XVI of the 1987 Constitution, which provides: No member of the military shall engage directly or indirectly in any partisan political activity, **except to vote**. The Civil Service laws implement this constitutional ban by stating that civil service officers and employees cannot engage in any partisan political activity **except to vote**. Section 55, Chapter 7, Title I, Book V of the Administrative Code of 1987 provides: Section 55. *Political Activity*. — No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election **except to vote** nor shall he use his official authority or influence to coerce the political activity of any other person or body. xxx. Likewise, the Omnibus Election Code penalizes civil service officers and employees who engage in any partisan political activity **except to vote**. Section 261 (i) of the Omnibus Election Code states: Section 261. *Prohibited Acts*. — The following shall be guilty of an election offense: xxx (i) *Intervention of*

public officers and employees. — Any officer or employee in the civil service, except those holding political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, *barangay* self-defense units and all other para-military units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity, *except to vote* or to preserve public order, if he is a peace officer.

3. ID.; ID.; ID.; FILING OF CERTIFICATE OF CANDIDACY IS A PARTISAN POLITICAL ACTIVITY TO WHICH THE LAW MAY VALIDLY PROVIDE THAT APPOINTIVE PUBLIC OFFICIAL FILING THE SAME IS AUTOMATICALLY DEEMED RESIGNED FROM OFFICE. — Filing a certificate of candidacy is in itself a partisan political activity. It is a public announcement that one is running for elective public office. It is a necessary act for election to public office, and promotes one's candidacy to public office. Running for public office, or exercising the right to be voted for, is different from, and not part of, the right to vote. The only partisan political activity allowed to civil service officers and employees is to vote. Filing a certificate of candidacy is a partisan political activity not allowed to civil service officers and employees. **An appointive public official who files a certificate of candidacy violates the express constitutional ban on civil service officers from engaging in any partisan political activity except to vote.** Thus, the law may validly provide that an appointive public official is automatically deemed resigned upon filing a certificate of candidacy. This merely implements the constitutional ban on civil service officers and employees from engaging in any partisan political activity except to vote.

4. ID.; ID.; ID.; APPOINTIVE PUBLIC OFFICIAL DISTINGUISHED FROM ELECTIVE PUBLIC OFFICIAL FOR PURPOSES OF CONSIDERING ONLY THE FORMER AS DEEMED RESIGNED UPON THE FILING OF CERTIFICATE OF CANDIDACY. — There is a substantial distinction between an appointive public official and an elective public official for purposes of considering only appointive public officials as deemed resigned upon the filing of certificate of candidacy. Appointive public officials are chosen by the appointing power and not elected by the people. They do not have to renew their mandate periodically

unlike elective public officials. They also do not have term limits unlike elective public officials. **Most important of all,** the constitutional ban on civil service officers and employees from engaging in any partisan political activity applies to appointive public officials but not to elective public officials. **By the very nature of their office, elective public officials engage in partisan political activities almost all year round, even outside of the campaign period.** Thus, because of all these substantial distinctions, there is no violation of the equal protection clause when the law mandates that only appointive public officials, and not elective public officials, are deemed automatically resigned upon the filing of certificate of candidacy. The **final proviso** on the automatic resignation of appointive public officials in paragraph 3, Section 11 of RA No. 8436, as amended by RA No. 9369, qualifies the **second sentence** in paragraph 3 that, "Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy; xxx." In short, the final proviso clearly excludes appointive public officials from the operation of the second sentence. This is the plain, clear and unequivocal language of the law.

CARPIO MORALES, *J.*, *dissenting opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; RA NO. 8436, AMENDED BY RA NO. 9369; THAT APPOINTIVE PUBLIC OFFICIALS ARE DEEMED AUTOMATICALLY RESIGNED FROM OFFICE UPON FILING THEIR CERTIFICATES OF CANDIDACY; RATIONALE. — To allow appointive officials to hang on to their respective posts *after* filing their certificate of candidacy will open the floodgates to countless charges of violation of the prohibition on partisan political activity. The filing of the certificate of candidacy is already **deemed as a partisan political activity**, which also explains why the appointive official is considered *ipso facto* resigned from public office upon the date of the filing of the certificate of candidacy, and not the date of the start of the campaign period. *Pagano v. Nazarro, Jr.* teaches: Clearly, the act of filing a Certificate of Candidacy while one is employed in the civil service constitutes **a just cause for termination** of employment for appointive officials. Section 66 of the Omnibus Election Code, in considering an appointive official *ipso facto* resigned, merely

provides for the **immediate implementation of the penalty for the prohibited act of engaging in partisan political activity**. This provision was not intended, and should not be used, as a defense against an administrative case for acts committed during government service.

APPEARANCES OF COUNSEL

Romulo B. Macalintal, Melchor R. Monsod, Marites A. Barrios-Taran, Maureen C. Tolentino and Donna C. Ramos for petitioners.

The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

"In our predisposition to discover the 'original intent' of a statute, courts become the unfeeling pillars of the *status quo*. Little do we realize that statutes or even constitutions are bundles of compromises thrown our way by their framers. Unless we exercise vigilance, the statute may already be out of tune and irrelevant to our day."[1] It is in this light that we should address the instant case.

Before the Court is a petition for prohibition and *certiorari*, with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction, assailing Section 4(a) of Resolution No. 8678 of the Commission on Elections (COMELEC). In view of pressing contemporary events, the petition begs for immediate resolution.

The Antecedents

This controversy actually stems from the law authorizing the COMELEC to use an automated election system (AES).

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[1] *Salvacion v. Central Bank of the Philippines*, G.R. No. 94723, August 21, 1997, 278 SCRA 27, 28.

On December 22, 1997, Congress enacted Republic Act (R.A.) No. 8436, entitled "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES." Section 11 thereof reads:

SEC. 11. *Official Ballot*.—The Commission shall prescribe the size and form of the official ballot which shall contain the titles of the positions to be filled and/or the propositions to be voted upon in an initiative, referendum or plebiscite. Under each position, the names of candidates shall be arranged alphabetically by surname and uniformly printed using the same type size. A fixed space where the chairman of the Board of Election inspectors shall affix his/her signature to authenticate the official ballot shall be provided.

Both sides of the ballots may be used when necessary.

For this purpose, the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections: *Provided,* That, any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running: *Provided, further,* That, unlawful acts or omissions applicable to a candidate shall take effect upon the start of the aforesaid campaign period: *Provided, finally*, That, for purposes of the May 11, 1998 elections, the deadline for filing of the certificate of candidacy for the positions of President, Vice President, Senators and candidates under the Party-List System as well as petitions for registration and/or manifestation to participate in the Party-List System shall be on February 9, 1998 while the deadline for the filing of certificate of candidacy for other positions shall be on March 27, 1998.

The official ballots shall be printed by the National Printing Office and/or the *Bangko Sentral ng Pilipinas* at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contract the services

of private printers upon certification by the National Printing Office/ *Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited political parties and deputized citizens' arms of the Commission may assign watchers in the printing, storage and distribution of official ballots.

To prevent the use of fake ballots, the Commission through the Committee shall ensure that the serial number on the ballot stub shall be printed in magnetic ink that shall be easily detectable by inexpensive hardware and shall be impossible to reproduce on a photocopying machine and that identification marks, magnetic strips, bar codes and other technical and security markings, are provided on the ballot.

The official ballots shall be printed and distributed to each city/ municipality at the rate of one (1) ballot for every registered voter with a provision of additional four (4) ballots per precinct.[2]

Almost a decade thereafter, Congress amended the law on January 23, 2007 by enacting R.A. No. 9369, entitled "AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED 'AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMPANSA BLG. 881, AS AMEMDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTION LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES.'" Section 13 of the amendatory law modified Section 11 of R.A. No. 8436, thus:

SEC. 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

"Section 15. *Official Ballot*.—The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be filled and/

[2] Emphasis supplied.

or the propositions to be voted upon in an initiative, referendum or plebiscite. Where practicable, electronic displays must be constructed to present the names of all candidates for the same position in the same page or screen, otherwise, the electronic displays must be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot. Under each position to be filled, the names of candidates shall be arranged alphabetically by surname and uniformly indicated using the same type size. The maiden or married name shall be listed in the official ballot, as preferred by the female candidate. Under each proposition to be vote upon, the choices should be uniformly indicated using the same font and size.

"A fixed space where the chairman of the board of election inspectors shall affix his/her signature to authenticate the official ballot shall be provided.

"**For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: *Provided,* That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period: *Provided, finally,* That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or -controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy.**

"Political parties may hold political conventions to nominate their official candidates within thirty (30) days before the start of the period for filing a certificate of candidacy.

"With respect to a paper-based election system, the official ballots shall be printed by the National Printing Office and/or the *Bangko Sentral ng Pilipinas* at the price comparable with that of private printers under proper security measures which the Commission shall adopt. The Commission may contract the services of private printers upon certification by the National Printing Office/*Bangko Sentral ng Pilipinas* that it cannot meet the printing requirements. Accredited

political parties and deputized citizens' arms of the Commission shall assign watchers in the printing, storage and distribution of official ballots.

"To prevent the use of fake ballots, the Commission through the Committee shall ensure that the necessary safeguards, such as, but not limited to, bar codes, holograms, color shifting ink, microprinting, are provided on the ballot.

"The official ballots shall be printed and distributed to each city/municipality at the rate of one ballot for every registered voter with a provision of additional three ballots per precinct."[3]

Pursuant to its constitutional mandate to enforce and administer election laws, COMELEC issued Resolution No. 8678,[4] the Guidelines on the Filing of Certificates of Candidacy (CoC) and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections. Sections 4 and 5 of Resolution No. 8678 provide:

SEC. 4. *Effects of Filing Certificates of Candidacy*.—a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

b) Any person holding an elective office or position shall not be considered resigned upon the filing of his certificate of candidacy for the same or any other elective office or position.

SEC. 5. *Period for filing Certificate of Candidacy.*—The certificate of candidacy shall be filed on regular days, from November 20 to 30, 2009, during office hours, except on the last day, which shall be until midnight.

Alarmed that they will be deemed *ipso facto* resigned from their offices the moment they file their CoCs, petitioners Eleazar P. Quinto and Gerino A. Tolentino, Jr., who hold appointive

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[3] Emphasis supplied.

[4] Promulgated on October 6, 2009.

positions in the government and who intend to run in the coming elections,[5] filed the instant petition for prohibition and *certiorari,* seeking the declaration of the afore-quoted Section 4(a) of Resolution No. 8678 as null and void.

The Petitioners' Contention

Petitioners contend that the COMELEC gravely abused its discretion when it issued the assailed Resolution. They aver that the advance filing of CoCs for the 2010 elections is intended merely for the purpose of early printing of the official ballots in order to cope with time limitations. Such advance filing does not automatically make the person who filed the CoC a candidate at the moment of filing. In fact, the law considers him a candidate only at the start of the campaign period. Petitioners then assert that this being so, they should not be deemed *ipso facto* resigned from their government offices when they file their CoCs, because at such time they are not yet treated by law as candidates. They should be considered resigned from their respective offices only at the start of the campaign period when they are, by law, already considered as candidates.[6]

Petitioners also contend that Section 13 of R.A. No. 9369, the basis of the assailed COMELEC resolution, contains two conflicting provisions. These must be harmonized or reconciled to give effect to both and to arrive at a declaration that they are not *ipso facto* resigned from their positions upon the filing of their CoCs.[7]

Petitioners further posit that the provision considering them as *ipso facto* resigned from office upon the filing of their CoCs

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[5] Petitioner Eleazar P. Quinto is the Undersecretary for Field Operations of the Department of Environment and Natural Resources (DENR). He intends to run for Representative in the 4th Congressional District of Pangasinan. Petitioner Gerino A. Tolentino, Jr. is the OIC-Director of the Land Management Bureau of the DENR. He likewise desires to run for City Councilor in the 4th District of Manila. (*Rollo,* pp. 8-9.)

[6] *Rollo,* pp. 10-13.

[7] *Id.* at 11.

is discriminatory and violates the equal protection clause in the Constitution.[8]

The Respondent's Arguments

On the procedural aspect of the petition, the Office of the Solicitor General (OSG), representing respondent COMELEC, argues that petitioners have no legal standing to institute the suit. Petitioners have not yet filed their CoCs, hence, they are not yet affected by the assailed provision in the COMELEC resolution. The OSG further claims that the petition is premature or unripe for judicial determination. Petitioners have admitted that they are merely planning to file their CoCs for the coming 2010 elections. Their interest in the present controversy is thus merely speculative and contingent upon the filing of the same. The OSG likewise contends that petitioners availed of the wrong remedy. They are questioning an issuance of the COMELEC made in the exercise of the latter's rule-making power. *Certiorari* under Rule 65 is then an improper remedy.[9]

On the substantive aspect, the OSG maintains that the COMELEC did not gravely abuse its discretion in phrasing Section 4(a) of Resolution No. 8678 for it merely copied what is in the law. The OSG, however, agrees with petitioners that there is a conflict in Section 13 of R.A. No. 9369 that should be resolved. According to the OSG, there seems to be no basis to consider appointive officials as *ipso facto* resigned and to require them to vacate their positions on the same day that they file their CoCs, because they are not yet considered as candidates at that time. Further, this "deemed resigned" provision existed in *Batas Pambansa Bilang* (B.P. *Blg*.) 881, and no longer finds a place in our present election laws with the innovations brought about by the automated system.[10]

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[8] *Id.* at 12-13.

[9] Comment of the OSG, pp. 11-26.

[10] *Id.* at 27-40.

Our Ruling

I.

At first glance, the petition suffers from an incipient procedural defect. What petitioners assail in their petition is a resolution issued by the COMELEC in the exercise of its quasi-legislative power. *Certiorari* under Rule 65, in relation to Rule 64, cannot be availed of, because it is a remedy to question decisions, resolutions and issuances made in the exercise of a judicial or quasi-judicial function.[11] Prohibition is also an inappropriate remedy, because what petitioners actually seek from the Court is a determination of the proper construction of a statute and a declaration of their rights thereunder. Obviously, their petition is one for declaratory relief,[12] over which this Court does not exercise original jurisdiction.[13]

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[11] The first paragraph of Sec. 1 of Rule 65 provides:

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. (See *Patalinghug v. Commission on Elections*, G.R. No. 178767, January 30, 2008, 543 SCRA 175, 184-185.)

[12] The first paragraph of Sec. 1 of Rule 63 provides:

SECTION 1. *Who may file petition*.—Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (See *Almeda v. Bathala Marketing Industries, Inc.*, G.R. No. 150806, January 28, 2008, 542 SCRA 470, 478-479; *John Hay Peoples Alternative Coalition v. Lim*, G.R. No. 119775, October 24, 2003, 414 SCRA 356, 369.)

[13] *Salvacion v. Central Bank of the Philippines*, *supra* note 1, at 39.

However, petitioners raise a challenge on the constitutionality of the questioned provisions of both the COMELEC resolution and the law. Given this scenario, the Court may step in and resolve the instant petition.

The transcendental nature and paramount importance of the issues raised and the compelling state interest involved in their early resolution—the period for the filing of CoCs for the 2010 elections has already started and hundreds of civil servants intending to run for elective offices are to lose their employment, thereby causing imminent and irreparable damage to their means of livelihood and, at the same time, crippling the government's manpower—further dictate that the Court must, for propriety, if only from a sense of obligation, entertain the petition so as to expedite the adjudication of all, especially the constitutional, issues.

In any event, the Court has ample authority to set aside errors of practice or technicalities of procedure and resolve the merits of a case. Repeatedly stressed in our prior decisions is the principle that the Rules were promulgated to provide guidelines for the orderly administration of justice, not to shackle the hand that dispenses it. Otherwise, the courts would be consigned to being mere slaves to technical rules, deprived of their judicial discretion.[14]

II.

To put things in their proper perspective, it is imperative that we trace the brief history of the assailed provision. Section 4(a) of COMELEC Resolution No. 8678 is a reproduction of the second proviso in the third paragraph of Section 13 of R.A. No. 9369, which for ready reference is quoted as follows:

> For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate

[14] *MCC Industrial Sales Corporation v. Ssangyong Corporation*, G.R. No. 170633, October 17, 2007, 536 SCRA 408, 433.

at the start of the campaign period for which he filed his certificate of candidacy: *Provided*, That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period: ***Provided, finally,*** **That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or -controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy**.[15]

Notably, this proviso is not present in Section 11 of R.A. No. 8436, the law amended by R.A. No. 9369. The proviso was lifted from Section 66 of *B.P. Blg.* 881 or the Omnibus Election Code (OEC) of the Philippines, which reads:

Sec. 66. *Candidates holding appointive office or position.*—Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

It may be recalled—in inverse chronology—that earlier, Presidential Decree No. 1296, or the 1978 Election Code, contained a similar provision, thus—

SECTION 29. Candidates holding appointive office or position. — Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy. Members of the Cabinet shall continue in the offices they presently hold notwithstanding the filing of certificate of candidacy, subject to the pleasure of the President of the Philippines.

Much earlier, R.A. No. 6388, or the Election Code of 1971, likewise stated in its Section 23 the following:

SECTION 23. Candidates Holding Appointive Office or Position. — Every person holding a public appointive office or position,

[15] Emphasis supplied.

including active members of the Armed Forces of the Philippines and every officer or employee in government-owned or controlled corporations, shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy: Provided, That the filing of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which he may have incurred.

Going further back in history, R.A. No. 180, or the Revised Election Code approved on June 21, 1947, also provided that—

SECTION 26. Automatic cessation of appointive officers and employees who are candidates. — Every person holding a public appointive office or position shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy.

During the Commonwealth era, Commonwealth Act (C.A.) No. 725, entitled "AN ACT TO PROVIDE FOR THE NEXT ELECTION FOR PRESIDENT AND VICE-PRESIDENT OF THE PHILIPPINES, SENATORS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES, AND APPROPRIATING THE NECESSARY FUNDS THEREFOR," approved on January 5, 1946, contained, in the last paragraph of its Section 2, the following:

A person occupying any civil office by appointment in the government or any of its political subdivisions or agencies or government-owned or controlled corporations, whether such office by appointive or elective, shall be considered to have resigned from such office from the moment of the filing of such certificate of candidacy.

Significantly, however, C.A. No. 666, entitled "AN ACT TO PROVIDE FOR THE FIRST ELECTION FOR PRESIDENT AND VICE-PRESIDENT OF THE PHILIPPINES, SENATORS, AND MEMBERS OF THE HOUSE OF REPRESENTATIVES, UNDER THE CONSTITUTION AND THE AMENDMENTS THEREOF," enacted without executive approval on June 22, 1941, the precursor of C.A. No. 725, only provided for automatic resignation of elective, but not appointive, officials.

Nevertheless, C.A. No. 357, or the Election Code approved on August 22, 1938, had, in its Section 22, the same verbatim provision as Section 26 of R.A. No. 180.

The earliest recorded Philippine law on the subject is Act No. 1582, or the Election Law enacted by the Philippine Commission in 1907, the last paragraph of Section 29 of which reads:

> Sec. 29. *Penalties upon officers.*— x x x.
>
> No public officer shall offer himself as a candidate for election, nor shall he be eligible during the time that he holds said public office to election, at any municipal, provincial or Assembly election, except for reelection to the position which he may be holding, and no judge of the Court of First Instance, justice of the peace, provincial fiscal, or officer or employee of the Bureau of Constabulary or of the Bureau of Education shall aid any candidate or influence in any manner or take any part in any municipal, provincial, or Assembly election under penalty of being deprived of his office and being disqualified to hold any public office whatever for a term of five years: *Provided, however,* That the foregoing provisions shall not be construed to deprive any person otherwise qualified of the right to vote at any election.

From this brief historical excursion, it may be gleaned that the second proviso in the third paragraph of Section 13 of R.A. No. 9369—*that any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy*—traces its roots to the period of the American occupation.

In fact, during the deliberations of Senate Bill No. 2231, the bill later to be consolidated with House Bill No. 5352 and enacted as R.A. No. 9369, Senator Richard Gordon, the principal author of the bill, acknowledged that the said proviso in the proposed legislative measure is an old provision which was merely copied from earlier existing legislation, thus—

Senator Osmeña. May I just opine here and perhaps obtain the opinion of the good Sponsor. This reads like, "ANY PERSON HOLDING [*means currently*] A PUBLIC APPOINTIVE POSITION… SHALL BE CONSIDERED *IPSO FACTO* RESIGNED" [which means that the prohibition extends only to appointive officials] "INCLUDING ACTIVE MEMBERS OF THE ARMED FORCES, OFFICERS AND EMPLOYEES"… This is a prohibition, Mr. President. This means if one is chairman of SSS or PDIC, he is deemed *ipso facto* resigned when he files his certificate of candidacy. Is that the intention?

Senator Gordon. This is really an old provision, Mr. President.

Senator Osmeña. It is in bold letters, so I think it was a Committee amendment.

Senator Gordon. No, it has always been there.

Senator Osmeña. I see.

Senator Gordon. I guess the intention is not to give them undue advantage, especially certain people.

Senator Osmeña. All right.[16]

In that Senate deliberation, however, Senator Miriam Defensor-Santiago expressed her concern over the inclusion of the said provision in the new law, given that the same would be disadvantageous and unfair to potential candidates holding appointive positions, while it grants a consequent preferential treatment to elective officials, thus—

Senator Santiago. On page 15, line 31, I know that this is a losing cause, so I make this point more as a matter of record than of any feasible hope that it can possibly be either accepted or if we come to a division of the House, it will be upheld by the majority.

I am referring to page 15, line 21. The proviso begins: "*PROVIDED FINALLY,* THAT ANY PERSON HOLDING A PUBLIC APPOINTIVE OFFICE…SHALL BE CONSIDERED *IPSO FACTO* RESIGNED FROM HIS/HER OFFICE."

The point that I made during the appropriate debate in the past in this Hall is that there is, for me, no valid reason for exempting

[16] Record of the Senate, Vol. III, Session No. 29, September 27, 2006, pp. 69-70.

elective officials from this inhibition or disqualification imposed by the law. If we are going to consider appointive officers of the government, including AFP members and officers of government-owned and controlled corporations, or any other member of the appointive sector of the civil service, why should it not apply to the elective sector for, after all, even senators and congressmen are members of the civil service as well?

Further, it is self-serving for the Senate, or for the Congress in general, to give an exception to itself which is not available to other similarly situated officials of government. Of course, the answer is, the reason why we are special is that we are elected. Since we are imposing a disqualification on all other government officials except ourselves, I think, it is the better part of *delicadeza* to inhibit ourselves as well, so that if we want to stay as senators, we wait until our term expires. But if we want to run for some other elective office during our term, then we have to be considered resigned just like everybody else. That is my proposed amendment. But if it is unacceptable to the distinguished Sponsor, because of sensitivity to the convictions of the rest of our colleagues, I will understand.

Senator Gordon. Mr. President, I think the suggestion is well-thought of. It is a good policy. However, this is something that is already in the old law which was upheld by the Supreme court in a recent case that the rider was not upheld and that it was valid.[17]

The obvious inequality brought about by the provision on automatic resignation of appointive civil servants must have been the reason why Senator Recto proposed the inclusion of the following during the period of amendments: "ANY PERSON WHO FILES HIS CERTIFICATE OF CANDIDACY WITHIN THIS PERIOD SHALL ONLY BE CONSIDERED AS A CANDIDATE AT THE START OF THE CAMPAIGN PERIOD FOR WHICH HE FILED HIS COC."[18] The said proviso seems to mitigate the situation of disadvantage afflicting appointive officials by considering persons who filed their CoCs

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[17] Record of the Senate, Vol. III, Session No. 12, August 16, 2006, pp. 71-72.

[18] Senate Records and Archives, 13th CP, 3rd Regular Session, Vol. III, August 1, 2006, p. 25.

as candidates only at the start of the campaign period, thereby, conveying the tacit intent that persons holding appointive positions will only be considered as resigned at the start of the campaign period when they are already treated by law as candidates.

Parenthetically, it may be remembered that Section 67 of the OEC and Section 11 of R.A. No. 8436 contained a similar provision on automatic resignation of elective officials upon the filing of their CoCs for any office other than that which they hold in a permanent capacity or for President or Vice-President. However, with the enactment of R.A. No. 9006, or the Fair Election Act,[19] in 2001, this provision was repealed by Section 14[20] of the said act. There was, thus, created a situation of obvious discrimination against appointive officials who were deemed *ipso facto* resigned from their offices upon the filing of their CoCs, while elective officials were not.

This situation was incidentally addressed by the Court in *Fariñas v. The Executive Secretary*[21] when it ruled that—

Section 14 of Rep. Act No. 9006
Is Not Violative of the Equal
Protection Clause of the Constitution

The petitioners' contention, that the repeal of Section 67 of the Omnibus Election Code pertaining to elective officials gives undue

[19] Entitled "AN ACT TO ENHANCE THE HOLDING OF FREE, ORDERLY, HONEST, PEACEFUL AND CREDIBLE ELECTIONS THROUGH FAIR ELECTION PRACTICES," approved on February 12, 2001.

[20] Sec. 14 of R.A. No. 9006 provides:

SEC. 14 *Repealing Clause*.—Sections 67 and 85 of the Omnibus Election Code (Batas Pambansa Blg. 881) and Sections 10 and 11 of Republic Act No. 6646 are hereby repealed. As a consequence, the first proviso in the third paragraph of Section 11 of Republic Act No. 8436 is rendered ineffective. All laws, presidential decrees, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed or modified or amended accordingly.

[21] 463 Phil. 179, 205-208 (2003).

benefit to such officials as against the appointive ones and violates the equal protection clause of the constitution, is tenuous.

The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from the other. The Court has explained the nature of the equal protection guarantee in this manner:

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take part in any election except to vote. Under

the same provision, elective officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.

By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.

Since the classification justifying Section 14 of Rep. Act No. 9006, *i.e.*, elected officials *vis-a-vis* appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[22]

However, it must be remembered that the Court, in *Fariñas*, was intently focused on the main issue of whether the repealing clause in the Fair Election Act was a constitutionally proscribed rider, in that it unwittingly failed to ascertain with stricter scrutiny the impact of the retention of the provision on automatic resignation of persons holding appointive positions (Section 66) in the OEC, *vis-à-vis* the equal protection clause. Moreover, the Court's vision in *Fariñas* was shrouded by the fact that petitioners therein, Fariñas *et al.*, never posed a direct challenge to the constitutionality of Section 66 of the OEC. *Fariñas et al.* rather merely questioned, on constitutional grounds, the repealing clause, or Section 14 of the Fair Election Act. The Court's afore-quoted declaration in *Fariñas* may then very well be considered as an *obiter dictum*.

III.

The instant case presents a rare opportunity for the Court, in view of the constitutional challenge advanced by petitioners, once and for all, to settle the issue of whether the second proviso in the third paragraph of Section 13 of R.A. No. 9369, a reproduction of Section 66 of the OEC, which, as shown above,

[22] Citations omitted.

was based on provisions dating back to the American occupation, is violative of the equal protection clause.

But before delving into the constitutional issue, we shall first address the issues on legal standing and on the existence of an actual controversy.

Central to the determination of *locus standi* is the question of whether a party has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.[23] In this case, petitioners allege that they will be directly affected by COMELEC Resolution No. 8678 for they intend, and they all have the qualifications, to run in the 2010 elections. The OSG, for its part, contends that since petitioners have not yet filed their CoCs, they are not yet candidates; hence, they are not yet directly affected by the assailed provision in the COMELEC resolution.

The Court, nevertheless, finds that, while petitioners are not yet candidates, they have the standing to raise the constitutional challenge, simply because they are qualified voters. A restriction on candidacy, such as the challenged measure herein, affects the rights of voters to choose their public officials. The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.[24] The Court believes that both candidates and voters may challenge, on grounds of equal protection, the assailed measure because of its impact on voting rights.[25]

In any event, in recent cases, this Court has relaxed the stringent direct injury test and has observed a liberal policy

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[23] *Province of Batangas v. Romulo*, G.R. No. 152774, May 27, 2004, 429 SCRA 736, 755.

[24] *Bullock v. Carter*, 405 U.S. 134, 143 (1972).

[25] *Mancuso v. Taft*, 476 F.2d 187, 190 (1973).

allowing ordinary citizens, members of Congress, and civil organizations to prosecute actions involving the constitutionality or validity of laws, regulations and rulings.[26]

We have also stressed in our prior decisions that the exercise by this Court of judicial power is limited to the determination and resolution of actual cases and controversies.[27] The Court, in this case, finds that an actual case or controversy exists between the petitioners and the COMELEC, the body charged with the enforcement and administration of all election laws. Petitioners have alleged in a precise manner that they would engage in the very acts that would trigger the enforcement of the provision—they would file their CoCs and run in the 2010 elections. Given that the assailed provision provides for *ipso facto* resignation upon the filing of the CoC, it cannot be said that it presents only a speculative or hypothetical obstacle to petitioners' candidacy.[28]

IV.

Having hurdled what the OSG posed as obstacles to judicial review, the Court now delves into the constitutional challenge.

It is noteworthy to point out that the right to run for public office touches on two fundamental freedoms, those of expression and of association. This premise is best explained in *Mancuso v. Taft*,[29] viz.:

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[26] *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 and 171424, May 3, 2006, 489 SCRA 160, 218.

[27] *Dumlao v. COMELEC*, G.R. No. 52245, January 22, 1980, 95 SCRA 392, 401. This case explains the standards that have to be followed in the exercise of the power of judicial review, namely: (1) the existence of an appropriate case; (2) an interest personal and substantial by the party raising the constitutional question; (3) the plea that the function be exercised at the earliest opportunity; and (4) the necessity that the constitutional question be passed upon in order to decide the case.

[28] *Clements v. Fashing*, 457 U.S. 957, 960; 102 S.Ct. 2836, 2843 (1982).

[29] *Supra* note 25, at 195-196.

Freedom of expression guarantees to the individual the opportunity to write a letter to the local newspaper, speak out in a public park, distribute handbills advocating radical reform, or picket an official building to seek redress of grievances. All of these activities are protected by the First Amendment if done in a manner consistent with a narrowly defined concept of public order and safety. The choice of means will likely depend on the amount of time and energy the individual wishes to expend and on his perception as to the most effective method of projecting his message to the public. But interest and commitment are evolving phenomena. What is an effective means for protest at one point in time may not seem so effective at a later date. The dilettante who participates in a picket line may decide to devote additional time and resources to his expressive activity. As his commitment increases, the means of effective expression changes, but the expressive quality remains constant. He may decide to lead the picket line, or to publish the newspaper. At one point in time he may decide that the most effective way to give expression to his views and to get the attention of an appropriate audience is to become a candidate for public office-means generally considered among the most appropriate for those desiring to effect change in our governmental systems. He may seek to become a candidate by filing in a general election as an independent or by seeking the nomination of a political party. And in the latter instance, the individual's expressive activity has two dimensions: besides urging that his views be the views of the elected public official, he is also attempting to become a spokesman for a political party whose substantive program extends beyond the particular office in question. But Cranston has said that a certain type of its citizenry, the public employee, may not become a candidate and may not engage in any campaign activity that promotes himself as a candidate for public office. Thus the city has stifled what may be the most important expression an individual can summon, namely that which he would be willing to effectuate, by means of concrete public action, were he to be selected by the voters.

It is impossible to ignore the additional fact that the right to run for office also affects the freedom to associate. In *Williams v. Rhodes, supra*, the Court used strict review to invalidate an Ohio election system that made it virtually impossible for third parties to secure a place on the ballot. The Court found that the First Amendment protected the freedom to associate by forming and promoting a political party and that that freedom was infringed when the state effectively denied a party access to its electoral machinery. The

Cranston charter provision before us also affects associational rights, albeit in a slightly different way. An individual may decide to join or participate in an organization or political party that shares his beliefs. He may even form a new group to forward his ideas. And at some juncture his supporters and fellow party members may decide that he is the ideal person to carry the group's standard into the electoral fray. To thus restrict the options available to political organization as the Cranston charter provision has done is to limit the effectiveness of association; and the freedom to associate is intimately related with the concept of making expression effective. Party access to the ballot becomes less meaningful if some of those selected by party machinery to carry the party's programs to the people are precluded from doing so because those nominees are civil servants.

Whether the right to run for office is looked at from the point of view of individual expression or associational effectiveness, wide opportunities exist for the individual who seeks public office. The fact of candidacy alone may open previously closed doors of the media. The candidate may be invited to discuss his views on radio talk shows; he may be able to secure equal time on television to elaborate his campaign program; the newspapers may cover his candidacy; he may be invited to debate before various groups that had theretofore never heard of him or his views. In short, the fact of candidacy opens up a variety of communicative possibilities that are not available to even the most diligent of picketers or the most loyal of party followers. A view today, that running for public office is not an interest protected by the First Amendment, seems to us an outlook stemming from an earlier era when public office was the preserve of the professional and the wealthy. Consequently we hold that candidacy is both a protected First Amendment right and a fundamental interest. Hence any legislative classification that significantly burdens that interest must be subjected to strict equal protection review.[30]

Here, petitioners' interest in running for public office, an interest protected by Sections 4 and 8 of Article III of the Constitution, is breached by the proviso in Section 13 of R.A. No. 9369. It is now the opportune time for the Court to strike

[30] Citations omitted.

down the said proviso for being violative of the equal protection clause and for being overbroad.

In considering persons holding appointive positions as *ipso facto* resigned from their posts upon the filing of their CoCs, but not considering as resigned all other civil servants, specifically the elective ones, the law unduly discriminates against the first class. The fact alone that there is substantial distinction between those who hold appointive positions and those occupying elective posts, does not justify such differential treatment.

In order that there can be valid classification so that a discriminatory governmental act may pass the constitutional norm of equal protection, it is necessary that the four (4) requisites of valid classification be complied with, namely:

(1) It must be based upon substantial distinctions;

(2) It must be germane to the purposes of the law;

(3) It must not be limited to existing conditions only; and

(4) It must apply equally to all members of the class.

The first requirement means that there must be real and substantial differences between the classes treated differently. As illustrated in the fairly recent *Mirasol v. Department of Public Works and Highways*,[31] a real and substantial distinction exists between a motorcycle and other motor vehicles sufficient to justify its classification among those prohibited from plying the toll ways. Not all motorized vehicles are created equal—a two-wheeled vehicle is less stable and more easily overturned than a four-wheel vehicle.

Nevertheless, the classification would still be invalid if it does not comply with the second requirement—if it is not germane to the purpose of the law. Justice Isagani A. Cruz (Ret.), in his treatise on constitutional law, explains,

The classification, even if based on substantial distinctions, will still be invalid if it is not germane to the purpose of the law. To

[31] G.R. No. 158793, June 8, 2006, 490 SCRA 318, 351-352.

illustrate, the accepted difference in physical stamina between men and women will justify the prohibition of the latter from employment as miners or stevedores or in other heavy and strenuous work. On the basis of this same classification, however, the law cannot provide for a lower passing average for women in the bar examinations because physical strength is not the test for admission to the legal profession. Imported cars may be taxed at a higher rate than locally assembled automobiles for the protection of the national economy, but their difference in origin is no justification for treating them differently when it comes to punishing violations of traffic regulations. The source of the vehicle has no relation to the observance of these rules.[32]

The third requirement means that the classification must be enforced not only for the present but as long as the problem sought to be corrected continues to exist. And, under the last requirement, the classification would be regarded as invalid if all the members of the class are not treated similarly, both as to rights conferred and obligations imposed.[33]

Applying the four requisites to the instant case, the Court finds that the differential treatment of persons holding appointive offices as opposed to those holding elective ones is not germane to the purposes of the law.

The obvious reason for the challenged provision is to prevent the use of a governmental position to promote one's candidacy, or even to wield a dangerous or coercive influence on the electorate. The measure is further aimed at promoting the efficiency, integrity, and discipline of the public service by eliminating the danger that the discharge of official duty would be motivated by political considerations rather than the welfare of the public.[34] The restriction is also justified by the proposition that the entry of civil servants to the electoral arena, while still in office, could result in neglect or inefficiency in the performance

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[32] Cruz, *Constitutional Law* (1998 ed.), p. 131.

[33] *Id.* at 131-132.

[34] *Fort v. Civil Service Commission of the County of Alameda*, 61 Cal.2d 331, 336; 392 P.2d 385, 388; 38 Cal.Rptr. 625, 628 (1964).

of duty because they would be attending to their campaign rather than to their office work.

If we accept these as the underlying objectives of the law, then the assailed provision cannot be constitutionally rescued on the ground of valid classification. Glaringly absent is the requisite that the classification must be germane to the purposes of the law. Indeed, whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain. For example, the Executive Secretary, or any Member of the Cabinet for that matter, could wield the same influence as the Vice-President who at the same time is appointed to a Cabinet post (in the recent past, elected Vice-Presidents were appointed to take charge of national housing, social welfare development, interior and local government, and foreign affairs). With the fact that they both head executive offices, there is no valid justification to treat them differently when both file their CoCs for the elections. Under the present state of our law, the Vice-President, in the example, running this time, let us say, for President, retains his position during the entire election period and can still use the resources of his office to support his campaign.

As to the danger of neglect, inefficiency or partisanship in the discharge of the functions of his appointive office, the inverse could be just as true and compelling. The public officer who files his certificate of candidacy would be driven by a greater impetus for excellent performance to show his fitness for the position aspired for.

Mancuso v. Taft,[35] cited above, explains that the measure on automatic resignation, which restricts the rights of civil servants to run for office—a right inextricably linked to their freedom of expression and association, is not reasonably necessary to the satisfaction of the state interest. Thus, in striking down a similar measure in the United States, *Mancuso* succinctly declares—

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[35] *Supra* note 25, at 198-199.

In proceeding to the second stage of active equal protection review, however, we do see some contemporary relevance of the *Mitchell* decision. *National Ass'n of Letter Carriers, supra*. In order for the Cranston charter provision to withstand strict scrutiny, the city must show that the exclusion of all government employees from candidacy is necessary to achieve a compelling state interest. And, as stated in *Mitchell* and other cases dealing with similar statutes, *see Wisconsin State Employees, supra; Broadrick, supra*, government at all levels has a substantial interest in protecting the integrity of its civil service. It is obviously conceivable that the impartial character of the civil service would be seriously jeopardized if people in positions of authority used their discretion to forward their electoral ambitions rather than the public welfare. Similarly if a public employee pressured other fellow employees to engage in corrupt practices in return for promises of post-election reward, or if an employee invoked the power of the office he was seeking to extract special favors from his superiors, the civil service would be done irreparable injury. Conversely, members of the public, fellow-employees, or supervisors might themselves request favors from the candidate or might improperly adjust their own official behavior towards him. Even if none of these abuses actually materialize, the possibility of their occurrence might seriously erode the public's confidence in its public employees. For the reputation of impartiality is probably as crucial as the impartiality itself; the knowledge that a clerk in the assessor's office who is running for the local zoning board has access to confidential files which could provide "pressure" points for furthering his campaign is destructive regardless of whether the clerk actually takes advantage of his opportunities. For all of these reasons we find that the state indeed has a compelling interest in maintaining the honesty and impartiality of its public work force.

We do not, however, consider the exclusionary measure taken by Cranston-a flat prohibition on office-seeking of all kinds by all kinds of public employees-as even reasonably necessary to satisfaction of this state interest. As Justice Marshall pointed out in *Dunn v. Blumstein*, "[s]tatutes affecting constitutional rights must be drawn with 'precision.'" For three sets of reasons we conclude that the Cranston charter provision pursues its objective in a far too heavy-handed manner and hence must fall under the equal protection clause. First, we think the nature of the regulation-a broad prophylactic rule-may be unnecessary to fulfillment of the city's objective. Second, even granting some sort of prophylactic rule may be required, the

provision here prohibits candidacies for all types of public office, including many which would pose none of the problems at which the law is aimed. Third, the provision excludes the candidacies of all types of public employees, without any attempt to limit exclusion to those employees whose positions make them vulnerable to corruption and conflicts of interest.

There is thus no valid justification to treat appointive officials differently from the elective ones. The classification simply fails to meet the test that it should be germane to the purposes of the law. The measure encapsulated in the second proviso of the third paragraph of Section 13 of R.A. No. 9369 and in Section 66 of the OEC violates the equal protection clause.

V.

The challenged provision also suffers from the infirmity of being overbroad.

First, the provision pertains to all civil servants holding appointive posts without distinction as to whether they occupy high positions in government or not. Certainly, a utility worker in the government will also be considered as *ipso facto* resigned once he files his CoC for the 2010 elections. This scenario is absurd for, indeed, it is unimaginable how he can use his position in the government to wield influence in the political world.

While it may be admitted that most appointive officials who seek public elective office are those who occupy relatively high positions in government, laws cannot be legislated for them alone, or with them alone in mind. For the right to seek public elective office is universal, open and unrestrained, subject only to the qualification standards prescribed in the Constitution and in the laws. These qualifications are, as we all know, general and basic so as to allow the widest participation of the citizenry and to give free rein for the pursuit of one's highest aspirations to public office. Such is the essence of democracy.

Second, the provision is directed to the activity of seeking any and all public offices, whether they be partisan or nonpartisan in character, whether they be in the national, municipal or *barangay* level. Congress has not shown a compelling state

interest to restrict the fundamental right involved on such a sweeping scale.[36]

Specific evils require specific treatments, not through overly broad measures that unduly restrict guaranteed freedoms of the citizenry. After all, sovereignty resides in the people, and all governmental power emanates from them.

Mancuso v. Taft,[37] on this point, instructs—

> As to approaches less restrictive than a prophylactic rule, there exists the device of the leave of absence. Some system of leaves of absence would permit the public employee to take time off to pursue his candidacy while assuring him his old job should his candidacy be unsuccessful. Moreover, a leave of absence policy would eliminate many of the opportunities for engaging in the questionable practices that the statute is designed to prevent. While campaigning, the candidate would feel no conflict between his desire for election and his publicly entrusted discretion, nor any conflict between his efforts to persuade the public and his access to confidential documents. But instead of adopting a reasonable leave of absence policy, Cranston has chosen a provision that makes the public employee cast off the security of hard-won public employment should he desire to compete for elected office.
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> The city might also promote its interest in the integrity of the civil service by enforcing, through dismissal, discipline, or criminal prosecution, rules or statutes that treat conflict of interests, bribery, or other forms of official corruption. By thus attacking the problem directly, instead of using a broad prophylactic rule, the city could pursue its objective without unduly burdening the First Amendment rights of its employees and the voting rights of its citizens. Last term in *Dunn v. Blumstein*, the Supreme Court faced an analogous question when the State of Tennessee asserted that the interest of "ballot box purity" justified its imposition of one year and three month residency requirements before a citizen could vote. Justice Marshall stated, *inter alia*, that Tennessee had available a number of criminal statutes that could be used to punish voter fraud without unnecessary

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[36] *Kinnear v. City and County of San Francisco*, 61 Cal.2d 341, 343; 392 P.2d 391, 392; 38 Cal.Rptr. 631, 632 (1964).

[37] *Supra* note 25, at 199-201.

infringement on the newcomer's right to vote. Similarly, it appears from the record in this case that the Cranston charter contains some provisions that might be used against opportunistic public employees.

Even if some sort of prophylactic rule is necessary, we cannot say that Cranston has put much effort into tailoring a narrow provision that attempts to match the prohibition with the problem. The charter forbids a Cranston public employee from running for any office, anywhere. The prohibition is not limited to the local offices of Cranston, but rather extends to statewide offices and even to national offices. It is difficult for us to see that a public employee running for the United States Congress poses quite the same threat to the civil service as would the same employee if he were running for a local office where the contacts and information provided by his job related directly to the position he was seeking, and hence where the potential for various abuses was greater. Nor does the Cranston charter except the public employee who works in Cranston but aspires to office in another local jurisdiction, most probably his town of residence. Here again the charter precludes candidacies which can pose only a remote threat to the civil service. Finally, the charter does not limit its prohibition to partisan office-seeking, but sterilizes also those public employees who would seek nonpartisan elective office. The statute reviewed in *Mitchell* was limited to partisan political activity, and since that time other courts have found the partisan-nonpartisan distinction a material one. *See Kinnear, supra; Wisconsin State Employees, supra; Gray v. Toledo, supra*. While the line between nonpartisan and partisan can often be blurred by systems whose true characters are disguised by the names given them by their architects, it seems clear that the concerns of a truly partisan office and the temptations it fosters are sufficiently different from those involved in an office removed from regular party politics to warrant distinctive treatment in a charter of this sort.

The third and last area of excessive and overinclusive coverage of the Cranston charter relates not to the type of office sought, but to the type of employee seeking the office. As Justice Douglas pointed out in his dissent in *Mitchell, 330 U.S. at 120-126, 67 S.Ct. 556,* restrictions on administrative employees who either participate in decision-making or at least have some access to information concerning policy matters are much more justifiable than restrictions on industrial employees, who, but for the fact that the government owns the plant they work in, are, for purposes of access to official

information, identically situated to all other industrial workers. Thus, a worker in the Philadelphia mint could be distinguished from a secretary in an office of the Department of Agriculture; so also could a janitor in the public schools of Cranston be distinguished from an assistant comptroller of the same city. A second line of distinction that focuses on the type of employee is illustrated by the cases of *Kinnear* and *Minielly, supra*. In both of these cases a civil service deputy decided to run for the elected office of sheriff. The courts in both cases felt that the no-candidacy laws in question were much too broad and indicated that perhaps the only situation sensitive enough to justify a flat rule was one in which an inferior in a public office electorally challenged his immediate superior. Given all these considerations, we think Cranston has not given adequate attention to the problem of narrowing the terms of its charter to deal with the specific kinds of conflict-of-interest problems it seeks to avoid.

We also do not find convincing the arguments that after-hours campaigning will drain the energy of the public employee to the extent that he is incapable of performing his job effectively and that inevitable on-the-job campaigning and discussion of his candidacy will disrupt the work of others. Although it is indisputable that the city has a compelling interest in the performance of official work, the exclusion is not well-tailored to effectuate that interest. Presumably the city could fire the individual if he clearly shirks his employment responsibilities or disrupts the work of others. Also, the efficiency rationale common to both arguments is significantly underinclusive. It applies equally well to a number of non-political, extracurricular activities that are not prohibited by the Cranston charter. Finally, the connection between after-hours campaigning and the state interest seems tenuous; in many cases a public employee would be able to campaign aggressively and still continue to do his job well.[38]

Incidentally, *Clements v. Fashing*[39] sustained as constitutional a provision on the automatic resignation of District Clerks, County Clerks, County Judges, County Treasurers, Criminal District Attorneys, County Surveyors, Inspectors of Hides and Animals, County Commissioners, Justices of the Peace, Sheriffs, Assessors and Collectors of Taxes, District Attorneys, County Attorneys,

[38] Citations omitted.

[39] *Supra* note 28.

Public Weighers, and Constables if they announce their candidacy or if they become candidates in any general, special or primary election.

In *Clements*, it may be readily observed that a provision treating differently particular officials, as distinguished from all others, under a classification that is germane to the purposes of the law, merits the stamp of approval from American courts. Not, however, a general and sweeping provision, and more so one violative of the second requisite for a valid classification, which is on its face unconstitutional.

On a final note, it may not be amiss to state that the Americans, from whom we copied the provision in question, had already stricken down a similar measure for being unconstitutional. It is high-time that we, too, should follow suit and, thus, uphold fundamental liberties over age-old, but barren, restrictions to such freedoms.

WHEREFORE, premises considered, the petition is *GRANTED*. The second proviso in the third paragraph of Section 13 of Republic Act No. 9369, Section 66 of the Omnibus Election Code and Section 4(a) of COMELEC Resolution No. 8678 are declared as *UNCONSTITUTIONAL*.

SO ORDERED.

Corona, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, and *Del Castillo, JJ.,* concur.

Puno, C.J., please see dissent.

Carpio, J., see dissenting opinion.

Carpio Morales, J., see dissenting opinion.

Peralta, Abad, and *Villarama, Jr., JJ.*, join the dissent of *C.J. Puno.*

DISSENTING OPINION

PUNO, *C.J.*:

The case at bar is a Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction seeking to nullify Section 4(a) of Resolution No. 8678 of the Commission on Elections (COMELEC) insofar as it decrees that "[a]ny person holding a public appointive office or position … shall be considered i*pso facto* resigned from his office upon the filing of his certificate of candidacy."

I.

On October 6, 2009, the COMELEC issued Resolution No. 8678[1] (Resolution 8678) which lays down the rules and guidelines on the filing of certificates of candidacy and nomination of official candidates of registered political parties in connection with the May 10, 2010 National and Local Elections.

Resolution 8678 provides, among others, the effects of filing certificates of candidacy, *viz.*:

> SECTION 4. Effects of Filing Certificates of Candidacy.- a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.
>
> b) Any person holding an elective office or position shall not be considered resigned upon the filing of his certificate of candidacy for the same or any other elective office or position.[2]

Under Section 4(a) of said Resolution, incumbent public appointive officials (including active members of the Armed Forces of the Philippines) and other officers and employees in

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[1] Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections; Annex A, Petition.

[2] *Rollo*, p. 23.

government-owned or controlled corporations are deemed *ipso facto* resigned from their respective offices upon the filing of their respective certificates of candidacy. In contrast, Section 4(b) of the same Resolution provides that incumbent elected officials shall not be considered resigned upon the filing of their respective certificates of candidacy for the same or any other elective office or position.

On October 19, 2009, petitioners Eleazar P. Quinto and Gerino A. Tolentino – both incumbent public appointive officials aspiring for elective office in the forthcoming 2010 elections[3] – filed the present Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction, seeking the nullification of Section 4(a) of Resolution 8678, and a declaration by this Court that any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned-and-controlled corporations, shall be considered as *ipso facto* resigned only upon the start of the campaign period for which they filed their certificates of candidacy.

II.

Petitioners contend that the COMELEC acted with grave abuse of discretion when it decreed in the assailed Section 4(a) of Resolution 8678 that an appointive government official shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.[4]

Section 4(a) contravenes existing laws and jurisprudence on the matter.

[3] Eleazar P. Quinto is the incumbent Undersecretary for Field Operations of the Department of Environment and Natural Resources; he intends to run for the position of Member, House Representatives for the 4th District of Pangasinan in the forthcoming 2010 elections. On the other hand, Gerino A. Tolentino is the incumbent OIC-Director, Land Management Bureau; he intends to run for the position of City Councilor for the 4th District of the City of Manila in the forthcoming 2010 elections.

[4] *Rollo*, p. 3.

Petitioners point out that under existing law and jurisprudence, a government official who files his certificate of candidacy (within the advanced period fixed by COMELEC) is considered a candidate only from the onset of the campaign period for which his certificate of candidacy was filed, and not upon the mere filing thereof.[5]

Section 11 of Republic Act No. 8436[6] ("RA 8436"), as amended by Republic Act No. 9369[7] ("RA 9369"), expressly provides:

> SEC. 15. *Official Ballot.* – The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be and/or the proposition to be voted upon in an initiative, referendum or plebiscite x x x
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> x x x x x x x x x
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> For this purpose, the Commission shall set the deadline for the filing of the certificate of candidacy/petition of registration/manifestation to participate in the election. *Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy*: Provided, That, unlawful acts or omissions applicable to a candidate shall take effect only upon that start of the campaign period: Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and

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[5] *Id.*, pp. 5-7.

[6] Republic Act No. 8436 is entitled, "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AND AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. It took effect on December 22, 1997.

[7] Republic Act NO. 9369 is entitled, "AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 881, AS AMENDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTION LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES. It took effect on January 23, 2007.

officers and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy.

x x x (italics supplied)

Petitioners note that in ***Lanot vs. COMELEC***,[8] we clarified that, consistent with the legislative intent, the advance filing of the certificate of candidacy mandated by RA 8436, as amended by RA 9369, is required only to provide ample time for the printing of official ballots; it does not make the person filing a certificate of candidacy a candidate, except only for ballot-printing purposes.[9]

In this regard, petitioners contend that since, by law, a government official who files his certificate of candidacy is considered a candidate only upon the onset of the campaign period for which the certificate was filed, correspondingly, the attendant consequences of candidacy – including that of being deemed to have *ipso facto* resigned from one's office, when and if applicable – should take effect only upon the onset of the relevant campaign period.[10] Thus, appointive officials should be considered *ipso facto* resigned only upon the start of the campaign period for which their respective certificates of candidacy were filed.[11]

Petitioners insist that this interpretation is the better approach since it reconciles and harmonizes the perceived conflict between that portion of Section 13 of RA 9369 which states that "[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy" and the

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[8] *Henry P. Lanot, substituted by Mario S. Raymundo, and Charmie Q. Benavides v. Commission on Elections, et al.*, G.R. No. 164858, November 16, 2006, 507 SCRA 114.

[9] *Rollo*, p.10, *citing Lanot v. COMELEC, id.*

[10] *Id.* at p. 12.

[11] *Id*.

subsequent proviso in the same section which states that "any person holding a public appointive office or position x x x shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her candidacy," in a manner that is consistent with the apparent intent of the legislature to treat an appointive government official who files his certificate of candidacy as a candidate only at the start of the campaign period.[12]

Section 4(a) violates the equal protection clause of the Constitution.

Petitioners also point out that while Section 4(a) of RA 9369 considers incumbent appointive government officials who file their respective certificates of candidacy as "*ipso facto* resigned" from their offices upon the filing of their certificates of candidacy, a different rule is imposed in the case of incumbent elected officials who, under Section 4(b) of the same law, are **not** deemed resigned upon the filing of their respective certificates of candidacy for the same or any other elective office or position.[13]

Petitioners contend that such differential treatment constitutes discrimination that is violative of the equal protection clause of the Constitution.[14]

III.

At the outset, it must be noted that the constitutional challenge was raised only with respect to Section 4(a) of Resolution 8678, and solely on equal protection terms. Nevertheless, in resolving the present petition, the *ponencia* extends its analysis to two other provisions of law – (a) Section 13 of RA 9369, particularly the proviso thereof which states that "any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or-controlled corporations, shall be considered *ipso facto*

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

[13] *Id*.

[14] *Id.* at 12-13.

resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy," and (b) Section 66 of the Omnibus Election Code. It then proceeds to strike down said provisions not only on equal protection grounds, but on overbreadth terms as well.

However, it must be noted that constitutional judgments are justified only out of the necessity of adjudicating rights in particular cases between the litigants before the Court.[15] This principle reflects the conviction that under our constitutional system, courts are not roving commissions assigned to pass judgment on the validity of the nation's laws[16] on matters which have not been squarely put in issue.

In striking down these provisions of law, the *ponencia* ruled that:

(1) These provisions violate the equal protection clause inasmuch as the differential treatment therein of persons holding appointive offices as opposed to those holding elective positions is not germane to the purposes of the law; and

(2) These provisions are unconstitutionally overbroad insofar as they seek to limit the candidacy of all civil servants holding appointive posts without distinction as to whether or not they occupy high/influential positions in the government, and insofar as they seek to limit the activity of seeking any and all public offices, whether they be partisan or nonpartisan in character, or whether they be in the national, municipal or *barangay* level. According to the *ponencia*, Congress has not shown a compelling state interest to restrict the fundamental right involved on such a sweeping scale.

For reasons explained below, I am constrained to dissent.

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[15] *Broadrick v. Oklahoma*, 413 U.S. 601, 606, 93 S.Ct. 2908, 2912, 37 L.Ed.2d 830 (1973).

[16] *Id*.

IV.

Before proceeding to discuss the petition in light of the manner in which the majority disposed of the case, it is necessary to first examine the legislative and jurisprudential history of the long-standing rule on deemed resignations, as embodied in the assailed Section 4(a) of Resolution 8678, in order to gain a proper understanding of the matter at hand.

PRE-BATAS PAMBANSA BLG. 881:

The law on deemed resignations of public officials who participate as candidates in electoral exercises, finds its genesis in Act No. 1582, or the 1907 Election Law, the relevant portion of which reads:

> Sec. 29. Penalties upon officers. – x x x
>
> No public officer shall offer himself as a candidate, nor shall he be eligible during the time that he holds said public office to election, at any municipal, provincial or Assembly election, except for reelection to the position which he may be holding, and no judge of the Court of First Instance, justice of peace, provincial fiscal, or officer or employee of the Bureau of Constabulary or of the Bureau of Education shall aid any candidate or influence in any manner or take part in any municipal, provincial or Assembly election under penalty of being deprived of his office and being disqualified to hold any public office whatever for a term of five years: Provided, however, That the foregoing provision shall not be construed to deprive any person otherwise qualified of the right to vote at any election.

Subsequently, the original rule on deemed resignations was bifurcated into two separate provisions of law – one for appointive officials, and another for elected officials – although the essence of the original rule was preserved for both groups.

For appointive officials, Section 22 of Commonwealth Act No. 357 provided that:

> Every person holding a public appointive office or position shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy.

As for elected officials, the last paragraph of Section 2 of Commonwealth Act No. 666 stated:

> Any elective provincial, municipal, or city official running for an office, other than the one for which he has been lastly elected, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy.

These rules were substantially reiterated in Republic Act No. 180,[17] or the Revised Election Code of 1947, which provides in relevant part:

> SECTION 26. Automatic cessation of appointive officers and employees who are candidates. — Every person holding a public appointive office or position shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy.
>
> SECTION 27. Candidate holding office. — Any elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy.

However, as may be noticed, Section 27 of the Revised Election Code of 1947 introduced an amendment to the rule in respect of elected officials. While Section 2 of Commonwealth Act No. 666 used the phrase "…office, other than the **one for which he has been lastly elected**," Section 27 spoke of "an office, other than the **one which he is actually holding**." To be sure, this change was not without purpose. As we explained in ***Salaysay v. Castro, et al***.:[18]

> Before the enactment of Section 27 of the Revised Election Code, the law in force covering the point or question in controversy was Section 2, Commonwealth Act No. 666. Its burden was to allow an

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[17] Effective June 21, 1947. This expressly repealed Commonwealth Act No. 357 and Commonwealth Act No. 666, *viz.:*

> SECTION 190. Repeal of laws. — Commonwealth Acts Numbered Three hundred and fifty-seven, Six hundred and fifty-seven, Six hundred and sixty-six, Seven hundred and twenty-five, and all other acts or parts of acts inconsistent with this Code are hereby repealed.

[18] G.R. No. L-9669, January 31, 1956, 98 Phil. 364.

elective provincial, municipal, or city official such as Mayor, running for the same office to continue in office until the expiration of his term. The legislative intention as we see it was to favor re-election of the incumbent by allowing him to continue in his office and use the prerogatives and influence thereof in his campaign for re-election and to avoid a break in or interruption of his incumbency during his current term and provide for continuity thereof with the next term of office if re-elected.

But Section 2, Commonwealth Act No. 666 had reference only to provincial and municipal officials duly elected to their offices and who were occupying the same by reason of said election at the time that they filed their certificates of candidacy for the same position. *It did not include officials who hold or occupy elective provincial and municipal offices not by election but by appointment*. x x x

x x x x x x x x x

However, this was exactly the situation facing the Legislature in the year 1947 after the late President Roxas had assumed office as President and before the elections coming up that year. The last national elections for provincial and municipal officials were held in 1940, those elected therein to serve up to December, 1943. Because of the war and the occupation by the Japanese, no elections for provincial and municipal officials could be held in 1943. Those elected in 1940 could not hold-over beyond 1943 after the expiration of their term of office because according to the views of the Executive department as later confirmed by this Court in the case of T*opacio Nueno vs. Angeles*, 76 Phil., 12, through Commonwealth Act No. 357, Congress had intended to suppress the doctrine or rule of hold-over. So, those provincial and municipal officials elected in 1940 ceased in 1943 and their offices became vacant, and this was the situation when after liberation, President Osmeña took over as Chief Executive. He filled these vacant positions by appointment. *When President Roxas was elected in 1946 and assumed office in 1947 he replaced many of these Osmeña appointees with his own men. Naturally, his Liberal Party followers wanted to extend to these appointees the same privilege of office retention thereto given by Section 2, Commonwealth Act No. 666 to local elective officials. It could not be done because Section 2, Commonwealth Act No. 666 had reference only to officials who had been elected. So, it was decided by President Roxas and his party to amend said Section 2, Commonwealth Act No. 666 by substituting the phrase "which he is actually holding,"*

for the phrase "for which he has been lastly elected" found in Section 2 of Commonwealth Act No. 666.

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The purpose of the Legislature in making the amendment, in our opinion, was to give the benefit or privilege of retaining office not only to those who have been elected thereto but also to those who have been appointed; *stated differently, to extend the privilege and benefit to the regular incumbents having the right and title to the office either by election or by appointment*. There can be no doubt, in our opinion, about this intention. We have carefully examined the proceedings in both Houses of the Legislature. The minority Nacionalista members of Congress bitterly attacked this amendment, realizing that it was partisan legislation intended to favor those officials appointed by President Roxas; but despite their opposition the amendment was passed.

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We repeat that the purpose of the Legislature in enacting Section 27 of the Revised Election Code was to allow an official to continue occupying an elective provincial, municipal or city office to which he had been appointed or elected, while campaigning for his election as long as he runs for the same office. He may keep said office continuously without any break, through the elections and up to the expiration of the term of the office. *By continuing in office, the office holder was allowed and expected to use the prerogatives, authority and influence of his office in his campaign for his election or re-election to the office he was holding. Another intention of the Legislature as we have hitherto adverted to was to provide for continuity of his incumbency so that there would be no interruption or break, which would happen if he were required to resign because of his filing his certificate of candidacy.*[19] (italics supplied)

In that case, the Court was faced with the issue of whether a Vice Mayor, merely acting as Mayor because of the temporary disability of the regular incumbent, comes under the provision and exception of Section 27 of the Revised Election Code of 1947. Ruling that a Vice Mayor acting as Mayor does not "actually hold the office" of Mayor within the meaning of Section 27,

[19] *Id.* at 369-371.

we denied the Petition for Prohibition with Preliminary Injunction in this wise:

x x x A Vice Mayor acts as Mayor only in a temporary, provisional capacity. This tenure is indefinite, uncertain and precarious. He may act for a few days, for a week or a month or even longer. But surely there, ordinarily, is no assurance or expectation that he could continue acting as Mayor, long, indefinitely, through the elections and up to the end of the term of the office because the temporary disability of the regular, incumbent Mayor may end any time and he may resume his duties.

VICE-MAYOR ACTING AS MAYOR, OUTSIDE LEGAL CONTEMPLATION

The case of a Vice-Mayor acting as Mayor could not have been within the contemplation and the intent of the Legislature because as we have already stated, that lawmaking body or at least the majority thereof intended to give the benefits and the privilege of Section 27 to those officials holding their offices by their own right and by a valid title either by election or by appointment, permanently continuously and up to the end of the term of the office, not to an official neither elected nor appointed to that office but merely acting provisionally in said office because of the temporary disability of the regular incumbent. In drafting and enacting Section 27, *how could the Legislature have possibly had in mind a Vice-Mayor acting as Mayor, and include him in its scope, and accord him the benefits of retaining the office of Mayor and utilizing its authority and influence in his election campaign, when his tenure in the office of Mayor is so uncertain, indefinite and precarious that there may be no opportunity or occasion for him to enjoy said benefits, and how could Congress have contemplated his continuing in the office in which he is acting, when the very idea of continuity is necessarily in conflict and incompatible with the uncertainty, precariousness and temporary character of his tenure in the office of Mayor?*

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MEANING OF PHRASE "RESIGNED FROM HIS OFFICE"

Section 27 of Republic Act No. 180 in providing that a local elective official running for an office other than the one he is actually holding, is considered resigned from his office, must necessarily refer to an office which said official can resign, or from which he could

be considered resigned, even against his will. For instance, an incumbent Mayor running for the office of Provincial Governor must be considered as having resigned from his office of Mayor. He must resign voluntarily or be compelled to resign. It has to be an office which is subject to resignation by the one occupying it. Can we say this of a Vice-Mayor acting as Mayor? Can he or could he resign from the office of Mayor or could he be made to resign therefrom No. As long as he holds the office of Vice-Mayor to which he has a right and legal title, he, cannot resign or be made to resign from the office of Mayor because the law itself requires that as Vice- Mayor he must act as Mayor during the temporary disability of the regular or incumbent Mayor. *If he cannot voluntarily resign the office of Mayor in which he is acting temporarily, or could not be made to resign therefrom, then the provision of Section 27 of the Code about resignation, to him, would be useless, futile and a dead letter*. In interpreting a law, we should always avoid a construction that would have this result, for it would violate the fundamental rule that every legislative act should be interpreted in order to give force and effect to every provision thereof because the Legislature is not presumed to have done a useless act.

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ANOTHER EXAMPLE

The regular incumbent Mayor files his certificate of candidacy for the same office of Mayor. Then he goes on leave of absence or falls sick and the Vice-Mayor acts in his place, and while thus acting he also files his certificate of candidacy for the same office of Mayor. Then the Vice-Mayor also goes on leave or falls sick or is suspended, and because the regular Mayor is still unable to return to office, under Section 2195 of the Revised Administrative Code, the councilor who at the last general elections received the highest number of votes, acts as Mayor and while thus acting he also files his certificate of candidacy for the office of Mayor. The Vice-Mayor also campaigns for the same post of Mayor claiming like the herein petitioner that he did not lose his office of Vice-Mayor because he filed his certificate of candidacy while acting as Mayor and thus was actually holding the office of Mayor. Using the same argument, the councilor who had previously acted as Mayor also campaigns for his election to the same post of Mayor while keeping his position as councilor. Thus we would have this singular situation of three municipal officials occupying three separate and distinct offices, running for the same

office of Mayor, yet keeping their different respective offices, and strangely enough two of those offices (Vice- Mayor and Councilor) are different from the office of Mayor they are running for. Could that situation have been contemplated by the Legislature in enacting Section 27 of the Revised Election Code? We do not think so, and yet that would happen if the contention of the petitioner about the meaning of "actually holding office" is to prevail.

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TWO OFFICIALS "ACTUALLY HOLDING" THE SAME ELECTIVE OFFICE

We have already said that a Mayor under temporary disability continues to be Mayor (*Gamalinda vs. Yap* * No. 6121, May 30, 1953) and actually holds the office despite his temporary disability to discharge the duties of the office; he receives full salary corresponding to his office, which payment may not be legal if he were not actually holding the office, while the Vice-Mayor acting as Mayor does not receive said salary but is paid only a sum equivalent to it (Section 2187, Revised Administrative Code). Now, if a Mayor under temporary disability actually holds the office of Mayor and the Vice-Mayor acting as Mayor, according to his claim is also actually holding the office of Mayor, then we would have the anomalous and embarrassing situation of two officials actually holding the very same local elective office. Considered from this view point, and to avoid the anomaly, it is to us clear that the Vice-Mayor should not be regarded as holding the office of Mayor but merely acting for the regular incumbent, a duty or right as an incident to his office of Vice-Mayor and not as an independent right or absolute title to the office by reason of election or appointment.

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EXCEPTION TO BE CONSTRUED STRICTLY

Section 26 of the Revised Election Code provides that every person holding an appointive office shall *ipso facto* cease in his office on the date he files his certificate of candidacy. Then we have Section 27 of the same Code as well as Section 2 of Commonwealth Act No. 666 which it amended, both providing that local elective officials running for office shall be considered resigned from their posts, except when they run for the same office they are occupying or holding. *It is evident that the general rule is that all Government officials running for office must resign. The authority or privilege*

to keep one's office when running for the same office is the exception. It is a settled rule of statutory construction that an exception or a proviso must be strictly construed specially when considered in an attempt to ascertain the legislative intent.

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Applying this rule, inasmuch as petitioner herein claimed the right to retain his office under the exception above referred to, said claim must have to be judged strictly, — whether or not his mere acting in the office of Mayor may be legally interpreted as actually holding the same so as to come within the exception. As we have already observed, literally and generally speaking, since he is discharging the duties and exercising the powers of the office of Mayor he might be regarded as actually holding the office; but strictly speaking and considering the purpose and intention of the Legislature behind Section 27 of the Revised Election Code, he may not and cannot legitimately be considered as actually holding the office of Mayor.

RETENTION OF OFFICE

We have, heretofore[,] discussed the case as regards the resignation of an office holder from his office by reason of his running for an office different from it; and our conclusion is that it must be an office that he can or may resign or be considered resigned from; and that the office of Mayor is not such an office from the stand point of a Vice-Mayor. Let us now consider the case from the point of view of retaining his office because he is running for the same office, namely — retention of his office. As we have already said, the Legislature intended to allow an office holder and incumbent to retain his office provided that he runs for the same. In other words, he is supposed to retain the office before and throughout the elections and up to the expiration of the term of the office, without interruption. Can a Vice-Mayor acting as Mayor be allowed or expected to retain the office of Mayor? The incumbent Mayor running for the same office can and has a right to keep and retain said office up to the end of his term. But a Vice-Mayor merely acting as Mayor and running for said office of Mayor, may not and cannot be expected to keep the office up to the end of the term, even assuming that by acting as Mayor he is actually holding the office of Mayor, for the simple reason that his holding of the same is temporary, provisional and precarious and may end any time when the incumbent Mayor returns to duty. Naturally, his temporary holding of the office of Mayor cannot be the retention or right to keep the office intended by the Legislature

in Section 27 of Republic Act No. 180. So that, neither from the point of view of resignation from the office of Mayor nor the standpoint of retention of said office, may a Vice-Mayor acting as Mayor, like herein petitioner, come within the provisions and meaning of Section 27 of the Election Code, particularly the exception in it.[20] (italics supplied)

In contrast, ***Castro v. Gatuslao***[21] dealt with the issue of whether a Vice Mayor who had filed a certificate of candidacy for reelection to the same post, and who on the next day became Mayor, due to vacancy in the mayoralty, comes within the sphere of action of Section 27 of Republic Act No. 180. We ruled in the negative, as follows:

The last words of said section, "shall be considered resigned from the moment of the filing of his certificate of candidacy," indicates that *the moment of such filing is the point of time to be referred to for the operation and application of the statute, and for the determination of its essential prerequisite*, to wit, that the official involved shall file his candidacy for an office other than that which he is actually holding. The law nowhere mentions or refers to positions that the candidate might hold either before or after the filing of the certificate of candidacy.

What office was petitioner Castro actually holding on September 8, 1955, when he filed his certificate of candidacy? Vice-Mayor of Manapla. For what office did he run and file his certificate of candidacy? For Vice-Mayor of Manapla. Clearly, then, he was a candidate for a position that he was actually holding at the time he filed his certificate of candidacy, for "actually" necessarily refers to that particular moment; hence, he should not be considered resigned or deemed to have forfeited his post. Deprivation of office without fault of the holder is not to be lightly presumed nor extended by implication.

That the petitioner came later to hold another office by operation of law, does not alter the case. The wording of the law plainly indicates that only the date of filing of the certificate of candidacy should be taken into account. The law does not make the forfeiture

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[20] *Id.* at 371-381.

[21] G.R. No. L-9688, January 19, 1956, 98 Phil. 194.

dependent upon future contingencies, unforeseen and unforeseeable, since the vacating is expressly made effective as of the moment of the filing of the certificate of candidacy, and there is nothing to show that the forfeiture is to operate retroactively. The statute does not decree that an elective municipal official must be considered resigned if he runs for an office other than the one held by him at or subsequently to the filing of his certificate of candidacy; neither does it declare that he must vacate if he runs for an office other than the one actually held by him at any time before the day of the election.

Since the law did not divest the petitioner Castro of his position of Vice-Mayor, he was entitled to the mayoralty of Manapla when that post became vacant the next day; and as his assumption of that office did not make herein petitioner hold a post different from that for which he became a candidate at the time his certificate of candidacy was filed, he did not forfeit the office of Mayor; therefore the respondent could not legally appoint another mayor for Municipality of Manapla. Petitioner's case becomes the more meritorious when it is considered that he was elevated from Vice-Mayor to Mayor by operation of law and not by his own will.[22] (italics supplied)

As to the nature of the forfeiture of office, Section 27 of the Revised Election Code is clear: it is automatic and permanently effective upon the filing of the certificate of candidacy for another office.[23] Only the moment and act of filing are considered.[24] Once the certificate is filed, the seat is forfeited forever and nothing save a new election or appointment can restore the ousted official, even if the certificate itself be subsequently withdrawn.[25]

Moving forward, Republic Act No. 6388,[26] or the Election Code of 1971, imposed similar provisos on appointive and elective officials, as follows:

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[22] *Id.* at 195-197.

[23] *Monroy v. Court of Appeals, et al.*, G.R. No. L-23258, July 1, 1967, 20 SCRA 620, 625.

[24] *Id*.

[25] *Id*.

[26] Effective September 2, 1971. This expressly repealed the Revised Election Code of 1947, thus:

SECTION 23. Candidates Holding Appointive Office or Position. — Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines and every officer or employee in government-owned or controlled corporations, shall *ipso-facto* cease in his office or position on the date he files his certificate of candidacy: Provided, That the filing of a certificate of candidacy shall not affect whatever civil, criminal or administrative liabilities which he may have incurred.

SECTION 24. Candidate Holding Elective Office. — Any elective provincial, sub-provincial, city, municipal or municipal district officer running for an office other than the one which he is holding in a permanent capacity shall be considered *ipso facto* resigned from his office from the moment of the filing of his certificate of candidacy.

Every elected official shall take his oath of office on the day his term of office commences, or within ten days after his proclamation if said proclamation takes place after such day. His failure to take his oath of office as herein provided shall be considered forfeiture of his right to the new office to which he has been elected unless said failure is for a cause or causes beyond his control.

However, the Election Code of 1971 was subsequently repealed by Presidential Decree No. 1296,[27] or the 1978 Election Code. The latter law provided the same rule on deemed resignations of appointive officials, with the added exception that Cabinet members shall continue in their offices, subject to the pleasure of the President. Section 29 of the 1978 Election Code thus states:

SECTION 249. Repealing Clause. — Republic Act Numbered One hundred and eighty, otherwise known as the "Revised Election Code," as amended, and Republic Act Numbered Three thousand five hundred and eighty-eight, as amended, are hereby repealed. All other laws, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Code are hereby repealed, amended or modified accordingly.

[27] Effective February 7, 1978. The Election Code of 1971 was expressly repealed pursuant to Section 202 of the 1978 Election Code, which states:

SECTION 202. Repealing Clause. — The Election Code of 1971 is hereby repealed, and all other laws, executive orders, rules and regulations, or parts thereof inconsistent with the provisions of this Code are also repealed, amended or modified accordingly.

SECTION 29. Candidates holding appointive office or position. — Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy. Members of the Cabinet shall continue in the offices they presently hold notwithstanding the filing of certificate of candidacy, subject to the pleasure of the President of the Philippines.

With respect to elected officials, the 1978 Election Code initially provided a different rule. Instead of deeming them *ipso facto* resigned from office upon filing their certificates of candidacy, they were merely considered on forced leave of absence, *viz.:*

SECTION 30. Candidates holding political office. — Governors, mayors, members of the various sanggunians, or *barangay* officials, shall, upon filing of a certificate of candidacy, be considered on forced leave of absence from office.

Almost two years later, however, President Marcos anticipated that applying "... Section 30 in the local elections on January 30, 1980, may give rise to chaos and confusion due to the difficulty of designating promptly and immediately the replacements of such officials to assure the continuity and stability of local governments."[28] He accordingly issued Presidential Decree No. 1659[29] and Presidential Decree

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[28] The pertinent Whereas clauses of Presidential Decree No. 1659 provide:

WHEREAS, under the above quoted provision of Section 30 of the 1978 Election Code, governors, mayors, sangguniang members or *barangay* officials are "considered or forced leave of absence from office" upon filing of a certificate of candidacy irrespective of whether these officials are running for the same office which they are holding or for another office;

WHEREAS, it is anticipated that applying the aforequoted provision of Section 30 in the local elections on January 30, 1980, may give rise to chaos and confusion due to the difficulty of designating promptly and immediately the replacements of such officials to assure the continuity and stability of local governments.

[29] Effective December 29, 1979. Presidential Decree No. 1659 is entitled "DEFINING THE STATUS OF OFFICIALS OCCUPYING ELECTIVE

No. 1659-A,[30] which reverted to the former rule on deemed resignations. Consequently, elected provincial, city, municipal, or municipal district officers who ran for offices other than the ones which they were holding, were considered *ipso facto* resigned from their respective offices upon the filing of their certificates of candidacy, as follows:

SEC. 1. Candidate holding elective office. — Any person occupying an elective provincial, city, municipal, or municipal district position who runs for an office other than the one which he is holding shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy: Provided, however, That during the pendency of the election, the President of the Philippines may appoint in an acting capacity said candidate to the office for which he filed a certificate of candidacy and which has been rendered vacant by virtue of the operation of the preceding provision of this section.[31]

POSITIONS WHO RUN FOR OFFICE OTHER THAN THAT WHICH THEY ARE HOLDING."

[30] Effective December 29, 1979. Presidential Decree No. 1659-A is entitled "AMENDING SECTION ONE OF PRESIDENTIAL DECREE NUMBERED SIXTEEN HUNDRED FIFTY-NINE."

[31] Section 1, Presidential Decree No. 1659-A.

N.B. Both Presidential Decree No. 1659 and Presidential Decree No. 1659-A were issued on December 29, 1979. The former amended the 1978 Election Code in this wise:

SECTION 1. Candidate holding elective office. — Any person occupying an elective provincial, city, municipal, or municipal district position who runs for an office other than the one which he is holding shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy; Provided, however, That during the pendency of the election, the President may appoint said candidate to the office for which he filed a certificate of candidacy.

However, a minor amendment was effected by Presidential Decree No. 1659-A to clarify that the appointment of the candidate in an acting capacity to the office for which he filed a certificate of candidacy applies only when such office had been rendered vacant by virtue of the deemed resignation of the person who previously held the office (*i.e.*, if the previous official ran for an office other than that which he was holding, and was therefore deemed *ipso facto* resigned upon the filing of his certificate of candidacy.)

BATAS PAMBANSA BLG. 881:

On December 3, 1985, President Marcos approved Batas Pambansa Blg. 881, or the Omnibus Election Code.[32] The pertinent provisions provide in relevant part:

SECTION 66. Candidates holding appointive office or positions. — Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

SECTION 67. Candidates holding elective office. — Any elective official, whether national or local, running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

As may be gleaned therefrom, the Omnibus Election Code substantially retained the rules on deemed resignations for both elected and appointive officials, except that:

(1) Cabinet members were no longer considered a unique class of appointive officials who may, subject to the pleasure of the President, continue in their offices notwithstanding the filing of their certificates of candidacy;

(2) The rule covering elected officials was expanded to include those holding national offices;

(3) Nevertheless, the rule covering elected officials carved out an exception insofar as the presidency and vice

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[32] The Omnibus Election Code repealed the 1978 Election Code, thus:

SECTION 282. Repealing clause. — Presidential Decree No. 1296, otherwise known as The 1978 Election Code, as amended, is hereby repealed. All other election laws, decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Code are hereby repealed, except Presidential Decree No. 1618 and Batas Pambansa Blg. 20 governing the election of the members of the Sangguniang Pampook of Regions IX and XII.

presidency are concerned, such that an elected official who was running for President or Vice-President, was **not** considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

In ***Dimaporo v. Mitra, et al.***,[33] this Court elucidated on the changes made in respect of elected officials (*i.e.*, (2) and (3) enumerated above) by adverting to the plenary deliberations of the Batasang Pambansa, thus:

It must be noted that only in B.P. Blg. 881 are members of the legislature included in the enumeration of elective public officials who are to be considered resigned from office from the moment of the filing of their certificates of candidacy for another office, except for President and Vice-President. The advocates of Cabinet Bill No. 2 (now Section 67, Article IX of B.P. Blg. 881) elucidated on the rationale of this inclusion, thus:[34]

MR. PALMARES: In the old Election Code, Your Honor, in the 1971 Election Code, the provision seems to be different — I think this is in Section 24 of Article III.

Any elective provincial, sub-provincial, city, municipal or municipal district officer running for an office other than the one which he is holding in a permanent capacity shall be considered *ipso facto* resigned from his office from the moment of the filing of his certificate of candidacy.

May I know, Your Honor, what is the reason of the Committee in departing or changing these provisions of Section 24 of the old Election Code and just adopting it *en toto*? Why do we have to change it? What could possibly be the reason behind it, or the rationale behind it?

MR. PEREZ (L.): I have already stated the rationale for this, Mr. Speaker, but I don't mind repeating it. *The purpose is that the people must be given the right to choose any official who belongs to, let us say, to the Batasan if he wants to run for another office. However, because of the practice in the past where members of the legislature ran for local offices, but did*

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[33] G.R. No. 96859, October 15, 1991, 202 SCRA 779.

[34] Records of the Batasang Pambansa, 8 October 1985.

not assume the office, because of that spectacle the impression is that these officials were just trifling with the mandate of the people. They have already obtained a mandate to be a member of the legislature, and they want to run for mayor or for governor and yet when the people give them that mandate, they do not comply with that latter mandate, but still preferred (sic) to remain in the earlier mandate. So we believe, Mr. Speaker, that the people's latest mandate must be the one that will be given due course. . . .

Assemblyman Manuel M. Garcia, in answer to the query of Assemblyman Arturo Tolentino on the constitutionality of Cabinet Bill No. 2, said:[35]

MR. GARCIA (M.M.): Thank you, Mr. Speaker.

Mr. Speaker, on the part of the Committee, we made this proposal based on constitutional grounds. We did not propose this amendment mainly on the rationale as stated by the Gentlemen from Manila that the officials running for office other than the ones they are holding will be considered resigned *not because of abuse of facilities of power or the use of office facilities but primarily because under our Constitution, we have this new chapter on accountability of public officers*. Now, this was not in the 1935 Constitution. It states that *(sic)* Article XIII, Section 1 — 'Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain accountable to the people.'

Now, what is this significance of this new provision on accountability of public officers? This only means that all elective public officials should honor the mandate they have gotten from the people. Thus, under our Constitution, it says that: 'Members of the Batasan shall serve for the term of 6 years, in the case of local officials and 6 years in the case of *barangay* officials.['] Now, Mr. Speaker, we have precisely included this as part of the Omnibus Election Code *because a Batasan Member who hold (sic) himself out with the people and seek (sic) their support and mandate should not be allowed to deviate or allow himself to run for any other position unless he relinquishes or abandons his office. Because his mandate*

[35] Records of the Batasang Pambansa, 21 October 1985.

to the people is to serve for 6 years. Now, if you allow a Batasan or a governor or a mayor who was mandated to serve for 6 years to file for an office other than the one he was elected to, then, that clearly shows that he has not (sic) intention to service the mandate of the people which was placed upon him and therefore he should be considered ipso facto resigned. I think more than anything that is the accountability that the Constitution requires of elective public officials. It is not because of the use or abuse of powers or facilities of his office, but it is because of the Constitution itself which I said under the 1973 Constitution called and inserted this new chapter on accountability.

Now, argument was said that the mere filing is not the intention to run. Now, what is it for? *If a Batasan Member files the certificate of candidacy, that means that he does not want to serve, otherwise, why should he file for an office other than the one he was elected to? The mere fact therefore of filing a certificate should be considered the overt act of abandoning or relinquishing his mandate to the people and that he should therefore resign if he wants to seek another position which he feels he could be of better service.*

As I said, Mr. Speaker, I disagree with the statements of the Gentleman from Manila because the basis of this Section 62 is the constitutional provision not only of the fact that Members of the Batasan and local officials should serve the entire 6-year term for which we were elected, but because of this new chapter on the accountability of public officers not only to the community which voted him to office, *but primarily because under this commentary on accountability of public officers, the elective public officers must serve their principal, the people, not their own personal ambition*. And that is the reason, Mr. Speaker, why we opted to propose Section 62 where candidates or elective public officers holding offices other than the one to which they were elected, should be considered *ipso facto* resigned from their office upon the filing of the certificate of candidacy.[36] (emphasis in the original)

Corollarily, ***Dimaporo v. Mitra, et al.*** involved Mohamad Ali Dimaporo, who was elected Representative for the Second

[36] *Dimaporo v. Mitra et al., supra* note 33 at 787-789.

Legislative District of Lanao del Sur during the 1987 congressional elections. He took his oath of office on January 9, 1987 and thereafter performed the duties and enjoyed the rights and privileges pertaining thereto. Three years later, he filed with the COMELEC a Certificate of Candidacy for the position of Regional Governor of the Autonomous Region in Muslim Mindanao. Upon being informed of this development, the Speaker and Secretary of the House of Representatives excluded Dimaporo's name from the Roll of Members of the House of Representatives pursuant to Section 67 of the Omnibus Election Code. Having lost in the 1990 elections, petitioner expressed his intention to the Speaker of the House of Representatives "to resume performing my duties and functions as elected Member of Congress," but he failed in his bid to regain his seat.

We sustained Dimaporo's forfeiture of his congressional seat. Holding that the concept of voluntary renunciation of office under Section 7, Article VI of the Constitution is broad enough to include the situation envisioned in Section 67 of the Omnibus Election Code, we ruled:

That the act, contemplated in Section 67, Article IX of 8.P. Blg. 881, of filing a certificate of candidacy for another office constitutes an overt, concrete act of voluntary renunciation of the elective office presently being held is evident from this exchange between the Members of Parliament Arturo Tolentino and Jose Roño:

"MR. ROÑO:

My reasonable ground is this: if you will make the person . . . my, shall we say, basis is that in one case the person is intending to run for an office which is different from his own, and therefore it should be considered, at least from the legal significance, an intention to relinquish his office.

MR. TOLENTINO:

Yes.

MR. ROÑO:

And in the other, because he is running for the same position, it is otherwise.

MR. TOLENTINO:

Yes, but what I cannot see is why are you going to compel a person to quit an office which he is only intending to leave? A relinquishment of office must be clear, must be definite.

MR. ROÑO:

Yes, sir. That's precisely, Mr. Speaker, what I am saying that while I do not disagree with the conclusion that the intention cannot be enough, but I am saying that the filing of the certificate of candidacy is an overt act of such intention. It's not just an intention: it's already there."

In *Monroy vs. Court of Appeals*, a case involving Section 27 of R.A. No. 180 above-quoted, this Court categorically pronounced that "forfeiture (is) automatic and permanently effective upon the filing of the certificate of candidacy for another office. Only the moment and act of filing are considered. Once the certificate is filed, the seat is forever forfeited and nothing save a new election or appointment can restore the ousted official. Thus, as We had occasion to remark, through Justice J.B.L. Reyes, in *Castro vs. Gatuslao*:

". . . 'The wording of the law plainly indicates that only the date of filing of the certificate of candidacy should be taken into account. The law does not make the forfeiture dependent upon future contingencies, unforeseen and unforeseeable, since the vacating is expressly made as of the moment of the filing of the certificate of candidacy....'"

As the mere act of filing the certificate of candidacy for another office produces automatically the permanent forfeiture of the elective position being presently held, it is not necessary, as petitioner opines, that the other position be actually held. The ground for forfeiture in Section 13, Article VI of the 1987 Constitution is different from the forfeiture decreed in Section 67, Article IX of B.P. Blg. 881, which is actually a mode of voluntary renunciation of office under Section 7, par. 2 of Article VI of the Constitution.

The legal effects of filing a certificate of candidacy for another office having been spelled out in Section 67, Article IX, B.P. Blg. 881 itself, no statutory interpretation was indulged in by respondents Speaker and Secretary of the House of Representatives in excluding petitioner's name from the Roll of Members. The Speaker is the administrative head of the House of Representatives and he exercises administrative powers and functions attached to his office. As

administrative officers, both the Speaker and House Secretary-General perform ministerial functions. It was their duty to remove petitioner's name from the Roll considering the unequivocal tenor of Section 67, Article IX, B.P. Blg. 881. When the Commission on Elections communicated to the House of Representatives that petitioner had filed his certificate of candidacy for regional governor of Muslim Mindanao, respondents had no choice but to abide by the clear and unmistakable legal effect of Section 67, Article IX of B.P. Blg. 881. It was their ministerial duty to do so. These officers cannot refuse to perform their duty on the ground of an alleged invalidity of the statute imposing the duty. The reason for this is obvious. It might seriously hinder the transaction of public business if these officers were to be permitted in all cases to question the constitutionality of statutes and ordinances imposing duties upon them and which have not judicially been declared unconstitutional. Officers of the government from the highest to the lowest are creatures of the law and are bound to obey it.[37]

Aguinaldo, et al. v. Commission on Elections[38] provided the occasion to revisit that issue. In that case, petitioners sought to prevent the COMELEC from enforcing Section 67 on the ground that it was violative of the Constitution in that it effectively shortens the terms of office of elected officials. We, however, fully reiterated the applicability of the doctrine of voluntary renunciation announced in ***Dimaporo v. Mitra, et al.***

Further to the rule on appointive officials, ***PNOC Energy Development Corporation, et al. v. National Labor Relations Commission, et al.***[39] held that an employee in a government-owned or -controlled corporation without an original charter (and therefore not covered by Civil Service Law) still falls within the scope of Section 66 of the Omnibus Election Code. We ruled:

When the Congress of the Philippines reviewed the Omnibus Election Code of 1985, in connection with its deliberations on and subsequent enactment of related and repealing legislation — *i.e.*,

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[37] *Id.* at 793-795.

[38] G.R. No. 132774, June 21, 1999, 308 SCRA 770.

[39] G.R. No. 100947, May 31, 1993, 222 SCRA 831.

Republic Acts Numbered 7166: "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes" (effective November 26, 1991), 6646: "An Act Introducing Additional Reforms in the Electoral System and for Other Purposes" (effective January 5, 1988) and 6636: "An Act Resetting the Local Elections, *etc*." (effective November 6, 1987), it was no doubt aware that in light of Section 2(1), Article IX of the 1987 Constitution: (a) government-owned or controlled corporations were of two (2) categories — those with original charters, and those organized under the general law — and (b) employees of these corporations were of two (2) kinds — those covered by the Civil Service Law, rules and regulations because employed in corporations having original charters, and those not subject to Civil Service Law but to the Labor Code because employed in said corporations organized under the general law, or the Corporation Code. Yet Congress made no effort to distinguish between these two classes of government-owned or controlled corporations or their employees in the Omnibus Election Code or subsequent related statutes, particularly as regards the rule that an any employee "in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy."

Be this as it may, it seems obvious to the Court that a government-owned or controlled corporation does not lose its character as such because not possessed of an original charter but organized under the general law. If a corporation's capital stock is owned by the Government, or it is operated and managed by officers charged with the mission of fulfilling the public objectives for which it has been organized, it is a government-owned or controlled corporation even if organized under the Corporation Code and not under a special statute; and *employees thereof, even if not covered by the Civil Service but by the Labor Code, are nonetheless "employees in government-owned or controlled corporations," and come within the letter of Section 66 of the Omnibus Election Code, declaring them "ipso facto resigned from . . . office upon the filing of . . . (their) certificate of candidacy."*

What all this imports is that Section 66 of the Omnibus Election Code applies to officers and employees in government-owned or controlled corporations, even those organized under the general laws on incorporation and therefore not having an original or legislative charter, and even if they do not fall under the Civil Service Law but

under the Labor Code. In other words, Section 66 constitutes just cause for termination of employment in addition to those set forth in the Labor Code, as amended.[40] (italics supplied)

REPUBLIC ACT NO. 8436:

RA 8436 was silent on the rule in respect of appointive officials. Therefore, the governing law on the matter is still the one provided under the Omnibus Election Code. Hence, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

On the other hand, RA 8436 modified the rule in respect of the automatic resignation of elected officials running for any office other than the ones they were currently holding in a permanent capacity, except the presidency and the vice presidency. Whereas, under the Omnibus Election Code they were considered *ipso facto* resigned from office upon **filing their certificates of candidacy**, RA 8436 considered them resigned **only upon the start of the campaign period** corresponding to the positions for which they are running, *viz.:*

SECTION 11. Official Ballot. — x x x

x x x x x x x x x

For this purpose, the deadline for the filing of certificate of candidacy/ petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the elections: Provided, That, *any elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice-president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running*: Provided, further, That, x x x. (italics supplied)

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[40] *Id.* at 840-841.

In *temporal* terms, however, the distinction is more apparent than real.

RA 8436 authorized the COMELEC to use an automated election system in the 1998 election and succeeding elections. Considering that automation requires a pre-printed ballot, the legislators deemed it necessary to move the deadline for the filing of certificates of candidacy to 120 days before election day. If the reckoning point of the automatic resignation was not moved to the start of the campaign period, then elected officials running for any office other than the ones they were holding in a permanent capacity (except the presidency and the vice presidency), were going to be considered resigned as early as 120 days before the election, leaving their constituents bereft of public officials for an extended period of time.

This was the evil sought to be avoided by the legislators when they transferred the reckoning period of deemed resignations from the time the certificate of candidacy is filed (under the pre-RA 8436 regime) to the start of the campaign period (under RA 8436). After all, RA 8436 did not alter the campaign periods provided under existing election laws. Consequently, the end result is that the particular point in time *(vis-à-vis* election day) at which an elected official is considered resigned under RA 8436, is not significantly different from the point in time at which an elected official was considered resigned prior to RA 8436.

The deliberations of the Bicameral Conference Committee on this point are instructive:[41]

THE CHAIRMAN (REP. TANJUATCO). Further to the question of the Deputy Speaker, the comment of this representation concerning the filing of certificate of candidacy in 2001, I suggest should also be applied to 1998, in the sense that the mere filing of the certificate of candidacy at an earlier date should not result in the loss of the office by a person running for a position other than what he is holding,

[41] Records of the Bicameral Conference Committee, December 16, 1997, pp. 42-46, 55-57, 131-139.

nor the restrictions that will apply to a candidate. Would the Senate agree to that?

THE CHAIRMAN. (SEN. FERNAN). You know, that particular proviso, we eliminated.

SEN. GONZALES. Yes.

THE CHAIRMAN (SEN. FERNAN). Because some Senators felt that it will be applied to them and they would be considered resigned, ano? But it was earlier manifested that it will be worded in such a way that it will not apply to those running for [the] presidency and vice-presidency.

SEN. GONZALES. That is the present law.

THE CHAIRMAN (SEN. FERNAN). Yeah, that is the present law. *So, the present law will be maintained but the concern about the inclusion of that particular provision is because they don't want a long period for them to be considered resigned. In other words, if you file your certificate of candidacy on January 11 and you are already considered resigned, there is a long gap until election day.*

THE CHAIRMAN (REP. TANJUATCO). That's right.

THE CHAIRMAN (SEN. FERNAN). *They were hoping that it will be limited only to 45 days before election.*

THE CHAIRMAN (REP. TANJUATCO). In the case of non-national candidates.

THE CHAIRMAN (SEN. FERNAN). Non-national. I mean, what would you feel?

THE CHAIRMAN (REP. TANJUATCO). Just to clarify to our Senate counterparts, there was no intention on the part of the House to withdraw the provision in existing law that the Senator running for president or vice-president will not be deemed resigned even if he files his certificate of candidacy for those offices. *The only reason why the provision adverted to was included was, as the distinguished Chairman mentioned, to avoid the situation where the constituency of that official filing that certificate of candidacy will be bereft of an official that that constituency elected for a three-year period.*

THE CHAIRMAN (SEN. FERNAN). So, the phraseology is, "Provided that the candidate who is aspiring for an elective office other than his incumbent position or the presidency or the vice-presidency, shall be deemed resigned forty-five (45) days before elections."

THE CHAIRMAN (REP. TANJUATCO). Or maybe using the word "under existing law".

REP. ABUEG. Mr. Chairman.

THE CHAIRMAN (REP. TANJUATCO). Our expert.

REP. ABUEG. To make it clear, while in the Senate version this was deleted, in order to remove any doubt, we can provide here the exception that, "except for the Office[s] of the President and Vice President, a candidate who is aspiring for an elected position other than his incumbent position shall be deemed resigned forty-five (45) days before the election." So, that will leave no room for doubt that the exemption existing is also carried in this proposed bill, proposed law.

THE CHAIRMAN (SEN. FERNAN). x x x Okay. So, if we agree, provided that it excludes those aspiring for the presidency and vice-presidency.

THE CHAIRMAN (REP. TANJUATCO). Yeah.

REP. DAZA. Mr. Chairman, in other words, we will keep the exception that for those running for president or vice-president, there is no resignation. x x x

x x x x x x x x x

THE CHAIRMAN (REP. TANJUATCO). Let's start to categorize it first. Insofar as elections from x x x 2001 and thereafter are concerned, Comelec has agreed that [the] 120-day period would be sufficient to print the ballots. *But again since we don't want to bring about a situation where an official who has been elected by his constituency for a term of three years to be removed from office way, way before the start of the campaign period, we would ask that the proviso that he will not be deemed resigned from the office, if he is deemed resigned under existing law, should be – that he will be deemed resigned only at the start of the campaign period.*

x x x x x x x x x

We are not altering the present rule concerning resignations as a result of filing of certificates of candidacy. *As a matter of fact, we are providing this so that the existing rule [in respect of the proximity of the "deemed resignation" to the election] will not be changed*.

THE ACTING CHAIRMAN (SEN. FERNAN). Okay. So, instead of saying "deemed resigned 45 days before the elections", it should be "at the start of the campaign period".

THE CHAIRMAN (REP. TANJUATCO). At the start of the campaign period.

THE ACTING CHAIRMAN (SEN. FERNAN). Deemed resigned at the start of the campaign period.

THE CHAIRMAN (REP. TANJUATCO). For which he is running.

THE ACTING CHAIRMAN (SEN. FERNAN). And then we will also exclude the presidency or vice presidency as provided by existing law?

THE CHAIRMAN (REP. TANJUATCO). That's right, Mr. Chairman.

THE ACTING CHAIRMAN (SEN. FERNAN). Okay. So, that's sufficiently – that's clarified.

x x x x x x x x x

THE ACTING CHAIRMAN (SEN. FERNAN). x x x

Now, the Senate Panel will note, and we would like to invite the attention of [the] House [Panel] that we eliminated – the Senate eliminated the proviso: "That candidates who are aspiring for an elective office other than his incumbent position shall be deemed resigned forty-five (45) days before election." It was explained to us earlier by the House Panel...

THE CHAIRMAN (REP. TANJUATCO). *Hindi kami nami-mersonal dito.* (Laughter)

THE ACTING CHAIRMAN (SEN. FERNAN). ... that the idea there was not to hit the Senators running for the presidency. (Laughter)

THE CHAIRMAN (REP. TANJUATCO). *Now, the intention of the House was to avoid the situation where candidates running for an office other than what they are holding, will be considered resigned much earlier than anticipated by their constituents who elected them for the period.*

x x x x x x x x x

THE CHAIRMAN (REP. TANJUATCO). *The only reason why we included this was to obviate a situation where incumbents running for a position other than what they're holding and other than for president or vice president will immediately be considered, or very early during his term[,] considered resigned.*

SENATOR ROCO. *Hindi ano eh* – because *wala namang epekto iyan sa* deadline.

THE CHAIRMAN (REP. TANJUATCO). *Mayroo*n.

MR. FERNANDO. *May deadline po, because under Section 67 [of the Omnibus Election Code], if you file your certificate of candidacy for the position other than what you're holding, you're already considered resigned and yet you cannot campaign. So with the recommendation of Congressman Tanjuatco, you can still serve during the period from January 11, if we set it January 11, until February 10 when the campaign period starts, or...*

THE CHAIRMAN (REP. TANJUATCO). *Or even beyond if you're running for local office.*

MS. *(sic)* FERNANDO. Or beyond March 25 if you run for local. So it's beneficial, it will not adversely affect any candidate.

THE CHAIRMAN (SEN. FERNAN). So in this connection then, may I just say something, 'no. Earlier this morning when Ding... when the Chairman gave this clarification, I felt that the objection has been, to a certain extent, removed so that this is the phraseology now that it was tentatively agreed: "For this purpose, the deadline for the filing of certificate of candidacy/petition for registration/manifestation to participate in the election shall not be later than one hundred twenty (120) days before the election provided that the candidate who is aspiring for an elective office other than his incumbent position or the presidency or the vice presidency" ... Because of the existing law. "...shall be deemed resigned at the start of the campaign."

THE CHAIRMAN (REP. TANJUATCO). Only upon the start.

THE CHAIRMAN (SEN. FERNAN). Only upon the start of the campaign period.

Now, I do not know how it strikes the other members of the Senate panel.

SEN. ROCO. What is the phraseology of the present law?

THE CHAIRMAN (SEN. FERNAN). The present, as far as the Senate version... Ah, yeah, go ahead.

SEN. ROCO. Sixty-seven.

THE CHAIRMAN (REP. TANJUATCO). "Any elective official, whether national or local[,] running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy."

Iyon ang umiiral ngayon. Ngayon, in our bill, since there is an early filing of certificate of candidacy, if there is no qualification, he will be considered resigned at a very early stage.

SEN. ROCO. Why don't we use those words and add provision of ano, for the local. Just retain those words *para* we don't invent new phraseology. *Tingnan mo ang* 67. Provided... *Ang* proviso *mo* will begin with the present law.

THE CHAIRMAN (SEN. *(sic)* TANJUATCO). *Hindi. Ganito ang gawin natin.*

SEN. ROCO. *O, sige.*

THE CHAIRMAN (REP. TANJUATCO). Same thing, 'no[.]Any elective official, whether national or local[,] running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered *ipso facto* resigned from his office only upon the start of the campaign period corresponding to the position for which he is running. (italics supplied)

REPUBLIC ACT NO. 9006:

Republic Act No. 9006,[42] or the Fair Election Act, was silent on the rule in respect of appointive officials. Therefore, the governing law is still the one provided under the Omnibus Election Code, *i.e.*, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned

[42] Effective March 20, 2001. Republic Act No. 9006 is entitled "AN ACT TO ENHANCE THE HOLDING OF FREE, ORDERLY, HONEST, PEACEFUL AND CREDIBLE ELECTIONS THROUGH FAIR ELECTION PRACTICES."

or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

However, the Fair Election Act expressly repealed, among others, Section 67 of Batas Pambansa Blg. 881, or the Omnibus Election Code, and rendered ineffective the proviso in RA 8436 relating to the automatic resignations of elected officials, as follows:

> SECTION 14. Repealing Clause. — *Sections 67* and 85 of the Omnibus Election Code (Batas Pambansa Blg. 881) and Sections 10 and 11 of Republic Act No. 6646 are hereby repealed. As a consequence, *the first proviso in the third paragraph of Section 11 of Republic Act No. 8436 is rendered ineffective.* All laws, presidential decrees, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed or modified or amended accordingly. (italics supplied)

It is worthy to note that the express repeal of Section 67 of the Omnibus Election Code may be considered superfluous, as this has already been impliedly repealed (for inconsistency) by RA 8436. As previously mentioned, officials were considered *ipso facto* resigned from office upon **filing their certificates of candidacy** under the Omnibus Election Code, whereas RA 8436 considered them resigned **only upon the start of the campaign period** corresponding to the positions for which they are running. Section 67 may nevertheless have been expressly mentioned in the repealing clause to clarify legislative intent, because automated elections (the subject matter of RA 8436) have not yet come to pass. In any event, Republic Act No. 9006 rendered ineffective the proviso in RA 8436 relating to the automatic resignations of elected officials.

In effect, the repealing clause of the Fair Election Act allows elected officials to run for another office without forfeiting the office they currently hold. This conclusion is supported by the February 7, 2001 deliberations of the Senate, when the Conference Committee Report on the disagreeing provisions

of House Bill No. 9000 and Senate Bill No. 1742 was considered, thus:[43]

The Presiding officer [Sen. Sotto]. May we know the effect as far as the other positions are concerned – elective officials are concerned?

Senator Roco. What we have done, Mr. President, is *everybody who is elected can run for any other position that he may desire without forfeiting his seat.*

We have reversed the old election law[, and now] an elected official is not required to forfeit his seat simply because he is running for another position. (italics supplied)

This is further confirmed by Section 26 of Comelec Resolution No. 3636,[44] which states:

SECTION 26. Effect of Filing Certificate of Candidacy by Elective Officials. — Any elective official, whether national or local[,] who has filed a certificate of candidacy for the same or any other office shall not be considered resigned from his office.

In ***Fariñas, et al. v. Executive Secretary, et al.***,[45] Section 14 of Republic Act No. 9006 was challenged on the ground, among others, that it was violative of the equal protection clause of the constitution. The petitioners contended that Section 14 discriminated against appointive officials. By the repeal of Section 67, an elected official who runs for office other than the one which he is holding is no longer considered *ipso facto* resigned therefrom upon filing his certificate of candidacy. Elected officials continue in public office even as they campaign for reelection or election for another elective position. On the other hand, Section 66 has been retained; thus, the limitation on appointive officials remains — they are still considered *ipso facto* resigned from their offices upon the filing of their certificates of candidacy.

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[43] Records of the Senate, February 7, 2001, p. 177.

[44] Issued on March 1, 2001. COMELEC Resolution No. 3636 is entitled "RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9006 OTHERWISE KNOWN AS "FAIR ELECTION ACT" FOR THE MAY 14, 2001 NATIONAL AND LOCAL ELECTIONS."

[45] G.R. No. 147387, December 10, 2003, 417 SCRA 503.

We held that there was no violation of the equal protection clause because substantial distinctions exist between the two sets of officials. Elected officials cannot, therefore, be similarly treated as appointive officials. Equal protection simply requires that all persons or things similarly situated are treated alike, both as to rights conferred and responsibilities imposed.

REPUBLIC ACT NO. 9369:

RA 9369 amended RA 8436. It provides, in relevant part:

SECTION 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC. 15. Official Ballot. — x x x

For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition for registration/ manifestation to participate in the election. *Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy*: Provided, That, unlawful acts or omissions applicable to a candidate shall take effect only upon the start of the aforesaid campaign period: *Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers and employees in government-owned or -controlled corporations, shall be considered ipso facto resigned from his/ her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy.*

x x x (italics supplied)

As may be noticed, RA 9369 expressly provides that appointive officials are considered *ipso facto* resigned from their offices and must vacate the same at the start of the day of the filing of their certificates of candidacy. However, this rule is a mere restatement of Section 66 of the Omnibus Election Code, the prevailing law in this regard.

On the other hand, RA 9369 is silent with respect to elected officials. The rule under the Fair Election Act (*i.e.*, that elected officials may run for another position without forfeiting their seats) is therefore applicable.

From these rules, Section 4 of COMELEC Resolution 8678 wa derived.

IV.

After a review of the legislative and case history of the law on deemed resignations of public officials, I now turn to the case at bar.

At the core of the controversy is Section 4(a) of COMELEC Resolution No. 8678, which is reproduced below for easy reference:

> Section 4. Effects of Filing Certificates of Candidacy.- a) *Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.*
>
> b) Any person holding an elective office or position shall not be considered resigned upon the filing of his certificate of candidacy for the same or any other elective office or position. (italics supplied)

Petitioners contend that Section 4(a) is null and void on the ground that: (a) it contravenes existing law and jurisprudence on the matter, and (b) it violates the equal protection clause of the Constitution.

The *ponencia* upholds these contentions, extends its analysis to two other provisions of law – (a) the second proviso in the third paragraph of Section 13 of RA 9369, and (b) Section 66 of the Omnibus Election Code – and proceeds to strike down said provisions not only on equal protection grounds, but on overbreadth terms as well.

Upon a considered review of the relevant laws and jurisprudence, I am constrained to strongly dissent on all points.

Section 4(a) is consistent with existing laws and jurisprudence on the matter.

Contrary to petitioners' assertion, Section 4(a) of COMELEC Resolution No. 8678 is a faithful reflection of the present state of the law and jurisprudence on the matter.

As the discussion on the legislative history of Section 4(a) has shown, the current state of the law on deemed resignations of public officials is as follows:

Incumbent Appointive Official - Under Section 13 of RA 9369, which reiterates what is provided in Section 66 of the Omnibus Election Code, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

Incumbent Elected Official – Upon the other hand, pursuant to Section 14 of RA 9006 or the Fair Election Act, which repealed Section 67 of the Omnibus Election Code and rendered ineffective Section 11 of R.A. 8436 insofar as it considered an elected official as resigned only upon the start of the campaign period corresponding to the positions for which they are running, an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position. In effect, an elected official may run for another position without forfeiting his seat.

Clearly, Section 4(a) of COMELEC Resolution No. 8678 merely reiterates the foregoing rules on deemed resignations of incumbent public officials.

Petitioners, however, hasten to point out that the same Section 13 of RA 9369 provides that any person who files his certificate of candidacy (within the advanced period fixed by COMELEC) shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy. Guided by the pronouncement of this Court in ***Lanot v. COMELEC***[46] that the advance filing of the certificate of candidacy is required

[46] *Supra* note 8.

only to provide ample time for the printing of official ballots, and that such advance filing does not make the person a candidate except only for ballot-printing purposes, [47] petitioners contend that the attendant consequences of candidacy – including that of being deemed *ipso facto* resigned from one's office, when and if applicable – should take effect only upon the onset of the campaign period for which the certificate of candidacy was filed, since it is only at this point in time that said government official is, by law, considered to be a candidate.[48] Thus, according to petitioners, appointive officials should be considered *ipso facto* resigned from the office they are holding only upon the start of the campaign period.[49]

Petitioners maintain that this interpretation is the better approach, since it reconciles and harmonizes the perceived conflict between that portion of Section 13 of RA 9369, which states that "[a]ny person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy" and the subsequent proviso in the same section which provides that "any person holding a public appointive office or position x x x shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her candidacy," in a manner that is consistent with the apparent intent of the legislators to treat an appointive government official who files his certificate of candidacy as a candidate only at the start of the campaign period.[50]

However, this argument fails to consider that the second proviso was precisely carved out as an exception to the general rule, in keeping with the principle that appointive officials are prohibited from engaging in any partisan political activity and

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[47] *Rollo*, p.10, *citing Lanot v. COMELEC*, *id.*

[48] *Id.* at 12.

[49] *Id*.

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

taking part in any election, except to vote.[51] Specific provisions of a particular law should be harmonized not only with the other provisions of the same law, but with the provisions of other existing laws as well.[52] *Interpretare et concordare leges legibus est optimus interpretandi modus.*

In ***Pagano v. Nazarro, Jr., et al.***,[53] we ruled that the act of filing a certificate of candidacy while one is employed in the civil service constitutes a just cause for termination of employment for appointive officials. Section 66 of the Omnibus Election Code, in considering an appointive official *ipso facto* resigned, merely provides for the immediate implementation of the penalty for the prohibited act of engaging in partisan political activity. Held this Court:

> Petitioner relies on Section 66 of the Omnibus Election Code to exculpate her from an administrative charge. The aforementioned provision reads:
>
> Any person holding a public appointive office or position, including active members of the Armed Forces of the

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[51] Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 provides:

Section 55. Political Activity. — No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body.

Additionally, Sections 46(b)(26), Chapter 6, Subtitle A, Title I, Book V of the same Code provides:

Section 44. Discipline: General Provisions:

x x x x x x x x x

(b) The following shall be grounds for disciplinary action:

x x x x x x x x x

(26) Engaging directly or indirectly in partisan political activities by one holding a non-political office.

x x x x x x x x x

[52] *Corona, et al. v. Court of Appeals, et al.*, G.R. No. 97356, September 30, 1992, 214 SCRA 378, 392.

[53] G.R. No. 149072, September 21, 2007, 533 SCRA 623.

Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

Section 66 of the Omnibus Election Code should be read in connection with Sections 46 (b) (26) and 55, Chapters 6 and 7, Subtitle A, Title I, Book V of the Administrative Code of 1987:

Section 44. Discipline: General Provisions:

x x x x x x x x x

(b) The following shall be grounds for disciplinary action:

x x x x x x x x x

(26) Engaging directly or indirectly in partisan political activities by one holding a non-political office.

x x x x x x x x x

Section 55. Political Activity. — No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body.

Clearly, the act of filing a Certificate of Candidacy while one is employed in the civil service constitutes a just cause for termination of employment for appointive officials. Section 66 of the Omnibus Election Code, in considering an appointive official *ipso facto* resigned, merely provides for the immediate implementation of the penalty for the prohibited act of engaging in partisan political activity. This provision was not intended, and should not be used, as a defense against an administrative case for acts committed during government service.[54]

Section 4(a) is not violative of the Equal Protection Clause of the Constitution

Petitioners' equal protection challenge was sustained by the *ponencia* on three grounds, *viz.:*

[54] *Id.* at 635-636.

(1) Our disquisition in ***Farinas, et al. v. Executive Secretary, et al.***[55] on the apparent unfairness of the rules on deemed resignations is not doctrine, but mere *obiter dictum*;

(2) ***Mancuso v. Taft***,[56] a 1973 United States Court of Appeals case, struck down as unconstitutional a similar deemed resignation provision; and

(3) The differential treatment of persons holding appointive offices as opposed to those holding elective offices is not germane to the purpose of the law.

I shall discuss these grounds *in seriatim*.

i. Pronouncement in *Farinas, et al. v. Executive Secretary, et al.* **Not** *Obiter Dictum*

An *obiter dictum* has been defined as a remark or opinion uttered, 'by the way.'[57] It is a statement of the court concerning a question which was not directly before it.[58] It is language unnecessary to a decision, a ruling on an issue not raised, or an opinion of a judge which does not embody the resolution or determination of the court, and is made without argument or full consideration of the point.[59] It is an expression of opinion by the court or judge on a collateral question not directly involved,[60] or not necessary for the decision.[61] Accordingly, it lacks the

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[55] *Infra*.

[56] 476 F.2d 187 (1973).

[57] *In re Hess*, 23 A. 2d. 298, 301, 20 N.J. Misc. 12.

[58] *Id.*

[59] *Lawson v. United States*, 176 F2d 49, 51, 85 U.S. App. D.C. 167.

[60] *Crescent Ring Co. v. Traveler's Indemnity Co.*, 132 A. 106, 107, 102 N.J. Law 85.

[61] *Du Bell v. Union Central Life Ins. Co.*, 29, So. 2d 709, 712; 211 La. 167; *Auyong Hian v. Court of Tax Appeals*, 59 SCRA 110, 120 (1974).

force of an adjudication and should not ordinarily be regarded as such.[62]

Prescinding from these principles, our pronouncement on the equal protection issue in *Farinas, et al. v. Executive Secretary, et al.*[63] cannot be characterized as *obiter dictum*.

The *ponencia* bases its conclusion on the premise that the "main issue" in **Farinas**, on which the Court was "intently focused," was whether the repealing clause in the Fair Election Act was a constitutionally proscribed rider.[64] Consequently, the *ponencia* continues, the matter of the equal protection claim was only "incidentally addressed,"[65] such that we "unwittingly failed to ascertain with stricter scrutiny the impact of the retention of the provision on automatic resignation of persons holding appointive positions (Section 66) in the OEC, *vis-à-vis* the equal protection clause."[66] It also asserts that the petitioners in **Farinas** "never posed a direct challenge to the constitutionality of Section 66 of the Omnibus Election Code."[67]

With due respect, this view fails to recognize that the equal protection implications of Section 14 of the Fair Election Act, in relation to Sections 66 and 67 of the Omnibus Election Code, were **squarely raised** before the Court, thus –

The Petitioners' Case

The petitioners now come to the Court alleging in the main that Section 14 of Rep. Act No. 9006, insofar as it repeals Section 67 of the Omnibus Election Code, is unconstitutional for being in violation of Section 26(1), Article VI of the Constitution, requiring every law to have only one subject which should be expressed in its title.

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[62] *Morales v. Paredes*, 55 Phil. 565, 567; *Cinco, et al. v. Sandiganbayan, et al.*, G.R. Nos. 92362-67, October 15, 1991, 202 SCRA 726, 736.

[63] *Supra* note 45.

[64] Majority Decision, p. 17.

[65] *Id.* at 15.

[66] *Id.* at 17.

[67] *Id*.

According to the petitioners, the inclusion of Section 14 repealing Section 67 of the Omnibus Election Code in Rep. Act No. 9006 constitutes a proscribed rider. x x x

The petitioners also assert that Section 14 of Rep. Act No. 9006 violates the equal protection clause of the Constitution because it repeals Section 67 only of the Omnibus Election Code, leaving intact Section 66 thereof which imposes a similar limitation to appointive officials, thus:

> *SEC. 66. Candidates holding appointive office or position. — Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.*

They contend that Section 14 of Rep. Act No. 9006 discriminates against appointive officials. By the repeal of Section 67, an elective official who runs for office other than the one which he is holding is no longer considered ipso facto resigned therefrom upon filing his certificate of candidacy. Elective officials continue in public office even as they campaign for reelection or election for another elective position. On the other hand, Section 66 has been retained; thus, the limitation on appointive officials remains — they are still considered ipso facto resigned from their offices upon the filing of their certificates of candidacy.

The petitioners assert that Rep. Act No. 9006 is null and void in its entirety as irregularities attended its enactment into law. x x x

Finally, the petitioners maintain that Section 67 of the Omnibus Election Code is a good law; hence, should not have been repealed. x x x[68] (italics supplied)

to which we responded:

Section 14 of Rep. Act No. 9006 Is Not Violative of the Equal Protection Clause of the Constitution

The petitioners' contention, that the repeal of Section 67 of the Omnibus Election Code pertaining to elective officials gives undue

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[68] *Farinas, et al. v. Executive Secretary, et al., supra* note 45 at 512-513.

benefit to such officials as against the appointive ones and violates the equal protection clause of the constitution, is tenuous.

The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from the other. The Court has explained the nature of the equal protection guarantee in this manner:

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or [taking] part in any election except to vote. Under the same provision, elective officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.

By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.

Since the classification justifying Section 14 of Rep. Act No. 9006, *i.e.*, elected officials *vis-a-vis* appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[69]

That **Farinas** likewise dealt with the issue of whether Section 14 of the Fair Election Act is a constitutionally proscribed rider, is wholly peripheral to the doctrinal value of our pronouncement on the equal protection challenge. The fact remains that the Court's disquisition on that matter was prompted by an issue clearly raised before us, one that cannot, by any means, be construed as "a collateral question not directly involved"[70] with the case.

To be sure, an adjudication on any point within the issues presented by the case cannot be considered as *obiter dictum*.[71] This rule applies to all pertinent questions, which are presented and decided in the regular course of the consideration of the case, and led up to the final conclusion, and to any statement as to the matter on which the decision is predicated.[72] For that reason, a point expressly decided does not lose its value as a precedent because the disposition of the case is, or might have been, made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise

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[69] *Id.* at 525-528.

[70] *Crescent Ring Co. v. Traveler's Indemnity Co, supra* note 60.

[71] *Villanueva, Jr. v. Court of Appeals, et al.*, G.R. No. 142947, March 19, 2002, 379 SCRA 463, 469 citing 21 Corpus Juris Secundum §190.

[72] *Id.* at 469-470.

than it did.[73] As we held in ***Villanueva, Jr. v. Court of Appeals, et al.***:[74]

> *… A decision which the case could have turned on is not regarded as obiter dictum merely because, owing to the disposal of the contention, it was necessary to consider another question*, nor can an additional reason in a decision, brought forward after the case has been disposed of on one ground, be regarded as dicta. So, also, where a case presents two (2) or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, *the case as an authoritative precedent as to every point decided, and none of such points can be regarded as having the status of a dictum, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered*, nor does a decision on one proposition make statements of the court regarding other propositions dicta.[75] (italics supplied)

I respectfully submit, therefore, that our pronouncement in *Farinas* in respect of the equal protection issue finds cogent application in this case. *Stare decisis et non quieta movere*.

ii. *Mancuso v. Taft* Has Been Overruled

The *ponencia* begins its discussion with the claim that the right to run for public office is "inextricably linked" with two fundamental freedoms – those of freedom and association. It then extensively cites ***Mancuso v. Taft***,[76] a decision of the First Circuit of the United States Court of Appeals promulgated on March 1973, to buttress its ruling. On this point, **Mancuso** asserts that "[c]andidacy is both a protected First Amendment right and a fundamental interest. Hence[,] any legislative classification that significantly burdens that interest must be subjected to strict equal protection review."

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[73] *Id.* at 470.

[74] *Id*.

[75] *Id*.

[76] *Infra*.

It must be noted, however, that while the United States Supreme Court has held that the fundamental rights include freedom of speech[77] and freedom of association,[78] **it has never recognized a fundamental right to express one's political views through candidacy**.[79] ***Bart v. Telford***[80] states quite categorically that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." ***Newcomb v. Brennan***[81] further instructs:

Although the Supreme Court has frequently invalidated state action which infringed a candidate's interest in seeking political office, it "has not heretofore attached such fundamental status to candidacy as to invoke a rigorous standard of review." Rather, it has relied on the right of association guaranteed by the First Amendment in holding that state action which denies individuals the freedom to form groups for the advancement of political ideas, as well as the freedom to campaign and vote for the candidates chosen by those groups, is unconstitutional absent a strong subordinating interest.[82] *These decisions indicate that plaintiff's interest in seeking office, by itself, is not entitled to constitutional protection.*[83] *Moreover, since plaintiff*

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[77] *Grosjean v. American Press Co.*, 297 U.S. 233, 243, 56 S.Ct. 444, 446, 80 L.Ed. 660 (1936).

[78] *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 544, 83 S.Ct. 889, 892-93, 9 L.Ed.2d 929 (1963).

[79] *Carver v. Dennis*, 104 F.3d 847, 65 USLW 2476 (1997); *American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d 1092, 1101 (1997); *NAACP, Los Angeles Branch v. Jones*, 131 F.3d 1317, 1324 (1997); *Brazil-Breashears v. Bilandic*, 53 F.3d 789, 792 (1995). See also *Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 855-56, 31 L.Ed.2d 92 (1972), quoted in *Clements v. Fashing*, 457 U.S. 957, 963, 102 S.Ct. 2836, 2843, 73 L.Ed.2d 508 (1982).

[80] 677 F.2d 622, 624 (1982).

[81] 558 F.2d 825 (1977).

[82] See, *e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 39-59, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam); *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972); *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968).

[83] See Developments in the Law Elections, 88 Harv.L.Rev. 1111, 1135 n. 81, 1218 (1975).

has not alleged that by running for Congress he was advancing the political ideas of a particular set of voters, he cannot bring his action under the rubric of freedom of association which the Supreme Court has embraced. (italics supplied)

As to the applicable standard of judicial scrutiny, ***Bullock v. Carter***[84] holds that the existence of barriers to a candidate's access to the ballot "does not of itself compel close scrutiny," and that the Court "has not heretofore attached such fundamental status to candidacy as to invoke a rigorous standard of review."[85]

These principles attain added significance as we examine the legal status of ***Mancuso v. Taft***.

Briefly, that case involved Kenneth Mancuso, a full-time police officer and classified civil service employee of the City of Cranston, Rhode Island. He filed as a candidate for nomination as representative to the Rhode Island General Assembly on October 19, 1971, and subsequently initiated a suit challenging the constitutionality of §14.09(c) of the City Home Rule Charter which prohibits "continuing in the classified service of the city after becoming a candidate for nomination or election to any public office." The district court ruled in his favor, for which reason the city officials appealed. Applying strict equal protection review, the United States Court of Appeals held that the Cranston charter provision pursues its objective (of maintaining the honesty and impartiality of its public work force) in a far too heavy-handed manner and must therefore fall under the equal protection clause, *viz.*:

> Whether the right to run for office is looked at from the point of view of individual expression or associational effectiveness, wide opportunities exist for the individual who seeks public office. x x x Consequently[,] we hold that candidacy is both a protected First Amendment right and a fundamental interest. Hence any legislative classification that significantly burdens that interest must be subjected to strict equal protection review.
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> x x x x x x x x x

[84] *Supra* note 79.

[85] *Id.* See also *Clements v. Fashing*, *supra* note 81.

x x x It is obviously conceivable that the impartial character of the civil service would be seriously jeopardized if people in positions of authority used their discretion to forward their electoral ambitions rather than the public welfare. Similarly if a public employee pressured other fellow employees to engage in corrupt practices in return for promises of post-election reward, or if an employee invoked the power of the office he was seeking to extract special favors from his superiors, the civil service would be done irreparable injury. Conversely, members of the public, fellow-employees, or supervisors might themselves request favors from the candidate or might improperly adjust their own official behavior towards him. Even if none of these abuses actually materialize, the possibility of their occurrence might seriously erode the public's confidence in its public employees. For the reputation of impartiality is probably as crucial as the impartiality itself; the knowledge that a clerk in the assessor's office who is running for the local zoning board has access to confidential files which could provide "pressure" points for furthering his campaign is destructive regardless of whether the clerk actually takes ad-vantage of his opportunities. For all of these reasons we find that the state indeed has a compelling interest in maintaining the honesty and impartiality of its public work force.

We do not, however, consider the exclusionary measure taken by Cranston-a flat prohibition on office-seeking of all kinds by all kinds of public employees-as even reasonably necessary to satisfaction of this state interest. As Justice Marshall pointed out in *Dunn v. Blumstein*, "[s]tatutes affecting constitutional rights must be drawn with 'precision'". For three sets of reasons we conclude that the Cranston charter provision pursues its objective in a far too heavy-handed manner and hence must fall under the equal protection clause. First, we think the nature of the regulation-a broad prophylactic rule-may be unnecessary to fulfillment of the city's objective. Second, even granting some sort of prophylactic rule may be required, the provision here prohibits candidacies for all types of public office, including many which would pose none of the problems at which the law is aimed. Third, the provision excludes the candidacies of all types of public employees, without any attempt to limit exclusion to those employees whose positions make them vulnerable to corruption and conflicts of interest.

As to approaches less restrictive than a prophylactic rule, there exists the device of the leave of absence. Some system of leaves of absence would permit the public employee to take time off to pursue

his candidacy while assuring him his old job should his candidacy be unsuccessful. Moreover, a leave of absence policy would eliminate many of the opportunities for engaging in the questionable practices that the statute is designed to prevent. While campaigning, the candidate would feel no conflict between his desire for election and his publicly entrusted discretion, nor any conflict between his efforts to persuade the public and his access to confidential documents. But instead of adopting a reasonable leave of absence policy, Cranston has chosen a provision that makes the public employee cast off the security of hard-won public employment should he desire to compete for elected office.

The city might also promote its interest in the integrity of the civil service by enforcing, through dismissal, discipline, or criminal prosecution, rules or statutes that treat conflict of interests, bribery, or other forms of official corruption. By thus attacking the problem directly, instead of using a broad prophylactic rule, the city could pursue its objective without unduly burdening the First Amendment rights of its employees and the voting rights of its citizens. x x x (citations omitted)

Three months after **Mancuso**, or on June 1973, the United States Supreme Court decided ***United States Civil Service Commission, et al. v. National Association of Letter Carriers AFL-CIO, et al.***[86] and ***Broadrick, et al. v. State of Oklahoma, et al.***[87]

Letter Carriers was a declaratory judgment action brought by the National Association of Letter Carriers, certain local Democratic and Republican political committees, and six individual federal employees, who asserted on behalf of themselves and all federal employees, that Section 9(a) of the Hatch Act, prohibiting federal employees from taking "an active part in political management or in political campaigns," was unconstitutional on its face.[88] **A divided three-judge court**

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[86] 413 U.S. 548, 93 S.Ct. 2880 (1973).

[87] 413 U.S. 601, 93 S.Ct. 2908 (1973).

[88] The provision states:

An employee in an Executive agency or an individual employed by the government of the District of Columbia may not-

held the section unconstitutional, but this ruling was reversed by the United States Supreme Court in this wise:

Until now, the judgment of Congress, the Executive, and the country appears to have been that partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly, elections are to play their proper part in representative government, and employees themselves are to be sufficiently free from improper influences. The restrictions so far imposed on federal employees are not aimed at particular parties, groups, or points of view, but apply equally to all partisan activities of the type described. They discriminate against no racial, ethnic, or religious minorities. Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls.

But, as the Court held in Pickering v. Board of Education,[89] *the government has an interest in regulating the conduct and 'the speech of its employees that differ(s) significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the (employee), as a citizen, in commenting upon matters of public concern and the interest of the (government), as an employer, in promoting the efficiency of the public services it performs through its employees.' Although Congress is free to strike a different balance than it has, if it so chooses, we think the balance it has so far struck is sustainable by the obviously important interests sought to be served by the limitations on partisan political activities now contained in the Hatch Act.*

It seems fundamental in the first place that employees in the Executive Branch of the Government, or those working for any of its agencies, should administer the law in accordance with the will

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(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or

(2) take an active part in political management or in political campaigns. 'For the purpose of this subsection, the phrase 'an active part in political management or in political campaigns' means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

[89] 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968).

of Congress, rather than in accordance with their own or the will of a political party. They are expected to enforce the law and execute the pro-grams of the Government without bias or favoritism for or against any political party or group or the members thereof. A major thesis of the Hatch Act is that to serve this great end of Government-the impartial execution of the laws-it is essential that federal employees, for example, not take formal positions in political parties, not undertake to play substantial roles in partisan political campaigns, and not run for office on partisan political tickets. Forbidding activities like these will reduce the hazards to fair and effective government.

There is another consideration in this judgment: it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.

Another major concern of the restriction against partisan activities by federal employees was perhaps the immediate occasion for enactment of the Hatch Act in 1939. That was the conviction that the rapidly expanding Government work force should not be employed to build a powerful, invincible, and perhaps corrupt political machine. The experience of the 1936 and 1938 campaigns convinced Congress that these dangers were sufficiently real that substantial barriers should be raised against the party in power-or the party out of power, for that matter-using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns.

A related concern, and this remains as important as any other, was to further serve the goal that employment and advancement in the Government service not depend on political performance, and at the same time to make sure that Government employees would be free from pres-sure and from express or tacit invitation to vote in a certain way or perform political chores in order to curry favor with their superiors rather than to act out their own beliefs. It may be urged that prohibitions against coercion are sufficient protection; but for many years the joint judgment of the Executive and Congress has been that to protect the rights of federal employees with respect to their jobs and their political acts and beliefs it is not enough merely to forbid one employee to attempt to influence or coerce another. For example, at the hearings in 1972 on proposed legislation for liberalizing the prohibition against political activity, the Chairman

of the Civil Service Commission stated that 'the prohibitions against active participation in partisan political management and partisan political campaigns constitute the most significant safeguards against coercion . . ..' Perhaps Congress at some time will come to a different view of the realities of political life and Government service; but that is its current view of the matter, and we are not now in any position to dispute it. Nor, in our view, does the Constitution forbid it.

Neither the right to associate nor the right to participate in political activities is absolute in any event.[90] x x x

x x x x x x x x x

As we see it, our task is not to destroy the Act if we can, but to construe it, if consistent with the will of Congress, so as to comport with constitutional limitations. (italics supplied)

Broadrick, on the other hand, was a class action brought by certain Oklahoma state employees seeking a declaration that a state statute regulating political activity by state employees was invalid. Section 818 of Oklahoma's Merit System of Personnel Administration Act restricts the political activities of the state's classified civil servants in much the same manner that the Hatch Act proscribes partisan political activities of federal employees.[91]

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[90] See, *e.g.*, *Rosario v. Rockefeller*, 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 999, 31 L.Ed.2d 274 (1972); *Bullock v. Carter*, 405 U.S. 134, 140-141, 92 S.Ct. 849, 854-855, 31 L.Ed.2d 92 (1972); *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971); *Williams v. Rhodes*, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10-11, 21 L.Ed.2d 24 (1968).

[91] The section reads as follows:

(1) No person in the classified service shall be appointed to, or demoted or dismissed from any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations, or because of race, creed, color or national origin or by reason of any physical handicap so long as the physical handicap does not prevent or render the employee less able to do the work for which he is employed.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay

It states, among others, that "[n]o employee in the classified service shall be … a candidate for nomination or election to

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or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for consideration; provided, however, that letters of inquiry, recommendation and reference by public employees of public officials shall not be considered official authority or influence unless such letter contains a threat, intimidation, irrelevant, derogatory or false information.

(3) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification or appointment made under any provision of this Act or in any manner commit any fraud preventing the impartial execution of this Act and rules made hereunder.

(4) No employee of the department, examiner, or other person shall defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under this law, or furnish to any person any special or secret information for the purpose of effecting (sic) the rights or prospects of any person with respect to employment in the classified service.

(5) No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

(6) No employee in the classified service, and no member of the Personnel Board shall, directly or indirectly, solicit, receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political organization, candidacy or other political purpose; and no state officer or state employee in the unclassified service shall solicit or receive any such assessment, subscription or contribution from an employee in the classified service.

(7) No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(8) Upon a showing of substantial evidence by the Personnel Director that any officer or employee in the state classified service, has knowingly violate any of the provisions of this Section, the State Personnel Board shall notify the officer or employee so charged and the appointing authority under whose jurisdiction the officer or employee serves. If the officer or employee so desires, the State Personnel Board shall hold

any paid public office…" Violation of Section 18 results in dismissal from employment, possible criminal sanctions and limited state employment ineligibility. The Supreme Court ruled that Section 18 is constitutional, thus:

> Appellants do not question Oklahoma's right to place even-handed restrictions on the partisan political conduct of state employees. Appellants freely concede that such restrictions serve valid and important state interests, particularly with respect to attracting greater numbers of qualified people by insuring their job security, free from the vicissitudes of the elective process, and by protecting them from 'political extortion. Rather, appellants maintain that however permissible, even commendable, the goals of s 818 may be, its language is unconstitutionally vague and its prohibitions too broad in their sweep, failing to distinguish between conduct that may be proscribed and conduct that must be permitted. For these and other reasons, appellants assert that the sixth and seventh paragraphs of s 818 are void *in toto* and cannot be enforced against them or anyone else.
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> We have held today that the Hatch Act is not impermissibly vague.[92] We have little doubt that s 818 is similarly not so vague that 'men of common intelligence must necessarily guess at its meaning.'[93] Whatever other problems there are with s 818, it is all but frivolous to suggest that the section fails to give adequate warning of what activities it proscribes or fails to set out 'explicit standards'

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a public hearing, or shall authorize the Personnel Director to hold a public hearing, and submit a transcript thereof, together with a recommendation, to the State Personnel Board. Relevant witnesses shall be allowed to be present and testify at such hearings. If the officer or employee shall be found guilty by the State Personnel Board of the violation of any provision of this Section, the Board shall direct the appointing authority to dismiss such officer or employee; and the appointing authority so directed shall comply.

[92] *United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO*, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796.

[93] *Connally v. General Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70 L.Ed. 322 (1926). See *Grayned v. City of Rockford*, 408 U.S. 104, 108-114, 92 S.Ct. 2294, 2298-2302, 33 L.Ed.2d 222 (1972); *Colten v. Kentucky*, 407 U.S. 104, 110-111, 92 S.Ct. 1953, 1957-1958, 32 L.Ed.2d 584 (1972); *Cameron v. Johnson*, 390 U.S. 611, 616, 88 S.Ct. 1335, 1338, 20 L.Ed.2d 182 (1968).

for those who must apply it. In the plainest language, it prohibits any state classified employee from being 'an officer or member' of a 'partisan political club' or a candidate for 'any paid public office.' It forbids solicitation of contributions 'for any political organization, candidacy or other political purpose' and taking part 'in the management or affairs of any political party or in any political campaign.' Words inevitably contain germs of uncertainty and, as with the Hatch Act, there may be disputes over the meaning of such terms in s 818 as 'partisan,' or 'take part in,' or 'affairs of' political parties. But what was said in *Letter Carriers*, is applicable here: 'there are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest.' x x x

x x x x x x x x x

[Appellants] nevertheless maintain that the statute is overbroad and purports to reach protected, as well as unprotected conduct, and must therefore be struck down on its face and held to be incapable of any constitutional application. We do not believe that the overbreadth doctrine may appropriately be invoked in this manner here.

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The consequence of our departure from traditional rules of standing in the First Amendment area is that any enforcement of a statute thus placed at issue is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression. Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly and only as a last resort. x x x

x x x But the plain import of our cases is, at the very least, that facial over-breadth adjudication is an exception to our traditional rules of practice and that *its function, a limited one at the outset, attenuates as the otherwise unprotected behavior that it forbids the State to sanction moves from 'pure speech' toward conduct* and that conduct-even if expressive-falls within the scope of otherwise valid criminal laws that reflect legitimate state interests in maintaining comprehensive

controls over harmful, constitutionally unprotected conduct. *Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect-at best a prediction-cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.* It is our view that s 818 is not substantially overbroad and that whatever overbreadth may exist should be cured through case-by-case analysis of the fact situations to which its sanctions, assertedly, may not be applied.

Unlike ordinary breach-of-the peace statutes or other broad regulatory acts, s 818 is directed, by its terms, at political expression which if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments. But at the same time, s 818 is not a censorial statute, directed at particular groups or viewpoints. The statute, rather, seeks to regulate political activity in an even-handed and neutral manner. As indicted, such statutes have in the past been subject to a less exacting overbreadth scrutiny. Moreover, the fact remains that s 818 regulates a substantial spectrum of conduct that is as manifestly subject to state regulation as the public peace or criminal trespass. This much was established in *United Public Workers v. Mitchell*, and has been unhesitatingly reaffirmed today in *Letter Carriers*. Under the decision in *Letter Carriers*, there is no question that s 818 is valid at least insofar as it forbids classified employees from: soliciting contributions for partisan candidates, political parties, or other partisan political purposes; becoming members of national, state, or local committees of political parties, or officers or committee members in partisan political clubs, or candidates for any paid public office; taking part in the management or affairs of any political party's partisan political campaign; serving as delegates or alternates to caucuses or conventions of political parties; addressing or taking an active part in partisan political rallies or meetings; soliciting votes or assisting voters at the polls or helping in a partisan effort to get voters to the polls; participating in the distribution of partisan campaign literature; initiating or circulating partisan nominating petitions; or riding in caravans for any political party or partisan political candidate.

x x x *It may be that such restrictions are impermissible and that s 818 may be susceptible of some other improper applications. But, as presently construed, we do not believe that s 818 must be discarded in toto because some persons' arguably protected conduct may or may not be caught or chilled by the statute. Section 818 is not substantially overbroad and it not, therefore, unconstitutional on its face*. (italics supplied)

Broadrick, likewise, held that the statute did not violate the equal protection clause by singling out classified service employees for restrictions on political expression, while leaving unclassified personnel free from such. The court reasoned that the state legislature must have some leeway in determining which of its employment positions required these restrictions.

Accordingly, **Letter Carriers** and **Broadrick** teach us that: (i) the state has interests as employer in regulating the speech of its employees that differ significantly from those it possesses in regulating the speech of the citizenry in general; (ii) the courts must therefore balance the legitimate interest of employee free expression against the interests of the employer in promoting efficiency of public services; (iii) if the employees' expression interferes with maintenance of efficient and regularly functioning services, the limitation on speech is not unconstitutional; and (iv) the Legislature is to be given some flexibility or latitude in ascertaining which positions are to be covered by any statutory restrictions.[94]

It is against this factual backdrop that ***Magill v. Lynch,***[95] a 1977 decision of the First Circuit of the United States Court of Appeals, gains prominence. Noteworthy, this case concerned a similar law, and was decided by the **same court** that decided **Mancuso**.

Magill involved Pawtucket, Rhode Island firemen who ran for city office in 1975. Pawtucket's "Little Hatch Act" prohibits city employees from engaging in a broad range of political

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[94] See also *Anderson v. Evans*, 660 F2d 153 (1981).

[95] 560 F.2d 22 (1977).

activities. Becoming a candidate for any city office is specifically proscribed,[96] the violation being punished by removal from office or immediate dismissal. The firemen brought an action against the city officials on the ground that that the provision of the city charter was unconstitutional. **However, the court, fully cognizant of *Letter Carriers* and *Broadrick*, took the position that *Mancuso* had since lost considerable vitality. It observed that the view that political candidacy was a fundamental interest which could be infringed upon only if less restrictive alternatives were not available, was a position which was no longer viable, since the Supreme Court (finding that the government's interest in regulating both the conduct and speech of its employees differed significantly from its interest in regulating those of the citizenry in general) had given little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of Congress, and applying a "balancing" test to determine whether limits on political activity by public employees substantially served government interests which were "important" enough to outweigh the employees' First Amendment rights.**[97]

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[96] The relevant charter provisions read as follows:

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(5) No appointed official, employee or member of any board or commission of the city, shall be a member of any national, state or local committee of a political party or organization, or an officer of a partisan political organization, or take part in a political campaign, except his right privately to express his opinion and to cast his vote.

(6) No appointed official or employee of the city and no member of any board or commission shall be a candidate for nomination or election to any public office, whether city, state or federal, except elected members of boards or commissions running for re-election, unless he shall have first resigned his then employment or office.

x x x x x x x x x

[97] See also Davis, R., *Prohibiting Public Employee from Running for Elective Office as Violation of Employee's Federal Constitutional Rights*, 44 A.L.R. Fed. 306.

It must be noted that the Court of Appeals ruled in this wise even though the election in **Magill** was characterized as **nonpartisan**, as it was reasonable for the city to fear, under the circumstances of that case, that politically active bureaucrats might use their official power to help political friends and hurt political foes. Ruled the court:

> The question before us is whether Pawtucket's charter provision, which bars a city employee's candidacy in even a nonpartisan city election, is constitutional. The issue compels us to extrapolate two recent Supreme Court decisions, *Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers* and *Broadrick v. Oklahoma*. Both dealt with laws barring civil servants from partisan political activity. *Letter Carriers* reaffirmed *United Public Workers v. Mitchell*, upholding the constitutionality of the Hatch Act as to federal employees. Broadrick sustained Oklahoma's "Little Hatch Act" against constitutional attack, limiting its holding to Oklaho-ma's construction that the Act barred only activity in partisan politics. *In Mancuso v. Taft, we assumed that proscriptions of candidacy in nonpartisan elections would not be constitutional. Letter Carriers and Broadrick compel new analysis.*
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> xxx xxx xxx
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> What we are obligated to do in this case, as the district court recognized, is to *apply the Court's interest balancing approach to the kind of nonpartisan election* revealed in this record. *We believe that the district court found more residual vigor in our opinion in Mancuso v. Taft than remains after Letter Carriers. We have particular reference to our view that political candidacy was a fundamental interest which could be trenched upon only if less restrictive alternatives were not available. While this approach may still be viable for citizens who are not government employees, the Court in Letter Carriers recognized that the government's interest in regulating both the conduct and speech of its employees differs significantly from its interest in regulating those of the citizenry in general*. Not only was *United Public Workers v. Mitchell* "unhesitatingly" reaffirmed, but the Court gave little weight to the argument that prohibitions against the coercion of government employees were a less drastic means to the same end, deferring to the judgment of the Congress. We cannot be more precise than the Third Circuit in characterizing the Court's approach as "some sort

of 'balancing' process."[98] It appears that the government may place limits on campaigning by public employees if the limits substantially serve government interests that are "important" enough to outweigh the employees' First Amendment rights. x x x (italics supplied)

Upholding the constitutionality of the law in question, the **Magill** court detailed the major governmental interests discussed in **Letter Carriers** and applied them to the Pawtucket provision as follows:

In *Letter Carriers*[,] the first interest identified by the Court was that of an efficient government, faithful to the Congress rather than to party. The district court discounted this interest, reasoning that candidates in a local election would not likely be committed to a state or national platform. This observation undoubtedly has substance insofar as allegiance to broad policy positions is concerned. But a different kind of possible political intrusion into efficient administration could be thought to threaten municipal government: not into broad policy decisions, but into the particulars of administration favoritism in minute decisions affecting welfare, tax assessments, municipal contracts and purchasing, hiring, zoning, licensing, and inspections. Just as the Court in *Letter Carriers* identified a second governmental interest in the avoidance of the appearance of "political justice" as to policy, so there is an equivalent interest in avoiding the appearance of political preferment in privileges, concessions, and benefits. The appearance (or reality) of favoritism that the charter's authors evidently feared is not exorcised by the nonpartisan character of the formal election process. Where, as here, party support is a key to successful campaigning, and party rivalry is the norm, the city might reasonably fear that politically active bureaucrats would use their official power to help political friends and hurt political foes. This is not to say that the city's interest in visibly fair and effective administration necessarily justifies a blanket prohibition of all employee campaigning; if parties are not heavily involved in a campaign, the danger of favoritism is less, for neither friend nor foe is as easily identified.

A second major governmental interest identified in *Letter Carriers* was avoiding the danger of a powerful political machine. The Court

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[98] *Alderman v. Philadelphia Housing Authority*, 496 F.2d 164, 171 n. 45 (974).

had in mind the large and growing federal bureaucracy and its partisan potential. The district court felt this was only a minor threat since parties had no control over nominations. But in fact candidates sought party endorsements, and party endorsements proved to be highly effective both in determining who would emerge from the primary election and who would be elected in the final election. Under the prevailing customs, known party affiliation and support were highly significant factors in Pawtucket elections. The charter's authors might reasonably have feared that a politically active public work force would give the incumbent party, and the incumbent workers, an unbreakable grasp on the reins of power. In municipal elections especially, the small size of the electorate and the limited powers of local government may inhibit the growth of interest groups powerful enough to outbalance the weight of a partisan work force. Even when nonpartisan issues and candidacies are at stake, isolated government employees may seek to influence voters or their co-workers improperly; but a more real danger is that a central party structure will mass the scattered powers of government workers behind a single party platform or slate. Occasional misuse of the public trust to pursue private political ends is tolerable, especially be-cause the political views of individual employees may balance each other out. But party discipline eliminates this diversity and tends to make abuse systematic. Instead of a handful of employees pressured into advancing their immediate superior's political ambitions, the entire government work force may be expected to turn out for many candidates in every election. In Pawtucket, where parties are a continuing presence in political campaigns, a carefully orchestrated use of city employees in support of the incumbent party's candidates is possible. The danger is scarcely lessened by the openness of Pawtucket's nominating procedure or the lack of party labels on its ballots.

The third area of proper governmental interest in *Letter Carriers* was ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity. The district court did not address this factor, but looked only to the possibility of a civil servant using his position to influence voters, and held this to be no more of a threat than in the most nonpartisan of elections. But we think that the possibility of coercion of employees by superiors remains as strong a factor in municipal elections as it was in *Letter Carriers*. Once again, it is the systematic and coordinated exploitation of public servants for political ends that a legislature is most likely to see as the primary threat of

employees' rights. Political oppression of public employees will be rare in an entirely nonpartisan system. Some superiors may be inclined to ride herd on the politics of their employees even in a nonpartisan context, but without party officials looking over their shoulders most supervisors will prefer to let employees go their own ways.

In short, the government may constitutionally restrict its employees' participation in nominally nonpartisan elections if political parties play a large role in the campaigns. In the absence of substantial party involvement, on the other hand, the interests identified by the *Letter Carriers* Court lose much of their force. While the employees' First Amendment rights would normally outbalance these diminished interests, we do not suggest that they would always do so. Even when parties are absent, many employee campaigns might be thought to endanger at least one strong public interest, an interest that looms larger in the context of municipal elections than it does in the national elections considered in *Letter Carriers*. The city could reasonably fear the prospect of a subordinate running directly against his superior or running for a position that confers great power over his superior. An employee of a federal agency who seeks a Congressional seat poses less of a direct challenge to the command and discipline of his agency than a fireman or policeman who runs for mayor or city council. The possibilities of internal discussion, cliques, and political bargaining, should an employee gather substantial political support, are considerable. (citations omitted)

The court, however, remanded the case to the district court for further proceedings in respect of the petitioners' overbreadth charge. Noting that invalidating a statute for being overbroad is "not to be taken lightly, much less to be taken in the dark," the court held:

The governing case is *Broadrick*, which introduced the doctrine of "substantial" overbreadth in a closely analogous case. Under *Broadrick*, when one who challenges a law has engaged in constitutionally unprotected conduct (rather than unprotected speech) and when the challenged law is aimed at unprotected conduct, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Two major uncertainties attend the doctrine: how to distinguish speech from conduct, and how to define "substantial" overbreadth. We are spared the first inquiry by *Broadrick* itself. The plaintiffs in

that case had solicited support for a candidate, and they were subject to discipline under a law proscribing a wide range of activities, including soliciting contributions for political candidates and becoming a candidate. The Court found that this combination required a substantial overbreadth approach. The facts of this case are so similar that we may reach the same result without worrying unduly about the sometimes opaque distinction between speech and conduct.

The second difficulty is not so easily disposed of. *Broadrick* found no substantial over-breadth in a statute restricting partisan campaigning. Pawtucket has gone further, banning participation in nonpartisan campaigns as well. *Measuring the substantiality of a statute's overbreadth apparently requires, inter alia, a rough balancing of the number of valid applications compared to the number of potentially invalid applications. Some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable. The question is a matter of degree; it will never be possible to say that a ratio of one invalid to nine valid applications makes a law substantially over-broad. Still, an overbreadth challenger has a duty to provide the court with some idea of the number of potentially invalid applications the statute permits*. Often, simply reading the statute in the light of common experience or litigated cases will suggest a number of probable invalid applications. But this case is different. Whether the statute is overbroad depends in large part on the number of elections that are insulated from party rivalry yet closed to Pawtucket employees. For all the record shows, every one of the city, state, or federal elections in Pawtucket is actively contested by political parties. Certainly the record suggests that parties play a major role even in campaigns that often are entirely nonpartisan in other cities. School committee candidates, for example, are endorsed by the local Democratic committee.

The state of the record does not permit us to find overbreadth; indeed such a step is not to be taken lightly, much less to be taken in the dark. On the other hand, the entire focus below, in the short period before the election was held, was on the constitutionality of the statute as applied. Plaintiffs may very well feel that further efforts are not justified, *but they should be afforded the opportunity to demonstrate that the charter forecloses access to a significant number of offices, the candidacy for which by municipal employees would not pose the possible threats to government efficiency and integrity which Letter Carriers, as we have interpreted it, deems significant*.

Accordingly, we remand for consideration of plaintiffs' overbreadth claim. (italics supplied, citations omitted)

Clearly, *Letter Carriers, Broadrick,* and *Magill* demonstrate beyond doubt that *Mancuso v. Taft,* which was heavily relied upon by the *ponencia,* has effectively been overruled. [99] As it is no longer good law, the *ponencia's* exhortation that we should follow Mancuso "[since] the Americans, from whom we copied the provision in question, had already stricken down a similar measure for being unconstitutional[,]" is misplaced and unwarranted.

Thus, in the instant case, I respectfully submit that Section 13 of RA 9369, which reiterates Section 66 of the Omnibus Election Code, is **not violative of the equal protection clause**. It is crystal clear that these deemed resignation provisions **substantially serve governmental interests** (*i.e.*, (i) efficient civil service faithful to the government and the people rather than to party, (ii) avoiding the appearance of "political justice" as to policy, (iii) avoiding the danger of a powerful political machine, and (iv) ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity), which are important enough to outweigh the **non-fundamental right of appointive officials and employees to seek elective office**.

Instead of the overruled case of Mancuso, we should take heed of the ruling in ***Adams v. Supreme Court of Pennsylvania***,[100] *viz.*:

> The relevant authorities provide that federal and state officials may regulate the First Amendment rights of various government employees to an extent greater than is appropriate for regular citizens. The issue is not whether a "compelling state interest" supports the relevant law. Rather, the proper test involves a balance between the individual's First Amendment rights and the interests the government

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[99] *Fernandez v. State Personnel Board, et al.*, 175 Ariz. 39, 852 P.2d 1223 (1993).

[100] 502 F.Supp. 1282 (1980).

has at stake.[101] In *Morial v. Judicial Commission of the State of Louisiana*,[102] the Court of Appeals for the Fifth Circuit held that this principle extends to state judicial officers. Furthermore, the precedent provided the rationale for resolving Adams's argument.

It must be conceded that "resign to run" laws place substantial burdens on a potential candidate's right to seek office. *Yet the "chilling" effect of these provisions should not be exaggerated, since they do not reach a wide variety of other activities protected by the First Amendment guarantee of free speech. The statutes, moreover, serve important state interests*. For example, they help prevent the abuse of judicial office by candidates and former candidates and they safeguard the appearances of propriety. *Finally, as the Morial court noted, the less-restrictive alternative of a forced leave of absence would not be sufficient to guard the state's interests, because the danger of corruption, real or perceived, would persist with regard to defeated candidates on their return to the bench*. Weighing these considerations, it must be concluded that the Morial analysis is compelling and the "resign to run" law is constitutional. (italics supplied)

iii. Classification Germane to the Purposes of the Law

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[103] It does not require the universal application of the laws on all persons or things without

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[101] *Broadrick v. Oklahoma*, 413 U.S. 601, 606, 93 S.Ct. 2908, 2912, 37 L.Ed.2d 830 (1973) (state civil service); *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 564, 93 S.Ct. 2880, 2889, 37 L.Ed.2d 796 (1973) (federal civil service); *Pickering v. Board of Education*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1969) (public school teachers); *Blameuser v. Andrews*, 630 F.2d 538 at 542-543 (7th Cir., 1980) (military officers).

[102] 565 F.2d at 299-303.

[103] *Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957); *Sison v. Ancheta, et al.*, G.R. No. 59431, July 25, 1984, 130 SCRA 654, 662; *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 375.

distinction.[104] What the clause simply requires is equality among equals as determined according to a valid classification.[105] By classification is meant the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars.[106]

The test for a valid classification is reasonableness,[107] which criterion is complied with upon a showing of the following:

(1) The classification rests 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 same class.[108]

In the main, the *ponencia* admits the presence of the first, third and fourth requisites. It, however, holds that the differential treatment of persons holding appointive offices as opposed to those holding elective offices is not germane to the purpose of the law.

I respectfully disagree.

Preliminarily, the equal protection clause is satisfied so long as there is a plausible policy reason for the classification.[109] The statute is accorded a strong presumption of validity, and the challenger must bear the burden of showing that the act creates a classification that is "palpably arbitrary or capricious;"[110]

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[104] *The Philippine Judges Association, et al. v. Prado, et al.*, G.R. No. 105371, November 11, 1993, 227 SCRA 703, 712.

[105] *Id*.

[106] *Id*.

[107] *The National Police Commission v. De Guzman, et al.*, G.R. No. 106724, February 9, 1994, 229 SCRA 801, 809.

[108] *People v. Cayat*, 68 Phil. 12, 18 (1939).

[109] *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326, 2332, 120 L.Ed.2d 1 (1992).

[110] *Chamber of Commerce of the U.S.A. v. New Jersey*, 89 N.J. 131, 159, 445 A.2d 353 (1982).

otherwise, the legislative determination as to what is a sufficient distinction to warrant the classification will not be overthrown.[111] The challenger must refute **all** possible rational bases for the differing treatment, whether or not the Legislature cited those bases as reasons for the enactment.[112] The case law is to uphold the statute if we "can conceive of any reason to justify the classification;"[113] that the constitutionality of the law must be sustained even if the reasonableness of the classification is "fairly debatable."[114]

The *ponencia* readily acknowledges the rationale behind the deemed resignation provision. It holds:

> The obvious reason for the challenged provision is to prevent the use of a governmental position to promote one's candidacy, or to even wield a dangerous or coercive influence on the electorate. The measure is further aimed at promoting the efficiency, integrity, and discipline of the public service by eliminating the danger that the discharge of official duty would be motivated by political considerations rather than the welfare of the public. The restriction is also justified by the proposition that the entry of civil servants to the electoral arena, while still in office, could result in the neglect or inefficiency in the performance of duty because they would be attending to their campaign rather than to their office work.[115] (citation omitted)

Nevertheless, the *ponencia* faults Section 13 of Republic Act No. 9369 and Section 66 of the Omnibus Election Code because "whether one holds an appointive office or an elective one, the evils sought to be prevented by the measure remain." The *ponencia* explains:

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[111] *Werner v. Southern California Associated Newspapers*, 35 Cal.2d 121, 216 P.2d 825 (1950).

[112] *Id*.

[113] *Newark Superior Officers Ass'n. v. City of Newark*, 98 N.J. 212, 227, 486 A.2d 305 (1985).

[114] *Id.*; *New Jersey State League of Municipalities, et al. v. State of New Jersey*, 257 N.J.Super. 509, 608 A.2d 965 (1992).

[115] Majority Decision, pp. 22-23.

… For example, the Executive Secretary, or any Member of the Cabinet for that matter, could wield the same influence as the Vice-President who at the same time is appointed to a Cabinet post (in the recent past, elected Vice-Presidents were appointed to take charge of national housing, social welfare development, interior and local government, and foreign affairs). With the fact that they both head executive offices, there is no valid justification to treat them differently when both file their [Certificates of Candidacy] for the elections. Under the present state of our law, the Vice-President, in the example, running this time, let us say, for President, retains his position during the entire election period and can still use the resources of his office to support his campaign.[116]

This reasoning, however, fails to appreciate the well-settled rule that, by itself, the fact that a legislative **classification is underinclusive will not render it unconstitutionally arbitrary or invidious**.[117] The Legislature is free to choose to remedy only part of a problem, as it may "select one phase of a field and apply a remedy there, neglecting the others."[118] Stated differently, **there is no constitutional requirement that regulation must reach each and every class to which it might be applied;**[119] **that the Legislature must be held rigidly to the choice of regulating all or none.**[120] **The state**

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[116] *Id.* at 23.

[117] *De Guzman, et al. v. Commission on Elections*, G.R. No. 129118, July 19, 2000, 336 SCRA 188, 197; *City of St. Louis v. Liberman*, 547 S.W.2d 452 (1977); *First Bank & Trust Co. v. Board of Governors of Federal Reserve System*, 605 F.Supp. 555 (1984); *Richardson v. Secretary of Labor*, 689 F.2d 632 (1982); *Holbrook v. Lexmark International Group, Inc.*, 65 S.W.3d 908 (2002).

[118] *Cleland v. National College of Business*, 435 U.S. 213, 220, 98 S.Ct. 1024, 55 L.Ed.2d 225 (1978) citing *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 489, 75 S.Ct. 461, 99 L.Ed. 563 (1955); *Holbrook v. Lexmark International Group, Inc.*, *id.*; *People v. Silva* 27 Cal.App.4th 1160, 1170-1171, 33 Cal.Rptr.2d 181 (1994); *People v. Fitch*, 55 Cal.App.4th 172, 63 Cal.Rptr.2d 753 (1997).

[119] *State v. Ewing*, 518 S.W.2d 643 (1975); *Werner v. Southern California Associated Newspapers*, *supra* note 111.

[120] *State v. Ewing*, *id.*; *Lutz v. Araneta*, 98 Phil. 148, 153 (1955); *Tolentino v. Secretary of Finance, et al.*, G.R. No. 115455, August 25,

is free to regulate one step at a time, recognizing degrees of harm and addressing itself to phases of a problem which presently seem most acute to the legislative mind.[121] For when the Legislature creates a statute, it is not required to solve all the evils of a particular wrong in one fell swoop.[122] ***New Jersey State League of Municipalities, et al. v. State of New Jersey***[123] succinctly states the principle thus:

It is axiomatic that in attempting to remedy an injustice, the Legislature need not address every manifestation of the evil at once; it may proceed "one step at a time."[124] Thus, "remedial legislation need not be 'all-or-nothing,'[;] ... the Legislature can decide that to start somewhere is better than to start nowhere."[125] Therefore, it is not necessarily fatal that a law is underinclusive by failing to include some who share characteristics of the included class, so long as there is a rational justification for excluding part of the affected class.[126]

1994, 235 SCRA 630, 684; *De Guzman, et al. v. Commission on Elections*, *supra* note 117; *Re: (a) Request of Assistant Court Administrators for Upgrading of their Rank, Salary and Privileges upon the Effectivity of Republic Act No. 9282 Elevating the Court of Tax Appeals to the Level of the Court of Appeals and (b) Grant of Special Distortion Allowance to Positions in the Judiciary with Rank of Judges of Metropolitan Trial Courts, Assistant Clerk of Court of the Court of Appeals and Division Clerks of Court of the Court of Appeals*, A.M. No. 03-10-05-SC, October 1, 2004, 440 SCRA 16, 31; *Werner v. Southern California Associated Newspapers*, *supra* note 111.

[121] *State v. Ewing*, *id.*; *Williamson v. Lee Optical of Oklahoma*, *supra* note 118.

[122] *Chicago National League Ball Club, Inc. v. Thompson*, 108 Ill.2d 357, 91 Ill.Dec. 610, 483 N.E.2d 1245 (1985); *People v. Adams*, 144 Ill.2d 381, 581 N.E.2d 637, 163 Ill.Dec. 483 (1991).

[123] *Supra* note 114.

[124] *Greenberg v. Kimmelman*, 99 N.J. 552, 577, 494 A.2d 294 (1985).

[125] *Drew Assocs. of N.J., L.P. v. Travisano*, 122 N.J. 249, 258, 584 A.2d 807 (1991).

[126] *Piscataway Tp. Bd. of Ed. v. Caffiero*, 86 N.J. 308, 324-25, 431 A.2d 799 (1981); *ADA Financial Serv. Corp. v. New Jersey*, 174 N.J.Super. 337, 348, 416 A.2d 908 (1979).

The Legislature in addressing an issue must invariably draw lines and make choices, thereby creating some inequity as to those included or excluded. As long as "the bounds of reasonable choice" are not exceeded, the courts must defer to the legislative judgment.[127] We may not strike down a law merely because the legislative aim would have been more fully achieved by expanding the class.[128] We must determine whether there is a reasonable basis for the Legislature's choice and not substitute our own judgment for that of the Legislature.[129]

Correspondingly, it is not sufficient grounds for invalidation that we may find that the statute's distinction is unfair, underinclusive, unwise, or not the best solution from a public-policy standpoint; rather, we must find that there is no reasonably rational reason for the differing treatment.[130]

In the instant case, is there a **rational justification** for excluding elected officials from the operation of the deemed resigned provisions? I submit that there is.

An election is the embodiment of the popular will, perhaps the purest expression of the sovereign power of the people.[131] It involves the choice or selection of candidates to public office by popular vote.[132] Considering that elected officials are put in office by their constituents **for a definite term**, it may justifiably be said that they were excluded from the ambit of the deemed resigned provisions in utmost respect for the mandate of the sovereign will of the people. In other words, complete deference is accorded to the will of the electorate that they be served by

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[127] *Taxpayers Ass'n of Weymouth Tp. v. Weymouth Tp.*, 80 N.J. 6, 40, 364 A.2d 1016 (1976).

[128] *Robbiani v. Burke*, 77 N.J. 383, 392-93, 390 A.2d 1149 (1978).

[129] *Drew Assocs. of N.J., L.P. v. Travisano, supra* note 128.

[130] *New Jersey State League of Municipalities, et al. v. State of New Jersey, supra* note 114.

[131] *Taule v. Santos, et al.*, G.R. No. 90336, August 12, 1991, 200 SCRA 512, 519.

[132] *Id*.

such officials until the end of the term for which they were elected. In contrast, there is no such expectation insofar as appointed officials are concerned.

The dichotomized treatment of appointive and elective officials is therefore germane to the purposes of the law. For the law was made not merely to preserve the integrity, efficiency, and discipline of the public service; the Legislature, whose wisdom is outside the rubric of judicial scrutiny, also thought it wise to balance this with the competing, yet equally compelling, interest of deferring to the sovereign will.

Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code are not overbroad.

Apart from sustaining petitioners' equal protection challenge, the *ponencia* took an **unwarranted step** further and struck down Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code for being unconstitutionally overbroad in two respects, *viz*:

(1) The assailed provisions limit the candidacy of all civil servants holding appointive posts without due regard for the type of position being held by the employee seeking an elective post and the degree of influence that may be attendant thereto;[133] and

(2) The assailed provisions limit the candidacy of any and all civil servants holding appointive positions without due regard for the type of office being sought, whether it be partisan or nonpartisan in character, or in the national, municipal or *barangay* level.[134]

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[133] Majority Decision, pp. 25-26.

[134] *Id*.

For reasons discussed below, I respectfully submit that Section 4(a) of Resolution 8678, Section 13 of RA 9369, and Section 66 of the Omnibus Election Code are not unconstitutionally overbroad and must therefore remain fully operative.

i. Limitation on Candidacy Regardless of Incumbent Appointive Official's Position, is Valid

The *ponencia* declares that the assailed provisions are overly broad because they are made to apply indiscriminately to all civil servants holding appointive posts, without due regard for the type of position being held by the employee running for elective office and the degree of influence that may be attendant thereto.

Apparently, the *ponencia* assumes that the evils sought to be prevented by the assailed provisions are made possible only when the incumbent appointive official running for elective office holds a position of influence. For this reason, it would limit the application of the challenged restriction solely to incumbent appointive officials in positions of influence.

Regrettably, the *ponencia* manifestly fails to take into account a different kind of possible threat to the government created by the partisan potential of a large and growing bureaucracy: the **danger of systematic abuse** perpetuated by a "powerful political machine" that has amassed "the scattered powers of government workers" so as to give itself, and its incumbent workers an "unbreakable grasp on the reins of power."[135]

Attempts by government employees to wield influence over others or to make use of their respective positions (apparently) to promote their own candidacy may seem tolerable – even innocuous – particularly when viewed in isolation from other similar attempts by other government employees. Yet it would be decidedly foolhardy to discount the equally (if not more) realistic and dangerous possibility that such seemingly disjointed attempts, when taken together, constitute a veiled effort on the part of a reigning political party to advance its own agenda

[135] *Magill v. Lynch, supra* note 95.

through a "carefully orchestrated use of [appointive and/or elective] officials"[136] coming from various levels of the bureaucracy.

I respectfully submit that the avoidance of such a "politically active public work force"[137] which could give a political machine an "unbreakable grasp on the reins of power"[138] is reason enough to impose a restriction on the candidacies of all appointive public officials without further distinction as to the type of positions being held by such employees or the degree of influence that may be attendant thereto.

ii. Limitation on Candidacy Regardless of Type of Office Sought, is Valid

The *ponencia* also maintains that the assailed provisions are overly broad because they are made to apply indiscriminately to all civil servants holding appointive offices, without due regard for the type of elective office being sought, whether it be partisan or nonpartisan in character, or in the national, municipal or *barangay* level.[139]

Adhering to the view that "the concerns of a truly partisan office and the temptations it fosters are sufficiently different from those involved in an office removed from regular party politics [so as] to warrant distinctive treatment"[140] in a statute similar to the ones being assailed, the *ponencia* would have the challenged restriction on candidacy apply only in situations where the elective office sought is partisan in character. To the extent, therefore, that it supposedly operates to preclude even candidacies for nonpartisan elective offices, the *ponencia* pronounces the challenged restriction as overbroad.

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[136] *Id*.

[137] *Id*.

[138] *Id*.

[139] Majority Opinion, p. 26.

[140] *Id.* at 27, citing *Mancuso v. Taft, supra* note 56.

Again, I respectfully disagree. A careful review, however, of the assailed provisions and related laws on the matter will readily show that the perceived overbreadth is more apparent than real.

A perusal of Resolution 8678 will immediately disclose that the rules and guidelines set forth therein refer to the filing of certificates of candidacy and nomination of official candidates of registered **political parties, in connection with the May 10, 2010 National and Local Elections**.[141] Obviously, these rules and guidelines, including the restriction in Section 4(a) of Resolution 8678, were issued specifically for purposes of the May 10, 2010 National and Local Elections, which, it must be noted, are decidedly *partisan* in character. Thus, it is clear that the restriction in Section 4(a) of RA 8678 applies only to the candidacies of appointive officials vying for *partisan* elective posts in the May 10, 2010 National and Local Elections. On this score alone, the overbreadth challenge leveled against Section 4(a) is clearly unsustainable.

Similarly, a fair reading of Section 13 of RA 9369 and Section 66 of the Omnibus Election Code, in conjunction with other related laws on the matter, will confirm that these provisions are likewise not intended to apply to elections for nonpartisan public offices.

The only elections which are relevant to the issue at bar are the elections for *barangay* offices, since these are the only elections in this country which involve *nonpartisan* public offices.[142]

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[141] See *rollo*, p.3 where the titular heading, as well as the first paragraph of Resolution 8678, refers to the contents of said Resolution as the "guidelines on the filing of certificates of candidacy and nomination of official candidates of registered political parties in connection with the May 10, 2010 National and Local Elections."

[142] The *Sangguniang Kabataan* elections, although nonpartisan in character, are, arguably, not relevant to the present inquiry because they are unlikely to involve the candidacies of appointive public officials.

In this regard, it is well to note that from as far back as the enactment of the Omnibus Election Code in 1985, Congress has intended that these nonpartisan lections should be governed by special rules, including a separate rule on deemed resignations which is found in Section 39 of the Omnibus Election Code. Said provision states:

> Section 39. Certificate of Candidacy. – No person shall be elected *punong barangay or kagawad ng sangguniang barangay* unless he files a sworn certificate of candidacy in triplicate on any day from the commencement of the election period but not later than the day before the beginning of the campaign period in a form to be prescribed by the Commission. The candidate shall state the *barangay* office for which he is a candidate.
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> *Any elective or appointive municipal, city, provincial or national official or employee, or those in the civil or military service, including those in government-owned or-controlled corporations, shall be considered automatically resigned upon the filing of certificate of candidacy for a barangay office.*

Since *barangay* elections are governed by a separate deemed resignation rule, under the present state of law, there would be no occasion to apply the restriction on candidacy found in Section 66 of the Omnibus Election Code, and later reiterated in the proviso of Section 13 of RA 9369, to any election other than a *partisan* one. For this reason, the overbreadth challenge raised against Section 66 of the Omnibus Election Code and Section 13 of RA 9369 must again fail.

In any event, assuming, for the sake of argument, that Section 66 of the Omnibus Election Code and the corresponding proviso in Section 13 of RA 9369 are general rules intended to apply also to elections for nonpartisan public offices, it is respectfully submitted that the overbreadth challenge mounted against said provisions would be just as futile.

In the first place, the view that Congress is limited to controlling only partisan behavior has not received judicial imprimatur. As previously discussed, the ruling case law in the United States

tells us that the government has an interest in regulating the conduct and speech of its employees that differs significantly from those it possesses in connection with regulation of the speech of the citizenry in general.[143]

Moreover, in order to have a statute declared as unconstitutional or void on its face for being overly broad, particularly where, as in this case, "conduct" and not "pure speech" is involved, the overbreadth must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.[144]

In operational terms, measuring the substantiality of a statute's overbreadth would entail, among other things, a rough balancing of the number of valid applications compared to the number of potentially invalid applications.[145] In this regard, some sensitivity to reality is needed; an invalid application that is far-fetched does not deserve as much weight as one that is probable.[146] The question is a matter of degree.[147] Thus, assuming for the sake of argument that the partisan-nonpartisan distinction is valid and necessary such that a statute which fails to make this distinction is susceptible to an overbreadth attack, the overbreadth challenge presently mounted must demonstrate or provide this Court with some idea of the number of potentially invalid elections (*i.e.*, the number of elections that were insulated from party rivalry but were nevertheless closed to appointive employees) that may in all probability result from the enforcement of the statute.[148]

The record of the case at bar, however, does not permit us to find overbreadth. Borrowing from the words of **Magill**, indeed, such a step is not to be taken lightly, much less to be taken in

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[143] *Smith v. Ehrlich*, 430 F. Supp. 818 (1976).

[144] *Broadrick v. Oklahoma*, *supra* note 87.

[145] *Magill v. Lynch*, *supra* note 95.

[146] *Id*.

[147] *Id*.

[148] *Id*.

the dark,[149] especially since an overbreadth finding in this case would effectively prohibit the state from enforcing an otherwise valid measure against conduct that is admittedly within its power to proscribe.[150]

At this juncture, it is well to note that the application of the overbreadth doctrine in the analysis of statutes that purportedly attempt to restrict or burden the exercise of a First Amendment right is manifestly strong medicine that must be employed by the Court sparingly, and only as a last resort.[151] This is because any enforcement of a statute thus placed at issue is totally forbidden until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression, thereby increasing the possible harm to society that may result from permitting some unprotected speech or conduct to go unpunished.

Thus, claims of facial overbreadth have been entertained only where, in the judgment of the court, the possible harm to society in permitting some unprotected speech or conduct to go unpunished is outweighed by the possibility that the protected speech of others may be muted, and perceived grievances left to fester because of the possible inhibitory effects of overly broad statutes.[152] Also, facial overbreadth has not been invoked where a limiting construction could be placed on the challenged statute, and where the court could conceive of readily apparent constructions which would cure, or at least substantially reduce, the alleged overbreadth of the statute.[153]

I respectfully submit that the probable harm to society in permitting incumbent appointive officials to remain in office even as they actively pursue elective posts far outweighs the less likely evil of having arguably protected candidacies curtailed

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149 *Id*.

150 *Broadrick v. Oklahoma, supra* note 87.

151 *Id*.

152 *Id*.

153 *Mining v. Wheeler*, 378 F. Supp. 1115 (1974).

because of the possible inhibitory effect of a potentially overly broad statute. Thus, while the challenged provisions may deter protected conduct to some unknown extent, that effect – at best a prediction – cannot, with confidence, justify invalidating these statutes *in toto* and so prohibit the State from enforcing them against conduct that is concededly within its power and interest to proscribe.[154]

Where the historic or likely frequency of a statute's conceivably impermissible applications is relatively low, it may be more appropriate to guard against the statute's conceivably impermissible applications through case-by-case adjudication rather than through facial invalidation.[155]

A last word

The importance of the coming May 2010 national and local elections cannot be overstated. The country cannot afford an election which will be perceived as neither free nor fair. It is the bounden duty of this Court to protect the integrity of our electoral process from any suspicion of partisan bias. The people should see judges and justices wearing judicial and not political robes. A court that cannot elevate itself above politics cannot protect the rule of law.

Accordingly, I vote to DISMISS the petition.

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[154] *Broadrick v. Oklahoma, supra* note 87.

[155] *Aiello v. City of Wilmington, Delaware,* 623 F.2d 845 (1980).

DISSENTING OPINION

CARPIO, *J.*:

I join Chief Justice Reynato S. Puno in his dissent.

The law is plain, clear and unequivocal that **appointive public officials** are deemed automatically resigned from office upon filing their certificates of candidacy. Paragraph 3, Section 11 of Republic Act No. 8436, as amended by Republic Act No. 9369, provides:

> For this purpose, the Commission shall set the deadline for the filing of certificate of candidacy/petition of registration/manifestation to participate in the election. Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy: Provided, That, unlawful acts or omissions applicable to a candidate shall effect only upon that start of the aforesaid campaign period: **Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certificate of candidacy**. (Emphasis supplied)

The final proviso in paragraph 3, Section 11 of RA No. 8436, as amended, is a mere reiteration of Section 66 of the Omnibus Election Code, which provides:

> Section 66. *Candidates holding appointive office or positions.* — Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

Congress inserted the final proviso to clarify that Section 66 of the Omnibus Election Code still applies despite the second sentence in the paragraph 3 of Section 11, which states that a person who files a certificate of candidacy is considered a candidate only upon the start of the campaign period.

The final proviso in paragraph 3, Section 11 of RA No. 8436, as amended, and Section 66 of the Omnibus Election Code are constitutional.

First. **Appointive public officials are civil service officers or employees**. Section 2(1), Article IX-B of the 1987 Constitution provides:

> The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

The Constitution expressly prohibits civil service officers and employees from engaging in **any electioneering or partisan political activity**. Section 2(4), Article IX-B of the 1987 Constitution provides:

> No officer or employee in the civil service shall engage, directly or indirectly, in **any electioneering or partisan political activity**. (Emphasis supplied)

Since the Constitution also provides that suffrage "may be exercised by **all** citizens,"[1] Section 2(4) of Article IX-B does not prohibit civil service officers and employees from voting.[2] Thus, civil service officers and employees cannot engage in any electioneering or partisan political activity **except to vote**.

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[1] Section 1, Article V of the 1987 Constitution provides: "Section 1. Suffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage."

[2] Both the 1935 and 1973 Constitutions contained the phrase "**except to vote**." Thus, Section 2, Article XII of the 1935 Constitution provides: "Section 2. Officers and employees in the Civil Service, including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote." Section 5, Article XII-B of the 1973 Constitution provides: "Section 5. No officer or employee in the Civil Service, including members of the armed forces, shall engage directly or indirectly, in any partisan political activity or take part in any election except to vote."

This is clear from the second paragraph of Section 3(3), Article XVI of the 1987 Constitution, which provides:

No member of the military shall engage directly or indirectly in any partisan political activity, **except to vote**. (Emphasis supplied)

The Civil Service laws[3] implement this constitutional ban by stating that civil service officers and employees cannot engage in any partisan political activity **except to vote**. Section 55, Chapter 7, Title I, Book V of the Administrative Code of 1987 provides:

Section 55. *Political Activity*. — No officer or employee in the Civil Service including members of the Armed Forces, shall engage directly or indirectly in any partisan political activity or take part in any election **except to vote** nor shall he use his official authority or influence to coerce the political activity of any other person or body. xxx. (Emphasis supplied)

Likewise, the Omnibus Election Code penalizes civil service officers and employees who engage in any partisan political activity **except to vote**. Section 261 (i) of the Omnibus Election Code states:

Section 261. *Prohibited Acts*. — The following shall be guilty of an election offense:

xxx xxx xxx

(i) *Intervention of public officers and employees*. — Any officer or employee in the civil service, except those holding political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, *barangay*

[3] Section 29 of the Civil Service Act of 1959 (RA No. 2260) provides: "Section 29. Political Activity. — Officers and employees in the civil service, whether in the competitive or classified, or non-competitive or unclassified service, shall not engage directly or indirectly in partisan political activities or take part in any election **except to vote**. xxx. " Similar provisions appear in the charters of government agencies. Section 5, Article XII-B of the 1973 Constitution also provides: "No officer or employee in the Civil Service, including members of the armed forces, shall engage directly or indirectly, in any partisan political activity or take part in any election **except to vote**."

self-defense units and all other para-military units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity**, except to vote** or to preserve public order, if he is a peace officer. (Emphasis supplied)

Filing a certificate of candidacy is in itself a partisan political activity. It is a public announcement that one is running for elective public office. It is a necessary act for election to public office, and promotes one's candidacy to public office. Running for public office, or exercising the right to be voted for, is different from, and not part of, the right to vote. The only partisan political activity allowed to civil service officers and employees is to vote. Filing a certificate of candidacy is a partisan political activity not allowed to civil service officers and employees. **An appointive public official who files a certificate of candidacy violates the express constitutional ban on civil service officers from engaging in any partisan political activity except to vote**.

Thus, the law may validly provide that an appointive public official is automatically deemed resigned upon filing a certificate of candidacy. This merely implements the constitutional ban on civil service officers and employees from engaging in any partisan political activity except to vote.

Second. There is a substantial distinction between an appointive public official and an elective public official for purposes of considering only appointive public officials as deemed resigned upon the filing of certificate of candidacy. Appointive public officials are chosen by the appointing power and not elected by the people. They do not have to renew their mandate periodically unlike elective public officials. They also do not have term limits unlike elective public officials.

Most important of all, the constitutional ban on civil service officers and employees from engaging in any partisan political activity applies to appointive public officials but not to elective public officials. **By the very nature of their office, elective public officials engage in partisan political activities almost**

all year round, even outside of the campaign period. Thus, because of all these substantial distinctions, there is no violation of the equal protection clause when the law mandates that only appointive public officials, and not elective public officials, are deemed automatically resigned upon the filing of certificate of candidacy.

Third. The **final proviso** on the automatic resignation of appointive public officials in paragraph 3, Section 11 of RA No. 8436, as amended by RA No. 9369, qualifies the **second sentence** in paragraph 3 that, "Any person who files his certificate of candidacy within this period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy; xxx." In short, the final proviso clearly excludes appointive public officials from the operation of the second sentence. This is the plain, clear and unequivocal language of the law.

Fourth. The automatic resignation of appointive public officials upon the filing of certificate of candidacy has been in the statute books **for more than 100 years**. The earliest law on the matter is Act No. 1582 or the first Election Law enacted by the Philippine Commission in 1907. Section 29 of Act No. 1582[4] provides:

> Section 29. Penalties upon officers. — xxx.
>
> No public officer shall offer himself as a candidate for election, nor shall he be eligible during the time that he holds said public office to election, at any municipal, provincial or Assembly election, **except for reelection to the position which he may be holding,** and no judge of the Court of First Instance xxx. (Emphasis supplied)

Even this law allowed elective public officers who sought "reelection" to hold on to their office, distinguishing them from appointive public officials who were not allowed to hold on to their office if they sought election.

Fifth. One can just imagine the anomaly, conflict and tension that will arise if the Provincial Director of the Philippine National

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[4] Section 29 of Act No. 1582 is quoted in the *ponencia*.

Police, or the Philippine Army Commander whose troops are stationed within the province, will file a certificate of candidacy for governor of the province on 1 December 2009 for the 10 May 2010 elections. If the PNP Provincial Director or Army Commander is not considered automatically resigned from office, he has until the start of the campaign period on 26 March 2010 to remain in his post, in command of hundreds, if not thousands, of fully-armed personnel. This is a disaster waiting to happen.

In sum, appointive public officials can validly be deemed automatically resigned upon the filing of certificate of candidacy, as provided in the final proviso of paragraph 3, Section 11 of RA No. 8436, as amended by RA No. 9369, as well as in Section 66 of the Omnibus Election Code. These provisions merely implement the constitutional ban in Section 2(4) of Article IX-B, and Section 3(3) of Article XVI, of the 1987 Constitution.

Accordingly, I vote to **DISMISS** the petition.

DISSENTING OPINION

CARPIO MORALES, *J.*:

I dissent from the majority opinion which declares as unconstitutional the second proviso in the third paragraph of Section 13 of Republic Act No. 9369 (January 23, 2007) and Section 66 of Batas Pambansa Blg. 881 (December 3, 1985) or the Omnibus Election Code, respectively quoted as follows:

SEC. 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

Sec. 15. x x x

x x x Provided, finally, That any person holding a public appointive office or position, including active members of the armed forces, and officers, and employees in government-owned or-controlled corporations, shall be considered *ipso facto* resigned from his/her office and must vacate the same at the start of the day of the filing of his/her certification of candidacy. (underscoring supplied)

x x x x x x x x x

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SEC. 66. Candidates holding appointive office or positions. - Any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy. (underscoring supplied)

What petitioners assail, however, is paragraph (a) of Section 4 of Comelec Resolution No. 8678[1] (October 6, 2009) which mirrors the above-quoted provisions. Section 4 thereof provides:

SEC. 4. Effects of Filing Certificates of Candidacy.– a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy.

(b) Any person holding an elective office or position shall not be considered resigned upon the filing of his certificate of candidacy for the same or any other elective office or position. (underscoring supplied)

As presented by the *ponencia,* a parallel provision on persons holding *elective* office or position existed in Section 67 of the Omnibus Election Code (December 3, 1985) until it was repealed by Republic Act No. 9006 (February 12, 2001) or the *Fair Election Act*. Prior to the repeal, the provision was amplified by the first proviso of the third paragraph of Section 11 of Republic Act No. 8436 (December 22, 1997) otherwise known as the *Election Automation Law* until said proviso was rendered ineffective in 2001 by the *Fair Election Act* and was totally abandoned in 2007 by the amendatory law of Republic Act No. 9369.

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[1] Entitled "Guidelines on the Filing of Certificates of Candidacy (CoC) and Nomination of Official Candidates of Registered Political Parties in connection with the May 10, 2010 National and Local Elections."

In granting the petition, the *ponencia* eliminates the *ipso facto* resignation from public office by an appointive public official upon the filing of the certificate of candidacy, thereby removing the distinction between one holding an appointive position and one holding an elective position.

The *ponencia* revisits *Fariñas v. The Executive Secretary*,[2] notwithstanding its submission that the discussion therein on the equal protection clause was *obiter dictum*, albeit the issue was squarely raised therein.

The *ponencia* adds that *Fariñas* focused on the validity of the repeal of Section 67 (on elective positions) of the *Omnibus Election Code* and never posed a direct challenge to the constitutionality of retaining Section 66 (on appointive positions) thereof. *En passant*, I observe that neither is the constitutionality of Section 13 of Republic Act No. 9369 and Section 66 of Batas Pambansa Blg. 881 challenged by petitioners in the present case. What petitioners assail is, it bears repeating, Section 4(a) of Comelec Resolution No. 8678.

In *Fariñas*, the Court ruled:

> The petitioners' contention, that the repeal of Section 67 of the Omnibus Election Code pertaining to elective officials gives undue benefit to such officials as against the appointive ones and violates the equal protection clause of the constitution, is tenuous.
>
> The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from the other. The Court has explained the nature of the equal protection guarantee in this manner:
>
> > The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires

[2] 463 Phil. 179 (2003).

> that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.

Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take part in any election except to vote. Under the same provision, elective officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.

By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.

Since the classification justifying Section 14 of Rep. Act No. 9006, *i.e.*, elected officials *vis-a-vis* appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[3] (italics in the original; underscoring supplied)

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[3] *Id*. at 205-208.

Fariñas pointed out at least three material and substantial distinctions that set apart elective officials from appointive officials (*i.e.*, mandate of the electorate, removal from office only upon stringent conditions, no prohibition against partisan political activity). The *ponencia* does **not** dispute the presence of this set of distinctions as one of the grounds for a classification to be valid and non-violative of the equal protection clause.

The *ponencia* does **not** correlate the impact of the prohibition against partisan political activity on the provisions on *ipso facto* resignation. Section 55, Chapter 8, Title I, Subsection A, Book V of the Administrative Code of 1987[4] reads:

> Sec. 55. Political Activity. – No officer or employee in the Civil Service including members of the Armed Forces, shall engage, directly or indirectly, in any partisan political activity or take part in any election except to vote nor shall he use his official authority or influence to coerce the political activity of any other person or body. Nothing herein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of his candidates for public office whom he supports: Provided, That public officers and employees holding political offices may take part in political and electoral activities but it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code. (underscoring supplied)

To allow appointive officials to hang on to their respective posts *after* filing their certificate of candidacy will open the floodgates to countless charges of violation of the prohibition on partisan political activity. The filing of the certificate of candidacy is already **deemed as a partisan political activity**, which also explains why the appointive official is considered *ipso facto* resigned from public office upon the date of the filing of the certificate of candidacy, and not the date of the start of the campaign period. *Pagano v. Nazarro, Jr.*[5] teaches:

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[4] EXECUTIVE ORDER No. 292 (July 25, 1987).

[5] G.R. No. 149072, September 21, 2007, 533 SCRA 622.

Clearly, the act of filing a Certificate of Candidacy while one is employed in the civil service constitutes **a just cause for termination** of employment for appointive officials. Section 66 of the Omnibus Election Code, in considering an appointive official *ipso facto* resigned, merely provides for the **immediate implementation of the penalty for the prohibited act of engaging in partisan political activity.** This provision was not intended, and should not be used, as a defense against an administrative case for acts committed during government service.[6] (emphasis and underscoring supplied)

The Court cannot look into the wisdom of the classification, as it runs the risk of either unduly magnifying the minutiae or viewing the whole picture with a myopic lens. **The Court cannot strike down as unconstitutional the above-mentioned provisions without crossing the path of said Section 55 of the Administrative Code, among other things,[7] on political activity or without rebutting the apolitical nature of an appointive office.** Section 55, however, is, as earlier stated, neither challenged in the present case, nor are Section 13 of Republic Act No. 9369 and Section 66 of the Omnibus Election Code.

While the *ponencia* admits that there are substantial distinctions, it avers that the requisite that the classification be germane to the purposes of the law is absent.

In discussing the underlying objectives of the law, the majority opinion identifies the evils sought to be prevented by the law and opines that these evils are present in both elective and appointive public offices. **Ultimately, the *ponencia* kills the law and spares the evils.** It raises arguments that lend support more to a parity of application of the *ipso facto* resignation than a parity of non-application of the *ipso facto* resignation.

In explaining Section 2 (4) of Article IX-B of the Constitution,[8] an eminent constitutionalist elucidated that the general rule is

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[6] *Id*. at 635-636.

[7] OMNIBUS ELECTION CODE, Sec. 261(i) on election offenses; ADMINISTRATIVE CODE of 1987, Sec 44(b)(26) on grounds for disciplinary action.

[8] Sec. 2(4) reads: No officer or employee in the Civil Service shall engage, directly or indirectly, in any electioneering or partisan political campaign.

"intended to keep the Civil Service free of the deleterious effects of political partisanship."[9] Political partisanship, meanwhile, is the inevitable essence of a political office, elective positions included.

Unfortunately, the *ponencia* does **not** refute the apolitical nature of an appointive office. To the issues surrounding the policy of reserving political activities to political officers, the remedy is legislation.

The *ponencia* proceeds to discuss the right to run for public office in relation to the freedom of expression and of association. It cites *Mancuso v. Taft*,[10] a case decided by the United States Court of Appeals, First Circuit, involving a city home rule charter in Rhode Island, to buttress its conclusion and to persuade[11] that this jurisdiction too should follow suit.

In U.S. jurisdiction, however, the Hatch Act of 1939[12] which imposes limitations on the political activities of federal government employees is still considered good law. It prohibits government employees from running for or holding public office or participating in the campaign management for another. On two occasions, the Hatch Act has been brought to the US Supreme Court, both times based on First Amendment arguments that the prohibitions were unduly restrictive on the private constitutional liberties of government employees. The statute was upheld in both cases, *United Public Workers of America v. Mitchell*,[13] and *United States Civil Service Commission v National Association of Letter Carriers*.[14]

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[9] JOAQUIN G. BERNAS, S.J., The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (1996), p. 919.

[10] 476 F.2d 187, 190 (1973).

[11] Cases decided in foreign jurisdictions are merely persuasive in this jurisdiction.

[12] Formally cited as 5 USCA 7324, named after the bill's sponsor, New Mexico Senator Carl Hatch.

[13] 330 US 75 (1947).

[14] 413 US 548 (1973).

The Hatch Act has since been applied or copied in most states with respect to state or local government employees. While the spirit of the ruling in *Mitchell* has been questioned or overturned by inferior courts in cases assailing similar state laws or city charters (such as *Mancuso*), *Mitchell* has not, however, been overturned by the U.S. Supreme Court. An inferior court can never erode a Supreme Court decision.

Finally, a public employee holding appointive office or position, by accepting a non-political government appointment, binds himself to the terms and conditions of employment fixed by law. In one case, it was held that in government employment, "it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through the statutes or administrative circulars, rules, and regulations[,]"[15] part of which is the setting of standards for allowable limitations in the exercise of the rights of free expression and of assembly.[16]

WHEREFORE, I vote to *DISMISS* the petition.

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[15] *Social Security System Employees Association (SSSEA) v. Court of Appeals*, G.R. No. 85279, July 28, 1989, 175 SCRA 686, 697 citing *Alliance of Government Workers v. Minister of Labor*, G.R. No. 60403, August 3, 1983, 124 SCRA 1; *vide supra* note 7.

[16] *Jacinto v. CA*, 346 Phil. 656, 669 (1997).

THIRD DIVISION

[G.R. No. 156208. December 2, 2009]

NPC DRIVERS AND MECHANICS ASSOCIATION (NPC DAMA), represented by Its President ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU) — NORTHERN LUZON REGIONAL CENTER, represented by its Regional President JIMMY D. SALMAN, in their own individual capacities and in behalf of the members of the associations and all affected officers and employees of National Power Corporation (NPC), ZOL D. MEDINA, NARCISO M. MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, in their individual capacities as employees of National Power Corporation, *petitioners, vs.* **THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO as Chairman of the National Power Board of Directors (NPB), ROLANDO S. QUILALA, as President — Officer-in-charge/CEO of National Power Corporation and Member of National Power Board, and VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO and NIEVES L. OSORIO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA LAW); VIOLATION THEREOF BY NATIONAL POWER BOARD (NPB) RESOLUTION NOS. 2002-124 AND 2002-125 RENDERED SAID RESOLUTIONS VOID AND CANNOT BE VALIDATED. — Petitioners' contention that NPB Resolutions No. 2002-124 and No. 2002-125 are void is correct. In our decision of 26 September 2006, the Court was very categorical in declaring that NPB Resolutions No. 2002-124 and No. 2002-125 are VOID and WITHOUT LEGAL EFFECT. The Court has

ruled that said resolutions are void for violating Section 48 of the EPIRA Law which requires the persons enumerated therein to personally exercise their judgment and discretion. An illegal act is void and cannot be validated. In the instant case, the approval of both resolutions was an illegal act for it violated the EPIRA Law.

2. ID.; ID.; ID.; ID.; NPB RESOLUTION NO. 2007-55 APPROVING THE VOID NPB RESOLUTION NOS. 2002-124 AND 2002-125; EFFECT THEREOF; CASE AT BAR. — What then is the effect of the approval of NPB Resolution No. 2007-55 on 14 September 2007? The approval of NPB Resolution No. 2007-55, supposedly by a majority of the National Power Board as designated by law, that adopted, confirmed and approved the contents of NPB Resolutions No. 2002-124 and No. 2002-125 will have a **prospective effect,** not a retroactive effect. The approval of NPB Resolution No. 2007-55 cannot ratify and validate NPB Resolutions No. 2002-124 and No. 2002-125 as to make the termination of the services of all NPC personnel/employees on 31 January 2003 valid, because said resolutions were void. **The approval of NPB Resolution No. 2007-55 on 14 September 2007 means that the services of all NPC employees have been legally terminated on this date.** All separation pay and other benefits to be received by said employees will be deemed cut on this date. The computation thereof shall, therefore, be from the date of their illegal termination pursuant to NPB Resolutions Nos. 2002-124 and 2002-125 as clarified by NPB Resolution No. 2003-11 and NPC Resolution No. 2003-09 up to 14 September 2007. Although the validity of NPB Resolution No. 2007-55 has not yet been passed upon by the Court, same has to be given effect because NPB Resolution No. 2007-55 enjoys the presumption of regularity of official acts. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. **Thus, until and unless there is clear and convincing evidence that rebuts this presumption, we have no option but to rule that said resolution is valid and effective as of 14 September 2007.**

3. STATUTORY CONSTRUCTION; INTERPRETATION OF STATUTES; WHERE WORDS ARE SUSCEPTIBLE OF MORE THAN ONE MEANING, THE MORE SENSIBLE INTERPRETATION IS FAVORED. — It is well settled that

courts are not to give a statute a meaning that would lead to absurdities. If the words of a statute are susceptible of more than one meaning, the absurdity of the result of one construction is a strong argument against its adoption, and in favor of such sensible interpretation. We test a law by its result. A law should not be interpreted so as not to cause an injustice. There are laws which are generally valid but may seem arbitrary when applied in a particular case because of its peculiar circumstances. We are not bound to apply them in slavish obedience to their language. The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; TRANSFER OF INTEREST; CASE AT BAR. — Section 19, Rule 3 of the 1997 Revised Rules of Civil Procedure reads: Sec. 19. *Transfer of interest*. – In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Under this section, the Court may, upon motion, direct the person to whom the interest is transferred to be substituted in the action or joined with the original party. In petitioners' Manifestation with Urgent Omnibus Motions dated 9 February 2009, they prayed that the properties acquired by PSALM from NPC be also levied/garnished. We consider this prayer to be tantamount to a motion to join PSALM as a party-respondent in this case in so far as to the properties, and any income arising therefrom, that PSALM acquired from NPC. It is in this light that we order the Clerk of Court of this division to implead or join PSALM as a party-respondent in this case. As above-explained, PSALM shall not be denied due process for it can participate in the proper forum by preventing the levying of properties other than that it had acquired from NPC.

APPEARANCES OF COUNSEL

Casan B. Macabanding, Victorano V. Orocio, Ariel V. Villanueva and *Cornelio P. Aldon Law Office* for petitioners.

The Solicitor General for respondents.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Under consideration are the following:

1. Petitioners' Manifestation with Urgent Motion dated 9 February 2009;

2. Power Sector Assets and Liabilities Management Corporation's (PSALM's) Manifestation dated 24 February 2009;

3. National Power Corporation's (NPC's) Compliance dated 9 March 2009;

4. Petitioners' Counter-Manifestation dated 13 March 2009;

5. Petitioners' Comment/Manifestation and Urgent Motion dated 23 March 2009;

6. PSALM's Submission dated 20 April 2009;

7. NPC's Consolidated Comment dated 26 May 2009; and

8. Petitioners' Reply to NPC's Consolidated Comment dated 5 June 2009.

In Our decision dated 26 September 2006, we declared void and without legal effect National Power Board (NPB) Resolutions No. 2002-124[1] and No. 2002-125,[2] both dated 18 November 2002, which directed, *inter alia*, the termination from the service of all employees of the National Power Corporation (NPC) on 31 January 2003 in line with the restructuring of the NPC, and thereafter enjoined the implementation of said resolutions by granting the petition for injunction.[3]

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[1] *Rollo*, pp. 165-188.

[2] *Id.* at 189-191.

[3] *Id.* at 297-308.

The dispositive portion of the decision reads:

WHEREFORE, premises considered, National Power Board Resolutions No. 2002-124 and No. 2002-125 are hereby declared VOID and WITHOUT LEGAL EFFECT. The Petition for Injunction is hereby GRANTED and respondents are hereby ENJOINED from implementing said NPB Resolutions No. 2002-124 and No. 2002-125.[4]

In a resolution dated 24 January 2007, for lack of merit, we denied with finality the motion for reconsideration of respondent NPC.[5]

In a resolution dated 17 September 2008, the Court resolved to:

(1) PARTIALLY GRANT the Motion for Clarification and/or Amplification of petitioners by affirming that, as a logical and necessary consequence of our Decision dated 26 September 2006 declaring null and without effect NPB Resolutions No. 2002-124 and No. 2002-125 and enjoining the implementation of the same, petitioners have the right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program; plus backwages, wage adjustments, and other benefits accruing from 31 January 2003 to the date of their reinstatement or payment of separation pay; but deducting therefrom the amount of separation benefits which they previously received under the null NPB Resolutions;

(2) PARTIALLY GRANT the Motion for Approval of Charging (Attorney's) Lien of Atty. Aldon and Atty. Orocio and ORDER the entry in the records of this case of their ten percent (10%) charging lien on the amounts recoverable by petitioners from respondent NPC by virtue of our Decision dated 26 September 2006; and

(3) ORDER that Entry of Judgment be finally made in due course in the case at bar.[6]

In a letter dated 29 September 2008, Attys. Victoriano V. Orocio (Orocio) and Cornelio P. Aldon (Aldon) requested that

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[4] *Id.* at 307.

[5] *Id.* at 330.

[6] *Id.* at 532.

Entry of Judgment be made in the instant case and a resolution implementing the same be issued immediately.[7]

On 27 October 2008, an Entry of Judgment was made in the case stating, among other things, that the judgment herein has become final and executory on 10 October 2008 and has been recorded in the Book of Entries of Judgments.[8]

On 14 November 2008, petitioners filed an Urgent Motion for Execution. They ask that the motion be granted by:

(1) Directing/Ordering the Office of the Clerk and *Ex-Officio* Sheriff of the Regional Trial Court of Quezon City as being the appropriate forum for the computation of the actual amounts due to the petitioners as well as the total amount of the charging lien of Atty. Cornelio P. Aldon and Atty. Victoriano V. Orocio, to determine and find out the names and number of all NPC personnel/employees terminated and/or separated as a result of or pursuant to the nullified NPB Board Resolution(s) No. 2002-124 and 2002-125, and the amounts due to each of them by way of separation pay, backwages, wage adjustments and other benefits in accordance with applicable jurisprudence on illegal dismissal cases, as well as interests due from the time the decision became final and executory, including the totality of the said amounts for the purpose of determining the 10% charging lien of Attorneys Aldon and Orocio, by summoning and issuing proper subpoenas to the Vice-Pres., Human Resources and to the Senior Department Manager for Finance of the NPC and directing the said responsible NPC officials to make and submit such list and computations under oath;

(2) Directing/Ordering the said Office of the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court of Quezon City after and on the basis of the said list and computations submitted by said NPC officials, to issue the corresponding writ of execution; and

(3) Directing said Office to undertake any and all actions necessary to implement and execute the decision and

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[7] *Id.* at 535-537.

[8] *Id.* at 545-548.

resolution in this case thru said writ of execution and, thereafter, to submit a report thereon to this Court.[9]

Finding petitioners' Motion for Urgent Execution meritorious, we granted the same per resolution dated 10 December 2008, and issued the following order:

1. The Chairman and Members of the National Power Board and the President of the National Power Corporation (NPC) to cause the preparation of a list, under oath, of (a) the names of all NPC personnel/employees terminated and/or separated as a result of or pursuant to the nullified NPB Board Resolutions No. 2002-124 and No. 2002-125, and (b) the amounts due to each of them by way of separation pay, backwages, wage adjustments and other benefits in accordance with applicable jurisprudence on illegal dismissal cases, as well as interests due from the time the decision became final and executory. From the totality of the amounts due to the illegally dismissed NPC personnel/employees, the same officers are directed to compute the 10% charging lien thereon of Atty. Cornelio P. Aldon (Aldon) and Atty. Victoriano V. Orocio (Orocio) pursuant to the Resolution dated 17 September 2008 of this Court;

2. The Chairman and Members of the National Power Board and the President of the NPC to pay or cause to be paid immediately the amounts due to the petitioners and all other illegally dismissed NPC personnel/employees, as well as the amount of charging lien to Atty. Aldon and Atty. Orocio, in accordance with the list and computations prepared under oath pursuant to paragraph 1 hereof; and

3. The Chairman and Members of the National Power Board and the President of the NPC to respectively submit proof of their compliance of the orders of this Court as stated in paragraphs 1 and 2 hereof within thirty (30) days from receipt of this Resolution.[10]

In their Manifestation with Urgent Omnibus Motions dated 9 February 2009, petitioners asked the Court to: (1) cite the

[9] *Id.* at 555-556.

[10] *Id.* at 559-560.

Chairman and the Members of the National Power Board and the President of the NPC in contempt for their willful failure to comply with paragraphs 1 and 2 of the Resolution dated 10 December 2008 which is a mockery of the Court's Order and gross disrespect of its authority; (2) appoint the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court (RTC) of Quezon City, together with his/her deputies, to enforce by execution the Court's resolution dated 10 December 2008 by garnishing/levying upon the assets of NPC, including but not limited to the assets of Power Sector Assets and Liabilities Management Corporation (PSALM), based on the list and computations submitted and attested to by the responsible NPC officials hereafter to be summoned; (3) immediately summon the concerned and responsible NPC officials, namely: Mr. Eduardo P. Elroy, Vice-President, Human Resources, Mr. Paquito F. Garcia, Sr., Department Manager, Human Resources & Administration and Ms. Wilma V. Ortega, Manager, Compensation and Benefits Management Division (CBMD), Human Resources Department, NPC, to attest jointly and severally under oath as to the existence of a 212-page list[11] containing the names of NPC personnel/employees terminated and/or separated from the service as a result of the nullified NPB Board Resolutions No. 2002-124 and No. 2002-125 with the amounts due to them and the charging lien due Attys. Orocio and Aldon, and to submit under oath jointly and severally the certified true copies thereof to the Court.[12]

On 11 February 2009, Ora Limpao, Abdullah Ali, Moctar D. Amundia, Macawali D. Minalang, Aliola Cawi, Talib Manudi and Masiding Tanggo, through counsel Casan B. Macabanding, filed a Motion for Implementation of the Issued Writ of Execution. They informed the Court that demand letters have been sent to the National Power Board and to the NPC showing the computations of the amount due each of them. Despite this, no action has been taken thereon. They therefore ask that an order be issued directing the Sheriff of the RTC of Quezon

[11] *Id.* at 578-790.

[12] *Id.* at 564-573.

and/or Sheriff of Lanao del Sur, 12th Judicial Region, Marawi City, to seize and attach cash and properties of the NPC and to apply the same to their claim of ₱16,120,706.00, and to deduct therefrom the attorney's lien of Attys. Aldon and Orocio.[13]

On 17 February 2009, the NPC asked for additional 30 days to address the Court's resolution dated 10 December 2008[14] which petitioners opposed.[15]

On 25 February 2009, PSALM filed a Manifestation stating that petitioners did not furnish it a copy of their Manifestation with Urgent Omnibus Motions dated 9 February 2009 wherein they prayed that the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Quezon City be appointed to enforce the Court's Resolution dated 10 December 2008 by garnishment/levy upon the assets of NPC, including but not limited to the assets of PSALM. Not being a party in the case, PSALM said it is not bound by the judgment rendered by the Court. It added that PSALM is mandated to privatize the transferred NPC generation assets, real estate and other disposable assets, and to apply the proceeds thereof to the payment of all existing and outstanding NPC financial obligations and stranded contract costs in an optimal manner. Nothing in the EPIRA[16] allows garnishment and levy of PSALM's assets to satisfy a judgment against NPC. Petitioners are not employees of PSALM but of respondent NPC. PSALM cannot be made liable for the financial obligations of NPC to its employees for it is not one of those liabilities transferred to, and assumed by, PSALM at the effectivity of the EPIRA. It explains that since the privatization proceeds are earmarked specifically for the liquidation of NPC's financial obligations transferred to, and assumed by, PSALM, same are not within the reach of any execution and garnishment. The garnishment and/or levying of PSALM's assets and privatization proceeds will amount to diverting them for the purpose originally

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[13] *Id.* at 791-795.

[14] *Id.* at 802-807.

[15] *Id.* at 809-825.

[16] Electric Power Industry Reform Act of 2001.

contemplated by the EPIRA. Such garnishment and/or levy will amount to a disbursement without proper appropriation as required by law. Finally, it argues that the present executory course of action taken by petitioners is a deviation from the Court's Resolution dated 17 September 2008 which leaves the computation of the actual amounts due them and the enforcement of payment thereof to the proper forum in appropriate proceedings for the Court is not a trier of facts.[17]

In its Compliance[18] dated 9 March 2009, NPC informed the Court that only the services of its top level employees were terminated on 31 January 2003 pursuant to the nullified NPB Resolutions No. 2002-124 and No. 2002-125 contrary to the submissions made by petitioner in its Manifestation and Omnibus Motions dated 9 February 2009. More specifically, it said only the services of sixteen (16) NPC employees occupying the positions of Senior Vice-President, Vice-President and Department Manager, were terminated on 31 January 2003, but were rehired on 1 February 2003 after receiving a full separation package pursuant to the EPIRA. It explained that any additional payment of separation pay, backwages and other benefits to these 16 employees would be iniquitous and would constitute unjust enrichment as they were never unemployed.

It further stated that NPB Resolutions No. 2002-124 and No. 2002-125 were nullified because they were signed by alternates. This infirmity, it explained, was rectified and effectively mooted with the issuance of NPB Resolution No. 2007-55[19] dated 14 September 2007 which adopted, confirmed and approved the principles and guidelines enunciated in NPB Resolutions No. 2002-124 and No. 2002-125. It likewise pointed out that the validity of NPB Resolution No. 2007-55 has not yet been passed upon by the Court.

On 13 March 2009, petitioners filed a Counter-Manifestation[20] to PSALM's Manifestation dated 24 February 2009 stating that

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[17] *Rollo,* pp. 830-843.

[18] *Id.* at 844-851.

[19] *Id.* at 854.

[20] *Id.* at 856-864.

a writ of execution may be issued against non-parties, including the PSALM, under, among others, the following situations: (1) one who is privy to the judgment debtor; (2) a successor-in-interest; and (3) under the principle of piercing the veil of corporate fiction. Petitioners explained that PSALM is privy to NPC because the former was principally organized to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and Independent Power Producers (IPP) contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner. PSALM, also being a successor-in-interest of NPC, is now the owner of the financial obligations/liabilities of NPC and shall be considered as one with NPC and the liability of the latter shall attach to the former. Further, it said PSALM is a mere alter ego or business conduit of NPC as evidenced by the fact that majority of the members of the NPB also constitutes the majority of the PSALM Board and that the NPB and the PSALM Board have held joint board meetings to resist payment in relation to the 10 December 2008 Resolution. Petitioners disclosed that the NPB and the PSALM Board recently issued a joint letter-instruction to the power consumers of NPC that all payments for power sales shall be directly remitted to PSALM. They further claimed that this letter-instruction violates the EPIRA Law because the payment for power sales to NPC is not enumerated among the funds, assets, contribution and other properties that constitute the property of PSALM, and that these payments constitute gross income revenue and not net profits of NPC. As a garnishee, PSALM need not be summoned or impleaded as a party to the case.

On 24 March 2009, petitioners filed their Comment/ Manifestation and Urgent Motions (1) To include for Contempt Respondents' Counsels and (2) To Summon the Vice-President, Human Resources and Administration, NPC to Attest and Certify Certain Official Documents.[21] Petitioners point out that respondents, in their compliance, raise two new issues, to wit: (1) there are only 16 NPC personnel (top executives) who were

[21] *Id.* at 868-877.

illegally terminated; and (2) the issuance of NPB Resolution No. 2007-55 on 14 September 2007 effectively rectified and mooted the infirmity of the nullified NPB Resolutions No. 2002-124 and No. 2002-125.

On the first issue, petitioners explain that respondents' misrepresentation that there were only 16 NPC personnel whose services were terminated on 31 January 2003 is true but is only half-true. They have intentionally suppressed and conveniently omitted in their Compliance to mention and inform the Court of the fact that while under NPB Resolution No. 2002-124 the services of all NPC personnel/employees were deemed legally terminated as of 31 January 2003, for various reasons, their actual termination was effected on different dates, as follows: (a) top executives – 31 January 2003; (b) early-leavers – 15 January 2003; (c) those no longer employed in NPC after 26 June 2001 – date of actual separation; (d) all other personnel – 28 February 2003. In support thereof, they mentioned NPB Resolution No. 2003-11, NPC Circular No. 2003-09 and the Memorandum dated 26 February 2009 of Dr. Eduardo R. Eroy, Vice-President, Human Resources and Administration (HRA), NPC. They revealed that NPB Resolution No. 2003-11 is one of the resolutions ratified and confirmed by NPB Resolution No. 2007-55.

As to the second issue, petitioners argue that since NPB Resolutions No. 2002-124 and No. 2002-125 are null and without legal effect, the same cannot be rectified and ratified since only voidable acts can be validated.

In our Resolution dated 15 April 2009, the Court, among other things, required NPC to file its Comment on Petitioner's Manifestation with Urgent Omnibus Motions dated 9 February 2009 and Comment/Manifestation and urgent motions dated 23 March 2009, and on PSALM's Manifestation dated 24 February 2009. The Court deferred action on petitioners' motion for implementation of the issued writ of execution dated 10 February 2009 pending filing by NPC of the afore-said comments.[22]

[22] *Id.* at 889-890.

On 5 May 2009, PSALM filed a Submission to petitioners' Counter-Manifestation dated 13 March 2009.[23] It argued that a writ of execution can be issued only against a party and not against one who did not have his day in court. It said it is neither a successor-in-interest nor an alter-ego or business conduit of NPC. Being employees of NPC, PSALM cannot be made liable for the financial obligations of NPC to its employees. It claims that petitioners' claim on the supposed conduct of joint board meetings of NPC and PSALM Boards is purely conjectural and without factual basis. The sending of letters to distribution utilities, like MERALCO, is a consequence of the implementation of the EPIRA as to the ownership by PSALM of all NPC generation assets, IPP Contracts, *etc*. On the claim that payment for power sales by customers are not one of those under the EPIRA as constituting properties of PSALM and that they constitute gross income and not net profits of NPC, PSALM argues that same is absurd because as owner of the generation assets, it is entitled to the income derived from the sale of electricity. Said income partakes of the nature of fruits which belong to the owner of the asset. Finally, it argued that not being a party in the case or judgment debtor, its properties cannot be garnished.

On 27 May 2009, petitioners Ora Limpao, Abdullah Ali, Moctar D. Amundia, Macawali D. Minalang, Aliola Cawi, Talib Manudi and Masiding Tanggo filed a Manifestation and Motion reiterating their prayer in their Motion for Implementation of the Issued Writ of Execution motion dated 11 February 2009.[24]

On 28 May 2009, respondent NPC filed its Consolidated Comment[25] on Petitioners' Manifestation with Urgent Omnibus Motions dated 9 February 2009 and Comment/Manifestation and urgent motions dated 23 March 2009, and on PSALM's Manifestation dated 24 February 2009.

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[23] *Id.* at 892-907.

[24] *Id.* at 915-917.

[25] *Id.* at 918-932.

On PSALM's Manifestation, NPC agreed with PSALM that execution of its properties is improper as it is not a party in the case.

On petitioners' Manifestation and Comment, NPC contends that petitioners are either confused or deviously sneaking into the present controversy facts, issues and reliefs that have not been litigated or resolved in the instant case. It argues that it involves the nullification of NPB Resolutions Nos. 2002-124 and 2002-125 did not affect the reorganization of the NPC because other resolutions pursuant thereto remain valid. The Court even declared in its 17 September 2008 Resolution that the "*NPC can still pursue its reorganization although it cannot implement the same by terminating petitioners' employment on 31 January 2003 pursuant to NPB Resolutions No. 2002-124 and 2002-125*." Under Resolutions No. 2002-124 and No. 2002-125, only the services of 16 top level employees were terminated. As admitted by petitioners, the services of **other** NPC employees were terminated on 28 February 2003 pursuant to NPB Resolution No. 2003-11. The validity of this latter resolution has not been the subject of the present controversy.

On 5 June 2009, petitioners filed their Reply to NPC's Consolidated Comment.[26] Petitioners reiterated their Counter-Manifestation dated 13 March 2009 to PSALM's Manifestation dated 24 February 2009. In addition, they explained that the purpose of the EPIRA in creating PSALM is to sell and dispose the assets of NPC and to use the proceeds therefrom to liquidate all the financial obligations and liabilities of the NPC. It quoted Congressman Arnulfo P. Fuentebella's opinion which was in response to a legal opinion of Cyril C. del Callar, former NPC President, as to the function of PSALM. The opinion partly reads: The function of PSALM is limited and akin to that of a liquidator of NPC assets as stated in Section 50 of the EPIRA that the principal purpose of PSALM is to manage the orderly sale, disposition, and privatization of NPC generation assets,

[26] *Id.* at 933-940.

real estate and other disposable assets, and IPP contracts with the end in view of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

Petitioners insists it is the NPC and its counsel (Office of the Solicitor General), not them, that are guilty of raising new issues without valid and legal justification. They explained that the Court had settled the following issues: (1) NPB Resolutions No. 2002-124 and No. 2002-125 are null and without legal effect; (2) as a consequence of the declaration of nullity of said resolutions, petitioners have the right to reinstatement or to separation in lieu of reinstatement pursuant to a validly approved Separation Program plus backwages, wage adjustments and other benefits accruing from January 2003 to the date of their reinstatement or payment of separation pay; and (3) 10% charging lien of Attys. Aldon and Orocio.

All these notwithstanding, NPC raised two new issues in a desperate effort to circumvent, frustrate and delay the final and executory orders of the Court, to wit: (1) there are only 16 NPC personnel (top executives) who were illegally terminated on 31 January 2003; and (2) the issuance of NPB Resolution No. 2007-55 on 14 September 2007 effectively rectified and mooted the purported infirmity of the nullified NPB Resolutions No. 2002-124 and No. 2002-125. NPC's raising these issues after the Court's decision and resolution have become final and executory is a clear case of afterthought and act of desperation. Petitioners claim that the NPC had all the time to raise said issues before the decision and resolution became final and executory, but it did not. Thus, it is guilty of estoppel. Petitioners added that the NPC in its Motion for Reconsideration and Motion for Leave to File Second Motion for Reconsideration admitted that "the nullification of National Power Board Resolution Nos. 2002-124 and 2002-125 have far reaching implications and dreadful aftermath. For one, it would entail a financial liability on the part of respondent in the amount of not less than FOUR BILLION SEVEN HUNDRED ONE MILLION THREE HUNDRED FIFTY-FOUR THOUSAND SEVENTY-THREE PESOS (₱4,701,354,073.00), representing

the backwages and wage adjustments of employees. (as of October 2006)" This admission, petitioners contend, belies NPC's claim that only 16 were illegally terminated pursuant to NPB Resolutions No. 2002-124 and No. 2002-125 considering that such amount cannot obviously cover only 16 employees but thousands of NPC personnel.

Moreover, petitioners alleged that the NPC, through its numerous pleadings, made them and the Court believe that pursuant to the null NPB Resolutions No. 2002-124 and No. 2002-125, all NPC personnel were legally terminated as of 31 January 2003. The issue that only 16 employees were terminated on 31 January 2003 was never raised before the Court's decision and resolution became final and executory. Now, after eight long years, NPC suddenly tells the Court that only 16 employees were terminated as of 31 January 2003. Such behavior shows lack of candor, honesty and fairness to the Court and to petitioners.

Petitioners pray that: (1) all the respondents and their counsels be held in contempt of court and punished accordingly until or unless they immediately execute the decision/resolution of the Court; (2) to summon and/or direct Mr. Edmund P. Anguluan, the present Vice-President, Human Resources and Administration of NPC, to fully and strictly comply with paragraph 1 of the 10 December 2008 Resolution - the list should include all personnel who were terminated pursuant to or as a result of the null NPB Resolutions No. 2002-124 and No. 2002-125 regardless of their actual dates of termination; and (3) to appoint and authorize the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Quezon City to enforce by execution the Court's 10 December 2008 Resolution by garnishment/levy upon the assets of NPC, including but not limited to the assets of PSALM, based on the list and computations submitted and attested to by the aforenamed Vice-President of NPC.

The principal question to be resolved is: should the execution of our decision and resolution which have become final and executory on 10 October 2008 be stopped or be prevented because of the new issues raised by NPC? The two new issues are: (1) whether or not our decision affects only 16 employees

or all the employees of NPC; and (2) whether or not NPB Resolutions No. 2002-124 and No. 2002-125 can be ratified by NPB Resolution No. 2007-55[27] which was issued on 14 September 2007.

On the first issue, NPC contends it has complied with the directive of the Supreme Court to list all employees terminated/separated as a result of, or pursuant to, NPB Resolutions No. 2002-124 and No. 2002-125. It stated that only its top-level employees, numbering sixteen (16), occupying the positions of Senior Vice-President, Vice-President and Department Manager were terminated on 31 January 2003 pursuant to the aforesaid resolutions contrary to the position of petitioners that all employees of NPC were terminated/separated on 31 January 2003. NPC added that these 16 employees who were terminated/separated on 31 January 2003 were rehired after receiving a full separation package pursuant to the EPIRA law. Thus, payment of any backwages and other benefits to these 16 employees are unnecessary and unwarranted.

It is unquestionable that when we promulgated our decision on 26 September 2006 and our subsequent resolutions dated 24 January 2007, 17 September 2008 and 10 December 2008, we were **referring to all employees** of the NPC, not only the 16 top-level employees, as those whose services were terminated on 31 January 2003. This was based on the nullified NPB Resolution No. 2002-124 which reads in part:

> RESOLVED, FURTHER, That, pursuant to Section 63 of the EPIRA and Rule 33 of the IRR, **all NPC personnel shall be legally terminated on January 31, 2003**, and shall be entitled to the separation benefits as provided in the Guidelines hereunder adopted.[28]

When the instant case was commenced with the filing of the petition, what was sought to be enjoined was the termination of all, not sixteen (16), NPC employees on 31 January 2003 in line with the restructuring of the NPC. All the while, the Court

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[27] *Id.* at 854.

[28] *Id.* at 169.

and the parties were on the same wavelength tackling the issue of whether the termination of **all** NPC employees pursuant to NPB Resolutions No. 2002-124 and No. 2002-125, is valid. In fact, it is NPC's stand that pursuant to NPB Resolutions No. 2002-124 and No. 2002-125, all NPC personnel were legally terminated as of 31 January 2003. It is only after when our decision and resolution on the matter became final and executory did NPC reveal that not all, but only 16 top-level employees, were terminated on 31 January 2003.

We find such action of NPC and its counsel improper. Why only now at this stage of the proceedings? NPC cannot possibly deny that the employees subject of the instant case involves all the personnel/employees of the NPC. As correctly pointed out by petitioners, NPC's statement in its Motion for Reconsideration and Motion for Leave to File Second Motion for Reconsideration that the nullification of NPB Resolutions No. 2002-124 and No. 2002-125 has far reaching implications and dreadful aftermath for it would entail a financial liability on its part in the amount of not less than ₱4,701,354,073.00 proves that what NPC is alluding to is the termination of all the employees of the NPC for the simple reason that said amount cannot be for the backwages, separation pay and other benefits of just 16 employees but thousands of NPC personnel.

Under NPB Resolution No. 2002-124, the services of all NPC personnel/employees were deemed legally terminated as of 31 January 2003. However, because it was no longer tenable for NPC to complete the legal separation of NPC employees on 31 January 2003, NPB Resolution No. 2003-11 dated 22 January 2003 was issued showing the effectivity of termination of personnel on 28 February 2003. NPC intentionally did not inform the Court that the separation of other employees holding the positions of below Vice-President levels, supervisors and rank-and-file was 28 February 2003 pursuant to NPB Resolution No. 2003-11 dated 22 January 2003. Furthermore, under NPC Circular No. 2003-09,[29] the dates of legal termination of all

[29] *Id.* at 881-886.

employees were as follows: (a) key officials – 31 January 2003; (b) early-leavers – 15 January 2003; (c) those no longer employed in NPC after 26 June 2001 – date of actual separation; and (d) **all other personnel** – 28 February 2003. To further show that what is covered by the Court's resolution dated 10 December 2008 are all the NPC employees, petitioners attached a memorandum[30] from Eduardo R. Eroy, Vice-President, HRM, NPC, to NPC President Froilan A. Tampinco explaining the amount of backwages, separation pay and other benefits to be received by the NPC terminated NPC employees.

From all these, it is clear that our ruling, pursuant to NPB Resolution No. 2002-124, covers all employees of the NPC and not only the 16 employees as contended by NPC. However, as regards their right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly approved Separation Program, plus backwages, wage adjustments, and other benefits, the same shall be computed from the date of legal termination as stated in NPC Circular No. 2003-09, to wit:

a) The legal termination of **key officials**, *i.e.*, the Corporate Secretary, Vice Presidents and Senior Vice Presidents who were appointed under NP Board Resolution No. 2003-12, shall be at the close of office hours of **January 31, 2003**.

b) The legal termination of personnel who availed of the **early leavers' scheme** shall be on the **last day of service** in NPC but **not beyond January 15, 2003**.

c) The legal termination of personnel who were **no longer employed in NPC after June 26, 2001** shall be the date of **actual separation** in NPC.

d) For **all other NPC personnel**, their legal termination shall be at the close of office hours/shift schedule of **February 28, 2003**.[31]

but deducting therefrom the amount of separation benefits which they previously received under the null NPB Resolutions.

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[30] *Id.* at 887.

[31] *Id.* at 881-882.

On the second issue, NPC contends that when NPB Resolution No. 2007-55[32] dated 14 September 2007 was issued, the same ratified and confirmed NPB Resolutions No. 2002-124 and No. 2002-125. The purported infirmity of NPB Resolutions No. 2002-124 and No. 2002-125 was rectified and effectively mooted. In so doing, all the principles and guidelines enunciated in both resolutions have been adopted, confirmed and approved. In effect, what NPC is saying is that the decision/resolution can no longer be executed since it has corrected the infirmity or mistake that caused the nullification of NPB Resolutions No. 2002-124 and No. 2002-125 by the issuance of NPB Resolution No. 2007-55.

As answer thereto, petitioners argue that NPB Resolutions No. 2002-124 and No. 2002-125 cannot be ratified because only voidable acts can be ratified. Petitioners contend that both resolutions are void.

Petitioners' contention that NPB Resolutions No. 2002-124 and No. 2002-125 are void is correct. In our decision of 26 September 2006, the Court was very categorical in declaring that NPB Resolutions No. 2002-124 and No. 2002-125 are VOID and WITHOUT LEGAL EFFECT. The Court has ruled that said resolutions are void for violating Section 48 of the EPIRA Law which requires the persons enumerated therein to personally exercise their judgment and discretion. An illegal act is void and cannot be validated.[33] In the instant case, the approval of both resolutions was an illegal act for it violated the EPIRA Law.

What then is the effect of the approval of NPB Resolution No. 2007-55 on 14 September 2007? The approval of NPB Resolution No. 2007-55, supposedly by a majority of the National Power Board as designated by law, that adopted, confirmed and approved the contents of NPB Resolutions No. 2002-124 and No. 2002-125 will have a **prospective effect**, not a retroactive effect. The approval of NPB Resolution No. 2007-

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[32] *Id.* at 854.

[33] *Republic v. Acoje Mining Co., Inc.*, 117 Phil. 379, 383-384 (1963).

55 cannot ratify and validate NPB Resolutions No. 2002-124 and No. 2002-125 as to make the termination of the services of all NPC personnel/employees on 31 January 2003 valid, because said resolutions were void.

The approval of NPB Resolution No. 2007-55 on 14 September 2007 means that the services of all NPC employees have been legally terminated on this date. All separation pay and other benefits to be received by said employees will be deemed cut on this date. The computation thereof shall, therefore, be from the date of their illegal termination pursuant to NPB Resolutions Nos. 2002-124 and 2002-125 as clarified by NPB Resolution No. 2003-11 and NPC Resolution No. 2003-09 up to 14 September 2007. Although the validity of NPB Resolution No. 2007-55 has not yet been passed upon by the Court, same has to be given effect because NPB Resolution No. 2007-55 enjoys the presumption of regularity of official acts. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty.[34] **Thus, until and unless there is clear and convincing evidence that rebuts this presumption, we have no option but to rule that said resolution is valid and effective as of 14 September 2007.**

We now resolve the issue of whether or not the assets of PSALM can be the subject of execution it being a non-party in this case.

In their Manifestation with Urgent Omnibus Motions dated 9 February 2009, petitioners prayed that the decision/resolution of the court be enforced by execution by garnishment/levy upon the assets of NPC, including but not limited to the assets of PSALM. In opposition thereto, PSALM stated that not being a party to the case, it is not bound by the decision rendered by the Court. It explained that there is nothing in the EPIRA Law that allows garnishment and/or levy of its assets to satisfy a judgment rendered against NPC. Not being employees of

[34] *Sevilla v. Cardenas*, G.R. No. 167684, 31 July 2006, 497 SCRA 428, 443.

PSALM, the latter states that it cannot be made liable for the financial obligations of NPC to its employees. PSALM explains that when the EPIRA Law was passed on 26 June 2001, ownership of all existing NPC generation assets, IPP contracts, real estate and all other disposable assets were transferred to it by operation of law. All existing liabilities and outstanding financial obligations of NPC arising from loans, issuances of bonds, securities and other instrument of indebtedness were legally transferred and assumed by PSALM. It stressed that the liability of NPC arising from employer-employee relationship is not one of those transferred to, and assumed by, PSALM. The EPIRA, it said, did not contemplate such kind of liability. Further, it claims that its assets and the privatization proceeds cannot be the subject of execution because these were already earmarked specifically for the liquidation of NPC's financial obligations transferred to, and assumed by, PSALM.

Sections 49 and 50 of the EPIRA Law read:

SEC. 49. Creation of Power Sector Assets and Liabilities Management Corporation. – There is hereby created a government-owned and –controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation," hereinafter referred to as the "PSALM Corp.," which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

SEC. 50. Purpose and Objective, Domicile and Term of Existence. – The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

The PSALM Corp. shall have its principal office and place of business within Metro Manila.

The PSALM Corp. shall exist for a period of twenty-five (25) years from the effectivity of this Act, unless otherwise provided by law, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government.

Under the EPIRA Law, PSALM shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. PSALM acquired ownership over said properties of NPC *via* the EPIRA Law. It did not deny such fact and even admitted the same.

PSALM argues that the present judgment obligation of NPC arising from employer-employee relationship was neither an existing financial liability nor a contractual liability of NPC at the effectivity of the EPIRA Law. From a reading of said Section 49, it appears that only existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets shall be transferred to PSALM. We, however, rule that the word "existing" is to be construed as to qualify only the term "NPC generation assets." In arriving at said ruling, Section 49 must be read in conjunction with Section 50. The interpretation of the word "existing" should be understood in light of PSALM's purpose and objective during its term of existence (25 years from the effectivity of the law). It would be absurd to interpret the word "existing" as referring to the assets and liabilities of NPC only existing at the time when the EPIRA Law took effect (26 June 2001). It is more sensible and equitable that the word "existing" applies only to "NPC generation assets" because of the intent and purpose of the EPIRA Law which is to privatize NPC generation assets, real estate, and other disposable assets and IPP contracts. Upon the effectivity of the EPIRA Law, most of the assets of NPC, from which it got its income, was transferred to PSALM. When the privatization of NPC's assets is in progress, NPC may still incur liabilities, as what happened in the instant case. Who then shall answer for these liabilities? How can NPC answer for its liabilities if PSALM had already acquired almost all of its assets? It would be, under the circumstances, unfair and

unjust if PSALM gets nearly all of NPC's assets but will not pay for liabilities incurred by NPC during this privatization stage. It must be remembered that the restructuring of the NPC was due to the EPIRA Law. It is also the EPIRA Law that authorized PSALM to take ownership of NPC's assets and liabilities. And since the restructuring of NPC, which this Court found to be void, was the cause of NPC's liability, it is but reasonable for PSALM to assume the liabilities of NPC during the privatization of the NPC's assets.

It is well settled that courts are not to give a statute a meaning that would lead to absurdities. If the words of a statute are susceptible of more than one meaning, the absurdity of the result of one construction is a strong argument against its adoption, and in favor of such sensible interpretation. We test a law by its result. A law should not be interpreted so as not to cause an injustice. There are laws which are generally valid but may seem arbitrary when applied in a particular case because of its peculiar circumstances. We are not bound to apply them in slavish obedience to their language.[35] The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.[36] Taking into consideration the legislative intent and applying the rule of reason, we hold that the word "existing" should be interpreted to only qualify the term "NPC generation assets" and not the word "liabilities."

On PSALM's contention that since it was not a party to the case and that the petitioners are not its employees, the properties that it acquired from NPC cannot be levied, is untenable. The issue here is about PSALM's assets that were acquired from NPC. As explained above, PSALM took ownership over most of NPC's assets. There was indeed a **transfer of interest** over these assets – from NPC to PSALM – by operation of law. These properties may be used to satisfy our judgment.

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[35] *Belo v. Philippine National Bank*, 405 Phil. 851, 874 (2001).

[36] *In Re: Request of Justice Bernardo P. Pardo for Adjustment of his Longevity Pay*, A.M. No. 02-1-12-SC, 14 March 2007, 518 SCRA 263, 267.

This being the case, petitioners may go after such properties. The fact that PSALM is a non-party to the case will not prevent the levying of the said properties, including their fruits and proceeds. However, PSALM should not be denied due process. The levying of said properties and their fruits/proceeds, if still needed in case NPC's properties are insufficient to satisfy our judgment, is without prejudice to PSALM's participation in said proceedings. Its participation therein is necessary to prevent the levying of properties other than that it had acquired from NPC. Such a proceeding is to be conducted in the proper forum where petitioners may take the appropriate action.

Section 19, Rule 3 of the 1997 Revised Rules of Civil Procedure reads:

> Sec. 19. *Transfer of interest*. – In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

Under this section, the Court may, upon motion, direct the person to whom the interest is transferred to be substituted in the action or joined with the original party. In petitioners' Manifestation with Urgent Omnibus Motions dated 9 February 2009, they prayed that the properties acquired by PSALM from NPC be also levied/garnished. We consider this prayer to be tantamount to a motion to join PSALM as a party-respondent in this case in so far as to the properties, and any income arising therefrom, that PSALM acquired from NPC. It is in this light that we order the Clerk of Court of this division to implead or join PSALM as a party-respondent in this case. As above-explained, PSALM shall not be denied due process for it can participate in the proper forum by preventing the levying of properties other than that it had acquired from NPC.

We now go to the implementation of our decision. Petitioners submitted to this Court a list[37] supposedly containing names of employees separated from the NPC pursuant to the nullified

[37] *Rollo,* pp. 1025-1148.

NPB Board Resolutions No. 2002-124 and No. 2002-125 and the respective amounts they will receive. The computation of the benefits due them started on 1 February 2003/1 March 2003 to 30 June 2009. Even if we are to consider said list to be an official document released with authority by the NPC, we unfortunately cannot use the same to determine, at this point, the amounts due each of the affected NPC employees for the simple reason that amounts due should only be from the date of the employees' illegal termination (31 January 2003 for key officials; last day of service in NPC but not beyond 15 January 2003 for early leavers; date of actual separation for personnel no longer employed at the NPC after 26 June 2001; and 28 February 2003 for all other NPC personnel)[38] up to 14 September 2007 when NPB Resolution No. 2007-55 was issued. **This list which should contain the names of all, not only 16, the affected NPC employees shall be submitted by the Chairperson and the Members of the National Power Board and the President of the NPC to the proper person to execute this judgment within ten (10) days from receipt of this resolution.**

The instant petition for injunction was filed directly to this Court as mandated by Section 78[39] of the EPIRA Law. In as much as this Court does not have a sheriff of its own to execute our decision, we deem it appropriate, pursuant to Section 6,[40] Rule 135 of the Rules of Court and considering that the principal office of NPC is located in Quezon City, to authorize the **Clerk of Court of the Regional Trial Court and *Ex-Officio* Sheriff of Quezon**

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[38] See NPC Circular No. 2003-09; *rollo*, pp. 881-886.

[39] SEC. 78. *Injunction and Restraining Order*. – The implementation of the provisions of this Act shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

[40] SEC. 6. *Means to carry jurisdiction into effect*. – When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these Rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

City to execute our judgment which became final and executory on 10 October 2008 and for which an entry of judgment was made on 27 October 2008. After receipt of the list containing the names of the affected NPC employees and benefits due each of them, the **Clerk of Court of the Regional Trial Court and *Ex-Officio* Sheriff of Quezon City is directed to forthwith execute our judgment.**

WHEREFORE, premises considered, the Court resolves to *GRANT* petitioners' Manifestation with Urgent Omnibus Motions dated 9 February 2009 by:

1. *ORDERING* the Chairperson and the Members of the National Power Board and the President of the National Power Corporation, and their respective counsels, to *SHOW CAUSE* why they should not be held in contempt of court for their willful failure to comply with paragraphs 1 and 2 of the Resolution dated 10 December 2008 by claiming that the Court's decision nullifying NPB Board Resolutions No. 2002-124 and No. 2002-125 covered only sixteen employees when it is clear that the Court's decision covered all personnel/employees affected by the restructuring of the NPC;

2. *ORDERING* the Clerk of Court of this Division to implead or join PSALM as a party-respondent in this case;

3. *ORDERING* the Chairperson and the Members of the National Power Board and the President of the National Power Corporation to comply with the Court's Resolution dated 10 December 2008. The list shall contain all the names of all, not 16, NPC personnel/employees affected by the restructuring of the NPC. The computation of the amounts due the employees who were terminated and/or separated as a result of, or pursuant to, the nullified NPB Board Resolutions No. 2002-124 and No. 2002-125 shall be from their **date of illegal termination up to 14 September 2007** when NPB Resolution No. 2007-55 was issued. Said list shall be submitted to the Clerk of Court of the Regional Trial Court and *Ex-Officio* Sheriff of Quezon City within ten (10) days from receipt of this resolution. They are also ordered to submit to this Court their compliance to

said order within thirty (30) days from receipt of this resolution; and

4. *DIRECTING* the Clerk of Court of the Regional Trial Court and *Ex-Officio* Sheriff of Quezon City to cause the immediate execution of our Decision. Said Clerk of Court is further directed to submit to this Court his/her compliance to this directive within thirty (30) days from receipt of this resolution.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Leonardo-De Castro,[*] and *Brion,*[**] *JJ.,* concur.

EN BANC

[G.R. No. 162243. December 3, 2009]

HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources, *petitioner, vs.* **PICOP RESOURCES, INC.,** *respondent.*

[G.R. No. 164516. December 3, 2009]

PICOP RESOURCES, INC., *petitioner, vs.* **HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources,** *respondent.*

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[*] Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 13 April 2009.

[**] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 3 August 2009.

[G.R. No. 171875. December 3, 2009]

THE HON. ANGELO T. REYES (formerly Hon. Elisea G. Gozun), in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), *petitioner, vs.* **PAPER INDUSTRIES CORP. OF THE PHILIPPINES (PICOP),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; CONSTRUED. — Petitions for *Mandamus* are governed by Rule 65 of the Rules of Court, Section 3 of which provides: SEC. 3. *Petition for mandamus*.—When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an **act which the law specifically enjoins as a duty resulting from an office, trust, or station,** or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

2. ID.; ID.; ID.; NOT APPLICABLE FOR THE ENFORCEMENT OF SECTION 9, DAO NO. 99-53. — Respondent PICOP is asking this Court to conclude that the DENR Secretary is specifically enjoined by law to issue an Integrated Forest Management Agreement (IFMA) in its favor. x x x PICOP stresses the word "automatic" in Section 9 of DENR (Administrative Order (DAO) No. 99-53: Sec. 9. *Qualifications of Applicants*. – The applicants for IFMA shall be: (a) A Filipino citizen of legal age; or, (b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws. However, in the case of application for conversion of TLA into IFMA, an *automatic* conversion after proper evaluation shall be *allowed*, provided the TLA holder shall have signified such intention prior to the expiry of the TLA, PROVIDED further, that the TLA

holder has showed satisfactory performance and have complied in the terms of condition of the TLA and pertinent rules and regulations. This administrative regulation provision *allowing* automatic conversion after proper evaluation can hardly qualify as a law, much less a law *specifically enjoining* the execution of a contract. To enjoin is "to order or direct with urgency; to instruct with authority; to command." "'Enjoin' is a mandatory word, in legal parlance, always; in common parlance, usually." The word "allow," on the other hand, is not equivalent to the word "must," and is in no sense a command. As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a *ministerial* duty, not a discretionary one; *mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

3. ID.; ID.; ID.; WHEN *MANDAMUS* CAN BE ISSUED TO RESPONDENT IN CASE AT BAR BY VIRTUE OF THE 1969 DOCUMENT WHERE THE STATE IS A PARTY.— A contract (1969 Document), being the law between the parties, can indeed, with respect to the State when it is a party to such contract, qualify as a law specifically enjoining the performance of an act. Hence, it is possible that a writ of *mandamus* may be issued to PICOP, but **only if it proves both of the following:** 1) That the 1969 Document is a contract recognized under the non-impairment clause; and 2) That the 1969 Document specifically enjoins the government to issue the IFMA.

4. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; VIOLATED WITH THE INTERPRETATION OF THE 1969 DOCUMENT THAT THE TERM OF WARRANTY FOR TIMBER LICENSE IS NOT LIMITED TO FIFTY YEARS BUT EXTENDS TO ANOTHER FIFTY YEARS.— PICOP's claim that the term of the warranty is not limited to fifty years, but that it extends to other fifty years, perpetually, violates Section 2, Article XII of the Constitution. x x x IFMAs are production-sharing agreements concerning the development and utilization of natural resources. As such, these agreements "may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided

by law." Any superior "contract" requiring the State to issue TLAs and IFMAs whenever they expire clearly circumvents Section 2, Article XII of the Constitution, which provides for the only permissible schemes wherein the full control and supervision of the State are not derogated: co-production, joint venture, or production-sharing agreements within the time limit of twenty-five years, renewable for another twenty-five years. On its face, the 1969 Document was meant to expire on 26 April 2002, upon the expiration of the expected extension of the original TLA period ending on 26 April 1977: x x x Any interpretation extending the application of the 1969 Document beyond 26 April 2002 and any concession that may be granted to PICOP beyond the said date would violate the Constitution, and no amount of legal hermeneutics can change that.

5. ID.; ID.; TRANSITORY PROVISIONS; THAT ALL EXISTING LAWS, DECREES, EXECUTIVE ORDERS, PROCLAMATIONS, LETTERS OF INSTRUCTIONS, AND OTHER EXECUTIVE ISSUANCES NOT INCONSISTENT WITH THE CONSTITUTION SHALL REMAIN OPERATIVE UNTIL AMENDED, REPEALED, OR REVOKED; ELUCIDATED. — PICOP insists that the alleged Presidential Warranty, having been signed on 29 July 1969, could not have possibly considered the limitations yet to be imposed by future issuances, such as the 1987 Constitution. However, Section 3, Article XVIII of said Constitution, provides: **Section** 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked. In the recent case *Sabio v. Gordon*, we ruled that "(t)he clear import of this provision is that all existing laws, executive orders, proclamations, letters of instructions and other executive issuances inconsistent or repugnant to the Constitution are repealed." When a provision is susceptible of two interpretations, "the one that will render them operative and effective and harmonious with other provisions of law" should be adopted. As the interpretations in the assailed Decision and in Mr. Justice Tinga's *ponencia* are the ones that would not make the subject Presidential Warranty unconstitutional, these are what we shall adopt.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESSENTIAL REQUISITES OF CONTRACTS; CAUSE OF CONTRACTS;

INVESTMENTS AS CONTRACT CONSIDERATION FOR GOVERNMENT LICENSE, NOT PROPER AS SAID LICENSE NOT A CONTRACT. — According to Article 1350 of the Civil Code, "(i)n onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other." Private investments for one's businesses, while indeed eventually beneficial to the country and deserving to be given incentives, are still principally and predominantly for the benefit of the investors. Thus, the "mutual" contract considerations by both parties to this alleged contract would be both for the benefit of one of the parties thereto, BBLCI, which is not obligated by the 1969 Document to surrender a share in its proceeds any more than it is already required by its TLA and by the tax laws. PICOP's argument that its investments can be considered as contract consideration derogates the rule that "a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in the constitutional sense, as to which the constitutional proscription against the impairment of contracts may extend." All licensees obviously put up investments, whether they are as small as a tricycle unit or as big as those put up by multi-billion-peso corporations. To construe these investments as contract considerations would be to abandon the foregoing rule, which would mean that the State would be bound to all licensees, and lose its power to revoke or amend these licenses when public interest so dictates.

7. POLITICAL LAW; POLICE POWER OF THE STATE; ISSUANCE OF LICENSES THAT COME IN THE FORM OF AGREEMENTS, NOT CONSIDERED CONTRACTS UNDER THE NON-IMPAIRMENT CLAUSE.— The power to issue licenses springs from the State's police power, known as "the most essential, insistent and least limitable of powers, extending as it does to all the great public needs." Businesses affecting the public interest, such as the operation of public utilities and those involving the exploitation of natural resources, are mandated by law to acquire licenses. This is so in order that the State can regulate their operations and thereby protect the public interest. Thus, while these licenses come in the form of "agreements," *e.g.*, "Timber License Agreements," they cannot be considered contracts under the non-impairment clause.

8. REMEDIAL LAW; CIVIL PROCEDURE; WHEN A COURT BASES ITS DECISION ON TWO OR MORE GROUNDS, EACH IS AS AUTHORITATIVE AS THE OTHER AND NEITHER IS *OBITER DICTUM*; CASE AT BAR. — When a court bases its decision on two or more grounds, each is as authoritative as the other and neither is *obiter dictum*. Thus, both grounds on which we based our ruling in the assailed Decision would become *judicial dictum*, and would affect the rights and interests of the parties to this case unless corrected in this Resolution on PICOP's Motion for Reconsideration. Therefore, although PICOP would not be entitled to a Writ of *Mandamus* even if the second issue is resolved in its favor, we should nonetheless resolve the same and determine whether PICOP has indeed complied with all administrative and statutory requirements for the issuance of an IFMA.

9. ID.; EVIDENCE; RULES OF ADMISSIBILITY; TESTIMONY GENERALLY CONFINED TO PERSONAL KNOWLEDGE; HEARSAY, EXCLUDED. — A witness may testify only on facts of which he has personal knowledge; that is, those derived from his perception, except in certain circumstances allowed by the Rules. Otherwise, such testimony is considered hearsay and, hence, inadmissible in evidence. SFMS Evangelista, while not relying on the Memoranda of Orlanes and Arayan, nevertheless relied on records, the preparation of which he did not participate in. These records and the persons who prepared them were not presented in court, either. As such, SFMS Evangelista's testimony, insofar as he relied on these records, was on matters not derived from his own perception, and was, therefore, hearsay.

10. ID.; ID.; ID.; ID.; ID.; EXCEPTION; ENTRIES IN OFFICIAL RECORDS. — Section 44, Rule 130 of the Rules of Court, which speaks of entries in official records as an exception to the hearsay rule, cannot excuse the testimony of SFMS Evangelista. Section 44 provides: SEC. 44. *Entries in official records*. – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. In *Africa v. Caltex*, we enumerated the following requisites for the admission of entries in official records as an exception to the hearsay rule: (1) the entries were made by a public officer or a private person

in the performance of a duty; (2) the performance of the duty is especially enjoined by law; (3) the public officer or the private person had sufficient knowledge of the facts stated by him, which must have been acquired by him personally or through official information. The presentation of the records themselves would, therefore, have been admissible as an exception to the hearsay rule even if the public officer/s who prepared them was/were not presented in court, provided the above requisites could be adequately proven. In the case at bar, however, neither the records nor the persons who prepared them were presented in court. Thus, the above requisites cannot be sufficiently proven. Also, since SFMS Evangelista merely testified based on what those records contained, his testimony was hearsay evidence twice removed, which was one step too many to be covered by the official-records exception to the hearsay rule.

11. POLITICAL LAW; RA NO. 8371; REQUIREMENT OF PRIOR CERTIFICATION FROM THE NCIP THAT THE AREAS AFFECTED BY TIMBER LICENSE DO NOT OVERLAP WITH ANY ANCESTRAL DOMAIN BEFORE ANY IFMA CAN BE ENTERED INTO BY THE GOVERNMENT; SUBJECT LANDS NEED NOT BE PROVEN PART OF ANCESTRAL DOMAINS FIRST BEFORE CERTIFICATION BE REQUIRED. — Section 59 of Republic Act No. 8371 requires prior certification from the NCIP that the areas affected do not overlap with any ancestral domain before any IFMA can be entered into by the government. x x x What is required in Section 59 of Republic Act No. 8379 is a Certification from the NCIP that there was no overlapping with any Ancestral Domain. PICOP cannot claim that the DENR gravely abused its discretion for requiring this Certification, on the ground that there was no overlapping. We reiterate that **it is manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that they are not can be required.**

12. ID.; LOCAL GOVERNMENT CODE; SANGGUNIAN CONSULTATION AND APPROVAL BEFORE ISSUANCE OF IFMA TO PICOP; IN SUFFICIENT COMPLIANCE IN CASE AT BAR. — Sections 2(c), 26 and 27 of the Local Government Code provide: SEC. 2. x x x. (c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other

concerned sectors of the community before any project or program is implemented in their respective jurisdictions. SEC. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance*. – It shall be the duty of every ***national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species,*** to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof. SEC. 27. *Prior Consultations Required*. – No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with***, and prior approval of the sanggunian concerned is obtained*:** Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution. x x x PICOP had claimed that it complied with the Local Government Code requirement of obtaining prior approval of the Sanggunian concerned by submitting a purported resolution of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion. We ruled that this cannot be deemed sufficient compliance with the foregoing provision. Surigao del Sur is not the only province affected by the area covered by the proposed IFMA. The approval of the Sanggunian concerned is required by law, not because the local government has control over such project, but because the local government has the duty to protect its constituents and their stake in the implementation of the project. Again, Section 26 states that it applies to projects that "may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species." The local government should thus represent the communities in such area, the very people who will be affected by flooding, landslides or even climatic change if the project is not properly regulated, and who likewise have a stake in the

resources in the area, and deserve to be adequately compensated when these resources are exploited.

13. ID.; CONSTITUTIONAL LAW; THAT ALL PROJECTS RELATING TO EXPLORATION, DEVELOPMENT AND UTILIZATION OF NATURAL RESOURCES ARE PROJECTS OF THE STATE, EMPHASIZED. – All projects relating to the exploration, development and utilization of natural resources are projects of the State. While the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by these citizens, such as PICOP, the projects nevertheless remain as State projects and ***can never be purely private endeavors***. Also, despite entering into co-production, joint venture, or production-sharing agreements, the State remains in full control and supervision over such projects. PICOP, thus, cannot limit government participation in the project to being merely its bouncer, whose primary participation is only to "warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project."

APPEARANCES OF COUNSEL

The Solicitor General for Hon. Heherson T. Alvarez and Hon. Angelo T. Reyes.

Quasha Ancheta Peña and Nolasco and *Agabin Verzola Hermoso and Layaoen Law Offices* for Paper Industries Corporation of the Philippines (PICOP) Resources, Inc.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

The cause of action of PICOP Resources, Inc. (PICOP) in its Petition for *Mandamus* with the trial court is clear: the government is bound by contract, a 1969 Document signed by then President Ferdinand Marcos, to enter into an Integrated Forest Management Agreement (IFMA) with PICOP. Since the remedy of *mandamus* lies only to compel an officer to

perform a *ministerial* duty, and since the 1969 Document itself has a proviso requiring compliance with the laws and the Constitution, the issues in this Motion for Reconsideration are the following: (1) firstly, is the 1969 Document a *contract* enforceable under the Non-Impairment Clause of the Constitution, so as to make the signing of the IFMA a ministerial duty? (2) secondly, did PICOP comply with all the legal and constitutional requirements for the issuance of an IFMA?

To recall, PICOP filed with the Department of Environment and Natural Resources (DENR) an application to have its Timber License Agreement (TLA) No. 43 converted into an IFMA. In the middle of the processing of PICOP's application, however, PICOP refused to attend further meetings with the DENR. Instead, on 2 September 2002, PICOP filed before the Regional Trial Court (RTC) of Quezon City a Petition for *Mandamus*[1] against then DENR Secretary Heherson T. Alvarez. PICOP seeks the issuance of a privileged writ of *mandamus* to compel the DENR Secretary to sign, execute and deliver an IFMA to PICOP, as well as to –

> [I]ssue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended; b) to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and c) to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, [1969] between the government and PICOP's predecessor-in-interest. x x x.[2]

On 11 October 2002, the RTC rendered a Decision granting PICOP's Petition for *Mandamus*, thus:

> WHEREFORE, premises considered, the Petition for *Mandamus* is hereby GRANTED.

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[1] Records, pp. 1-38.

[2] *Id.* at 36.

The Respondent DENR Secretary Hon. Heherson Alvarez is hereby ordered:

1. to sign, execute and deliver the IFMA contract and/or documents to PICOP and issue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended;

2. to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and

3. to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, 1999 (sic) between the government and PICOP's predecessor-in-interest Exhibits "H", "H-1" to "H-5", particularly the following:

    a) the area coverage of TLA No. 43, which forms part and parcel of the government warranties;

    b) PICOP tenure over the said area of TLA No. 43 and exclusive right to cut, collect and remove sawtimber and pulpwood for the period ending on April 26, 1977; and said period to be renewable for [an]other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions; and

    c) The peaceful and adequate enjoyment by PICOP of the area as described and specified in the aforesaid amended Timber License Agreement No. 43.

The Respondent Secretary Alvarez is likewise ordered to pay petitioner the sum of ₱10 million a month beginning May 2002 until the conversion of TLA No. 43, as amended, to IFMA is formally effected and the harvesting from the said area is granted.[3]

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[3] *Rollo* (G.R. No. 162243), pp. 221-222.

On 25 October 2002, the DENR Secretary filed a Motion for Reconsideration.[4] In a 10 February 2003 Order, the RTC denied the DENR Secretary's Motion for Reconsideration and granted PICOP's Motion for the Issuance of Writ of *Mandamus* and/or Writ of Mandatory Injunction.[5] The *fallo* of the 11 October 2002 Decision was practically copied in the 10 February 2003 Order, although there was no mention of the damages imposed against then DENR Secretary Alvarez.[6] The DENR Secretary

[4] Records, Vol. 2, pp. 393-456.

[5] Records, Vol. 4, pp. 1349-1575.

[6] The dispositive portion of the 10 February 2003 Order reads:

WHEREFORE, premises considered, the Motion for Reconsideration dated October 25, 2002 is hereby DENIED for utter lack of merit while the Motion for the Issuance of Writ of *Mandamus* and/or Writ of Mandatory Injunction is GRANTED. Accordingly, respondent DENR Secretary Heherson Alvarez, now substituted by Secretary Elisea Gozun, is hereby ordered:

1. to sign, execute and deliver the IFMA contract and/or documents to PICOP and issue the corresponding IFMA assignment number on the area covered by IFMA, formerly TLA No. 43, as amended;

2. to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and

3. to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, 1999 (sic) between the government and PICOP's predecessor-in-interest (Exhibits "H", "H-1" to "H-5", particularly the following:

a) The area coverage of TLA No. 43, which forms part and parcel of the government warranties;

b) PICOP tenure over the said area of TLA No. 43 and exclusive right to cut, collect and remove sawtimber and pulpwood for the period ending on April 26, 1977; and said period to be renewable for another 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions, and

c) The peaceful and adequate enjoyment by PICOP of the area as described and specified in the aforesaid amended Timber License Agreement No. 43. (Records, Vol. 4, pp. 1374-1375)

filed a Notice of Appeal[7] from the 11 October 2002 Decision and the 10 February 2003 Order.

On 19 February 2004, the Seventh Division of the Court of Appeals affirmed[8] the Decision of the RTC, to wit:

> WHEREFORE, the appealed Decision is hereby AFFIRMED with modification that the order directing then DENR Secretary Alvarez "to pay petitioner-appellee the sum of ₱10 million a month beginning May, 2002 until the conversion to IFMA of TLA No. 43, as amended, is formally effected and the harvesting from the said area is granted" is hereby deleted.[9]

Challenging the deletion of the damages awarded to it, PICOP filed a Motion for Partial Reconsideration[10] of this Decision, which was denied by the Court of Appeals in a 20 July 2004 Resolution.[11]

The DENR Secretary and PICOP filed with this Court separate Petitions for Review of the 19 February 2004 Court of Appeals Decision. These Petitions were docketed as G.R. No. 162243 and No. 164516, respectively. These cases were consolidated with G.R. No. 171875, which relates to the lifting of a Writ of Preliminary Injunction enjoining the execution pending appeal of the foregoing Decision.

On 29 November 2006, this Court rendered the assailed Decision on the Consolidated Petitions:

> WHEREFORE, the Petition in G.R. No. 162243 is **GRANTED**. The Decision of the Court of Appeals insofar as it affirmed the RTC Decision granting the Petition for *Mandamus* filed by Paper Industries Corp. of the Philippines (PICOP) is hereby **REVERSED** and **SET ASIDE**. The Petition in G.R. No. 164516 seeking the reversal of the same Decision

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[7] Records, Vol. 2, p. 611.

[8] *Rollo* (G.R. No. 162243), pp. 229-258. Penned by Associate Justice Ruben T. Reyes, with Associate Justices Edgardo P. Cruz and Noel G. Tijam concurring; *rollo* (G.R. No. 162243), pp. 229-258.

[9] *Rollo* (G.R. No. 162243), p. 257.

[10] *Rollo* (G.R. No. 164516), pp. 107-119.

[11] *Id.* at 121-122.

insofar as it nullified the award of damages in favor of PICOP is **DENIED** for lack of merit. The Petition in G.R. No. 171875, assailing the lifting of the Preliminary Mandatory Injunction in favor of the Secretary of Environment and Natural Resources is **DISMISSED** on the ground of mootness.[12]

On 18 January 2006, PICOP filed the instant Motion for Reconsideration, based on the following grounds:

I.

THE HONORABLE COURT ERRED IN HOLDING THAT THE CONTRACT WITH PRESIDENTIAL WARRANTY SIGNED BY THE PRESIDENT OF THE REPUBLIC ON 29 JUNE 1969 ISSUED TO PICOP IS A MERE PERMIT OR LICENSE AND IS NOT A CONTRACT, PROPERTY OR PROPERTY RIGHT PROTECTED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION

II.

THE EVALUATION OF PICOP'S MANAGEMENT OF THE TLA 43 NATURAL FOREST CLEARLY SHOWED SATISFACTORY PERFORMANCE FOR KEEPING THE NATURAL FOREST GENERALLY INTACT AFTER 50 YEARS OF FOREST OPERATIONS. THIS COMPLETES THE REQUIREMENT FOR AUTOMATIC CONVERSION UNDER SECTION 9 OF DAO 99-53.

III.

WITH DUE RESPECT, THE HONORABLE COURT, IN REVERSING THE FINDINGS OF FACTS OF THE TRIAL COURT AND THE COURT OF APPEALS, MISAPPRECIATED THE EVIDENCE, TESTIMONIAL AND DOCUMENTARY, WHEN IT RULED THAT:

i.

PICOP FAILED TO SUBMIT A FIVE-YEAR FOREST PROTECTION PLAN AND A SEVEN-YEAR REFORESTATION PLAN FOR THE YEARS UNDER REVIEW.

ii.

PICOP FAILED TO COMPLY WITH THE PAYMENT OF FOREST CHARGES.

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[12] *Id*. at 814.

iii.

PICOP DID NOT COMPLY WITH THE REQUIREMENT FOR A CERTIFICATION FROM THE NCIP THAT THE AREA OF TLA 43 DOES NOT OVERLAP WITH ANY ANCESTRAL DOMAIN.

iv.

PICOP FAILED TO HAVE PRIOR CONSULTATION WITH AND APPROVAL FROM THE SANGUNIAN CONCERNED, AS REQUIRED BY SECTION 27 OF THE REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991.

v.

PCIOP FAILED TO SECURE SOCIAL ACCEPTABILITY UNDER PRESIDENTIAL DECREE NO. 1586.

IV

THE MOTIVATION OF ALVAREZ IN RECALLING THE CLEARANCE FOR AUTOMATIC CONVERSION HE ISSUED ON 25 OCTOBER 2001 WAS NOT DUE TO ANY SHORTCOMING FROM PICOP BUT DUE TO HIS DETERMINATION TO EXCLUDE 28,125 HECTARES FROM THE CONVERSION AND OTHER THINGS.

On 15 December 2008, on Motion by PICOP, the Third Division of this Court resolved to refer the consolidated cases at bar to the Court *en banc*. On 16 December 2008, this Court sitting *en banc* resolved to accept the said cases and set them for oral arguments. Oral arguments were conducted on 10 February 2009.

PICOP's Cause of Action: Matters PICOP Should Have Proven to Be Entitled to a Writ of *Mandamus*

In seeking a writ of *mandamus* to compel the issuance of an IFMA in its favor, PICOP relied on a 29 July 1969 Document, the so-called Presidential Warranty approved by then President Ferdinand E. Marcos in favor of PICOP's predecessor-in-interest, Bislig Bay Lumber Company, Inc. (BBLCI). PICOP's cause

of action is summarized in paragraphs 1.6 and 4.19 of its Petition for *Mandamus*:

1.6 Respondent Secretary impaired the obligation of contract under the said Warranty and Agreement of 29 July 1969 by refusing to respect the tenure; and its renewal for another twenty five (25) years, of PICOP over the area covered by the said Agreement which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable and disposable lands with an aggregate area of approximately 21,580 hectares, and petitioner's exclusive right to cut, collect and remove sawtimber and pulpwood therein and the peaceful and adequate enjoyment of the said area as described and specified in petitioner's Timber License Agreement (TLA) No. 43 guaranteed by the Government, under the Warranty and Agreement of 29 July 1969.[13]

4.19 Respondent is in violation of the Constitution and has impaired the obligation of contract by his refusal to respect: a) the tenurial rights of PICOP over the forest area covered by TLA No. 43, as amended and its renewal for another twenty five (25) years; b) the exclusive right of PICOP to cut, collect and remove sawtimber and pulpwood therein; and c) PICOP's peaceful and adequate enjoyment of the said area which the government guaranteed under the Warranty and Agreement of 29 July 1969.[14]

The grounds submitted by PICOP in its Petition for *Mandamus* are as follows:

I

Respondent secretary has unlawfully refused and/or neglected to sign and execute the IFMA contract of PICOP even as the latter has complied with all the legal requirements for the automatic conversion of TLA No. 43, as amended, into an IFMA.

II

Respondent Secretary acted with grave abuse of discretion and/or in excess of jurisdiction in refusing to sign and execute PICOP's IFMA contract, notwithstanding that PICOP had complied with all the requirements for Automatic Conversion under DAO 99-53, as in fact

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[13] PICOP's Petition for *Mandamus*; records, p. 5.

[14] *Id.*; records, p. 20.

Automatic Conversion was already cleared in October, 2001, and was a completed process.

III

Respondent Secretary has impaired the obligation of contract under a valid and binding warranty and agreement of 29 July 1969 between the government and PICOP's predecessor-in-interest, by refusing to respect: a) the tenure of PICOP, and its renewal for another twenty five (25) years, over the TLA No.43 area covered by said agreement; b) the exclusive right to cut, collect and remove sawtimber and pulpwood timber; and c) the peaceful and adequate enjoyment of the said area.

IV

As a result of respondent Secretary's unlawful refusal and/or neglect to sign and deliver the IFMA contract, and violation of the constitutional rights of PICOP against non-impairment of the obligation of contract (Sec. 10, Art. III, 1997 [sic] Constitution), PICOP suffered grave and irreparable damages.[15]

Petitions for *Mandamus* are governed by Rule 65 of the Rules of Court, Section 3 of which provides:

SEC. 3. *Petition for mandamus.*—When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an **act which the law specifically enjoins as a duty resulting from an office, trust, or station**, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphasis supplied.)

PICOP is thus asking this Court to conclude that the DENR Secretary is specifically enjoined by law to issue an IFMA in

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

its favor. An IFMA, as defined by DENR Administrative Order (DAO) No. 99-53,[16] is -

> [A] production-sharing contract entered into by and between the DENR and a qualified applicant wherein the DENR grants to the latter the exclusive right to develop, manage, protect and utilize a specified area of forestland and forest resource therein for a period of 25 years and may be renewed for another 25-year period, consistent with the principle of sustainable development and in accordance with an approved CDMP, and under which both parties share in its produce.[17]

PICOP stresses the word "automatic" in Section 9 of this DAO No. 99-53:

> Sec. 9. *Qualifications of Applicants*. – The applicants for IFMA shall be:
>
> (a) A Filipino citizen of legal age; or,
>
> (b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws.
>
> However, in the case of application for conversion of TLA into IFMA, an *automatic* conversion after proper evaluation shall be *allowed*, provided the TLA holder shall have signified such intention prior to the expiry of the TLA, PROVIDED further, that the TLA holder has showed satisfactory performance and have complied in the terms of condition of the TLA and pertinent rules and regulations. (Emphasis supplied.)[18]

This administrative regulation provision *allowing* automatic conversion after proper evaluation can hardly qualify as a law, much less a law *specifically enjoining* the execution of a contract. To enjoin is "to order or direct with urgency; to instruct with authority; to command."[19] "'Enjoin' is a mandatory word, in

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[16] Regulations Governing the Integrated Forest Management Program (IFMP); records, pp. 41-55.

[17] Records, p. 43.

[18] *Id.* at 46.

[19] 14A Words and Phrases, West Publishing Co., p. 290 (1952), citing *Lawrence v. Cooke*, N.Y., 32 Hun 126, 134.

legal parlance, always; in common parlance, usually."[20] The word "allow," on the other hand, is not equivalent to the word "must," and is in no sense a command.[21]

As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a *ministerial* duty, not a discretionary one; *mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.[22]

The execution of agreements, in itself, involves the exercise of discretion. Agreements are products of negotiations and mutual concessions, necessitating evaluation of their provisions on the part of both parties. In the case of the IFMA, the evaluation on the part of the government is specifically mandated in the afore-quoted Section 3 of DAO No. 99-53. This evaluation necessarily involves the exercise of discretion and judgment on the part of the DENR Secretary, who is tasked not only to negotiate the sharing of the profit arising from the IFMA, but also to evaluate the compliance with the requirements on the part of the applicant.

Furthermore, as shall be discussed later, the period of an IFMA that was merely automatically converted from a TLA in accordance with Section 9, paragraph 2 of DAO No. 99-53 would only be for the remaining period of the TLA. Since the TLA of PICOP expired on 26 April 2002, the IFMA that could have been granted to PICOP via the automatic conversion provision in DAO No. 99-53 would have expired on the same date, 26 April 2002, and the PICOP's Petition for *Mandamus* would have become moot.

This is where the 1969 Document, the purported Presidential Warranty, comes into play. When PICOP's application was brought to a standstill upon the evaluation that PICOP had yet to comply

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[20] *Id.*, citing *Clifford v. Stewart*, 49 A. 52, 55, 95 Me. 38.

[21] 3 Words and Phrases, West Publishing Co., p. 344 (1953), citing *Giffin v. Petree*, 46 S.W. 2d 609, 618, 226 Mo. App. 718.

[22] *Akbayan-Youth v. Commission on Elections*, 407 Phil. 618, 646 (2001).

with the requirements for such conversion, PICOP refused to attend further meetings with the DENR and instead filed a Petition for *Mandamus*, insisting that the DENR Secretary had impaired the obligation of contract by his refusal to respect: a) the tenurial rights of PICOP over the forest area covered by TLA No. 43, as amended, and its renewal for another twenty-five (25) years; b) the exclusive right of PICOP to cut, collect and remove sawtimber and pulpwood therein; and c) PICOP's peaceful and adequate enjoyment of the said area which the government guaranteed under the Warranty and Agreement of 29 July 1969.[23]

PICOP is, thus, insisting that the government is *obligated by contract* to issue an IFMA in its favor because of the 1969 Document.

A contract, being the law between the parties, can indeed, with respect to the State when it is a party to such contract, qualify as a law specifically enjoining the performance of an act. Hence, it is possible that a writ of *mandamus* may be issued to PICOP, but **only if it proves both of the following**:

1) That the 1969 Document is a contract recognized under the non-impairment clause; and

2) That the 1969 Document specifically enjoins the government to issue the IFMA.

If PICOP fails to prove any of these two matters, the grant of a privileged writ of *mandamus* is not warranted. This was why we pronounced in the assailed Decision that the overriding controversy involved in the Petition was one of law.[24] If PICOP fails to prove any of these two matters, more significantly its assertion that the 1969 Document is a contract, PICOP fails to prove its cause of action.[25] Not even the satisfactory

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[23] PICOP's Petition for *Mandamus*; records, p. 20.

[24] Decision, p. 26.

[25] The nature of PICOP's Petition for *Mandamus* reads in full:

NATURE OF THE PETITION/COMPLAINT

compliance with all legal and administrative requirements for an IFMA would save PICOP's Petition for *Mandamus*.

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1. This is a Special Civil Action for *Mandamus*, with prayer for issuance of Writ of Preliminary Prohibitory and Mandatory Injunction with Damages under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

1.1 Petitioner invokes the jurisdiction of this Honorable Court conferred by Batas Pambansa Blg. 129, The Judiciary Reorganization Act of 1980, under Sections 21 thereof:

> "Sec. 21. Original Jurisdiction in other cases. Regional Trial Court shall exercise original jurisdiction:
>
> (1) In the issuance of writs of *certiorari*, prohibition *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions; xxx (underscoring supplied).

1.2 Petitioner brings the instant petition for the grant of the privileged writ of *mandamus*, with prayer for the issuance of provisional remedies of preliminary prohibitory and mandatory injunction *pendente lite* against respondent Secretary for illegal acts which impinge on and violate the constitutional rights of petitioner, and respondent Secretary has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction.

1.3 Appropriateness of Recourse to *Mandamus*. The 1997 Rules of Civil Procedure, as amended, under Rule 65, Sec. 3 thereof provides relief against official acts by public officers which are illegal and traduces fundamental rights of a party aggrieved, or acts done without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus:

> "Sec. 3. Petition for *Mandamus*. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another person from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay damages sustained by the petitioner by reason of the wrongful acts of the respondent." (Emphasis supplied)

1.4 The jurisdiction of this Honorable Court to adjudicate the matters raised in this petition and to issue the privileged writ of *mandamus* is a settled matter. In *Tañada v. Angara*, 272 SCRA 18 [1997], the Supreme Court held:

The reverse, however, is not true. The 1969 Document expressly states that the warranty as to the tenure of PICOP

The jurisdiction of this Court to adjudicate the matters raised in the petition is clearly set out in the 1987 Constitution, as follows:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

The foregoing text emphasizes the judicial department's duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government including Congress. It is innovation in our political law. As explained by former Chief Justice Roberto Concepcion, the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not a judicial power but a duty to pass judgment on matters of this nature.

As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government.

As the petition alleges grave abuse of discretion and as there is no other plain, speedy or adequate remedy in the ordinary course of law, we have no hesitation at all in holding that this petition should be given due course and the vital questions raised therein ruled upon under Rule 65 of the Rules of Court. Indeed, *certiorari*, prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials. On this, we have no equivocation.

1.5 By this privileged writ of *mandamus*, petitioner seeks to:

1.5.1 Compel respondent Department of Environment and Natural Resources (DENR) Secretary Heherson T. Alvarez to execute and deliver the Integrated Forestry Management Agreement (IFMA for short), and issue the corresponding IFMA number assignment to petitioner and to which it has a clear legal right and respondent has the legal duty to perform.

Respondent DENR Secretary has unlawfully refused and neglected and continue to unlawfully refuse and neglect, to issue the IFMA and corresponding IFMA number assignment to PICOP, the performance of which the law specifically enjoins as a duty resulting from his office.

is "subject to compliance with constitutional and statutory requirements as well as with existing policy on timber

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Respondent Secretary Alvarez in refusing to sign, execute and deliver the IFMA and corresponding IFMA assignment number to PICOP has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess or lack of jurisdiction.

1.5.2 Compel respondent DENR Secretary to abide by and respect the obligation of contract embodied under a letter warranty and agreement entered into by and between the Government and PICOP's predecessor-in-interest dated 29 July 1969, with the following covenants:

> "This has reference to the request of the Board of Investment through its Chairman in a letter dated July 16, 1969 for a warranty on the boundaries of your concession area under Timber License Agreement No. 43, as amended.
>
> We are made to understand that your company is committed to support the first large scale integrated wood processing complex (hereinafter called "The Project") and that such support will be provided not only in the form of the supply of pulpwood and other wood materials from your concession but also by making available funds generated out of your own operations, to supplement PICOP's operational sources of funds and other financial arrangements made by him. In order that your company may provide such support effectively, it is understood that you will call upon your stockholders to take such steps as may be necessary to effect in unification of managerial, technical, economical and manpower resources between your company and PICOP.
>
> It is in the public interest to promote industries that will enhance the proper conservation of our forest resources as well as insure the maximum utilization thereof to the benefit of the national economy. The Administration feels that the PICOP project is one such industry which should enjoy priority over the usual logging operations hitherto practiced by ordinary timber licenses for this reason, we are pleased to consider favorably the request.
>
> We confirm that your Timber License Agreement No. 43, as amended, (copy of which is attached as Annex "A") hereof attached to form part and parcel of this warranty) definitely establishes the boundary lines of your concession area which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares.
>
> We further confirm that your tenure over the area and exclusive right to cut, collect and remove sawtimber and pulpwood shall be for the period ending on April 26, 1997; said period to be renewable

concessions." Thus, **if PICOP proves the two above-mentioned matters, it still has to prove compliance with**

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for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

The peaceful and adequate enjoyment by you of your area as described and specified in your aforesaid amended Timber License Agreement No. 43 is hereby warranted provided that pertinent laws, regulations and the terms and conditions of your license agreement are observed."

Copy of which is attached as Annex "A".

1.6 Respondent Secretary impaired the obligation of contract under the said Warranty and Agreement of 29 July 1969 by refusing to respect the tenure; and its renewal for other twenty five (25) years, of PICOP over the area covered by said Agreement which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares, and petitioner's exclusive right to cut, collect and remove sawtimber and pulpwood therein and the peaceful and adequate enjoyment of the said area as described and specified in petitioner's Timber License Agreement (TLA) No. 43 guaranteed by the Government, under the Warranty and Agreement of 29 July 1969.

1.7 The Bill of Rights of the 1987 Constitution guarantees the non-impairment of the obligation of contract, providing in Sec. 10, Art. III thereof that:

"Sec. 10. No law impairing the obligation of contracts shall be passed."

1.8 The obligation of a contract is the law or duty which binds the parties to perform their agreement according to its terms or intent (*Sturgess v. Crownshields,* 4 Wheat 122). The treaties on the Constitution state the scope of terms "law" and "contract", to mean:

> (1) The law, the enactment of which is prohibited, includes executive and administrative orders issued by heads of departments, and ordinances enacted by local governments. (citing *Lim v. Secretary of Agriculture*, 34 SCRA 751 [1970]).
>
> (2) The contract, the obligation of which is secured against impairment by the Constitution, includes contracts entered into by the Government (citing *Maddumba v. GSIS*, 182 SCRA 281 [1990]). An example of impairment by law is when a tax exemption based on a contract entered into by the government is revoked by a letter taxing statute (citing *Casanova v. Hord,* 8 Phil. 125 [1907]).
>
> 3) The State when contracting does so upon the same terms as a private individual or corporation and may not plead its sovereignty as justification in impairing a contractual obligation which it has assumed (citing Willoughby, op. Cit. p. 1224).

statutory and administrative requirements for the conversion of its TLA into an IFMA.

Exhaustion of Administrative Remedies

PICOP uses the same argument — that the government is bound by contract to issue the IFMA — in its refusal to exhaust all administrative remedies by not appealing the alleged illegal non-issuance of the IFMA to the Office of the President. PICOP claimed in its Petition for *Mandamus* with the trial court that:

1.10 This petition falls as an exception to the exhaustion of administrative remedies. The acts of respondent DENR Secretary complained of in this petition are ***patently illegal; in derogation of the constitutional rights of petitioner against non-impairment of the obligation of contracts***; without jurisdiction, or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to

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(4) In a Contract, a party acquires a right ande the other assumed an obligation arising from the same (Art. 1305 New Civil Code). A contract is the law between the contracting parties, their assigns, and their heirs (Arts. 1159, 1311 par. 1, Civil Code) (De Leon, *Philippine Constitutional Law, Principles* and *Cases*, 1999 Ed., pp. 682, 283).

As used in the Constitution, the word "Contracts" includes other arrangement not normally considered to be contracts such as a legislative grant of a public land to particular individuals, such that a subsequent attempt by the State to annul the title of purchasers in good faith from the grantee would be unconstitutional (citing *Fletcher v. Peck,* 10 US 87). (*ibid.*, p. 6).

1.9 There is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law except the privileged writ of *mandamus* prayed for in this petition.

1.10 This petition falls as an exception to the exhaustion of administrative remedies. The acts of respondent DENR Secretary complained of in this petition are patently illegal; in derogation of the constitutional rights of petitioner against non-impairment of the obligation of contracts; without jurisdiction, or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess or lack of jurisdiction; and moreover, the failure or refusal of a high government official such as a Department head from whom relief is brought to act on the matter was considered equivalent to exhaustion of administrative remedies (*Sanoy v.*

excess or lack of jurisdiction; and moreover, the failure or refusal of a high government official such as a Department head from whom relief is brought to act on the matter was considered equivalent to exhaustion of administrative remedies (*Sanoy v. Tantuico,* 50 SCRA 455 [1973]), and there are compelling and urgent reasons for judicial intervention (*Bagatsing v. Ramirez*, 74 SCRA 306 [1976]).

Thus, if there has been no impairment of the obligation of contracts in the DENR Secretary's non-issuance of the IFMA, the proper remedy of PICOP in claiming that it has complied with all statutory and administrative requirements for the issuance of the IFMA should have been with the Office of the President. This makes the issue of the enforceability of the 1969 Document as a contract even more significant.

The Nature and Effects of the Purported 29 July 1969 Presidential Warranty

Base Metals Case

PICOP challenges our ruling that the 1969 Document is *not* a contract. Before we review this finding, however, it must be pointed out that one week after the assailed Decision, another division of this Court promulgated a Decision concerning the very same 1969 Document. Thus, in *PICOP Resources, Inc. v. Base Metals Mineral Resources Corporation*,[26] five other Justices who were still unaware of this Division's Decision,[27] came up with the same conclusion as regards the same issue of whether former President Marcos's Presidential Warranty is a contract:

Tantuico, 50 SCRA 455 [1973]), and there are compelling and urgent reasons for judicial intervention (*Bagatsing v. Ramirez,* 74 SCRA 306 [1976]). (PICOP's Petition for *Mandamus*, Records pp. 1-6.)

[26] G.R. No. 163509, 6 December 2006, 510 SCRA 400, penned by Associate Justice Dante O. Tinga with Associate Justices Leo A. Quisumbing, Antonio T. Carpio, Conchita Carpio Morales, and Presbitero J. Velasco, Jr., concurring.

[27] That the erstwhile Third Division of this Court was still unaware of this Division's Decision is shown by the following excerpts in its Decision: PICOP brings to the Court's attention the case of *PICOP Resources, Inc. v. Hon. Heherson T. Alvarez*, wherein the Court of Appeals ruled that the

Finally, we do not subscribe to PICOP's argument that the Presidential Warranty dated September 25, 1968 is a contract protected by the non-impairment clause of the 1987 Constitution.

An examination of the Presidential Warranty at once reveals that ***it simply reassures PICOP of the government's commitment to uphold the terms and conditions of its timber license and guarantees PICOP's peaceful and adequate possession and enjoyment of the areas which are the basic sources of raw materials for its wood processing complex***. The warranty covers only the right to cut, collect, and remove timber in its concession area, and does not extend to the utilization of other resources, such as mineral resources, occurring within the concession.

The Presidential Warranty cannot be considered a contract distinct from PTLA No. 47 and FMA No. 35. We agree with the OSG's position that it is merely a collateral undertaking which cannot amplify PICOP's rights under its timber license. Our definitive ruling in *Oposa v. Factoran* that ***a timber license is not a contract within the purview of the non-impairment clause*** is edifying. We declared:

> Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution. In *Tan vs. Director of Forestry*, this Court held:
>
> > "x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or a privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

Presidential Warranty issued to PICOP for its TLA No. 43 dated July 29, 1969, a TLA distinct from PTLA No. 47 involved in this case, is a valid contract involving mutual prestations on the part of the Government and PICOP.

x x x x x x x x x

The case of *PICOP Resources, Inc. v. Hon. Heherson T. Alvarez, supra,* cited by PICOP cannot be relied upon to buttress the latter's claim that a presidential warranty is a valid and subsisting contract between PICOP and the Government ***because the decision of the appellate court in that case is still pending review before the Court's Second Division.*** (*Id*. at 411-415.)

> 'A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it a property or a property right, nor does it create a vested right; nor is it taxation' (C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (*People vs. Ong Tin,* 54 O.G. 7576). x x x"

We reiterated this pronouncement in *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary*:

> "x x x Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause [See Sections 3(ee) and 20 of Pres. Decree No. 705, as amended. Also, *Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302]."

Since timber licenses are not contracts, the non-impairment clause, which reads:

> "SEC. 10. No law impairing the obligation of contracts shall be passed."

cannot be invoked.

The Presidential Warranty cannot, in any manner, be construed as a contractual undertaking assuring PICOP of exclusive possession and enjoyment of its concession areas. Such an interpretation would result in the complete abdication by the State in favor of PICOP of the

sovereign power to control and supervise the exploration, development and utilization of the natural resources in the area.[28]

The Motion for Reconsideration was denied with finality on 14 February 2007. A Second Motion for Reconsideration filed by PICOP was denied on 23 May 2007.

PICOP insists that the pronouncement in *Base Metals* is a mere *obiter dictum*, which would not bind this Court in resolving this Motion for Reconsideration. In the oral arguments, however, upon questioning from the *ponente* himself of *Base Metals*, it was agreed that the issue of whether the 1969 Document is a contract was necessary in the resolution of *Base Metals*:

JUSTICE TINGA:

And do you confirm that one of the very issues raised by PICOP in that case [*PICOP Resources Inc. v. Base Metal Mineral Resources Corporation*] revolves around its claim that a Presidential Warranty is protected by the non-impairment c[l]ause of the Constitution.

ATTY. AGABIN:

Yes, I believe that statement was made by the Court, your Honor.

JUSTICE TINGA:

Yes. And that claim on the part of PICOP necessarily implies that the Presidential Warranty according to PICOP is a contract protected by the non-impairment clause.

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE TINGA:

Essentially, the PICOP raised the issue of whether the Presidential Warranty is a contract or not.

ATTY. AGABIN:

Yes, Your Honor.

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[28] *Id.* at 426-428.

JUSTICE TINGA:

And therefore any ruling on the part of the Court on that issue could not be an *obiter dictum.*

ATTY. AGABIN:

Your Honor, actually we believe that the basic issue in that case was whether or not Base Metals could conduct mining activities underneath the forest reserve allotted to PICOP and the Honorable Court ruled that the Mining Act of 1995 as well as the Department Order of DENR does not disallow mining activity under a forest reserve.

JUSTICE TINGA:

But it was PICOP itself which raised the claim that a Presidential Warranty is a contract. And therefore be, should be protected on the under the non-impairment clause of the Constitution.

ATTY. AGABIN:

Yes, Your Honor. Except that…

JUSTICE TINGA:

So, how can you say now that the Court merely uttered, declared, laid down an *obiter dictum* in saying that the Presidential Warranty is not a contract, and it is not being a contract, it is not prohibited by the non-impairment clause.

ATTY. AGABIN:

This Honorable Court could have just ruled, held that the mining law allows mining activities under a forest reserve without deciding on that issue that was raised by PICOP, your Honor, and therefore we believe….

JUSTICE TINGA:

It could have been better if PICOP has not raised that issue and had not claimed that the Presidential Warranty is not a contract.

ATTY. AGABIN:

Well, that is correct, your Honor except that the Court could have just avoided that question. Because…

JUSTICE TINGA:

Why[?]

ATTY. AGABIN:

It already settled the issue, the basic issue.

JUSTICE TINGA:

Yes, because the Court in saying that merely reiterated a number of rulings to the effect that the Presidential Warranty, a Timber License for that matter is not a contract protected by the non-impairment laws.

ATTY. AGABIN:

Well, it is our submission, your Honor, that it is *obiter* because, that issue even a phrase by PICOP was not really fully argued by the parties for the Honorable Court and it seems from my reading at least it was just an aside given by the Honorable Court to decide on that issue raised by PICOP but it was not necessary to the decision of the court.

JUSTICE TINGA:

It was not necessary[?]

ATTY. AGABIN:

To the decision of the Court.

JUSTICE TINGA:

It was.

ATTY. AGABIN:

It was not necessary.

JUSTICE TINGA:

It was.

ATTY. AGABIN:

Yes.

JUSTICE TINGA:

And PICOP devoted quite a number of pages in [its] memorandum to that issue and so did the Court [in its Decision].

ATTY. AGABIN:

Anyway, your Honor, we beg the Court to revisit, not to…[29]

Interpretation of the 1969 Document That Would Be in Harmony with the Constitution

To remove any doubts as to the contents of the 1969 Document, the purported Presidential Warranty, below is a complete text thereof:

Republic of the Philippines
Department of Agriculture and Natural Resources
OFFICE OF THE SECRETARY
Diliman, Quezon City

D-53, Licenses (T.L.A. No. 43)
Bislig Bay Lumber Co., Inc.
(Bislig, Surigao)

July 29, 1969

Bislig Bay Lumber Co., Inc.
[unreadable word] Bldg.
Makati, Rizal

S i r s:

This has reference to the request of the Board of Investments through its Chairman in a letter dated July 16, 1969 for a warranty on the boundaries of your concession area under Timber License Agreement No. 43, as amended.

We are made to understand that your company is committed to support the first large scale integrated wood processing complex hereinafter called: "The Project") and that such support will be provided not only in the form of the supply of pulpwood and other wood materials from your concession but also by making available funds generated out of your own operations, to supplement PICOP's operational sources of funds and other financial arrangements made by him. In order that your company may provide such support effectively, it is understood that you will call upon your stockholders

[29] TSN, Oral Arguments, pp. 174-181.

to take such steps as may be necessary to effect a unification of managerial, technical, economic and manpower resources between your company and PICOP.

It is in the public interest to promote industries that will enhance the proper conservation of our forest resources as well as insure the maximum utilization thereof to the benefit of the national economy. The administration feels that the PICOP project is one such industry which should enjoy priority over the usual logging operations hitherto practiced by ordinary timber licensees: For this reason, we are pleased to consider favorably the request.

We confirm that your Timber License Agreement No. 43, as amended (copy of which is attached as Annex "A" hereof which shall form part and parcel of this warranty) definitely establishes the boundary lines of your concession area which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares.

We further confirm that your tenure over the area and exclusive right to cut, collect and remove sawtimber and pulpwood shall be for the period ending on April 26, 1977; said period to be renewable for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

The peaceful and adequate enjoyment by you of your area as described and specified in your aforesaid amended Timber License Agreement No. 43 is hereby warranted provided that pertinent laws, regulations and the terms and conditions of your license agreement are observed.

Very truly yours,

(Sgd.) FERNANDO LOPEZ
Secretary of Agriculture
and Natural Resources

Encl.:

RECOMMENDED BY:

(Sgd.) JOSE VIADO
Acting Director of Forestry

APPROVED:

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

ACCEPTED:

BISLIG BAY LBR. CO., INC.

By:

(Sgd.) JOSE E. SORIANO
President

PICOP interprets this document in the following manner:

6.1 It is clear that the thrust of the government warranty is to establish a particular area defined by boundary lines of TLA No. 43 for the PICOP Project. In consideration for PICOP's commitment to pursue and establish the project requiring huge investment/funding from stockholders and lending institutions, the government provided a warranty that ensures the continued and exclusive right of PICOP to source its raw materials needs from the forest and renewable trees within the areas established.

6.2 As a long-term support, the warranty covers the initial twenty five (25) year period and is **renewable for periods of twenty five (25) years provided the project continues to exist and operate.** Very notably, the wording of the Presidential Warranty connotes that for as long as the holder complies with all the legal requirements, **the term of the warranty is not limited to fifty (50) years but other twenty five (25) years.**

6.3 Note must be made that the government warranted that PICOP's tenure over the area and exclusive right to cut, collect and remove saw timber and pulpwood shall be for the period ending on 26 April 1977 and said period to be renewable for other 25 years subject to "compliance with constitutional and statutory requirements as well as existing policy on timber requirements". It is clear that the renewal for other 25 years, not necessarily for another 25 years is guaranteed. This explains why on 07 October 1977, TLA No. 43, as amended, was automatically renewed for another period of twenty five (25) years to expire on 26 April 2002.[30]

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[30] PICOP's Petition for *Mandamus*; records, pp. 26-27.

PICOP's interpretation of the 1969 Document cannot be sustained. PICOP's claim that the term of the warranty is not limited to fifty years, but that it extends to other fifty years, perpetually, violates Section 2, Article XII of the Constitution which provides:

> Section 2. **All** lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, **forests or timber**, wildlife, flora and fauna, **and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.** In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

Mr. Justice Dante O. Tinga's interpretation of the 1969 Document is much more in accord with the laws and the Constitution. What one cannot do directly, he cannot do indirectly. Forest lands cannot be alienated in favor of private entities. Granting to private entities, via a contract, a permanent, irrevocable, and exclusive possession of and right over forest lands is tantamount to granting ownership thereof. PICOP, it should be noted, claims nothing less than having exclusive, continuous and uninterrupted possession of its concession areas,[31] where all other entrants are illegal,[32] and where so-called "illegal settlers and squatters" are apprehended.[33]

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[31] PICOP's Memorandum, p. 101; *rollo*, p. 1262.

[32] PICOP's Motion for Reconsideration, p. 50; *rollo*, p. 1391a; TSN, 19 September 2002, pp. 27-35; 41-45.

[33] *Id.* at 51; *rollo*, p. 1391b.

IFMAs are production-sharing agreements concerning the development and utilization of natural resources. As such, these agreements "may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law." Any superior "contract" requiring the State to issue TLAs and IFMAs whenever they expire clearly circumvents Section 2, Article XII of the Constitution, which provides for the only permissible schemes wherein the full control and supervision of the State are not derogated: co-production, joint venture, or production-sharing agreements within the time limit of twenty-five years, renewable for another twenty-five years.

On its face, the 1969 Document was meant to expire on 26 April 2002, upon the expiration of the expected extension of the original TLA period ending on 26 April 1977:

> We further confirm that your tenure over the area and exclusive right to cut, collect and remove sawtimber and pulpwood shall be for the period ending on April 26, 1977; said period to be renewable for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

Any interpretation extending the application of the 1969 Document beyond 26 April 2002 and any concession that may be granted to PICOP beyond the said date would violate the Constitution, and no amount of legal hermeneutics can change that. Attempts of PICOP to explain its way out of this Constitutional provision only led to absurdities, as exemplified in the following excerpt from the oral arguments:

JUSTICE CARPIO:

> The maximum trend of agreement to develop and utilize natural resources like forest products is 25 years plus another 25 years or a total of 50 years correct?

ATTY. AGABIN

> Yes, Your Honor.

JUSTICE CARPIO:

That is true for the 1987, 1973, 1935 Constitution, correct?

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

The TLA here, TLA 43, expired, the first 25 years expired in 1977, correct?

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

And it was renewed for another 25 years until 2002, the 50th year?

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

Now, could PICOP before the end of the 50th year let's say in 2001, one year before the expiration, could it have asked for an extension of another 25 years of its TLA agreement[?]

ATTY. AGABIN:

I believe so, Your Honor.

JUSTICE CARPIO:

But the Constitution says, maximum of fifty years. How could you ask for another 25 years of its TLA.

ATTY. AGABIN:

Well, your Honor, we believe on a question like this, this Honorable Court should balance the interest.

JUSTICE CARPIO:

The Constitution is very clear, you have only a maximum of 50 years, 25 plus another 25. PICOP could never have applied for an extension, for a third 25-year term whether under the 1935 Constitution, the 1973 Constitution and the 1987 Constitution, correct?

ATTY. AGABIN:

Your Honor, except that we are invoking the warranty, the terms of the warranty….

JUSTICE CARPIO:

Can the warranty prevail over the Constitution?

ATTY. AGABIN:

Well, it is a vested right, your Honor.

JUSTICE CARPIO:

Yes, but whatever it is, can it prevail over the Constitution?

ATTY. AGABIN:

The Constitution itself provides that vested rights should be ….

JUSTICE CARPIO:

If it is not in violation of specific provision of the Constitution. The Constitution says, 25 years plus another 25 years, that's the end of it. You mean to say that a President of the Philippines can give somebody 1,000 years license?

ATTY. AGABIN:

Well, that is not our position, Your Honor. Because our position is that ….

JUSTICE CARPIO:

My question is, what is the maximum term, you said 50 years. So, my next question is, can PICOP apply for an extension of another 25 years after 2002, the 50th year?

ATTY. AGABIN:

Yes, based on the contract of warranty, Your Honor, because the contract of warranty….

JUSTICE CARPIO:

But in the PICOP license it is very clear, it says here, provision 28, it says the license agreement is for a total of 50 years. I mean it is very simple, the President or even Congress cannot pass a law extending the license, whatever kind of license to utilize natural

resources for more than fifty year[s]. I mean even the law cannot do that. It cannot prevail over the Constitution. Is that correct, Counsel?

ATTY. AGABIN:

It is correct, Your Honor, except that in this case, what is actually our application is that the law provides for the conversion of existing TLA into IFMA.

JUSTICE CARPIO:

So, they file the petition for conversion before the end of the 50th year for IFMA.

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

But IFMA is the same, it is based on Section 2, Article 12 of the Constitution, develop and utilize natural resources because as you said when the new constitution took effect we did away with the old licensing regime, we have now co-production, a production sharing, joint venture, direct undertaking but still the same developing and utilizing the natural resources, still comes from Section 2, Art. 12 of the Constitution. It is still a license but different format now.

ATTY. AGABIN:

It is correct, Your Honor, except that the regimes of joint venture, co-production and production sharing are what is referred to in the constitution, Your Honor, and still covered…

JUSTICE CARPIO:

Yes, but it is covered by same 25 year[s], you mean to say people now can circumvent the 50 year maximum term by calling their TLA as IFMA and after fifty years calling it ISMA, after another 50 years call it MAMA.

ATTY. AGABIN:

Yes, Your Honor. Because…

JUSTICE CARPIO:

It can be done.

ATTY. AGABIN:

That is provided for by the department itself.[34]

PICOP is, in effect, arguing that the DENR issued DAO No. 99-53 in order to provide a way to circumvent the provisions of the Constitution limiting agreements for the utilization of natural resources to a maximum period of fifty years. Official duties are, however, disputably considered to be regularly performed,[35] and good faith is always presumed.

DAO No. 99-53 was issued to change the means by which the government enters into an agreement with private entities for the utilization of forest products. DAO No. 99-53 is a late response to the change in the constitutional provisions on natural resources from the 1973 Constitution, which allowed the granting of licenses to private entities,[36] to the present Constitution, which provides for co-production, joint venture, or production-sharing agreements as the permissible schemes wherein private entities may participate in the utilization of forest products. Since the granting of timber licenses ceased to be a permissible scheme for the participation of private entities under the present Constitution, their operations should have ceased upon the issuance of DAO No. 99-53, the rule regulating the schemes under the present Constitution. This would be iniquitous to those with existing TLAs that would not have expired yet as of the issuance of DAO No. 99-53, especially those with new TLAs that were

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[34] Oral Arguments, 10 February 2009; TSN, pp. 158-167.

[35] RULES OF COURT, Section 3(m), Rule 131.

[36] Article XIV, Section 8, 1973 Constitution provides:

Section 8. All lands of public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, or resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than development of water power, in which cases, beneficial use may by the measure and the limit of the grant.

originally set to expire after 10 or even 20 or more years. The DENR thus inserted a provision in DAO No. 99-53 allowing these TLA holders to finish the period of their TLAs, but this time as IFMAs, without the rigors of going through a new application, which they have probably just gone through a few years ago.

Such an interpretation would not only make DAO No. 99-53 consistent with the provisions of the Constitution, but would also prevent possible discrimination against new IFMA applicants:

ASSOCIATE JUSTICE DE CASTRO:

I ask this question because of your interpretation that the period of the IFMA, if your TLA is converted into IFMA, would cover a new a fresh period of twenty-five years renewable by another period of twenty-five years.

DEAN AGABIN:

Yes, Your Honor.

ASSOCIATE JUSTICE DE CASTRO:

Don't you think that will, in effect, be invidious discrimination with respect to other applicants if you are granted a fresh period of twenty-five years extendible to another twenty-five years?

DEAN AGABIN:

I don't think it would be, Your Honor, considering that the IFMA is different regime from the TLA. And not only that, there are considerations of public health and ecology which should come into play in this case, and which we had explained in our opening statement and, therefore the provision of the Constitution on the twenty-five limits for renewal of co-production, joint venture and production sharing agreements, should be balanced with other values stated in the Constitution, like the value of balanced ecology, which should be in harmony with the rhythm of nature, or the policy of forest preservation in Article XII, Section 14 of the Constitution. These are all important policy considerations which should be balanced against the term limits in Article II of the Constitution.

ASSOCIATE JUSTICE DE CASTRO:

The provision of this Administrative Order regarding automatic conversion may be reasonable, if, I want to know if you agree with me, if we limit this automatic conversion to the remaining period of the TLA, because in that case there will be a valid ground to make a distinction between those with existing TLA and those who are applying for the first time for IFMA?

DEAN AGABIN:

Well, Your Honor, we beg to disagree, because as I said TLA's are completely different from IFMA. The TLA has no production sharing or co-production agreement or condition. All that the licensee has to do is, to pay forest charges, taxes and other impositions from the local and national government. On the other hand, the IFMAs contained terms and conditions which are completely different, and that they either impose co-production, production sharing or joint venture terms. So it's a completely different regime, Your Honor.

ASSOCIATE JUSTICE DE CASTRO:

Precisely, that is the reason why there should be an evaluation of what you mentioned earlier of the development plan.

DEAN AGABIN:

Yes, Your Honor.

ASSOCIATE JUSTICE DE CASTRO:

So it will be reasonable to convert a TLA into an IFMA without considering the development plan submitted by other applicants or the development plan itself of one seeking conversion into IFMA if it will only be limited to the period, the original period of the TLA. But once you go beyond the period of the TLA, then you will be, the DENR is I think should evaluate the different proposals of the applicants if we are thinking of a fresh period of twenty-five years, and which is renewable under the Constitution by another twenty-five years. So the development plan will be important in this case, the submission of the development plan of the different applicants must be considered. So I don't understand why you mentioned earlier that the development plan will later on be a subject matter of negotiation between the IFMA grantee and the government. So it seems that it will be too late in the day to discuss that if you

have already converted the TLA into IFMA or if the government has already granted the IFMA, and then it will later on study the development plan, whether it is viable or not, or it is sustainable or not, and whether the development plan of the different applicants are, are, which of the development plan of the different applicants is better or more advantageous to the government.[37]

PICOP insists that the alleged Presidential Warranty, having been signed on 29 July 1969, could not have possibly considered the limitations yet to be imposed by future issuances, such as the 1987 Constitution. However, Section 3, Article XVIII of said Constitution, provides:

> **Section 3.** All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

In the recent case *Sabio v. Gordon*,[38] we ruled that "(t)he clear import of this provision is that all existing laws, executive orders, proclamations, letters of instructions and other executive issuances inconsistent or repugnant to the Constitution are repealed."

When a provision is susceptible of two interpretations, "the one that will render them operative and effective and harmonious with other provisions of law"[39] should be adopted. As the interpretations in the assailed Decision and in Mr. Justice Tinga's *ponencia* are the ones that would not make the subject Presidential Warranty unconstitutional, these are what we shall adopt.

Purpose of the 1969 Document: Assurance That the Boundaries of Its Concession Area Would Not Be Altered Despite the Provision in the TLA that the DENR Secretary Can Amend Said Boundaries

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[37] Oral Arguments, 10 February 2009, TSN, pp. 230-236.

[38] G.R. No. 174340, 17 October 2006, 504 SCRA 704, 730.

[39] *Javellana v. Tayo*, 116 Phil. 1342, 1351 (1962).

In the assailed Decision, we ruled that the 1969 Document cannot be considered a contract that would bind the government regardless of changes in policy and the demands of public interest and social welfare. PICOP claims this conclusion "did not take into consideration that PICOP already had a valid and current TLA before the contract with warranty was signed in 1969."[40] PICOP goes on: "The TLA is a license that equips any TLA holder in the country for harvesting of timber. A TLA is signed by the Secretary of the DANR now DENR. The Court ignored the significance of the need for another contract with the Secretary of the DANR but this time with the approval of the President of the Republic."[41] PICOP then asks us: "If PICOP/BBLCI was only an ordinary TLA holder, why will it go through the extra step of securing another contract just to harvest timber when the same can be served by the TLA signed only by the Secretary and not requiring the approval of the President of the Republic(?)"[42]

The answer to this query is found in TLA No. 43 itself wherein, immediately after the boundary lines of TLA No. 43 were established, the following conditions were given:

> This license is granted to the said party of the second part upon the following express conditions:
>
> I. That authority is granted hereunder to the *party of the second part*[43] to cut, collect or remove firewood or other minor forest products from the area embraced in this license agreement except as hereinafter provided.
>
> II. That **the *party of the first part*[44] <u>may amend or alter the description of the boundaries of the area covered by this license agreement to conform with official surveys</u>** and that **the decision of**

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[40] PICOP's Motion for Reconsideration, p. 16; *rollo*, p. 1385.

[41] *Id*.

[42] *Id*.

[43] PICOP (CA *rollo*, p. 176).

[44] Secretary of Agriculture and Natural Resources (*id.*).

the party of the first part as to the exact location of the said boundaries shall be final.

III. That if the party of the first part deems it necessary to establish on the ground the boundary lines of the area granted under this license agreement, the party of the second part shall furnish to the party of the first part or its representatives as many laborers as it needs and all the expenses to be incurred on the work including the wages of such laborers shall be paid by the party of the second part.[45]

Thus, **BBLCI needed an assurance that the boundaries of its concession area, as established in TLA No. 43, as amended, would not be altered despite this provision.** Hence, BBLCI endeavored to obtain the 1969 Document, which provides:

We confirm that your Timber License Agreement No. 43, as amended (copy of which is attached as Annex "A" hereof which shall form part and parcel of this warranty) ***definitely establishes the boundary lines of your concession area*** which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares.

We further confirm that your ***tenure over the area*** and ***exclusive right to cut, collect and remove sawtimber and pulpwood*** shall be for the period ending on April 26, 1977; said period to be renewable for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

The peaceful and adequate enjoyment by you of your area as described and specified in your aforesaid amended Timber License Agreement No. 43 is hereby warranted provided that pertinent laws, regulations and the terms and conditions of your license agreement are observed.[46]

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[45] Timber License Agreement No. 43; CA *rollo*, p. 177.

[46] CA *rollo*, pp. 323-324.

In *Koa v. Court of Appeals*,[47] we ruled that a warranty is a collateral undertaking and is merely part of a contract. As a collateral undertaking, it follows the principal wherever it goes. When this was pointed out by the Solicitor General, PICOP changed its designation of the 1969 Document from "Presidential Warranty" or "government warranty" in all its pleadings prior to our Decision, to "contract with warranty" in its Motion for Reconsideration. This, however, is belied by the statements in the 29 July 1969 Document, which refers to itself as "this warranty."

Re: Allegation That There Were Mutual Contract Considerations

Had the 29 July 1969 Document been intended as a contract, it could have easily said so. More importantly, it could have clearly defined the mutual considerations of the parties thereto. It could have also easily provided for the sanctions for the breach of the mutual considerations specified therein. PICOP had vigorously argued that the 1969 Document was a contract because of these mutual considerations, apparently referring to the following paragraph of the 1969 Document:

> We are made to understand that your company is committed to support the first large scale integrated wood processing complex hereinafter called: "The Project") and that such support will be provided not only in the form of the supply of pulpwood and other wood materials from your concession but also by making available funds generated out of your own operations, to supplement PICOP's operational surces (sic) of funds and other financial arrangements made by him. In order that your company may provide such support effectively, it is understood that you will call upon your stockholders to take such steps as may be necessary to effect a unification of managerial, technical, economic and manpower resources between your company and PICOP.

This provision hardly evinces a contract consideration (which, in PICOP's interpretation, is in exchange for the *exclusive and perpetual tenure over 121,587 hectares of forest land and 21,580 hectares of alienable and disposable lands*).

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[47] G.R. No. 84847, 5 March 1993, 219 SCRA 541.

As elucidated by PICOP itself in bringing up the Investment Incentives Act which we shall discuss later, and as shown by the tenor of the 1969 Document, the latter document was more of a conferment of an incentive for BBLCI's investment rather than a contract creating mutual obligations on the part of the government, on one hand, and BBLCI, on the other. There was no stipulation providing for sanctions for breach if BBLCI's being "committed to support the first large scale integrated wood processing complex" remains a commitment. Neither did the 1969 Document give BBLCI a period within which to pursue this commitment.

According to Article 1350 of the Civil Code, "(i)n onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other."[48] Private investments for one's businesses, while indeed eventually beneficial to the country and deserving to be given incentives, are still principally and predominantly for the benefit of the investors. Thus, the "mutual" contract considerations by both parties to this alleged contract would be both for the benefit of one of the parties thereto, BBLCI, which is not obligated by the 1969 Document to surrender a share in its proceeds any more than it is already required by its TLA and by the tax laws.

PICOP's argument that its investments can be considered as contract consideration derogates the rule that "a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in the constitutional sense, as to which the constitutional proscription against the impairment of contracts may extend." All licensees obviously put up investments, whether they are as small as a tricycle unit or as big as those put up by multi-billion-peso corporations. To construe these investments as contract considerations would be to abandon the foregoing rule, which would mean that the State would be bound to all licensees, and lose its power to revoke or amend these licenses when public interest so dictates.

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[48] *Quirino v. Palarca*, 139 Phil. 488, 492 (1969).

The power to issue licenses springs from the State's police power, known as "the most essential, insistent and least limitable of powers, extending as it does to all the great public needs."[49] Businesses affecting the public interest, such as the operation of public utilities and those involving the exploitation of natural resources, are mandated by law to acquire licenses. This is so in order that the State can regulate their operations and thereby protect the public interest. Thus, while these licenses come in the form of "agreements," *e.g.*, "Timber License Agreements," they cannot be considered contracts under the non-impairment clause.[50]

PICOP found this argument "lame," arguing, thus:

43. It is respectfully submitted that the aforesaid pronouncement in the Decision is an egregious and monumental error.

44. The Decision could not dismiss as "preposterous" the mutual covenants in the Presidential Warranty which calls for a huge investment of Php500 million at that time in 1969 out of which Php268,440,000 raised from domestic foreign lending institution to establish the first large scale integrated wood processing complex in the Philippines.

45. The Decision puts up a lame explanation that "all licensees put up investments in pursuing their business"

46. Now there are about a hundred timber licenses issued by the Government thru the DENR, but these are ordinary timber licenses which involve the mere cutting of timber in the concession area, and nothing else. Records in the DENR shows that no timber licensee has put up an integrated large wood processing complex in the Philippines except PICOP.[51]

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[49] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306, 318 (1967).

[50] The definition in DAO No. 99-53 that an IFMA is a "production sharing *contract*" has not been assailed as unconstitutional, thus prohibiting us from determining its constitutionality. Nonetheless, a mere designation in an administrative rule cannot alter the legal nature thereof.

[51] PICOP's Motion for Reconsideration, p. 21; *rollo*, p. 1386.

PICOP thus argues on the basis of quantity, and wants us to distinguish between the investment of the tricycle driver and that of the multi-billion corporation. However, not even billions of pesos in investment can change the fact that natural resources and, therefore, public interest are involved in PICOP's venture, consequently necessitating the full control and supervision by the State as mandated by the Constitution. Not even billions of pesos in investment can buy forest lands, which is practically what PICOP is asking for by interpreting the 1969 Document as a contract giving it perpetual and exclusive possession over such lands. Among all TLA holders in the Philippines, PICOP has, by far, the largest concession area at 143,167 hectares, a land area more than the size of two Metro Manilas.[52] How can it not expect to also have the largest investment?

Investment Incentives Act

PICOP then claims that the contractual nature of the 1969 Document was brought about by its issuance in accordance with and pursuant to the Investment Incentives Act. According to PICOP:

The conclusion in the Decision that to construe PICOP's investments as a consideration in a contract would be to stealthily render ineffective the principle that a license is not a contract between the sovereignty and the licensee is so flawed since the contract with the warranty dated 29 July 1969 was issued by the Government in accordance with and pursuant to Republic Act No. 5186, otherwise known as "The Investment Incentives Act."[53]

PICOP then proceeds to cite Sections 2 and 4(d) and (e) of said act:

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[52] The land area of Metro Manila is 63,600 hectares, or 636 square kilometers. Metro Manila includes within its boundaries the following cities and municipalities: Quezon City, Manila, Caloocan, Makati, Pasig, Marikina, Mandaluyong, Pasay City, Muntinlupa, Parañaque, Las Piñas, Valenzuela, Taguig, Malabon, Navotas, San Juan and Pateros.

[53] PICOP's Motion for Reconsideration, pp. 22-23; *rollo*, pp. 1386a-1386b.

Section 2. *Declaration of Policy* – To accelerate the sound development of the national economy in consonance with the principles and objectives of economic nationalism, and in pursuance of a planned, economically feasible and practicable dispersal of industries, under conditions which will encourage competition and discharge monopolies, it is hereby declared to be the policy of the state to encourage Filipino and foreign investments, as hereinafter set out, in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment, raise the standards of living of the people, and provide for an equitable distribution of wealth. It is further declared to be the policy of the state to welcome and encourage foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available.

Section 4. *Basic Rights and Guarantees*. – All investors and enterprises are entitled to the basic rights and guarantees provided in the constitution. Among other rights recognized by the Government of the Philippines are the following:

x x x x x x x x x

d) *Freedom from Expropriation*. – There shall be no expropriation by the government of the property represented by investments or of the property of enterprises except for public use or in the interest of national welfare and defense and upon payment of just compensation. x x x.

e) *Requisition of Investment*. – There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

Section 2 speaks of the policy of the State to encourage Filipino and foreign investments. It does not speak of how this

policy can be implemented. Implementation of this policy is tackled in Sections 5 to 12 of the same law,[54] which PICOP failed to mention, and for a good reason. None of the 24 incentives

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[54] SECTION 5. *Incentives to Investors in a Registered Enterprise*. — An investor, with respect to his investment in a registered enterprise, shall be granted the following incentive benefits:

(a) *Protection of Patents and Other Proprietary Rights*. — The right to be protected from infringement of patents, trademarks, copyright, trade names, and other proprietary rights, where such patents, trade marks, copyright, trade names, and other proprietary rights have been registered with the Board and the appropriate agencies of the Government of the Philippines.

(b) *Capital Gains Tax Exemption*. — Exemption from income tax on that portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section thirty-four of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of a registered enterprise within six months from the date the gains were realized: *Provided*, (1) that the said sale, disposition or transfer and the investment of the proceeds thereof have been registered with the Board and the Bureau of Internal Revenue; and (2) that the shares of stock representing the investment are not disposed of, transferred, assigned, or conveyed for a period of five years from the date the investment was made. If such shares of stock are disposed of within the said period of five (5) years, all taxes due on the gains realized from the original transfer, sale or disposition of the capital assets shall immediately become due and payable.

SECTION 6. *Incentives to Philippine Nationals Investing in Pioneer Enterprises*. — In addition to the incentives provided in the preceding sections, Philippine Nationals investing in a pioneer enterprise shall be granted the following incentives benefits:

(a) *Tax Allowance for Investments*. — An investment allowance to the extent of his actual investment, paid in cash or property shall be allowed as a deduction from his taxable income but not to exceed ten per cent thereof: *Provided*, (1) That the investment is made in a subscription of shares in the original and/or increased capital stock of a pioneer enterprise within seven years from the date of registration; (2) that the shares are held for a period of not less than three years and; (3) that the investment is registered with the Board. If the shares are disposed of within the said three year period, the tax payer shall lose the benefit of this deduction, his income tax liability shall be recomputed, and he shall pay whatever additional sum be due plus interest thereon, within thirty days from the date of disposition.

enumerated therein relates to, or even remotely suggests that, PICOP's proposition that the 1969 Document is a contract.

(b) *Capital Gains Tax Exemption*. — Exemption from income tax on the portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section thirty-four of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of, or in the purchase of stock owned by foreigners in, pioneer enterprises, within six months from the date the gains were realized: *Provided*, (1) That such sale, disposition or transfer and the investment of the proceeds thereof are registered with the Board and the Bureau of Internal Revenue; and (2) that the shares of stock representing the investment are not disposed of, transferred, assigned or conveyed for a period of three (3) years from the date the investment was made. If said shares of stock are disposed of within the said period of three (3) years, all taxes due on the gains realized from the original transfer, sale or disposition of the capital assets shall immediately become due and payable.

(c) *Tax Exemption on Sale of Stock Dividends*. — Exemption from income tax on all gains realized from the sale, disposition, or transfer of stock dividends received from a pioneer enterprise: *Provided*, That the sale, disposition or transfer occurs within seven years from the date of registration of the enterprise.

SECTION 7. *Incentives to a Registered Enterprise*. — A registered enterprise, to the extent engaged in a preferred area of investment, shall be granted the following incentive benefits:

(a) *Deduction of Organizational and Pre-Operating Expenses*. — All capitalized organizational and pre-operating expenses attributable to the establishment of a registered enterprise may be deducted from its taxable income over a period of not more than ten years beginning with the month the enterprise begins operations, provided the taxpayer indicates the desired amortization period at the time of the filing of the income tax returns for the first taxable year. For the purpose of this provision, organizational and pre-operating expenses shall include expenses for pre-investment studies, start up costs, costs of initial recruitment and training, and similar expenses.

(b) *Accelerated Depreciation*. — At the option of the taxpayer and in accordance with the procedure established by the Bureau of Internal Revenue, fixed assets may be (1) depreciated to the extent of not more than twice as fast as normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten years or less; or (2) depreciated over any number of years between five years and expected life if the latter is more than ten (10) years; and the depreciation thereon allowed as a

PICOP could indeed argue that the enumeration is not exclusive. Certainly, granting incentives to investors, whether

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deduction from taxable income: *Provided*, That the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it.

(c) *Net Operating Loss Carry-over*. — A net operating loss incurred in any of the first ten years of operations may be carried over as a deduction from taxable income for the six years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the six taxable years following the loss, and any portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of the next remaining five years. The net operating loss shall be computed in accordance with the provisions of the National Internal Revenue Code, any provision of this Act to the contrary notwithstanding, except that income not taxable either in whole or in part under this or other laws shall be included in gross income.

(d) *Tax Exemption on Imported Capital Equipment*. — Within seven years from the date of registration of the enterprise, importation of machinery and equipment, and spare parts shipped with such machinery and equipment, shall not be subject to tariff duties and compensating tax: *Provided*, That said machinery, equipment and spare parts: (1) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (2) are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products; (3) are covered by shipping documents in the name of the registered enterprise to whom the shipment will be delivered direct by customs authorities; (4) the prior approval of the Board was obtained by the registered enterprise before the importation of such machinery, equipment and spare parts; and (5) the registered enterprise chooses not to avail of the privileges granted by Republic Act Numbered Thirty-one hundred twenty-seven, as amended. If the registered enterprise sells, transfers, or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise shall pay twice the amount of the tax exemption given it. However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five (5) years if made: (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise.

(e) *Tax Credit on Domestic Capital Equipment*. — A tax credit equivalent to one hundred per cent (100%) of the value of the compensating tax and customs duties that would have been paid on the machinery, equipment and spare parts had these items been imported shall be given to the registered enterprise who purchases machinery, equipment and spare parts from a

included in the enumeration or not, would be an implementation of this policy. However, it is presumed that whatever incentives

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domestic manufacturer, and another tax credit equivalent to fifty per cent (50%) thereof shall be given to the said manufacturer: *Provided*, (1) That the said machinery, equipment and spare parts are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products; (2) that the prior approval of the Board was obtained by the local manufacturer concerned; and (3) that the sale is made within seven years from the date of registration of the registered enterprise. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five years from the date of acquisition, then it shall pay twice the amount of the tax credit given it. However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five years if made (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise

(f) *Tax Credit for Withholding Tax on Interest*. — A tax credit for taxes withheld on interest payments on foreign loans shall be given a registered enterprise when (1) no such credit is enjoyed by the lender-remittee in his country and (2) the registered enterprise has assumed the liability for payment of the tax due from the lender-remittee.

(g) *Employment of Foreign Nationals*. — Subject to the provisions of Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, as amended, an enterprise may, within five years from registration, employ foreign nationals in supervisory, technical or advisory positions not in excess of five *per centum* of its total personnel in each such category: *Provided*, That in no case shall each employment exceed five years. The employment of foreign nationals after five years from registration, or within such five years but in excess of the proportion herein provided, shall be governed by Section twenty of Commonwealth Act Numbered Six hundred thirteen, as amended.

Foreign nationals under employment contract within the purview of this Act, their spouse and unmarried children under twenty-one years of age, who are not excluded by Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

A registered enterprise shall train Filipinos in administrative, supervisory, and technical skills and shall submit annual reports on such training to the Board of Investments.

(h) *Deduction for Expansion Reinvestment*. — When a registered enterprise reinvests its undistributed profit or surplus by actual transfer thereof to the capital stock of the corporation for procurement of machinery,

may be given to investors should be within the bounds of the laws and the Constitution. The declaration of policy in

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equipment and spare parts previously approved by the Board under Subsections "d" and "e" hereof or for the expansion of machinery and equipment used in production or for the construction of the buildings, improvements or other facilities for the installation of the said machinery and equipment, the amount so reinvested shall be allowed as a deduction from its taxable income in the year in which such reinvestment was made: *Provided*, (1) That prior approval by the Board of such reinvestment was obtained by the registered enterprise planning such reinvestment, and (2) that the registered enterprise does not reduce its capital stock represented by the reinvestment within seven years from the date such reinvestment was made. In the event the registered enterprise does not order the machinery and equipment within two (2) years from the date the reinvestment was made or reduces its capital stock represented by the reinvestment within a period of seven years from the date of reinvestment, a recomputation of the income tax liability therefor shall be made for the period when the deduction was made, and the proper taxes shall be assessed and paid with interest.

(i) *Anti-Dumping Protection*. — Upon recommendation of the Board, made after notice and hearing, the President shall issue a directive banning for a limited period the importation of goods or commodities which, as provided in Section three hundred one (a) of the Tariff and Customs Code of the Philippines, unfairly or unnecessarily complete with those produced by registered enterprises: *Provided*, (1) That the Board certifies to the satisfactory quality of the goods or commodities produced or manufactured by the registered enterprises; and (2) that the enterprises agree not to increase the price of these goods or commodities during this period, unless for good cause, the Board allows such an increase.

(j) *Protection from Government Competition*. — No agency or instrumentality of the government shall import, or allow the importation tax and duty free of products or items that are being produced or manufactured by registered enterprises, except when the President determines that the national interest so requires or when international commitments require international competitive bidding.

SECTION 8. *Incentives to a Pioneer Enterprise*. — In addition to the incentives provided in the preceding section, pioneer enterprises shall be granted the following incentives benefits:

(a) *Tax Exemptions*. — Exemptions from all taxes under the National Internal Revenue Code, except income tax, to the following extent:

(1) One hundred per cent up to December 31, 1972;

(2) Seventy-five per cent up to December 31, 1975;

Section 2 cannot, by any stretch of the imagination, be read to provide an exception to either the laws or, heaven forbid, the

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(3) Fifty per cent up to December 31, 1977;

(4) Twenty per cent up to December 31, 1979;

(5) Ten per cent up to December 31, 1981;

(b) *Employment of Foreign Nationals*. — Subject to the provisions of Section twenty- nine of Commonwealth Act Numbered Six hundred thirteen, as amended, to employ and bring into the Philippines foreign nationals under the following conditions:

(1) That all such foreign nationals shall register with the Board;

(2) That the employment of all foreign nationals shall cease and they shall be repatriated five years after the registered enterprise has begun operating: *Provided*, That when the majority of the capital stock of the pioneer enterprise is owned by foreign investors, the positions of president, treasurer and general manager, or their equivalents, may be retained by foreign nationals. In exceptional cases, the Board may allow employment of foreign nationals in other positions that cannot be filled by the Philippine nationals, but in such cases the limitations of Section seven paragraph (g) of this Act shall apply.

Foreign nationals under employment contract within the purview of this Act, their spouse and unmarried children under twenty-one years of age, who are not excluded by Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

(c) *Post-Operative Tariff Protection*. — Upon recommendation of the Board, the President, with or without the recommendation of the Tariff Commission or the National Economic Council, shall issue a certification that a pioneer industry shall be entitled to post-operative tariff protection to an extent not exceeding fifty per cent of the dutiable value of imported items similar to those being manufactured or produced by a pioneer enterprise, unless a higher rate or amount is provided for in the Tariff Code or pertinent laws. Said tariff shall take effect automatically upon certification by the Board that the pioneer enterprise is operating on a commercial scale: *Provided*, That said tariff, once operative, may be modified in accordance with Section four hundred one of the Tariff and Customs Code.

SECTION 9. *Special Export Incentives for Registered Enterprises*. — Registered enterprises shall be entitled to the following special incentives for exports of their completely finished products and commodities:

Constitution. Exceptions are never presumed and should be convincingly proven. Section 2 of the Investment Incentives

(a) *Double Deduction of Promotional Expenses*. — To deduct from taxable income twice the amount of the ordinary and necessary expenses incurred for the purpose of promoting the sale of their products abroad;

(b) *Double Deduction of Shipping Costs*. — To deduct from taxable income twice the amount of shipping freight incurred in connection with the export of their products, if the shipments are made in vessels of Philippine registry to their regular ports of call; and to deduct one hundred fifty per cent (150%) of the freight when shipments are made in vessels of foreign registry to a port which is not a regular port of call of Philippine vessels;

(c) *Special Tax Credit on Raw Materials*. — A tax credit equivalent to seven per cent (7%) of the total cost of the raw materials and supplies purchased by registered enterprises or an amount equivalent to the taxes actually paid by registered enterprises on said raw materials, whichever is higher, to the extent used in manufacturing exported products and commodities.

Before registered enterprises may avail themselves of the foregoing exports incentives benefits, the (sic) shall apply first with the Board, which shall approve the application upon proof: (1) that the enterprise proposes to engage in good faith in creating a market for its products abroad; (2) that the product to be exported is one included in the government priorities plan as suitable for export, or if not so included that its export will not adversely affect the needs of the domestic market for the finished product to be exported or for the domestic raw materials used in its manufacture; (3) that the enterprise has or will set up an adequate accounting system to segregate revenues, purchases and expenses of its export market operations from those of its domestic market operations; and (4) that the exported products and commodities meet the standards of quality established by the Bureau of Standards or, in default thereof, by the Board.

SECTION 10. *Preference in Grant of Government Loans*. — Government financial institutions such as the Development Bank of the Philippines, Philippine National Bank, Government Service Insurance System, Social Security System, Land Bank, and such other government institutions as are now engaged or may hereafter engage in financing or investment operations shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to applications for financial assistance submitted by pioneer and other registered enterprises, whether such financial assistance be in the form of equity participation in preferred, common, or preferred convertible shares of stock, or in loans and guarantees, and shall facilitate the processing thereof and the release of the funds therefor. However, no financial assistance shall be extended under this section to any investor or enterprise that is not a Philippine National.

Act cannot be read as exempting investors from the Constitutional provisions (1) prohibiting private ownership of

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The above-mentioned financial institutions, to the extent allowed by their respective charters or applicable laws, shall contribute to the capital of a registered enterprise whenever the said contribution would enable the formation of pioneer or other registered enterprise with at least sixty per cent control by Philippine Nationals: *Provided*, That the capital contribution of the said financial institutions shall be limited to the amount that cannot be contributed by private Filipino investors, and shall in no case exceed thirty per cent of the total capitalization of the pioneer or other registered enterprises. The shares representing the contribution of the said financial institutions shall be offered for public sale to Philippine Nationals through all the members of a registered Philippine stock exchange.

To facilitate the implementation of the provisions of this Section, all the said financial institutions shall coordinate their financial assistance programs with each other, exchange relevant information about applicants and applications, and submit a monthly report to the Board showing the amount of funds available for financial assistance to pioneer or other registered enterprises. The Board shall recommend to the Board of Directors of each such financial institution what order of priority shall be given the applications of pioneer and other registered enterprises, or of applicants that propose to seek registration as such.

SECTION 11. *Private Financial Assistance*. — Any provision of existing laws to the contrary notwithstanding, the Insurance Commissioner is hereby authorized to allow insurance companies, under such rules and regulations as he may issue, to invest in new issues of stock of registered enterprises, notwithstanding that said enterprises may not have paid regular dividends, to the extent set out in section two hundred, paragraphs (c) and (f) of the Insurance Act, as amended: *Provided*, that said investments are diversified.

SECTION 12. *Loans for Investment*. — The Government Service Insurance System and the Social Security System shall extend to their respective members five-year loans at a rate of interest not to exceed six per cent per annum for the purchase of shares of stock in any registered enterprise: *Provided*, That (1) the shares so purchased shall be deposited in escrow with the lending institution for the full five-year term of the loan; partial releases of the shares shall, however, be allowed to the extent of the payment of amortization made therefor; (2) such loans shall be amortized in sixty equal monthly installments which shall be withheld by the employer from the monthly salary of the employee concerned and remitted to the lending institution by the employer; but any and all dividends earned by shares of stock while they are held in escrow shall be delivered to the employee; and (3) the maximum loan available to each employee in any one calendar year shall not exceed fifty per centum of the employee's annual gross income: *Provided, further*, That the total investment of the government

forest lands; (2) providing for the complete control and supervision by the State of exploitation activities; or (3) limiting exploitation agreements to twenty-five years, renewable for another twenty-five years.

Section 4(d) and (e), on the other hand, is a recognition of rights already guaranteed under the Constitution. Freedom from expropriation is granted under Section 9 of Article III[55] of the Constitution, while the provision on requisition is a negative restatement of Section 6, Article XII.[56]

Refusal to grant perpetual and exclusive possession to PICOP of its concession area would not result in the expropriation or requisition of PICOP's property, as these forest lands belong to the State, and not to PICOP. This is not changed by PICOP's allegation that:

> Since it takes 35 years before the company can go back and harvest their residuals in a logged-over area, it must be assured of tenure in order to provide an inducement for the company to manage and preserve the residuals during their growth period. This is a commitment of resources over a span of 35 years for each plot for each cycle. ***No company will undertake the responsibility and cost involved in policing, preserving and managing residual forest areas until it were sure that it had firm title to the timber***.[57]

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financial institution concerned, consisting of its direct investment in the registered enterprise and the loans it has extended to its respective members which have been invested by the members in a registered enterprise, shall not be more than forty-nine per cent (49%) of the total capitalization of the registered enterprise in which the investments have been made.

[55] **Section 9.** Private property shall not be taken for public use without just compensation.

[56] **Section 18.** The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

[57] PICOP's Motion for Reconsideration, pp. 17-18. *rollo* pp. 1386a-1386b.

The requirement for logging companies to preserve and maintain forest areas, including the reforestation thereof, is one of the prices a logging company must pay for the exploitation thereof. Forest lands are meant to be enjoyed by countless future generations of Filipinos, and not just by one logging company. The requirements of reforestation and preservation of the concession areas are meant to protect them, the future generations, and not PICOP. **Reforestation and preservation of the concession areas are not required of logging companies so that they would have something to cut again, but so that the forest would remain intact after their operations.** That PICOP would not accept the responsibility to preserve its concession area if it is not assured of tenure thereto does not speak well of its corporate policies.

Conclusion

In sum, PICOP was not able to prove either of the two things it needed to prove to be entitled to a Writ of *Mandamus* against the DENR Secretary. The 1969 Document is not a contract recognized under the non-impairment clause and, even if we assume for the sake of argument that it is, it did not enjoin the government to issue an IFMA in 2002 either. These are the essential elements in PICOP's cause of action, and the failure to prove the same warrants a dismissal of PICOP's Petition for *Mandamus*, as not even PICOP's compliance with all the administrative and statutory requirements can save its Petition now.

Whether PICOP Has Complied with the Statutory and Administrative Requirements for the Conversion of the TLA to an IFMA

In the assailed Decision, our ruling was based on two distinct grounds, each one being sufficient in itself for us to rule that PICOP was not entitled to a Writ of *Mandamus*: (1) the 1969 Document, on which PICOP hinges its right to compel the issuance of an IFMA, is not a contract; and (2) PICOP has

not complied with all administrative and statutory requirements for the issuance of an IFMA.

When a court bases its decision on two or more grounds, each is as authoritative as the other and neither is *obiter dictum*.[58] Thus, both grounds on which we based our ruling in the assailed Decision would become *judicial dictum*, and would affect the rights and interests of the parties to this case unless corrected in this Resolution on PICOP's Motion for Reconsideration. Therefore, although PICOP would not be entitled to a Writ of *Mandamus* even if the second issue is resolved in its favor, we should nonetheless resolve the same and determine whether PICOP has indeed complied with all administrative and statutory requirements for the issuance of an IFMA.

While the first issue (on the nature of the 1969 Document) is entirely legal, this second issue (on PICOP's compliance with administrative and statutory requirements for the issuance of an IFMA) has both legal and factual sub-issues. Legal sub-issues include whether PICOP is legally required to (1) consult with and acquire an approval from the Sanggunian concerned under Sections 26 and 27 of the Local Government Code; and (2) acquire a Certification from the National Commission on Indigenous Peoples (NCIP) that the concession area does not overlap with any ancestral domain. Factual sub-issues include whether, at the time it filed its Petition for *Mandamus*, PICOP had submitted the required Five-Year Forest Protection Plan and Seven-Year Reforestation Plan and whether PICOP had paid all forest charges.

For the factual sub-issues, PICOP invokes the doctrine that factual findings of the trial court, especially when upheld by the Court of Appeals, deserve great weight. However, deserving of even greater weight are the factual findings of administrative agencies that have the expertise in the area of concern. The contentious facts in this case relate to the licensing, regulation and management of forest resources, the determination of which belongs exclusively to the DENR:

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[58] *Riss & Co. v. Wallace*, 195 S.W. 2d 881, 885, 239 Mo.App. 979, cited in Words and Phrases, Permanent Edition, Vol. 29, p. 13.

SECTION 4. Mandate. – The Department shall be the ***primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, specifically forest and grazing lands***, mineral resources, including those in reservation and watershed areas, and lands of the public domain, ***as well as the licensing and regulation of all natural resources as may be provided for by law*** in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.[59]

When parties file a Petition for *Certiorari* against judgments of administrative agencies tasked with overseeing the implementation of laws, the findings of such administrative agencies are entitled to great weight. In the case at bar, PICOP could not have filed a Petition for *Certiorari*, as the DENR Secretary had not yet even determined whether PICOP should be issued an IFMA. As previously mentioned, when PICOP's application was brought to a standstill upon the evaluation that PICOP had yet to comply with the requirements for the issuance of an IFMA, PICOP refused to attend further meetings with the DENR and instead filed a Petition for *Mandamus* against the latter. By jumping the gun, PICOP did not diminish the weight of the DENR Secretary's initial determination.

Forest Protection and Reforestation Plans

The Performance Evaluation Team tasked to appraise PICOP's performance on its TLA No. 43 found that PICOP had not submitted its Five-Year Forest Protection Plan and its Seven-Year Reforestation Plan.[60]

In its Motion for Reconsideration, PICOP asserts that, in its Letter of Intent dated 28 August 2000 and marked as Exhibit L in the trial court, there was a reference to a Ten-Year Sustainable Forest Management Plan (SFMP), in which a Five-Year Forest Protection Plan and a Seven-Year Reforestation Plan were allegedly incorporated. PICOP

[59] E.O. No. 192, otherwise known as the "Reorganization Act of the Department of Environment and Natural Resources," Section 4.

[60] Exhibit 7-g-2, Folder of Exhibits, Vol. 3, pp. 480-482.

submitted a machine copy of a certified photocopy of pages 50-67 and 104-110 of this SFMP in its Motion for Reconsideration. PICOP claims that the existence of this SFMP was repeatedly asserted during the IFMA application process.[61]

Upon examination of the portions of the SFMP submitted to us, we cannot help but notice that PICOP's concept of forest protection is the security of the area against "illegal" entrants and settlers. There is no mention of the protection of the wildlife therein, as the focus of the discussion of the silvicultural treatments and the SFMP itself is on the protection and generation of future timber harvests. We are particularly disturbed by the portions stating that trees of undesirable quality shall be removed.

However, when we required the DENR Secretary to comment on PICOP's Motion for Reconsideration, the DENR Secretary did not dispute the existence of this SFMP, or question PICOP's assertion that a Ten-Year Forest Protection Plan and a Ten-Year Reforestation Plan are already incorporated therein. Hence, since the agency tasked to determine compliance with IFMA administrative requirements chose to remain silent in the face of allegations of compliance, we are constrained to withdraw our pronouncement in the assailed Decision that PICOP had not submitted a Five-Year Forest Protection Plan and a Seven-Year Reforestation Plan for its TLA No. 43. As previously mentioned, the licensing, regulation and management of forest resources are the primary responsibilities of the DENR.[62]

The compliance discussed above is, of course, only for the purpose of determining PICOP's satisfactory performance as a TLA holder, and covers a period within the subsistence of PICOP's TLA No. 43. This determination, therefore, cannot prohibit the DENR from requiring PICOP, in the future, to submit proper forest protection and reforestation plans covering the period of the proposed IFMA.

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[61] Motion for Reconsideration, p. 30.

[62] E.O. No. 192, otherwise known as the "Reorganization Act of the Department of Environment and Natural Resources," Section 4.

Forest Charges

In determining that PICOP did not have unpaid forest charges, the Court of Appeals relied on the assumption that if it were true that PICOP had unpaid forest charges, it should not have been issued an approved Integrated Annual Operation Plan (IAOP) for the year 2001-2002 by Secretary Alvarez himself.[63]

In the assailed Decision, we held that the Court of Appeals had been selective in its evaluation of the IAOP, as it disregarded the part thereof that shows that the IAOP was approved subject to several conditions, not the least of which was the submission of proof of the updated payment of forest charges from April 2001 to June 2001.[64] We also held that even if we considered for the sake of argument that the IAOP should not have been issued if PICOP had existing forestry accounts, the issuance of the IAOP could not be considered proof that PICOP had paid the same. Firstly, the best evidence of payment is the receipt thereof. PICOP has not presented any evidence that such receipts were lost or destroyed or could not be produced in court.[65] Secondly, the government cannot be estopped by the acts of its officers. If PICOP has been issued an IAOP in violation of the law, allegedly because it may not be issued if PICOP had existing forestry accounts, the government cannot be estopped from collecting such amounts and providing the necessary sanctions therefor, including the withholding of the IFMA until such amounts are paid.

We therefore found that, as opposed to the Court of Appeals' findings, which were based merely on estoppel of government officers, the positive and categorical evidence presented by the DENR Secretary was more convincing with respect to the issue of payment of forestry charges:

1. Forest Management Bureau (FMB) Senior Forest Management Specialist (SFMS) Ignacio M. Evangelista

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[63] *Rollo* (G.R. No. 162243), p. 252.

[64] Folder of Exhibits, Vol. 2, pp. 398-399.

[65] *See* Rules of Court, Rule 130, Section 3(a).

testified that PICOP had failed to pay its regular forest charges covering the period from 22 September 2001 to 26 April 2002 in the total amount of ₱15,056,054.05[66] PICOP also allegedly paid late most of its forest charges from 1996 onwards, by reason of which, PICOP is liable for a surcharge of 25% per annum on the tax due and interest of 20% per annum which now amounts to ₱150,169,485.02.[67] Likewise, PICOP allegedly had overdue and unpaid silvicultural fees in the amount of ₱2,366,901.00 as of 30 August 2002.[68] Summing up the testimony, therefore, it was alleged that PICOP had unpaid and overdue forest charges in the sum of ₱167,592,440.90 as of 10 August 2002.[69]

2. Collection letters were sent to PICOP, but no official receipts are extant in the DENR record in Bislig City evidencing payment of the overdue amount stated in the said collection letters.[70] There were no official receipts for the period covering 22 September 2001 to 26 April 2002.

We also considered these pieces of evidence more convincing than the other ones presented by PICOP:

1. PICOP presented the certification of Community Environment and Natural Resources Office (CENRO) Officer Philip A. Calunsag, which refers only to PICOP's alleged payment of regular forest charges covering the period from 14 September 2001 to 15 May 2002.[71] We noted that it does not mention similar payment of the penalties, surcharges and interests that

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[66] Folder of Exhibits, Vol. 3, pp. 433-434.

[67] Exhibit 6, p. 440; Folder of Exhibits, Vol. 3.

[68] *Id*.

[69] *Id*.

[70] TSN, 1 October 2002, pp. 13-14.

[71] Exhibit NN, p. 349; Folder of Exhibits, Vol. 2.

PICOP incurred in paying late several forest charges, which fact was not rebutted by PICOP.

2. The 27 May 2002 Certification by CENRO Calunsag specified only the period covering 14 September 2001 to 15 May 2002 and the amount of ₱53,603,719.85 paid by PICOP without indicating the corresponding volume and date of production of the logs. This is in contrast to the findings of SFMS Evangelista, which cover the period from CY 1996 to 30 August 2002 and includes penalties, interests, and surcharges for late payment pursuant to DAO 80, series of 1987.

3. The 21 August 2002 PICOP-requested certification issued by Bill Collector Amelia D. Arayan, and attested to by CENRO Calunsag himself, shows that PICOP paid only regular forest charges for its log production covering 1 July 2001 to 21 September 2001. However, there were log productions after 21 September 2001, the regular forest charges for which have not been paid, amounting to ₱15,056,054.05.[72] The same certification shows delayed payment of forest charges, thereby corroborating the testimony of SFMS Evangelista and substantiating the imposition of penalties and surcharges.

In its Motion for Reconsideration, PICOP claims that SFMS Evangelista is assigned to an office that has nothing to do with the collection of forest charges, and that he based his testimony on the Memoranda of Forest Management Specialist II (FMS II) Teofila Orlanes and DENR, Bislig City Bill Collector Amelia D. Arayan, neither of whom was presented to testify on his or her Memorandum. PICOP also submitted an Addendum to Motion for Reconsideration, wherein it appended certified true copies of CENRO Summaries with attached Official Receipts tending to show that PICOP had paid a total of ₱81,184,747.70 in forest charges for 10 January 2001 to 20 December 2002, including the period during which SFMS Evangelista claims

[72] Records, Vol. 2, pp. 457-458.

PICOP did not pay forest charges (22 September 2001 to 26 April 2002).

Before proceeding any further, it is necessary for us to point out that, as with our ruling on the forest protection and reforestation plans, this determination of compliance with the payment of forest charges is exclusively for the purpose of determining PICOP's satisfactory performance on its TLA No. 43. This cannot bind either party in a possible collection case that may ensue.

An evaluation of the DENR Secretary's position on this matter shows a heavy reliance on the testimony of SFMS Evangelista, making it imperative for us to strictly scrutinize the same with respect to its contents and admissibility.

PICOP claims that SFMS Evangelista's office has nothing to do with the collection of forest charges. According to PICOP, the entity having administrative jurisdiction over it is CENRO, Bislig City by virtue of DENR Administrative Order No. 96-36, dated 20 November 1996, which states:

> 1. In order for the DENR to be able to exercise closer and more effective supervision, management and control over the forest resources within the areas covered by TLA No. 43, PTLA No. 47 and IFMA No. 35 of the PICOP Resources, Inc., (PRI) and, at the same time, provide greater facility in the delivery of DENR services to various publics, the aforesaid forest holdings of PRI are hereby placed under the exclusive jurisdiction of DENR Region No. XIII with the CENR Office at Bislig, Surigao del Sur, as directly responsible thereto. x x x.

We disagree. Evangelista is an SFMS assigned at the Natural Forest Management Division of the FMB, DENR. In Evangelista's aforementioned affidavit submitted as part of his direct examination, Evangelista enumerated his duties and functions as SFMS:

> 1. As SFMS, I have the following duties and functions:
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> a) To evaluate and act on cases pertaining to forest management referred to in the Natural forest Management Division;

b) To monitor, verify and validate forest management and related activities by timber licences as to their compliance to approved plans and programs;
c) To conduct investigation and verification of compliance by timber licenses/permittees to existing DENR rules and regulations;
d) To gather field data and information to be used in the formulation of forest policies and regulations; and
e) To perform other duties and responsibilities as may be directed by superiors.[73]

PICOP also alleges that the testimony of SFMS Evangelista was based on the aforementioned Memoranda of Orlanes and Arayan and that, since neither Orlanes nor Arayan was presented as a witness, SFMS Evangelista's testimony should be deemed hearsay. SFMS Evangelista's 1 October 2002 Affidavit,[74] which was offered as part of his testimony, provides:

2. Sometime in September, 2001 the DENR Secretary was furnished a copy of forest Management Specialist II (FMS II) Teofila L. Orlanes' Memorandum dated September 24, 2001 concerning unopaid forest charges of PICOP. Attached to the said Memorandum was a Memorandum dated September 19, 2001 of Amelia D. Arayan, Bill collector of the DENR R13-14, Bislig City. Copies of the said Memoranda are attached as Annexes 1 and 2, respectively.

3. The said Memoranda were referred to the FMB Director for appropriate action.

4. Thus, on August 5, 2002, I was directed by the FMB Director to proceed to Region 13 to gather forestry-related data and validate the report contained in the Memoranda of Ms. Orlanes and Arayan.

5. On August 6, 2002, I proceeded to DENR Region 13 in Bislig City. A copy of my Travel Order is attached as Annex 3.

6. Upon my arrival at CENRO, Bislig, Surigao del Sur, I coordinated with CENRO Officer Philip A. Calunsag and requested him to make

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[73] Folder of Exhibits, Volume 3, p. 423.

[74] Folder of Exhibits, Volume 3, pp. 423-425.

available to me the records regarding the forest products assessments of PICOP.

7. After I was provided with the requested records, I evaluated and collected the data.

8. After the evaluation, I found that the unpaid forest charges adverted to in the Memoranda of Mr. Orlanes and Arayan covering the period from May 8, 2001 to July 7, 2001 had already been paid but late. I further found out that PICOP had not paid its forest charges covering the period from September 22, 2001 to April 26, 2002 in the total amount of ₱15,056,054.05.

9. I also discovered that from 1996 up to august 30, 2002, PICOP paid late some of its forest charges in 1996 and consistently failed to pay late its forest charges from 1997 up to the present time.

10. Under Section 7.4 of DAO No. 80 Series of 197\87 and Paragraph (4a), Section 10 of BIR revenue Regulations No. 2-81 dated November 18, 1980, PICOP is mandated to pay a surcharge of 25% per annum of the tax due and interest of 20% per annum for late payment of forest charges.

11. The overdue unpaid forest charges of PICOP as shown in the attached tabulation marked as Annex 4 hereof is ₱150,169,485.02. Likewise, PICOP has overdue and unpaid silvicultural fees in the amount of ₱2,366,901.00 from 1996 to the present.

12. In all, PICOP has an outstanding and overdue total obligation of ₱167,592,440.90 as of August 30, 2002 based on the attached tabulation which is marked as Annex 5 hereof.[75]

Clearly, SFMS Evangelista had not *relied* on the Memoranda of Orlanes and Arayan. On the contrary, he traveled to Surigao del Sur in order to verify the contents of these Memoranda. SFMS Evangelista, in fact, revised the findings therein, as he discovered that certain forest charges adverted to as unpaid had already been paid.

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[75] *Id*.

This does not mean, however, that SFMS Evangelista's testimony was not hearsay. A witness may testify only on facts of which he has personal knowledge; that is, those derived from his perception, except in certain circumstances allowed by the Rules.[76] Otherwise, such testimony is considered hearsay and, hence, inadmissible in evidence.[77]

SFMS Evangelista, while not relying on the Memoranda of Orlanes and Arayan, nevertheless relied on records, the preparation of which he did not participate in.[78] These records and the persons who prepared them were not presented in court, either. As such, SFMS Evangelista's testimony, insofar as he relied on these records, was on matters not derived from his own perception, and was, therefore, hearsay.

Section 44, Rule 130 of the Rules of Court, which speaks of entries in official records as an exception to the hearsay rule, cannot excuse the testimony of SFMS Evangelista. Section 44 provides:

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

In *Africa v. Caltex*,[79] we enumerated the following requisites for the admission of entries in official records as an exception to the hearsay rule: (1) the entries were made by a public officer or a private person in the performance of a duty; (2) the performance of the duty is especially enjoined by law; (3) the public officer or the private person had sufficient knowledge of the facts stated by him, which must have been acquired by him personally or through official information.

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[76] Section 36, Rule 130 of the Rules of Court.

[77] *People v. Parungao*, 332 Phil. 917, 924 (1996).

[78] TSN, Volume 2, 1 October 2002, p. 32.

[79] 123 Phil. 272, 277 (1966).

The presentation of the records themselves would, therefore, have been admissible as an exception to the hearsay rule even if the public officer/s who prepared them was/were not presented in court, provided the above requisites could be adequately proven. In the case at bar, however, neither the records nor the persons who prepared them were presented in court. Thus, the above requisites cannot be sufficiently proven. Also, since SFMS Evangelista merely testified based on what those records contained, his testimony was hearsay evidence twice removed, which was one step too many to be covered by the official-records exception to the hearsay rule.

SFMS Evangelista's testimony of nonpayment of forest charges was, furthermore, based on his failure to find official receipts corresponding to billings sent to PICOP. As stated above, PICOP attached official receipts in its Addendum to Motion for Reconsideration to this Court. While this course of action is normally irregular in judicial proceedings, we merely stated in the assailed Decision that "the DENR Secretary has adequately proven that PICOP has, ***at this time***, failed to comply with administrative and statutory requirements for the conversion of TLA No. 43 into an IFMA,"[80] and that "this disposition confers another chance to comply with the foregoing requirements."[81]

In view of the foregoing, we withdraw our pronouncement that PICOP has unpaid forestry charges, at least for the purpose of determining compliance with the IFMA requirements.

NCIP Certification

The Court of Appeals held that PICOP need not comply with Section 59 of Republic Act No. 8371, which requires prior certification from the NCIP that the areas affected do not overlap with any ancestral domain before any IFMA can be entered into by the government. According to the Court of Appeals, Section 59 should be interpreted to refer to ancestral domains

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[80] *Alvarez v. PICOP Resources, Inc.*, G.R. No. 162243, 29 November 2006, 508 SCRA 498, 553.

[81] *Id*.

that have been duly established as such by the continuous possession and occupation of the area concerned by indigenous peoples since time immemorial up to the present. The Court of Appeals held that PICOP had acquired property rights over TLA No. 43 areas, being in exclusive, continuous and uninterrupted possession and occupation of these areas since 1952 up to the present.

In the assailed Decision, we reversed the findings of the Court of Appeals. Firstly, the Court of Appeals ruling defies the settled jurisprudence we have mentioned earlier, that a TLA is neither a property nor a property right, and that it does not create a vested right.[82]

Secondly, the Court of Appeals' resort to statutory construction is misplaced, as Section 59 of Republic Act No. 8379 is clear and unambiguous:

> SEC. 59. *Certification Precondition*. – ***All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain.*** Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

PICOP had tried to put a cloud of ambiguity over Section 59 of Republic Act No. 8371 by invoking the definition of Ancestral Domains in Section 3(a) thereof, wherein the possession by

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[82] *Oposa v. Factoran, Jr.*, G.R. No. 101083, 30 July 1993, 224 SCRA 792, 812; *Tan v. Director of Forestry*, 210 Phil. 244 (1983).

Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) must have been continuous to the present. However, we noted the exception found in the very same sentence invoked by PICOP:

> a) Ancestral domains – Subject to Section 56 hereof, refers to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, ***held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted*** by war, *force majeure* or displacement by force, deceit, stealth or ***as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations***, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

Ancestral domains, therefore, remain as such even when possession or occupation of these areas has been interrupted by causes provided under the law, such as voluntary dealings entered into by the government and private individuals/corporations. Consequently, the issuance of TLA No. 43 in 1952 did not cause the ICCs/IPs to lose their possession or occupation over the area covered by TLA No. 43.

Thirdly, we held that it was manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that the lands are not part of ancestral domains can be required, and invoked the separate opinion of now Chief Justice Reynato Puno in *Cruz v. Secretary of DENR*:[83]

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[83] 400 Phil. 904, 1012-1013 (2000), Separate Opinion of Justice Reynato Puno.

As its subtitle suggests, [Section 59 of R.A. No. 8371] requires as a precondition for the issuance of any concession, license or agreement over natural resources, that a certification be issued by the NCIP that the area subject of the agreement does not lie within any ancestral domain. The provision does not vest the NCIP with power over the other agencies of the State as to determine whether to grant or deny any concession or license or agreement. It merely gives the NCIP the authority to ensure that the ICCs/IPs have been informed of the agreement and that their consent thereto has been obtained. Note that ***the certification applies to agreements over natural resources that do not necessarily lie within the ancestral domains. For those that are found within the said domains, Sections 7(b) and 57 of the IPRA apply.***

PICOP rejects the entire disposition of this Court on the matter, relying on the following theory:

84. It is quite clear that Section 59 of R.A. 8371 does not apply to the automatic conversion of TLA 43 to IFMA.

First, the automatic conversion of TLA 43 to an IFMA is not a new project. It is a mere continuation of the harvesting process in an area that PICOP had been managing, conserving and reforesting for the last 50 years since 1952. Hence any pending application for a CADT within the area, cannot affect much less hold back the automatic conversion. That the government now wishes to change the tenurial system to an IFMA could not change the PICOP project, in existence and operating for the last 30 (sic) years, into a new one.[84]

PICOP's position is anything but clear. What is clearly provided for in Section 59 is that it covers "issuing, *renewing* or granting (of) any concession, license or lease, or entering into any production sharing agreement." PICOP is implying that, when the government changed the tenurial system to an IFMA, PICOP's existing TLA would just be upgraded or modified, but would be the very same agreement, hence, dodging the inclusion in the word "renewing." However, PICOP is conveniently leaving out the fact that its TLA expired in 2002. If PICOP really intends to pursue the argument that the

[84] PICOP's Motion for Reconsideration, p. 41; *rollo*, pp. 1390a-1390b.

conversion of the TLA into an IFMA would not create a new agreement, but would only be a modification of the old one, then it should be willing to concede that the IFMA expired as well in 2002. An automatic modification would not alter the terms and conditions of the TLA except when they are inconsistent with the terms and conditions of an IFMA. Consequently, PICOP's concession period under the renewed TLA No. 43, which is from the year 1977 to 2002, would remain the same.

PICOP cannot rely on a theory of the case whenever such theory is beneficial to it, but refute the same whenever the theory is damaging to it. In the same way, PICOP cannot claim that the alleged Presidential Warranty is "renewable for other 25 years" and later on claim that what it is asking for is not a renewal. Extensions of agreements must necessarily be included in the term *renewal*. Otherwise, the inclusion of "renewing" in Section 59 would be rendered inoperative.

PICOP further claims:

> 85. Verily, in interpreting the term "held under claim of ownership," the Supreme Court could not have meant to include claims that had just been filed and not yet recognized under the provisions of DENR Administrative Order No. 2 Series of 1993, nor to any other community /ancestral domain program prior to R.A. 8371.
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> xxx xxx xxx
>
> 87. One can not imagine the terrible damage and chaos to the country, its economy, its people and its future if a mere claim filed for the issuance of a CADC or CADT will already provide those who filed the application, the authority or right to stop the renewal or issuance of any concession, license or lease or any production-sharing agreement. The same interpretation will give such applicants through a mere application the right to stop or suspend any project that they can cite for not satisfying the requirements of the consultation process of R.A. 8371. If such interpretation gets enshrined in the statures of the land, the unscrupulous and the extortionists can put any ongoing or future project or activity to a stop in any part of the country citing their right from having filed

an application for issuance of a CADC or CADT claim and the legal doctrine established by the Supreme Court in this PICOP case.[85]

We are not sure whether PICOP's counsels are deliberately trying to mislead us, or are just plainly ignorant of basic precepts of law. The term "claim" in the phrase "claim of ownership" is not a document of any sort. It is an attitude towards something. The phrase "claim of ownership" means "the possession of a piece of property with the intention of claiming it in hostility to the true owner."[86] It is also defined as "a party's manifest intention to take over land, regardless of title or right."[87] Other than in Republic Act No. 8371, the phrase "claim of ownership" is thoroughly discussed in issues relating to acquisitive prescription in Civil Law.

Before PICOP's counsels could attribute to us an assertion that a mere *attitude* or *intention* would stop the renewal or issuance of any concession, license or lease or any production-sharing agreement, we should stress beforehand that this *attitude* or *intention* must be clearly shown by overt acts and, as required by Section 3(a), should have been in existence "since time immemorial, continuously to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/ corporations."

Another argument of PICOP involves the claim itself that there was no overlapping:

> Second, there could be no overlapping with any Ancestral Domain as proven by the evidence presented and testimonies rendered during the hearings in the Regional Trial Court. x x x.
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> x x x x x x x x x.

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[85] PICOP's Motion for Reconsideration, pp. 43-44; *rollo*, pp. 1390a-1390b.

[86] Black's Law Dictionary (Eighth Edition), p. 265.

[87] *Id*.

88. The DENR issued a total of 73 CADCs as of December 11, 1996. The DENR Undersecretary for Field Operations had recommended another 11 applications for issuance of CADCs. None of the CADCs overlap the TLA 43 area.

89. However former DENR Secretary Alvarez, in a memorandum dated 13 September, 2002 addressed to PGMA, insisted that PICOP had to comply with the requirement to secure a Free and Prior Informed Concent because CADC 095 was issued covering 17,112 hectares of TLA 43.

90. This CADC 095 is a fake CADC and was not validly released by the DENR. While the Legal Department of the DENR was still in the process of receiving the filings for applicants and the oppositors to the CADC application, PICOP came across filed copies of a CADC 095 with the PENRO of Davao Oriental as part of their application for a Community Based Forest Management Agreement (CBFMA). Further research came across the same group filing copies of the alleged CADC 095 with the Mines and Geosciences Bureau in Davao City for a mining agreement application. The two applications had two different versions of the CADCs second page. One had Mr. Romeo T. Acosta signing as the Social reform Agenda Technical Action Officer, while the other had him signing as the Head, Community-Based Forest Management Office. One had the word "Eight" crossed out and "Seven" written to make it appear that the CADC was issued on September 25, 1997, the other made it appear that there were no alterations and the date was supposed to be originally 25 September 1997.

What is required in Section 59 of Republic Act No. 8379 is a Certification from the NCIP that there was no overlapping with any Ancestral Domain. PICOP cannot claim that the DENR gravely abused its discretion for requiring this Certification, on the ground that there was no overlapping. We reiterate that **it is manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that they are not can be required**. As discussed in the assailed Decision, PICOP did not even seek any certification from the NCIP that the area covered by TLA No. 43, subject of its IFMA conversion, did not overlap with any ancestral domain.[88]

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[88] *Rollo* (G.R. No. 162243), pp. 470-472.

Sanggunian Consultation and Approval

While PICOP did not seek any certification from the NCIP that the former's concession area did not overlap with any ancestral domain, PICOP initially sought to comply with the requirement under Sections 26 and 27 of the Local Government Code to procure prior approval of the Sanggunians concerned. However, only one of the many provinces affected approved the issuance of an IFMA to PICOP. Undaunted, PICOP nevertheless submitted to the DENR the purported resolution[89] of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion, apparently hoping either that the disapproval of the other provinces would go unnoticed, or that the Surigao del Sur approval would be treated as sufficient compliance.

Surprisingly, the disapproval by the other provinces *did* go unnoticed before the RTC and the Court of Appeals, despite the repeated assertions thereof by the Solicitor General. When we pointed out in the assailed Decision that the approval must be by all the Sanggunians concerned and not by only one of them, PICOP changed its theory of the case in its Motion for Reconsideration, this time claiming that they are not required *at all* to procure Sanggunian approval.

Sections 2(c), 26 and 27 of the Local Government Code provide:

SEC. 2. x x x.

x x x x x x x x x

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

SEC. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance*. – It shall be the duty of every

[89] Folder of Exhibits, Vol. 2, Exhibit OO, p. 351.

national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

SEC. 27. *Prior Consultations Required*. – No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with, ***and prior approval of the sanggunian concerned is obtained***: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

As stated in the assailed Decision, the common evidence of the DENR Secretary and PICOP, namely, the 31 July 2001 Memorandum of Regional Executive Director (RED) Elias D. Seraspi, Jr., enumerated the local government units and other groups which had expressed their opposition to PICOP's application for IFMA conversion:

> 7. During the conduct of the performance evaluation of TLA No. 43 issues complaints against PRI were submitted thru Resolutions and letters. It is important that these are included in this report for assessment of what are their worth, *viz*:
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> x x x x x x x x x
>
> 7.2 Joint Resolution (unnumbered), dated March 19, 2001 of the *Barangay* Council and *Barangay* Tribal Council of Simulao, Boston, Davao Oriental (ANNEX F) opposing the conversion of TLA No. 43 into IFMA over the 17,112 hectares allegedly covered with CADC No. 095.
>
> 7.3 Resolution Nos. 10, s-2001 and 05, s-2001 (ANNEXES G & H) of the Bunawan Tribal Council of Elders (BBMTCE) strongly demanding none renewal of PICOP TLA. They claim to be the rightful owner of the area it being their alleged ancestral land.

7.4 Resolution No. 4, S-2001 of Sitio Linao, San Jose, Bislig City (ANNEX I) requesting not to renew TLA 43 over the 900 hectares occupied by them.

7.5 Resolution No. 22, S-2001 (ANNEX J) of the Sanguniang Bayan, Lingig, Surigao del Sur not to grant the conversion of TLA 43 citing the plight of former employees of PRI who were forced to enter and farm portion of TLA No. 43, after they were laid off.

7.6 SP Resolution No. 2001-113 and CDC Resolution Nos. 09-2001 of the Sanguniang Panglungsod of Bislig City (ANNEXES K & L) requesting to exclude the area of TLA No. 43 for watershed purposes.

7.7 Resolution No. 2001-164, dated June 01, 2001 (ANNEX M) Sanguniang Panglungsod of Bislig City opposing the conversion of TLA 43 to IFMA for the reason that IFMA do not give revenue benefits to the City.[90]

PICOP had claimed that it complied with the Local Government Code requirement of obtaining prior approval of the Sanggunian concerned by submitting a purported resolution[91] of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion. We ruled that this cannot be deemed sufficient compliance with the foregoing provision. Surigao del Sur is not the only province affected by the area covered by the proposed IFMA. As even the Court of Appeals found, PICOP's TLA No. 43 traverses the length and breadth not only of Surigao del Sur but also of Agusan del Sur, Compostela Valley and Davao Oriental.[92]

On Motion for Reconsideration, PICOP now argues that the requirement under Sections 26 and 27 does not apply to it:

97. PICOP is not a national agency. Neither is PICOP government owned or controlled. Thus Section 26 does not apply to PICOP.

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[90] Folder of Exhibits, Vol. 2, Exhibit O-1, p. 176; Folder of Exhibits, Vol. 3, Exhibit 7-g, p. 475.

[91] Folder of Exhibits, Vol. 2, Exhibit OO, p. 351.

[92] *Rollo* (G.R. No. 162243), p. 230.

98. It is very clear that Section 27 refers to projects or programs to be implemented by government authorities or government-owned and controlled corporations. PICOP's project or the automatic conversion is a purely private endeavour. First the PICOP project has been implemented since 1969. Second, the project was being implemented by private investors and financial institutions.

99. The primary government participation is to warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project. To rule now that a project whose foundations were commenced as early as 1969 shall now be subjected to a 1991 law is to apply the law retrospectively in violation of Article 4 of the Civil Code that laws shall not be applied retroactively.

100. In addition, under DAO 30, Series of 1992, TLA and IFMA operations were not among those devolved function from the National Government / DENR to the local government unit. Under its Section 03, the devolved function cover only:

a) Community Based forestry projects.
b) Communal forests of less than 5000 hectares
c) Small watershed areas which are sources of local water supply.[93]

We have to remind PICOP again of the contents of Section 2, Article XII of the Constitution:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions

[93] PICOP's Motion for Reconsideration, pp. 48-49, *rollo*, pp. 1391a-1391b.

as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

All projects relating to the exploration, development and utilization of natural resources are projects of the State. While the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by these citizens, such as PICOP, the projects nevertheless remain as State projects and ***can never be purely private endeavors***.

Also, despite entering into co-production, joint venture, or production-sharing agreements, the State remains in full control and supervision over such projects. PICOP, thus, cannot limit government participation in the project to being merely its bouncer, whose primary participation is only to "warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project."

PICOP is indeed neither a national agency nor a government-owned or controlled corporation. The DENR, however, is a national agency and is *the* national agency prohibited by Section 27 from issuing an IFMA without the prior approval of the Sanggunian concerned. As previously discussed, PICOP's Petition for *Mandamus* can only be granted if the DENR Secretary is *required by law* to issue an IFMA. We, however, see here the exact opposite: the DENR Secretary was actually *prohibited by law* from issuing an IFMA, as there had been no prior approval by all the other Sanggunians concerned.

As regards PICOP's assertion that the application to them of a 1991 law is in violation of the prohibition against the non-retroactivity provision in Article 4 of the Civil Code, we have to remind PICOP that it is applying for an IFMA with a term of 2002 to 2027. Section 2, Article XII of the Constitution allows exploitation agreements to last only "for a period not exceeding twenty-five years, renewable for not more than twenty-five years." PICOP, thus, cannot legally claim that the project's term started in 1952 and extends all the way to the present.

Finally, the devolution of the project to local government units is not required before Sections 26 and 27 would be applicable. Neither Section 26 nor 27 mentions such a requirement. Moreover, it is not only the letter, but more importantly the spirit of Sections 26 and 27, that shows that the devolution of the project is not required. The approval of the Sanggunian concerned is required by law, not because the local government has control over such project, but because the local government has the duty to protect its constituents and their stake in the implementation of the project. Again, Section 26 states that it applies to projects that "may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species." The local government should thus represent the communities in such area, the very people who will be affected by flooding, landslides or even climatic change if the project is not properly regulated, and who likewise have a stake in the resources in the area, and deserve to be adequately compensated when these resources are exploited.

Indeed, it would be absurd to claim that the project must first be devolved to the local government before the requirement of the national government seeking approval from the local government can be applied. If a project has been devolved to the local government, the local government itself would be implementing the project. That the local government would need its own approval before implementing its own project is patently silly.

EPILOGUE AND DISPOSITION

PICOP'c cause of action consists in the allegation that the DENR Secretary, in not issuing an IFMA, violated its constitutional right against non-impairment of contracts. We have ruled, however, that the 1969 Document is not a contract recognized under the non-impairment clause, much less a contract specifically enjoining the DENR Secretary to issue the IFMA. The conclusion that the 1969 Document is not a contract recognized under the non-impairment clause has even been disposed of in another case decided by another division of this Court, *PICOP Resources, Inc. v. Base*

Metals Mineral Resources Corporation,[94] the Decision in which case has become final and executory. PICOP's Petition for *Mandamus* should, therefore, fail.

Furthermore, even if we assume for the sake of argument that the 1969 Document is a contract recognized under the non-impairment clause, and even if we assume for the sake of argument that the same is a contract specifically enjoining the DENR Secretary to issue an IFMA, PICOP's Petition for *Mandamus* must still fail. The 1969 Document expressly states that the warranty as to the tenure of PICOP is "subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions." Thus, if PICOP proves the two above-mentioned matters, it still has to prove compliance with statutory and administrative requirements for the conversion of its TLA into an IFMA.

While we have withdrawn our pronouncements in the assailed Decision that (1) PICOP had not submitted the required forest protection and reforestation plans, and that (2) PICOP had unpaid forestry charges, thus effectively ruling in favor of PICOP on ***all*** factual issues in this case, PICOP still insists that the requirements of an NCIP certification and Sanggunian consultation and approval do not apply to it. To affirm PICOP's position on these matters would entail nothing less than rewriting the Indigenous Peoples' Rights Act and the Local Government Code, an act simply beyond our jurisdiction.

WHEREFORE, the Motion for Reconsideration of PICOP Resources, Inc. is *DENIED*.

SO ORDERED.

Puno, C.J.,, Carpio, Corona, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad and *Villarama, Jr., JJ.*, concur.

Nachura ,* *J.*, no part.

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[94] *Supra* note 26.

* No part.

SECOND DIVISION

[G.R. No. 173441. December 3, 2009]

HEIRS OF SOFIA QUIRONG, Represented by ROMEO P. QUIRONG, *petitioners, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RESCISSIBLE CONTRACTS; PRESCRIPTIVE PERIOD; RECKONING DATE IN CASE AT BAR IS FROM THE FINALITY OF THE DECEMBER 16, 1992 RTC DECISION IN CIVIL CASE D-7159 WHICH IS JANUARY 28, 1993, AS NO APPEAL WAS MADE THEREIN. — The CA held that the Quirong heirs' action for rescission of the sale between DBP and their predecessor, Sofia Quirong, is barred by prescription reckoned from the date of finality of the December 16, 1992 RTC decision in Civil Case D-7159 and applying the prescriptive period of four years set by Article 1389 of the Civil Code. Unfortunately, the CA did not state in its decision the date when the RTC decision in Civil Case D-7159 became final and executory, which decision resulted in the Quirong heirs' loss of 80% of the lot that the DBP sold to Sofia Quirong. Petitioner heirs claim that the prescriptive period should be reckoned from January 17, 1995, the date this Court's resolution in G.R. 116575 became final and executory. But the incident before this Court in G.R. 116575 did not deal with the merit of the RTC decision in Civil Case D-7159. That decision became final and executory on January 28, 1993 when the DBP failed to appeal from it within the time set for such appeal. The incident before this Court in G.R. 116575 involved the issuance of the writ of execution in that case. The DBP contested such issuance supposedly because the dispositive portion of the decision failed to specify details that were needed for its implementation. Since this incident did not affect the finality of the decision in Civil Case D-7159, the prescriptive period remained to be reckoned from January 28, 1993, the date of such finality.

2. ID.; ID.; RESCISSION OF CONTRACTS; AVAILABLE TO INJURED PARTY IN RECIPROCAL OBLIGATIONS;

ELUCIDATED. — The remedy of "rescission" is not confined to the rescissible contracts enumerated under Article 1381. Article 1191 of the Civil Code gives the injured party in reciprocal obligations, such as what contracts are about, the option to choose between fulfillment and "rescission." Arturo M. Tolentino, a well-known authority in civil law, is quick to note, however, that the equivalent of Article 1191 in the old code actually uses the term "resolution" rather than the present "rescission." The calibrated meanings of these terms are distinct. "Rescission" is a subsidiary action based on injury to the plaintiff's economic interests as described in Articles 1380 and 1381. "Resolution," the action referred to in Article 1191, on the other hand, is based on the defendant's breach of faith, a violation of the reciprocity between the parties. As an action based on the binding force of a written contract, therefore, rescission (resolution) under Article 1191 prescribes in 10 years. Ten years is the period of prescription of actions based on a written contract under Article 1144. The distinction makes sense. Article 1191 gives the injured party an option to choose between, first, fulfillment of the contract and, second, its rescission. An action to enforce a written contract (fulfillment) is definitely an "action upon a written contract," which prescribes in 10 years (Article 1144). It will not be logical to make the remedy of fulfillment prescribe in 10 years while the alternative remedy of rescission (or resolution) is made to prescribe after only four years as provided in Article 1389 when the injury from which the two kinds of actions derive is the same.

3. ID.; ID.; ID.; CASE AT BAR. – Here, the Quirong heirs alleged in their complaint that they were entitled to the rescission of the contract of sale of the lot between the DBP and Sofia Quirong because the decision in Civil Case D-7159 deprived her heirs of nearly the whole of that lot. But what was the status of that contract at the time of the filing of the action for rescission? Apparently, that contract of sale had already been fully performed when Sofia Quirong paid the full price for the lot and when, in exchange, the DBP executed the deed of absolute sale in her favor. There was a turnover of control of the property from DBP to Sofia Quirong since she assumed under their contract, "the ejectment of squatters and/or occupants" on the lot, at her own expense. Actually, the cause of action of the Quirong heirs stems from their having been ousted by

> final judgment from the ownership of the lot that the DBP sold to Sofia Quirong, their predecessor, in violation of the warranty against eviction that comes with every sale of property or thing. x x x With the loss of 80% of the subject lot to the Dalopes by reason of the judgment of the RTC in Civil Case D-7159, the Quirong heirs had the right to file an action for rescission against the DBP pursuant to the provision of Article 1556 of the Civil Code x x x And that action for rescission, which is based on a subsequent economic loss suffered by the buyer, was precisely the action that the Quirong heirs took against the DBP. Consequently, it prescribed as Article 1389 provides in four years from the time the action accrued.

APPEARANCES OF COUNSEL

Aurora Esguerra Valle for petitioners.

Benilda A. Tejada Restituto A. Luna, Jr. Rene A. Gaerlan & Teresita Ivanness C. Cadag for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the prescriptive period of an action for rescission of a contract of sale where the buyer is evicted from the thing sold by a subsequent judicial order in favor of a third party.

The Facts and the Case

The facts are not disputed. When the late Emilio Dalope died, he left a 589-square meter untitled lot[1] in Sta. Barbara, Pangasinan, to his wife, Felisa Dalope (Felisa) and their nine children, one of whom was Rosa Dalope-Funcion.[2] To enable

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[1] Unregistered lot previously declared for taxation purposes in the name of spouses Emilio and Felisa Dalope, located at Tuliao, Sta. Barbara, Pangasinan and covered by Tax Declaration No. 720.

[2] The heirs are in possession of the land. Standing on it are two houses, one bungalow owned by Felisa and a two-storey house owned by the Funcion spouses.

Rosa and her husband Antonio Funcion (the Funcions) get a loan from respondent Development Bank of the Philippines (DBP), Felisa sold the whole lot to the Funcions. With the deed of sale in their favor and the tax declaration transferred in their names, the Funcions mortgaged the lot with the DBP.

On February 12, 1979, after the Funcions failed to pay their loan, the DBP foreclosed the mortgage on the lot and consolidated ownership in its name on June 17, 1981.[3]

Four years later or on September 20, 1983 the DBP conditionally sold the lot to Sofia Quirong[4] for the price of ₱78,000.00. In their contract of sale, Sofia Quirong waived any warranty against eviction. The contract provided that the DBP did not guarantee possession of the property and that it would not be liable for any lien or encumbrance on the same. Quirong gave a down payment of ₱14,000.00.

Two months after that sale or on November 28, 1983 Felisa and her eight children (collectively, the Dalopes)[5] filed an action for partition and declaration of nullity of documents with damages against the DBP and the Funcions before the Regional Trial Court (RTC) of Dagupan City, Branch 42, in Civil Case D-7159.

On December 27, 1984, notwithstanding the suit, the DBP executed a deed of absolute sale of the subject lot in Sofia Quirong's favor. The deed of sale carried substantially the same waiver of warranty against eviction and of any adverse lien or encumbrance.

On May 11, 1985, Sofia Quirong having since died, her heirs (petitioner Quirong heirs) filed an answer in intervention[6] in Civil Case D-7159 in which they asked the RTC to award the

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[3] CA *rollo*, p. 25.

[4] Now substituted by the petitioner Heirs of Sofia Quirong.

[5] Lydia, Jose, Imelda, Cesar, Fredeline, Carlos, Emilio, and Cipriano, the latter also known as Sofronio and represented by his heirs, Elena Andaca, Alma, Noemi, Gaile, and Shiela, all surnamed Dalope.

[6] *Rollo*, p. 182.

lot to them and, should it instead be given to the Dalopes, to allow the Quirong heirs to recover the lot's value from the DBP. But, because the heirs failed to file a formal offer of evidence, the trial court did not rule on the merits of their claim to the lot and, alternatively, to relief from the DBP.[7]

On December 16, 1992 the RTC rendered a decision, declaring the DBP's sale to Sofia Quirong valid only with respect to the shares of Felisa and Rosa Funcion in the property. It declared Felisa's sale to the Funcions, the latter's mortgage to the DBP, and the latter's sale to Sofia Quirong void insofar as they prejudiced the shares of the eight other children of Emilio and Felisa who were each entitled to a tenth share in the subject lot.

The DBP received a copy of the decision on January 13, 1993 and, therefore, it had until January 28, 1993 within which to file a motion for its reconsideration or a notice of appeal from it. But the DBP failed to appeal supposedly because of excusable negligence and the withdrawal of its previous counsel of record.[8]

When the RTC judgment became final and the court issued a writ of execution, the DBP resisted the writ by motion to quash, claiming that the decision could not be enforced because it failed to state by metes and bounds the particular portions of the lot that would be assigned to the different parties in the case. The RTC denied the DBP's motion, prompting the latter to seek recourse by special civil action of *certiorari* directly with this Court in G.R. 116575, *Development Bank of the Philippines v. Fontanilla.* On September 7, 1994 the Court issued a resolution, denying the petition for failure of the DBP to pay the prescribed fees. This resolution became final and executory on January 17, 1995.[9]

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[7] *Id.* at 96. Pertinent portion of the decision reads: "No evidence was formally offered in support of the intervention filed in this case by the heirs of the late Sofia P. Quirong. The merits of the case could not therefore be passed upon in this case."

[8] Petition in G.R. No. 116575, *rollo*, p. 105.

[9] *Rollo*, p. 114.

On June 10, 1998 the Quirong heirs filed the present action[10] against the DBP before the RTC of Dagupan City, Branch 44, in Civil Case CV-98-02399-D for rescission of the contract of sale between Sofia Quirong, their predecessor, and the DBP and praying for the reimbursement of the price of ₱78,000.00 that she paid the bank plus damages. The heirs alleged that they were entitled to the rescission of the sale because the decision in Civil Case D-7159 stripped them of nearly the whole of the lot that Sofia Quirong, their predecessor, bought from the DBP. The DBP filed a motion to dismiss the action on ground of prescription and *res judicata* but the RTC denied their motion.

On June 14, 2004, after hearing the case, the RTC rendered a decision,[11] rescinding the sale between Sofia Quirong and the DBP and ordering the latter to return to the Quirong heirs the ₱78,000.00 Sofia Quirong paid the bank.[12] On appeal by the DBP, the Court of Appeals (CA) reversed the RTC decision and dismissed the heirs' action on the ground of prescription. The CA concluded that, reckoned from the finality of the December 16, 1992 decision in Civil Case D-7159, the complaint filed on June 10, 1998 was already barred by the four-year prescriptive period under Article 1389 of the Civil Code.[13] The Quirong heirs filed a motion for reconsideration of the decision but the appellate court denied it,[14] thus, this petition.

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[10] Complaint, *id.* at 57.

[11] *Id.* at 77.

[12] WHEREFORE, the Contract of Sale involving the parcel of land situated in Tuliao, Sta. Barbara, Pangasinan, x x x is ordered rescinded and defendant is ordered to reimburse to plaintiffs the sum of Seventy Eight Thousand Pesos (₱78,000.00) plus interests thereof at bank rate from 1983 until it is returned to the plaintiffs.

Furnish copies of this decision to Atty. Aurora Esguerra Valle and Atty. Rolando D. Mendoza.

SO ORDERED. (*Rollo*, p. 86)

[13] November 30, 2005 Decision, *id.* at 52.

[14] June 14, 2006 Resolution, *id.* at 56.

The Issues Presented

The issues presented in this case are:

1. Whether or not the Quirong heirs' action for rescission of respondent DBP's sale of the subject property to Sofia Quirong was already barred by prescription; and

2. In the negative, whether or not the heirs of Quirong were entitled to the rescission of the DBP's sale of the subject lot to the late Sofia Quirong as a consequence of her heirs having been evicted from it.

The Court's Rulings

The CA held that the Quirong heirs' action for rescission of the sale between DBP and their predecessor, Sofia Quirong, is barred by prescription reckoned from the date of finality of the December 16, 1992 RTC decision in Civil Case D-7159 and applying the prescriptive period of four years set by Article 1389 of the Civil Code.

Unfortunately, the CA did not state in its decision the date when the RTC decision in Civil Case D-7159 became final and executory, which decision resulted in the Quirong heirs' loss of 80% of the lot that the DBP sold to Sofia Quirong. Petitioner heirs claim that the prescriptive period should be reckoned from January 17, 1995, the date this Court's resolution in G.R. 116575 became final and executory.[15]

But the incident before this Court in G.R. 116575 did not deal with the merit of the RTC decision in Civil Case D-7159. That decision became final and executory on January 28, 1993 when the DBP failed to appeal from it within the time set for such appeal. The incident before this Court in G.R. 116575 involved the issuance of the writ of execution in that case. The DBP contested such issuance supposedly because the dispositive portion of the decision failed to specify details that were needed for its implementation. Since this incident did not affect the finality of the decision in Civil Case D-7159, the

[15] *Id.* at 114.

prescriptive period remained to be reckoned from January 28, 1993, the date of such finality.

The next question that needs to be resolved is the applicable period of prescription. The DBP claims that it should be four years as provided under Article 1389 of the Civil Code.[16] Article 1389 provides that "the action to claim rescission must be commenced within four years." The Quirong heirs, on the other hand, claim that it should be 10 years as provided under Article 1144 which states that actions "upon a written contract" must be brought "within 10 years from the date the right of action accrues."

Now, was the action of the Quirong heirs "for rescission" or "upon a written contract"? There is no question that their action was for rescission, since their complaint in Civil Case CV-98-02399-D asked for the rescission of the contract of sale between Sofia Quirong, their predecessor, and the DBP and the reimbursement of the price of ₱78,000.00 that Sofia Quirong paid the bank plus damages. The prescriptive period for rescission is four years.

But it is not that simple. The remedy of "rescission" is not confined to the rescissible contracts enumerated under Article 1381.[17] Article 1191 of the Civil Code gives the injured party

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[16] Art. 1389. The action to claim rescission must be commenced within four years.

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known.

[17] Article 1381. The following contracts are rescissible: (1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof; (2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number; (3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them; (4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority; (5) All other contracts specially declared by law to be subject to rescission.

in reciprocal obligations, such as what contracts are about, the option to choose between fulfillment and "rescission." Arturo M. Tolentino, a well-known authority in civil law, is quick to note, however, that the equivalent of Article 1191 in the old code actually uses the term "resolution" rather than the present "rescission."[18] The calibrated meanings of these terms are distinct.

"Rescission" is a subsidiary action based on injury to the plaintiff's economic interests as described in Articles 1380 and 1381. "Resolution," the action referred to in Article 1191, on the other hand, is based on the defendant's breach of faith, a violation of the reciprocity between the parties. As an action based on the binding force of a written contract, therefore, rescission (resolution) under Article 1191 prescribes in 10 years. Ten years is the period of prescription of actions based on a written contract under Article 1144.

The distinction makes sense. Article 1191 gives the injured party an option to choose between, first, fulfillment of the contract and, second, its rescission. An action to enforce a written contract (fulfillment) is definitely an "action upon a written contract," which prescribes in 10 years (Article 1144). It will not be logical to make the remedy of fulfillment prescribe in 10 years while the alternative remedy of rescission (or resolution) is made to prescribe after only four years as provided in Article 1389 when the injury from which the two kinds of actions derive is the same.

Here, the Quirong heirs alleged in their complaint that they were entitled to the rescission of the contract of sale of the lot between the DBP and Sofia Quirong because the decision in Civil Case D-7159 deprived her heirs of nearly the whole of that lot. But what was the status of that contract at the time of the filing of the action for rescission? Apparently, that contract of sale had already been fully performed when Sofia Quirong paid the full price for the lot and when, in exchange, the DBP executed the deed of absolute sale in her favor. There was

[18] Tolentino, Civil Code of the Philippines, Vol. IV, 169 (1992).

a turnover of control of the property from DBP to Sofia Quirong since she assumed under their contract, "the ejectment of squatters and/or occupants" on the lot, at her own expense.[19]

Actually, the cause of action of the Quirong heirs stems from their having been ousted by final judgment from the ownership of the lot that the DBP sold to Sofia Quirong, their predecessor, in violation of the warranty against eviction that comes with every sale of property or thing. Article 1548 of the Civil Code provides:

Article 1548. Eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of thing purchased.

x x x x x x x x x

With the loss of 80% of the subject lot to the Dalopes by reason of the judgment of the RTC in Civil Case D-7159, the Quirong heirs had the right to file an action for rescission against the DBP pursuant to the provision of Article 1556 of the Civil Code which provides:

Article 1556. Should the vendee lose, by reason of the eviction, a part of the thing sold of such importance, in relation to the whole, that he would not have bought it without said part, he may demand the rescission of the contract; but with the obligation to return the thing without other encumbrances than those which it had when he acquired it. x x x

And that action for rescission, which is based on a subsequent economic loss suffered by the buyer, was precisely the action that the Quirong heirs took against the DBP. Consequently, it prescribed as Article 1389 provides in four years from the time the action accrued. Since it accrued on January 28, 1993 when the decision in Civil Case D-7159 became final and executory and ousted the heirs from a substantial portion of the lot, the latter had only until January 28, 1997 within which to file their

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[19] DBP's Memorandum, citing par. 15, No. 3 of Deed of Conditional Sale, *rollo*, p. 245.

action for rescission. Given that they filed their action on June 10, 1998, they did so beyond the four-year period.

With the conclusion that the Court has reached respecting the first issue presented in this case, it would serve no useful purpose for it to further consider the issue of whether or not the heirs of Quirong would have been entitled to the rescission of the DBP's sale of the subject lot to Sofia Quirong as a consequence of her heirs having been evicted from it. As the Court has ruled above, their action was barred by prescription. The CA acted correctly in reversing the RTC decision and dismissing their action.

Parenthetically, the Quirong heirs were allowed by the RTC to intervene in the original action for annulment of sale in Civil Case D-7159 that the Dalopes filed against the DBP and the Funcions. Not only did the heirs intervene in defense of the sale, they likewise filed a cross claim against the DBP. And they were apparently heard on their defense and cross claim but the RTC did not adjudicate their claim for the reason that they failed to make a formal offer of their documentary exhibits. Yet, they did not appeal from this omission or from the judgment of the RTC, annulling the DBP's sale of the subject lot to Sofia Quirong. This point is of course entirely academic but it shows that the Quirong heirs have themselves to blame for the loss of whatever right they may have in the case.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the November 30, 2005 decision of the Court of Appeals in CA-G.R. CV 83897.

SO ORDERED.

Carpio, Leonardo-De Castro, Brion, and *Peralta,*[*] *JJ.,* concur.

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[*] Designated as additional member of the Second Division per raffle dated September 29, 2009.

EN BANC

[G.R. No. 179830. December 3, 2009]

LINTANG BEDOL, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; POWER TO CONDUCT INVESTIGATIONS AS AN ADJUNCT TO ITS CONSTITUTIONAL DUTY TO ENFORCE AND ADMINISTER ALL ELECTION LAWS; CONSTRUED BROADLY. — The COMELEC possesses the power to conduct investigations as an adjunct to its constitutional duty to enforce and administer all election laws, by virtue of the explicit provisions of paragraph 6, Section 2, Article IX of the 1987 Constitution, which reads: Article IX-C, Section 2. xxx (6) xxx; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices. The above-quoted provision should be construed broadly to give effect to the COMELEC's constitutional mandate as enunciated in *Loong v. Commission on Elections*, which held: xxx. Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." Undoubtedly, the text and intent of this provision is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections. Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections.

2. ID.; ID.; ID.; POWERS AND FUNCTIONS MAY BE CLASSIFIED INTO ADMINISTRATIVE, QUASI-LEGISLATIVE, AND QUASI-JUDICIAL; ELUCIDATED. — The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative, and quasi-judicial. The quasi-judicial power of the COMELEC embraces

the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications. Its quasi-legislative power refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress. Its administrative function refers to the enforcement and administration of election laws. In the exercise of such power, the Constitution (Section 6, Article IX-A) and the Omnibus Election Code (Section 52 [c]) authorize the COMELEC to issue rules and regulations to implement the provisions of the 1987 Constitution and the Omnibus Election Code.

3. ID.; ID.; ID.; ID.; QUASI-JUDICIAL POWER; ELUCIDATED. – The quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The Court, in *Dole Philippines Inc. v. Esteva*, described quasi-judicial power in the following manner, *viz*: Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. **In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.** Since rights of specific persons are affected, it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings.

4. ID.; ID.; ID.; ID.; ID.; EFFECTIVENESS THEREOF HINGES ON ITS AUTHORITY TO COMPEL ATTENDANCE OF THE PARTIES AND/OR THEIR WITNESSES AT THE HEARINGS OR PROCEEDINGS. — The effectiveness of the quasi–judicial power vested by law on a government institution hinges on its authority to compel attendance of the parties and/or their witnesses at the hearings or proceedings. As enunciated in *Arnault v. Nazareno*– Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed. In the same vein, to withhold from the COMELEC the power to punish individuals who refuse to appear during a fact-finding investigation, despite a previous notice and order to attend, would render nugatory the COMELEC's investigative power, which is an essential incident to its constitutional mandate to secure the conduct of honest and credible elections.

5. ID.; ID.; ID.; ID.; ID.; ID.; APPLICATION IN CASE AT BAR WHERE COMELEC ACTING AS BOARD OF CANVASSERS. — Even assuming *arguendo* that the COMELEC was acting as a board of canvassers at that time it required petitioner to appear before it, the Court had the occasion to rule that the powers of the board of canvassers are not purely ministerial. The board exercises quasi-judicial functions, such as the function and duty to determine whether the papers transmitted to them are genuine election returns signed by the proper officers. When the results of the elections in the province of Maguindanao were being canvassed, counsels for various candidates posited numerous questions on the certificates of canvass brought before the COMELEC. The COMELEC asked petitioner to appear before it in order to shed light on the issue of whether the election documents coming from Maguindanao were spurious or not. When petitioner unjustifiably refused to appear, COMELEC undeniably acted within the bounds of its jurisdiction when it issued the assailed resolutions.

6. ID.; ID.; ID.; OMNIBUS ELECTION CODE; POWERS AND FUNCTIONS OF THE COMELEC; ASSUMING JURISDICTION OVER INDIRECT CONTEMPT PROCEEDINGS INITIATED BY TASK FORCE MAGUINDANAO (ASSISTING ELECTION IN MAGUINDANAO), NOTWITHSTANDING ABSENCE OF

COMPLAINT CHARGES BY PRIVATE PARTY, PROPER. — On the procedure adopted by the COMELEC in proceeding with the indirect contempt charges against petitioner, Section 52 (e), Article VII of the Omnibus Election Code pertinently provides: Section 52. *Powers and functions of the Commission on Elections*. x x x (e) Punish contempts provided for in the Rules of Court **in the same procedure and with the same penalties** provided therein. Any violation of any final and executory decision, order or ruling of the Commission shall constitute contempt thereof. The aforecited provision of law is implemented by Rule 29 of COMELEC's Rules of Procedure, Section 2 x x x The language of the Omnibus Election Code and the COMELEC Rules of Procedure is broad enough to allow the initiation of indirect contempt proceedings by the COMELEC *motu proprio*. Furthermore, the above-quoted provision of Section 52(e), Article VII of the Omnibus Election Code explicitly adopts the procedure and penalties provided by the Rules of Court. Under Section 4, Rule 71, said proceedings may be initiated *motu proprio* by the COMELEC. x x x Hence, the COMELEC properly assumed jurisdiction over the indirect contempt proceedings which were initiated by its Task Force Maguindanao, through a *Contempt Charge and Show Cause Order*, notwithstanding the absence of any complaint filed by a private party.

7. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; HEARSAY RULE; NEWSPAPER APPRECIATED AS AN EXCEPTION TO HEARSAY RULE. — There were instances when the Court rejected newspaper articles as hearsay, when such articles are offered to prove their contents without any other competent and credible evidence to corroborate them. However, in *Estrada v. Desierto, et al.*, the Court held that not all hearsay evidence is inadmissible and how over time, exceptions to the hearsay rule have emerged. Hearsay evidence may be admitted by the courts on grounds of "relevance, trustworthiness and necessity." When certain facts are within judicial notice of the Court, newspaper accounts "only buttressed these facts as facts."

8. ID.; ID.; ID.; ID.; EXCEPTIONS; DOCTRINE OF INDEPENDENTLY RELEVANT STATEMENTS. —Another exception to the hearsay rule is the doctrine of independently relevant statements, where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial.

The hearsay rule does not apply; hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.

APPEARANCES OF COUNSEL

Law Firm of Adrei Bon Tagum and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Challenged in this petition for *certiorari* are the twin Resolutions issued by the respondent Commission on Elections (COMELEC) *En Banc* in the case entitled "*In the Matter of the Charge of Contempt of the Commission Against Election Supervisor Lintang Bedol*." The first Resolution[1] dated August 7, 2007, held petitioner guilty of contempt of the COMELEC and meted out to him the penalty of six (6) months imprisonment and a fine of ₱1,000.00. The second Resolution[2] dated August 31, 2007, denied petitioner's motion for reconsideration.

The facts as stated by the COMELEC follow:

On May 14, 2007, the National and Local elections were held under the auspices of this Commission.

As Chair of the Provincial Board of Canvassers (PBOC) for the province of Maguindanao, the respondent [petitioner] discharged his official functions and was able to ensure the PBOC's performance of its ministerial duty to canvass the Certificates of Canvass coming from the twenty two (22) city and municipalities in the province.

At that time, respondent [petitioner] also was charged with the burdensome and gargantuan duty of being the concurrent Provincial

[1] *Rollo*, pp. 56-76.

[2] *Id.* at 77-78.

Elections Supervisor for the Province of Shariff Kabunsuan a neighboring province of Maguindanao.

Respondent [petitioner] Bedol failed to attend the scheduled canvassing of the Provincial Certificates of Canvass (PCOC) of Maguindanao of which he is the Provincial Election Supervisor which was slated on May 22, 2007.

On May 25, 2007, respondent appeared before the Commission, en banc sitting as the National Board of Canvassers (NBOC) for the election of senators to submit the provincial certificate of canvass for Maguindanao, pursuant to his functions as Provincial Elections Supervisor and chair of the PBOC for Maguindanao. Due to certain 'observations' on the provincial certificates of canvass by certain parties, canvassing of the certificate was held in abeyance and respondent was queried on the alleged fraud which attended the conduct of elections in his area.

He was already informed of the resetting of the canvassing for May 30, 2007, but failed to appear despite prior knowledge.

On June 4, 2007, Celia B. Romero, Director II, ERSD & Concurrent Chief of the Records and Statistics Division of the COMELEC issued a certification that as of even date, the canvassing documents for all municipalities of the province of Maguindanao in connection with the May 14, 2007 elections were not transmitted by the Provincial Election Supervisor of said province nor the respective Board of Canvassers.

The Commission and not just the NBOC, in the exercise of its investigatory powers to determine existing controversies created the Task Force Maguindanao, headed by Commissioner Nicodemo Ferrer, which was tasked to conduct a fact-finding investigation on the conduct of elections and certificates of canvass from the city and municipalities in Maguindanao.

Respondent [petitioner] appeared before the Task Force during its June 11, 2007 fact finding activity and responded to the queries from the chair. It was during this hearing that respondent [petitioner] Bedol explained that, while in his custody and possession, the election paraphernalia were stolen sometime on May 29, 2007, or some fifteen (15) days after the elections. This was the first time such an excuse was given by the respondent [petitioner] and no written report was ever filed with the Commission regarding the alleged loss.

Respondent [petitioner] Bedol was duly informed to be present in the next scheduled investigative proceedings set for June 14, 2007 as the Task Force wanted to delve deeper into the alleged loss by propounding additional questions to Atty. Bedol during the next scheduled proceedings, such as why he still had in his possession said documents which should have already been turned over to the Commission, why he did not report to the COMELEC or to the police authorities the purported theft, and other pertinent questions. However, despite actual notice in open session, Atty. Bedol failed to appear, giving the impression that respondent [petitioner] Bedol does not give importance to this whole exercise and ignores the negative impact his attitude has on this Commission.

Also respondent [petitioner] failed and refused to submit a written explanation of his absences which he undertook to submit on June 13, 2007, but was only received by this Commission belatedly on July 03, 2007.

On June 26, 2007, [petitioner] came out on national newspapers, in an exclusive interview with the '*Inquirer*' and GMA-7, with a gleaming 45 caliber pistol strapped to his side, and in clear defiance of the Commission posted the challenge by saying that 'those that are saying that there was cheating in Maguindanao, file a case against me tomorrow, the next day. They should file a case now and I will answer their accusations.'(Words in brackets ours)

On June 27, 2007, the COMELEC through Task Force Maguindanao head, Commissioner Nicodemo T. Ferrer, issued a Contempt Charge and Show Cause Order[3] against petitioner citing various violations of the COMELEC Rules of Procedure, *viz*:

You are hereby formally charged of contempt of this Commission for having committed during the period between May 14, 2007, and June 26, 2007, acts in violation of specific paragraphs of Section 2, Rule 29 of the COMELEC Rules of Procedure, as follows:

1. (a) Your (PES Bedol's) failure to attend the scheduled canvassing of the Provincial Certificates of Canvass (PCOC) of Maguindanao of which he (sic) is (sic) the Provincial Election Supervisor on May 22, 2007; (b) your failure to attend the reset

[3] *Rollo*, pp. 79-80.

schedule of the canvassing on May 30, 2007, despite knowledge thereof when you attended the previously scheduled but again reset canvassing of said PCOCs on May 25, 2007; (c) your failure to attend the continuation of hearing of the Task Force Maguindanao on June 14, 2007, despite notice to him in open session in the hearing held on June 11, 2007, and personal service to you of a subpoena which you duly signed on the same date; and your failure/refusal to submit your written explanation of your said absences which you undertook to submit on June 13, 2007 – all of these failures on your part are violations of paragraphs (b) and (f) of Section 2, Rule 29 of COMELEC Rules of Procedure.

2. Your unlawful assumption of custody in your office in Maguinadanao of the municipal certificates of canvass (MCOC) and other accountable election documents of all the municipalities of Maguinadanao used in the last elections of 2007, but which should have been delivered to the Commission on Elections in its main office in Intramuros, Manila, and your admission that said accountable documents were lost from your said custody – these constitute violations of paragraphs (a), (c) and (d), Section 2, Rule 29 of said Rules.

3. Your pronouncements in the media flaunting [disrespect to] the authority of the COMELEC over you, challenging the institution to file a case against you in court as it is only in court that you are ready to face your accuser are violations of paragraphs (a) and (d), Section 2, Rule 29 of said Rules.

4. Your regaling the media (interviews in national television channels, newspapers and radios) with your boast of possession of an armory of long firearms and side arms, displaying in public for all to see in your front-page colored portrait in a national broadsheet and during a television interview a shiny pistol tucked in a holster at your waist in a 'combative mode (sic)' – these are clear violations of paragraphs (a) and (d), Section 2, Rule 29 of said Rules. (Words in brackets ours)

Through the foregoing June 27, 2007 Order, petitioner was directed to appear before the COMELEC *En Banc* on July 3, 2007 at 10:00 o'clock in the morning to personally explain why he should not be held in contempt for the above-mentioned offenses.

On July 2, 2007, petitioner was arrested by members of the Philippine National Police on the basis of an Order of Arrest[4] issued on June 29, 2007 by the COMELEC after petitioner repeatedly failed to appear during the fact-finding proceedings before Task Force Maguindanao.

During the July 3, 2007 hearing, petitioner questioned the COMELEC's legal basis for issuing the warrant of arrest and its assumption of jurisdiction over the contempt charges. Upon petitioner's motion, he was granted a period of ten (10) days within which to file the necessary pleading adducing his arguments and supporting authorities. The continuation of the hearing was set on July 17, 2007.

On July 17, 2007, which was beyond the ten-day period he requested, petitioner submitted an Explanation *Ad Cautelam* with Urgent Manifestation, containing the following averments:

> 1. Respondent [petitioner] urgently manifests that he is making a special appearance as he assails the jurisdiction of the Honorable Commission and its capacity to prosecute the present case in an impartial and fair manner.
>
> 2. Respondent [petitioner] questions the issuance of a warrant of arrest against him. He can not be validly arrested or re-arrested as a witness who is being compelled to testify in a hearing before the Honorable Commission.
>
> 3. Respondent [petitioner] has not committed any contemptuous acts against the Commission. He has not committed those acts charged against him by the Commission *motu proprio*. (Words in brackets ours.)

During the hearing on July 17, 2007, petitioner reiterated his objection to the jurisdiction of the COMELEC over the contempt charges due to the absence of a complaint lodged with the COMELEC by any private party. Petitioner's objection was treated as a motion to dismiss for lack of jurisdiction, which was denied forthwith by the COMELEC. Petitioner was then required to present evidence which he refused to do. Various

[4] *Id.* at 81.

exhibits were then marked and presented to the COMELEC. However, the latter allowed petitioner to file a Memorandum within a period of ten (10) days and gave him the opportunity to attach thereto his documentary and other evidence.

On July 31, 2007, petitioner again belatedly filed his Memorandum[5] maintaining his objection to the jurisdiction of the COMELEC to initiate the contempt proceedings on ground that the COMELEC, sitting e*n banc* as the National Board of Canvassers for the election of senators, was performing its administrative and not its quasi-judicial functions. Petitioner argued that the COMELEC, in that capacity, could not punish him for contempt.

On August 7, 2007, the COMELEC *En Banc* rendered the first assailed Resolution, the dispositive part of which reads:

> WHEREFORE, considering all the foregoing, respondent Atty. Lintang Bedol is hereby found guilty of Contempt of the Commission for the following acts and omissions:
>
> 1. (a) The failure to attend the scheduled canvassing of the Provincial Certificates of Canvass (PCOC) of Maguindanao of which he is the Provincial Election Supervisor on May 22, 2007 (b) failure to attend the reset schedule of the canvassing on May 30, 2007, despite knowledge thereof when Respondent Bedol attended the previously scheduled but again reset canvassing on May 25, 2007 (c) failure to attend the continuation of hearing of the Task Force Maguindanao on June 14, 2007, despite notice to Respondent in open session in the hearing held on June 11, 2007, and personal service to him of the subpoena which he duly signed on the same date; the failure/refusal to submit written explanation of respondent's absences which he undertook to submit on June 13, 2007 — all of these failures are violations of paragraphs (b) and (f) of Section 2, Rule 29 of COMELEC Rules of Procedure.
>
> 2. The unlawful assumption of custody in the Respondent's office in Maguindanao of the Municipal Certificates of Canvass (MCOC) and other accountable election documents of all the municipalities of Maguindanao used in the last elections of 2007,

[5] *Id.* at 123-146.

but which should have been delivered to the Commission on Elections in its main office in Intramuros, Manila, and Respondent's plain admission that said accountable documents were lost from his said custody — these constitute violations of paragraphs (a), (c) and (d), Section 2, Rule 29 of said Rules.

3. The respondent's pronouncements in media flaunting disrespect to the authority of the COMELEC over him, challenging the institution to file a case against him in court as it is supposedly only in court that Respondent Bedol was ready to face his accuser are violations of paragraphs (a) and (d), Section 2, Rule 29 of said Rules.

4. Regaling the public through the media (interviews in national television channels, newspapers and radios) with boast of possession of an armory of long firearms and side arms, displaying in public, for all to see in his front-page colored portrait in a national broadsheet and during a television interview, a shiny pistol tucked in a holster at your waist in a 'combative mode' (sic) — these are clear violations of paragraphs (a) and (d), Section 2, Rule 29 of said Rules.

All the foregoing constitute an exhibition of contumacious acts showing disrespect for the institution, of which respondent is even a ranking official, which is clearly contemptuous of this Commission, for which Respondent Lintang Bedol is hereby sentenced to suffer the penalty of imprisonment of six (6) months and to pay a fine of One Thousand Pesos (₱1,000.00).

The Legal Department of the Comelec is hereby directed to investigate and determine whether or not any election offense or crime under the Revised Penal Code has been committed by respondent Lintang Bedol and to initiate the filing of the necessary charge/s therefor.

SO ORDERED.

Aggrieved, petitioner filed a motion for reconsideration which was denied by the COMELEC in the other assailed Resolution dated August 31, 2007.

Hence, petitioner filed before the Court the instant petition for *certiorari* raising the following issues:

I

WHETHER OR NOT THE COMMISSION ON ELECTIONS HAS JURISDICTION TO INITIATE OR PROSECUTE THE CONTEMPT PROCEEDINGS AGAINST THE PETITIONER.

II

WHETHER OR NOT THE COMMISSSION HAS ALREADY PREJUDGED THE CASE AGAINST THE PETITIONER IN VIOLATION OF HIS DUE PROCESS RIGHTS

III

WHETHER OR NOT THE FINDINGS OF THE COMMISSION ON ELECTIONS, ASSUMING IT HAS JURISDICTION TO PUNISH FOR CONTEMPT, ARE SUPPORTED BY SUBSTANTIAL, CREDIBLE AND COMPETENT EVIDENCE.

We dismiss the petition.

The main thrust of petitioner's argument is that the COMELEC exceeded its jurisdiction in initiating the contempt proceedings when it was performing its administrative and not its quasi-judicial functions as the National Board of Canvassers for the election of senators. According to petitioner, the COMELEC may only punish contemptuous acts while exercising its quasi-judicial functions.

The COMELEC possesses the power to conduct investigations as an adjunct to its constitutional duty to enforce and administer all election laws, by virtue of the explicit provisions of paragraph 6, Section 2, Article IX of the 1987 Constitution, which reads:

Article IX-C, Section 2. xxx

(6) xxx; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

The above-quoted provision should be construed broadly to give effect to the COMELEC's constitutional mandate as enunciated in *Loong v. Commission on Elections*,[6] which held:

[6] G.R. No. 133676, April 14, 1999, 305 SCRA 832, 866-867.

xxx. Section 2(1) of Article IX(C) of the Constitution gives the COMELEC the broad power "to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall." Undoubtedly, the text and intent of this provision is to give COMELEC all the necessary and incidental powers for it to achieve the objective of holding free, orderly, honest, peaceful, and credible elections. Congruent to this intent, this Court has not been niggardly in defining the parameters of powers of COMELEC in the conduct of our elections.

The powers and functions of the COMELEC, conferred upon it by the 1987 Constitution and the Omnibus Election Code, may be classified into administrative, quasi-legislative, and quasi-judicial. The quasi-judicial power of the COMELEC embraces the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications. Its quasi-legislative power refers to the issuance of rules and regulations to implement the election laws and to exercise such legislative functions as may expressly be delegated to it by Congress. Its administrative function refers to the enforcement and administration of election laws. In the exercise of such power, the Constitution (Section 6, Article IX-A) and the Omnibus Election Code (Section 52 [c]) authorize the COMELEC to issue rules and regulations to implement the provisions of the 1987 Constitution and the Omnibus Election Code.[7]

The quasi-judicial or administrative adjudicatory power is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The Court, in *Dole Philippines Inc. v. Esteva*,[8] described quasi-judicial power in the following manner, *viz*:

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[7] *Akbayan – Youth, et al. v. COMELEC*, G.R. No. 147066, March 26, 2001, 355 SCRA 318, 364.

[8] G.R. No. 161115, November 30, 2006, 509 SCRA 332, 369-370.

Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. **In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.** Since rights of specific persons are affected, it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings. [Emphasis ours.]

The Creation of Task Force Maguindanao was impelled by the allegations of fraud and irregularities attending the conduct of elections in the province of Maguindanao and the non-transmittal of the canvassing documents for all municipalities of said province.

Task Force Maguindanao's fact-finding investigation – to probe into the veracity of the alleged fraud that marred the elections in said province; and consequently, to determine whether the certificates of canvass were genuine or spurious, and whether an election offense had possibly been committed – could by no means be classified as a purely ministerial or administrative function.

The COMELEC, through the Task Force Maguindanao, was exercising its quasi-judicial power in pursuit of the truth behind the allegations of massive fraud during the elections in Maguindanao. To achieve its objective, the Task Force conducted hearings and required the attendance of the parties concerned and their counsels to give them the opportunity to argue and support their respective positions.

The effectiveness of the quasi–judicial power vested by law on a government institution hinges on its authority to compel attendance of the parties and/or their witnesses at the hearings or proceedings. As enunciated in *Arnault v. Nazareno*[9] –

> Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to obtain what is needed.

In the same vein, to withhold from the COMELEC the power to punish individuals who refuse to appear during a fact-finding investigation, despite a previous notice and order to attend, would render nugatory the COMELEC's investigative power, which is an essential incident to its constitutional mandate to secure the conduct of honest and credible elections. In this case, the purpose of the investigation was however derailed when petitioner obstinately refused to appear during said hearings and to answer questions regarding the various election documents which, he claimed, were stolen while they were in his possession and custody. Undoubtedly, the COMELEC could punish petitioner for such contumacious refusal to attend the Task Force hearings.

Even assuming *arguendo* that the COMELEC was acting as a board of canvassers at that time it required petitioner to appear before it, the Court had the occasion to rule that the powers of the board of canvassers are not purely ministerial. The board exercises quasi-judicial functions, such as the function and duty to determine whether the papers transmitted to them are genuine election returns signed by the proper officers.[10] When the results of the elections in the province of Maguindanao were being canvassed, counsels for various candidates posited numerous questions on the certificates of canvass brought before the COMELEC. The COMELEC asked petitioner to appear before it in order to shed light on the issue of whether the election documents coming from Maguindanao were spurious

[9] 87 Phil. 29, 45 (1950).

[10] *Torres v. Ribo,* 81 Phil. 44, 48 (1948).

or not. When petitioner unjustifiably refused to appear, COMELEC undeniably acted within the bounds of its jurisdiction when it issued the assailed resolutions.

In *Santiago, Jr. v. Bautista*,[11] the Court held:

> xxx. The exercise of judicial functions may involve the performance of legislative or administrative duties, and the performance of and administrative or ministerial duties, may, in a measure, involve the exercise of judicial functions. It may be said generally that the exercise of judicial functions is to determine what the law is, and what the legal rights of parties are, with respect to a matter in controversy; and whenever an officer is clothed with that authority, and undertakes to determine those questions, he acts judicially.

On the procedure adopted by the COMELEC in proceeding with the indirect contempt charges against petitioner, Section 52 (e), Article VII of the Omnibus Election Code pertinently provides:

> Section 52. *Powers and functions of the Commission on Elections*.
>
> xxx xxx xxx
>
> (e) Punish contempts provided for in the Rules of Court **in the same procedure and with the same penalties** provided therein. Any violation of any final and executory decision, order or ruling of the Commission shall constitute contempt thereof. [Emphasis ours.]

The aforecited provision of law is implemented by Rule 29 of COMELEC's Rules of Procedure, Section 2 of which states:

> **Rule 29 – Contempt**
>
> Sec. 1. xxx
>
> Sec. 2. *Indirect Contempt*. – After charge in writing has been filed with the Commission or Division, as the case may be, and an opportunity given to the respondent to be heard by himself or counsel, a person guilty of the following acts may be punished for indirect contempt:

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[11] No. L-25024, March 30, 1970, 32 SCRA 188, 198; citing *In State ex rel. Board of Commrs. v. Dunn (86 Minn. 301, 304)*.

(a) Misbehavior of the responsible officer of the Commission in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, judgment or command of the Commission or any of its Divisions, or injunction or restraining order granted by it;

(c) Any abuse of or any inlawful interference with the process or proceedings of the Commission or any of its Divisions not constituting direct contempt under Section 1 of this Rules;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice by the Commission or any of its Divisions;

(e) Assuming to be an attorney and acting as such without authority; and

(f) Failure to obey a subpoena duly served.

SEC. 3 *Penalty for Indirect Contempt*. – If adjudged guilty, the accused may be punished by a fine not exceeding one thousand (₱1,000.00) pesos or imprisonment for not more than six (6) months, or both, at the discretion of the Commission or Division.

The language of the Omnibus Election Code and the COMELEC Rules of Procedure is broad enough to allow the initiation of indirect contempt proceedings by the COMELEC *motu proprio*. Furthermore, the above-quoted provision of Section 52(e), Article VII of the Omnibus Election Code explicitly adopts the procedure and penalties provided by the Rules of Court. Under Section 4, Rule 71, said proceedings may be initiated *motu proprio* by the COMELEC, *viz*:

SEC. 4. *How proceedings commenced*. – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

Hence, the COMELEC properly assumed jurisdiction over the indirect contempt proceedings which were initiated by its Task Force Maguindanao, through a *Contempt Charge and Show Cause Order*, notwithstanding the absence of any complaint filed by a private party.

We turn now to petitioner's claim that the COMELEC prejudged the case against him, and that its findings were not supported by evidence. His claim deserves scant consideration.

The fact that the indirect contempt charges against petitioner were initiated *motu proprio* by the COMELEC did not by itself prove that it had already prejudged the case against him. As borne out by the records, the COMELEC gave petitioner several opportunities to explain his side and to present evidence to defend himself. All of petitioner's belatedly filed pleadings were admitted and taken into consideration before the COMELEC issued the assailed Resolution finding petitioner guilty of indirect contempt.

The COMELEC complied with the aforementioned Section 4, Rule 71 of the Rules of Court and with the requirements set by Rule 29 of the COMELEC Rules of Procedure, when it issued the Contempt Charge and Show Cause Order against petitioner directing him to appear before it and explain why he should not be held in contempt.

Petitioner claims that the challenged Resolution finding him guilty of indirect contempt was based merely on hearsay, surmises, speculations and conjectures, and not on competent and substantial evidence. He contends that there is no convincing evidence

that he deliberately refused to heed the summonses of the COMELEC or that he was sufficiently notified of the investigative hearings. He further argues that the loss of the election documents should not even be automatically ascribed to him.

We are not persuaded.

Petitioner was found guilty of contempt on four (4) grounds. *First,* he repeatedly failed to attend, despite notice of the scheduled[12] canvassing of the Provincial Certificates of Canvass, the hearing of the Task Force Maguindanao; and refused to submit his explanation for such absences, which he had undertaken to submit, in violation of paragraphs (b) and (f) of Section 2, Rule 29 of the COMELEC Rules of Procedure.

Petitioner was duly notified of the scheduled hearings. It was his official responsibility to be present during the scheduled hearing to shed light on the allegedly stolen election documents but he failed to do so without offering any valid justification for his non-appearance.

Second, he unlawfully assumed custody of accountable election documents, which were lost while in his possession, and consequently failed to deliver the same, in violation of paragraphs (a), (c) and (d) Section 2, Rule 29 of same Rules.

Petitioner admitted that the subject certificate of canvass and other election documents were lost while in his custody. Petitioner himself admitted during the hearing held on June 11, 2007 that the documents were stolen sometime on May 29, 2007. Apart from the said loss of the vital election documents, his liability stemmed from the fact that he illegally retained custody and possession of said documents more than two weeks after the elections. The COMELEC viewed such act as a contemptuous interference with its normal functions.

Third and *fourth*, he publicly displayed disrespect for the authority of the COMELEC through the media (interviews on national television channels, and in newspapers and radios) by

[12] May 22, 2007 and May 30, 2007.

flaunting an armory of long firearms and side arms in public, and posing for the front page of a national broadsheet, with a shiny pistol tucked in a holster, in violation of paragraphs (a) and (d), Section 2, Rule 29 of same Rules.

Petitioner questions the probative value of the newspaper clippings published in the Philippine Daily Inquirer on June 26, 2007 which showed a photo of him with a firearm tucked to his side and his supposed exclusive interview. He claims that said newspaper clippings are mere hearsay, which are of no evidentiary value.

True, there were instances when the Court rejected newspaper articles as hearsay, when such articles are offered to prove their contents without any other competent and credible evidence to corroborate them. However, in *Estrada v. Desierto, et al.*,[13] the Court held that not all hearsay evidence is inadmissible and how over time, exceptions to the hearsay rule have emerged. Hearsay evidence may be admitted by the courts on grounds of "relevance, trustworthiness and necessity."[14] When certain facts are within judicial notice of the Court, newspaper accounts "only buttressed these facts as facts."[15]

Another exception to the hearsay rule is the doctrine of independently relevant statements, where only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply; hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.[16]

Here, the newspaper clippings were introduced to prove that petitioner deliberately defied or challenged the authority of the COMELEC. As ratiocinated by the COMELEC in the challenged

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[13] G.R. Nos. 146710-15, April 3, 2001, 356 SCRA 108, 128.

[14] *Id.*

[15] *Id.* at 124.

[16] *People v. Malibiran,* G.R. No. 178301, April 24, 2009.

Resolution of August 7, 2007, it was not the mere content of the articles that was in issue, but petitioner's conduct when he allowed himself to be interviewed in the manner and circumstances, adverted to in the COMELEC Resolution, on a pending controversy which was still brewing in the COMELEC. While petitioner claimed that he was misquoted, he denied neither the said interview nor his picture splashed on the newspaper with a firearm holstered at his side but simply relied on his objection to the hearsay nature of the newspaper clippings. It should be stressed that petitioner was no ordinary witness or respondent. He was under the administrative supervision of the COMELEC[17] and it was incumbent upon him to demonstrate to the COMELEC that he had faithfully discharged his duties as dictated by law. His evasiveness and refusal to present his evidence as well as his reliance on technicalities to justify such refusal in the face of the allegations of fraud or anomalies and newspaper publication mentioned to the *Contempt Charge and Show Cause Order* amounted to an implied admission of the charges leveled against him.

All told, petitioner brought this predicament upon himself when he opted to dispense with the presentation of his evidence during the scheduled hearings and to explain his non-appearance at the hearings of Task Force Maguindanao and the loss of the certificates of canvass and other election documents.

WHEREFORE, the petition is hereby *DISMISSED* and the prayer for a Temporary Restraining Order and/or a Writ of Preliminary Injunction is hereby *DENIED*. No costs.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Chico-Nazario, Nachura, Brion, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

Corona, Velasco, Jr., and *Peralta, JJ.,* on official leave.

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[17] *Canicosa v. COMELEC*, G.R. No. 120318, December 5, 1997, 282 SCRA 512, 521-522.

[*] On official leave.

EN BANC

[G.R. No. 182161. December 3, 2009]

REVEREND FATHER ROBERT P. REYES, *petitioner, vs.* **COURT OF APPEALS, SECRETARY RAUL M. GONZALEZ, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF JUSTICE, AND COMMISSIONER MARCELINO C. LIBANAN, IN HIS CAPACITY AS THE COMMISSIONER OF THE BUREAU OF IMMIGRATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; *WRIT OF AMPARO*; COVERAGE; CONFINED TO INSTANCES OF EXTRALEGAL KILLINGS AND ENFORCED DISAPPEARANCES, OR THREATS THEREOF. — Section 1 of the Rule on the Writ of *Amparo* provides: Section 1. *Petition.* – The petition for a *writ of amparo* is a remedy available to any person whose **right to life, liberty and security** is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof. The Court, in *Secretary of National Defense et al. v. Manalo et al*., made a categorical pronouncement that the *Amparo* Rule in its present form is confined to these two instances of "extralegal killings" and "enforced disappearances," or to threats thereof, thus: x x x As the *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to

acknowledge the deprivation of liberty which places such persons outside the protection of law."

2. ID.; ID.; BASIC PRINCIPLE REGARDING THE RULE ON THE *WRIT OF AMPARO*. — In *Tapuz v. Del Rosario,* the Court laid down the basic principle regarding the rule on the *writ of amparo* as follows: To start off with the basics, the writ of *amparo* was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended **to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules,** or as a remedy supplemental to these Rules. What it is not, is a writ to protect concerns that are purely property or commercial. **Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of *Amparo* – in line with the extraordinary character of the writ and the reasonable certainty that its issuance demands – requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit: "(a) The personal circumstances of the petitioner; (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation; (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits; (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report; (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and (f) The relief prayed for. The petition may include a general prayer for other just and equitable reliefs." The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how

and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed.

3. ID.; ID.; RIGHTS THAT FALL WITHIN THE PROTECTIVE MANTLE OF THE WRIT OF *AMPARO*; RIGHT TO TRAVEL IN CASE AT BAR, NOT COVERED. — The rights that fall within the protective mantle of the Writ of *Amparo* under Section 1 of the Rules thereon are the following: (1) right to life; (2) right to liberty; and (3) right to security. x x x The *right to travel* refers to the right to move from one place to another. As we have stated in *Marcos v. Sandiganbayan*, "xxx a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice. In such cases, whether the accused should be permitted to leave the jurisdiction for humanitarian reasons is a matter of the court's sound discretion." Here, the restriction on petitioner's right to travel as a consequence of the pendency of the criminal case filed against him was not unlawful. Petitioner has also failed to establish that his right to travel was impaired in the manner and to the extent that it amounted to a serious violation of his right to life, liberty and security, for which there exists no readily available legal recourse or remedy. In *Canlas et al. v. Napico Homeowners Association I – XIII, Inc. et al.*, this Court ruled that: This new remedy of *writ of amparo* which is made available by this Court is intended for the protection of the highest possible rights of any person, which is his or her right to life, liberty and security. The Court will not spare any time or effort on its part in order to give priority to petitions of this nature. However, the Court will also not waste its precious time and effort on matters not covered by the writ. We find the direct recourse to this Court inappropriate, considering the provision of Section 22 of the Rule on the *Writ of Amparo* which reads: Section 22. Effect of Filing of a Criminal Action. – When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available by motion in the criminal case. The procedure under this Rule shall govern the disposition of the reliefs available under the *writ of amparo*.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For resolution is the petition for review under Rule 45 of the Rules of Court, assailing the February 4, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. No. 00011 which dismissed the petition for the issuance of the writ of *amparo* under A.M. No. 07-9-12-SC, as amended. It also assails the CA's Resolution dated March 25, 2008, denying petitioner's motion for reconsideration of the aforesaid February 4, 2008 Decision.

The undisputed facts as found by the CA are as follows:

Petitioner was among those arrested in the Manila Peninsula Hotel siege on November 30, 2007. In the morning of November 30, 2007, petitioner together with fifty (50) others, were brought to Camp Crame to await inquest proceedings. In the evening of the same day, the Department of Justice (DOJ) Panel of Prosecutors, composed of Emmanuel Y. Velasco, Phillip L. Dela Cruz and Aristotle M. Reyes, conducted inquest proceedings to ascertain whether or not there was probable cause to hold petitioner and the others for trial on charges of Rebellion and/or Inciting to Rebellion.

On December 1, 2007, upon the request of the Department of Interior and Local Government (DILG), respondent DOJ Secretary Raul Gonzales issued Hold Departure Order (HDO) No. 45 ordering respondent Commissioner of Immigration to include in the Hold Departure List of the Bureau of Immigration and Deportation (BID) the name of petitioner and 49 others relative to the aforementioned case in the interest of national security and public safety.

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[1] Penned by Associate Justice Portia Alino-Hormachuelos with Associate Justices Angelita R. Lontok and Marlene Gonzales-Sison concurring; *rollo*, pp. 33-45.

On December 2, 2007, after finding probable cause against petitioner and 36 others for the crime of Rebellion under Article 134 of the Revised Penal Code, the DOJ Panel of Prosecutors filed an Information docketed as I.S. No. 2007-1045 before the Regional Trial Court, Branch 150 of Makati City.

On December 7, 2007, petitioner filed a Motion for Judicial Determination of Probable Cause and Release of the Accused Fr. Reyes Upon Recognizance asserting that the DOJ panel failed to produce any evidence indicating his specific participation in the crime charged; and that under the Constitution, the determination of probable cause must be made personally by a judge.

On December 13, 2007, the RTC issued an Order dismissing the charge for Rebellion against petitioner and 17 others for lack of probable cause. The trial court ratiocinated that the evidence submitted by the DOJ Panel of Investigating Prosecutors failed to show that petitioner and the other accused-civilians conspired and confederated with the accused-soldiers in taking arms against the government; that petitioner and other accused-civilians were arrested because they ignored the call of the police despite the deadline given to them to come out from the 2nd Floor of the Hotel and submit themselves to the police authorities; that mere presence at the scene of the crime and expressing one's sentiments on electoral and political reforms did not make them conspirators absent concrete evidence that the accused-civilians knew beforehand the intent of the accused-soldiers to commit rebellion; and that the cooperation which the law penalizes must be one that is knowingly and intentionally rendered.

On December 18, 2007, petitioner's counsel Atty. Francisco L. Chavez wrote the DOJ Secretary requesting the lifting of HDO No. 45 in view of the dismissal of Criminal Case No. 07-3126.

On even date, Secretary Gonzales replied to petitioner's letter stating that the DOJ could not act on petitioner's request until Atty. Chavez's right to represent petitioner is settled in view of the fact that a certain Atty. J. V. Bautista representing himself as counsel of petitioner had also written a letter to the DOJ.

On January 3, 2008, petitioner filed the instant petition claiming that despite the dismissal of the rebellion case against petitioner, HDO No. 45 still subsists; that on December 19, 2007, petitioner was held by BID officials at the NAIA as his name is included in the Hold Departure List; that had it not been for the timely intervention

of petitioner's counsel, petitioner would not have been able to take his scheduled flight to Hong Kong; that on December 26, 2007, petitioner was able to fly back to the Philippines from Hong Kong but every time petitioner would present himself at the NAIA for his flights abroad, he stands to be detained and interrogated by BID officers because of the continued inclusion of his name in the Hold Departure List; and that the Secretary of Justice has not acted on his request for the lifting of HDO No. 45. Petitioner further maintained that immediate recourse to the Supreme Court for the availment of the writ is exigent as the continued restraint on petitioner's right to travel is illegal.

On January 24, 2008, respondents represented by the Office of the Solicitor General (OSG) filed the Return of the Writ raising the following affirmative defenses: 1) that the Secretary of Justice is authorized to issue Hold Departure Orders under the DOJ Circulars No. 17, Series of 1998[2] and No. 18 Series of 2007[3] pursuant to his mandate under the Administrative Code of 1987 as ahead of the principal law agency of the government; 2) that HDO No. 45 dated December 1, 2007 was issued by the Sec. Gonzales in the course of the preliminary investigation of the case against herein petitioner upon the request of the DILG; 3) that the lifting of HDO No. 45 is premature in view of public respondent's pending Motion for Reconsideration dated January 3, 2008 filed by the respondents of the Order dated December 13, 2007 of the RTC dismissing Criminal Case No. 07-3126 for Rebellion for lack of probable cause; 4) that petitioner failed to exhaust administrative remedies by filing a motion to lift HDO No. 45 before the DOJ; and 5) that the constitutionality of Circulars No. 17 and 18 can not be attacked collaterally in an *amparo* proceeding.

During the hearing on January 25, 2008 at 10:00 a.m. at the Paras Hall of the Court of Appeals, counsels for both parties appeared. Petitioner's counsel Atty. Francisco Chavez manifested that petitioner is currently in Hong Kong; that every time petitioner would leave and return to the country, the immigration officers at the NAIA detain

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[2] Prescribing Rules and Regulations Governing the Issuance of Hold Departure Orders.

[3] Prescribing Rules and Regulations Governing the Issuance and Implementation of Watchlist Orders and for other purposes.

and interrogate him for several minutes because of the existing HDO; that the power of the DOJ Secretary to issue HDO has no legal basis; and that petitioner did not file a motion to lift the HDO before the RTC nor the DOJ because to do so would be tantamount to recognizing the power of the DOJ Secretary to issue HDO.

For respondents' part, the Office of the Solicitor-General (OSG) maintained that the Secretary of the DOJ's power to issue HDO springs from its mandate under the Administrative Code to investigate and prosecute offenders as the principal law agency of the government; that in its ten-year existence, the constitutionality of DOJ Circular No. 17 has not been challenged except now; and that on January 3, 2008, the DOJ Panel of Investigating Prosecutors had filed a Motion for Reconsideration of the Order of Dismissal of the trial court.

On February 1, 2008, petitioner filed a Manifestation attaching thereto a copy of the Order dated January 31, 2008 of the trial court denying respondent DOJ's Motion for Reconsideration for utter lack of merit. The trial court also observed that the said Motion should be dismissed outright for being filed out of time. [4]

The petition for a writ of *amparo* is anchored on the ground that respondents violated petitioner's constitutional right to travel. Petitioner argues that the DOJ Secretary has no power to issue a Hold Departure Order (HDO) and the subject HDO No. 45 has no legal basis since Criminal Case No. 07-3126 has already been dismissed.

On February 4, 2008, the CA rendered the assailed Decision dismissing the petition and denying the privilege of the writ of *amparo*.

Petitioner's Motion for Reconsideration[5] thereon was also denied in the assailed Resolution[6] dated March 25, 2008.

Hence, the present petition which is based on the following grounds:

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[4] *Rollo*, pp. 34-38.

[5] *Id.* at 53-68.

[6] *Id.* at 48-52.

I.

THE DOJ SECRETARY'S ARROGATION OF POWER AND USURPATION OF AUTHORITY TO ISSUE A HOLD DEPARTURE ORDER CANNOT BE JUSTIFIED THROUGH A RATIONALE THAT IT HAS SUPPOSEDLY BEEN "REGULARLY EXERCISED IN THE PAST" OR HAS "NEVER BEEN QUESTIONED (IN THE PAST).

II.

THE DOJ HAS CLAIMED A POWER TO ISSUE AN HDO INDEPENDENT OF THAT OF THE REGIONAL TRIAL COURTS, HENCE, PETITIONER CANNOT MERELY RELY ON THE RESIDUAL POWER OF THE RTC MAKATI IN CRIMINAL CASE NO. 07-3126 TO ASSAIL SUCH CLAIMED POWER.

III.

THE UTMOST EXIGENCY OF THE PETITION IS EXEMPLIFIED BY THE CONTINUING ACTUAL RESTRAINT ON PETITIONER'S RIGHT TO TRAVEL THROUGH THE MAINTENANCE OF HIS NAME IN THE HDO LIST AND DOES NOT SIMPLY HINGE ON THE QUESTION OF WHETHER OR NOT PETITIONER WAS ABLE TO TRAVEL DESPITE SUCH A RESTRAINT.

IV.

DOJ CIRCULAR 17 SERIES OF 1998 PROVIDES NO STATUTORY BASIS FOR THE DOJ SECRETARY'S CLAIMED POWER TO ISSUE AN HDO FOR IT IS NOT A STATUTE. THE CIRCULAR ITSELF APPEARS NOT TO BE BASED ON ANY STATUTE, HENCE, IT DOES NOT HAVE THE FORCE OF LAW AND NEED NOT BE ATTACKED IN A DIRECT PROCEEDING.[7]

Petitioner maintains that the writ of *amparo* does not only exclusively apply to situations of extrajudicial killings and enforced disappearances but encompasses the whole gamut of liberties protected by the Constitution. Petitioner argues that "[liberty] includes the right to exist and the right to be free from arbitrary personal restraint or servitude and includes the right of the citizens to be free to use his faculties in all lawful ways." Part

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

of the right to liberty guaranteed by the Constitution is the right of a person to travel.

In their Comment[8] both respondents Secretary Gonzalez and Commissioner Libanan argue that: 1) HDO No. 45 was validly issued by the Secretary of Justice in accordance with Department of Justice Circular No. 17, Series of 1998,[9] and Circular No. 18, Series of 2007,[10] which were issued pursuant to said Secretary's mandate under the Administrative Code of 1987, as head of the principal law agency of the government, to investigate the commission of crimes, prosecute offenders, and provide immigration regulatory services; and; 2) the issue of the constitutionality of the DOJ Secretary's authority to issue hold departure orders under DOJ Circulars Nos. 17 and 18 is not within the ambit of a writ of *amparo*.

The case hinges on the issue as to whether or not petitioner's right to liberty has been violated or threatened with violation by the issuance of the subject HDO, which would entitle him to the privilege of the writ of *amparo*.

The petition must fail.

Section 1 of the Rule on the Writ of *Amparo* provides:

> Section 1. *Petition.* – The petition for a *writ of amparo* is a remedy available to any person whose **right to life, liberty and security** is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.
>
> The writ shall cover extralegal killings and enforced disappearances or threats thereof.

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[8] *Rollo*, pp. 235-254.

[9] Prescribing Rules and Regulations Governing the Issuance of Hold Departure Orders.

[10] Prescribing Rules and Regulations Governing the Issuance and Implementation of Watchlist Orders and for other purposes.

The Court, in *Secretary of National Defense et al. v. Manalo et al.*,[11] made a categorical pronouncement that the *Amparo* Rule in its present form is confined to these two instances of "extralegal killings" and "enforced disappearances," or to threats thereof, thus:

> x x x As the *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law."[12]

In *Tapuz v. Del Rosario*,[13] the Court laid down the basic principle regarding the rule on the *writ of amparo* as follows:

> To start off with the basics, the writ of *amparo* was originally conceived as a response to the extraordinary rise in the number of killings and enforced disappearances, and to the perceived lack of available and effective remedies to address these extraordinary concerns. It is intended **to address violations of or threats to the rights to life, liberty or security, as an extraordinary and independent remedy beyond those available under the prevailing Rules**, or as a remedy supplemental to these Rules. What it is not, is a writ to protect concerns that are purely property or commercial. **Neither is it a writ that we shall issue on amorphous and uncertain grounds.** Consequently, the Rule on the Writ of *Amparo* – in line with the extraordinary character of the writ and the reasonable certainty that

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[11] G.R. No. 180906, October 7, 2008, 568 SCRA 1, 38-39.

[12] Citing the Rule on the Writ of *Amparo*: Annotation, p. 48. This is the definition used in the Declaration on the Protection of All Persons from Enforced Disappearances.

[13] G.R. No. 182484, June 17, 2008, 554 SCRA 768, 784-785.

its issuance demands – requires that every petition for the issuance of the writ must be supported by justifying allegations of fact, to wit:

> "(a) The personal circumstances of the petitioner;
>
> (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;
>
> (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;
>
> (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;
>
> (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and
>
> (f) The relief prayed for.
>
> The petition may include a general prayer for other just and equitable reliefs."[14]

The writ shall issue if the Court is preliminarily satisfied with the *prima facie* existence of the ultimate facts determinable from the supporting affidavits that detail the circumstances of how and to what extent a threat to or violation of the rights to life, liberty and security of the aggrieved party was or is being committed. (Emphasis supplied)

Here, petitioner invokes this extraordinary remedy of the *writ of amparo* for the protection of his right to travel. He insists that he is entitled to the protection covered by the Rule on the Writ of *Amparo* because the HDO is a continuing actual

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[14] Citing Section 5 of the Rule on the *Writ of Amparo*.

restraint on his right to travel. The Court is thus called upon to rule whether or not the right to travel is covered by the Rule on the Writ of *Amparo*.

The rights that fall within the protective mantle of the Writ of *Amparo* under Section 1 of the Rules thereon are the following: (1) right to life; (2) right to liberty; and (3) right to security.

In *Secretary of National Defense et al. v. Manalo et al.*,[15] the Court explained the concept of *right to life* in this wise:

> While the right to life under Article III, Section 1 guarantees essentially the right to be alive- upon which the enjoyment of all other rights is preconditioned - the right to security of person is a guarantee of the secure quality of this life, *viz*: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property… pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual."[16]

The *right to liberty*, on the other hand, was defined in the *City of Manila, et al. v. Hon. Laguio, Jr.*,[17] in this manner:

> Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the facilities with

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[15] *Supra* note 11 at 52.

[16] *Id*.

[17] G.R. No. 118127, April 12, 2005**,** 455 SCRA 308, 336.

which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare." x x x

Secretary of National Defense et al. v. Manalo et al.[18] thoroughly expounded on the import of the *right to security*, thus:

A closer look at the right to security of person would yield various permutations of the exercise of this right.

***First,* the right to security of person is "freedom from fear."** In its "whereas" clauses, the **Universal Declaration of Human Rights** (UDHR) enunciates that "a world in which human beings shall enjoy freedom of speech and belief and **freedom from fear** and want has been proclaimed as the highest aspiration of the common people." (*emphasis supplied*) Some scholars postulate that "freedom from fear" is not only an aspirational principle, but essentially an individual international human right. It is the "right to security of person" as the word "security" itself means "freedom from fear." Article 3 of the UDHR provides, *viz*:

> Everyone has the right to life, liberty and **security of person**.
>
> x x x x x x x x x

The Philippines is a signatory to both the UDHR and the ICCPR.

In the context of Section 1 of the *Amparo* Rule, "freedom from fear" is the right and any **threat to the rights to life, liberty or security** is the **actionable wrong**. Fear is a state of mind, a reaction; **threat** is a stimulus, a **cause of action**. Fear caused by the same stimulus can range from being baseless to well-founded as people react differently. The degree of fear can vary from one person to another with the variation of the prolificacy of their imagination, strength of character or past experience with the stimulus. Thus, in the *amparo* context, it is more correct to say that the "right to security" is actually the **"freedom from threat."** Viewed in this light, the "threatened with violation" Clause in the latter part of Section 1 of the *Amparo* Rule is a form of violation of the right to security mentioned in the earlier part of the provision.

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[18] *Supra* note 11 at 52-57.

***Second*, the right to security of person is a guarantee of bodily and psychological integrity or security.** Article III, Section II of the 1987 Constitution guarantees that, as a general rule, one's body cannot be searched or invaded without a search warrant. Physical injuries inflicted in the context of extralegal killings and enforced disappearances constitute more than a search or invasion of the body. It may constitute dismemberment, physical disabilities, and painful physical intrusion. As the degree of physical injury increases, the danger to life itself escalates. Notably, in criminal law, physical injuries constitute a crime against persons because they are an affront to the bodily integrity or security of a person.

xxx xxx xxx

***Third*, the right to security of person is a guarantee of protection of one's rights by the government.** In the context of the writ of *amparo*, this right is **built into the guarantees of the right to life and liberty** under Article III, Section 1 of the 1987 Constitution **and the right to security of person** (as freedom from threat and guarantee of bodily and psychological integrity) under Article III, Section 2. The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford protection to these rights especially when they are under threat. Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice. x x x (emphasis supplied) [19]

The *right to travel* refers to the right to move from one place to another.[20] As we have stated in *Marcos v. Sandiganbayan*,[21] "xxx a person's right to travel is subject to the usual constraints

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[19] *Id.* at 50-59.

[20] *Mirasol, et al. v. Department of Public Works and Highways,* G.R. No. 158793, June 8, 2006, 490 SCRA 318, 353.

[21] G.R. Nos. 115132-34, August 9, 1995, 247 SCRA 127.

imposed by the very necessity of safeguarding the system of justice. In such cases, whether the accused should be permitted to leave the jurisdiction for humanitarian reasons is a matter of the court's sound discretion."[22]

Here, the restriction on petitioner's right to travel as a consequence of the pendency of the criminal case filed against him was not unlawful. Petitioner has also failed to establish that his right to travel was impaired in the manner and to the extent that it amounted to a serious violation of his right to life, liberty and security, for which there exists no readily available legal recourse or remedy.

In *Canlas et al. v. Napico Homeowners Association I – XIII, Inc. et al.*,[23] this Court ruled that:

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

We find the direct recourse to this Court inappropriate, considering the provision of Section 22 of the Rule on the *Writ of Amparo* which reads:

> Section 22. Effect of Filing of a Criminal Action. – When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available by motion in the criminal case.
>
> The procedure under this Rule shall govern the disposition of the reliefs available under the *writ of amparo*.

Pursuant to the aforementioned Section 22, petitioner should have filed with the RTC-Makati a motion to lift HDO No. 45 in Criminal Case No. 07-3126. Petitioner, however, did not

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

[23] G.R. No. 182795, June 5, 2008, 554 SCRA 208, 211-212.

file in the RTC-Makati a motion to lift the DOJ's HDO, as his co-accused did in the same criminal case. Petitioner argues that it was not the RTC-Makati but the DOJ that issued the said HDO, and that it is his intention not to limit his remedy to the lifting of the HDO but also to question before this Court the constitutionality of the power of the DOJ Secretary to issue an HDO.[24] We quote with approval the CA's ruling on this matter:

> The said provision [Section 22] is an affirmation by the Supreme Court of its pronouncement in *Crespo v. Mogul*[25] that once a complaint or information is filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court. Despite the denial of respondent's MR of the dismissal of the case against petitioner, the trial court has not lost control over Criminal Case No. 07-3126 which is still pending before it. By virtue of its residual power, the court *a quo* retains the authority to entertain incidents in the instant case to the exclusion of even this Court. The relief petitioner seeks which is the lifting of the HDO was and is available by motion in the criminal case. (Sec. 22, Rule on the *Writ of amparo*, *supra*).[26]

Even in civil cases pending before the trial courts, the Court has no authority to separately and directly intervene through the writ of *amparo*, as elucidated in *Tapuz v. Del Rosario*,[27] thus:

> Where, as in this case, there is an ongoing civil process dealing directly with the possessory dispute and the reported acts of violence and harassment, we see no point in separately and directly intervening through a writ of *amparo* in the absence of any clear *prima facie* showing that the right to life, liberty or security–the *personal* concern that the writ is intended to protect–is immediately in danger or threatened, or that the danger or threat is continuing. We see no

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[24] CA Decision, *rollo*, pp. 9-10.

[25] G.R. No. 53373, June 30, 1987, 151 SCRA 462.

[26] *Rollo*, pp. 39-40.

[27] *Supra* note 13 at 789.

legal bar, however, to an application for the issuance of the writ, in a *proper case*, by motion in a pending case on appeal or on *certiorari*, applying by analogy the provisions on the co-existence of the writ with a separately filed criminal case.

Additionally, petitioner is seeking the extraordinary writ of *amparo* due to his apprehension that the DOJ may deny his motion to lift the HDO.[28] Petitioner's apprehension is at best merely speculative. Thus, he has failed to show any clear threat to his right to liberty actionable through a petition for a *writ of amparo*. The absence of an actual controversy also renders it unnecessary for us on this occasion to pass upon the constitutionality of DOJ Circular No. 17, Series of 1998 (*Prescribing Rules and Regulations Governing the Issuance of Hold Departure Orders*); and Circular No. 18, Series of 2007 (*Prescribing Rules and Regulations Governing the Issuance and Implementation of Watchlist Orders and for Other Purposes*).

WHEREFORE, the petition is *DISMISSED*. The assailed Decision of the CA dated February 4, 2008 in CA-G.R. No. 00011 is hereby *AFFIRMED*.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

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[28] *Rollo,* p. 43.

EN BANC

[G.R. No. 182498. December 3, 2009]

GEN. AVELINO I. RAZON, JR., Chief, Philippine National Police (PNP); Police Chief Superintendent RAUL CASTAÑEDA, Chief, Criminal Investigation and Detection Group (CIDG); Police Senior Superintendent LEONARDO A. ESPINA, Chief, Police Anti-Crime and Emergency Response (PACER); and GEN. JOEL R. GOLTIAO, Regional Director of ARMM, PNP, *petitioners, vs.* **MARY JEAN B. TAGITIS, herein represented by ATTY. FELIPE P. ARCILLA, JR., Attorney-in-Fact,** *respondent.*

SYLLABUS

1. POLITICAL LAW; RULE ON THE WRIT OF *AMPARO*; MATTERS TO BE ALLEGED IN THE PETITION AND APPRECIATION THEREOF. — A petition for the Writ of *Amparo* shall be signed and verified and shall allege, among others (in terms of the portions the petitioners cite): **(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits; (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report; (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and** The framers of the *Amparo* Rule never intended Section 5(c) to be complete in every detail in stating the threatened or actual violation of a victim's rights. As in any other initiatory pleading, the pleader must of course state the ultimate facts constituting the cause of action, omitting the evidentiary details. In an *Amparo* petition, however, this requirement must be read in light of the nature and purpose of the proceeding, which

addresses a situation of uncertainty; the petitioner may not be able to describe with certainty how the victim exactly disappeared, or who actually acted to kidnap, abduct or arrest him or her, or where the victim is detained, because these information may purposely be hidden or covered up by those who caused the disappearance. In this type of situation, to require the level of specificity, detail and precision that the petitioners apparently want to read into the *Amparo* Rule is to make this Rule a *token gesture* of judicial concern for violations of the constitutional rights to life, liberty and security. To read the Rules of Court requirement on pleadings while addressing the unique *Amparo* situation, the test in reading the petition should be to determine whether it contains the details *available to the petitioner under the circumstances*, while presenting a cause of action showing a violation of the victim's rights to life, liberty and security through State or private party action. The petition should likewise be read in its totality, rather than in terms of its isolated component parts, to determine if the required elements – namely, of the disappearance, the State or private action, and the actual or threatened violations of the rights to life, liberty or security – are present.

2. ID.; ID.; ID.; SUFFICIENCY IN CASE AT BAR. — In the present case, the petition amply recites in its paragraphs 4 to 11 the circumstances under which Tagitis suddenly dropped out of sight after engaging in normal activities, and thereafter was nowhere to be found despite efforts to locate him. The petition alleged, too, under its paragraph 7, in relation to paragraphs 15 and 16, that according to reliable information, police operatives were the perpetrators of the abduction. It also clearly alleged how Tagitis' rights to life, liberty and security were violated when he was "forcibly taken and boarded on a motor vehicle by a couple of burly men believed to be police intelligence operatives," and then taken "into custody by the respondents' police intelligence operatives since October 30, 2007, specifically by the CIDG, PNP Zamboanga City, x x x held against his will in an earnest attempt of the police to involve and connect [him] with different terrorist groups." These allegations, in our view, properly pleaded ultimate facts within the pleader's knowledge about Tagitis' disappearance, the participation by agents of the State in this disappearance, the failure of the State to release Tagitis or to provide sufficient information about his

whereabouts, as well as the actual violation of his right to liberty. Thus, the petition cannot be faulted for any failure in its statement of a cause of action.

3. ID.; ID.; ID.; ID.; LACK OF SUPPORTING AFFIDAVIT, ESSENTIALLY FULFILLED WITH THE SUBMISSION OF VERIFIED PETITION SUFFICIENTLY DETAILING FACTS RELIED UPON, AND THE SAME CURED BY PERSONAL TESTIMONY IN THE COURT HEARINGS TO SWEAR TO AND FLESH OUT THE PETITION'S ALLEGATIONS. — If a defect can at all be attributed to the petition, this defect is its lack of supporting affidavit, as required by Section 5(c) of the *Amparo* Rule. Owing to the summary nature of the proceedings for the writ and to facilitate the resolution of the petition, the *Amparo* Rule incorporated the requirement for supporting affidavits, with the annotation that these can be used as the affiant's direct testimony. This requirement, however, should not be read as an absolute one that necessarily leads to the dismissal of the petition if not strictly followed. Where, as in this case, the petitioner has substantially complied with the requirement by submitting a *verified* petition sufficiently detailing the facts relied upon, the strict need for the sworn statement that an affidavit represents is essentially fulfilled. We note that the failure to attach the required affidavits was fully cured when the respondent and her witness (Mrs. Talbin) personally testified in the CA hearings held on January 7 and 17 and February 18, 2008 to swear to and flesh out the allegations of the petition. Thus, even on this point, the petition cannot be faulted.

4. ID.; ID.; REQUIREMENT THAT PRIOR INVESTIGATION OF THE ALLEGED DISAPPEARANCE MUST HAVE BEEN MADE, SPECIFYING THE MANNER AND RESULTS THEREOF; STATEMENT THAT DISAPPEARANCE HAS BEEN REPORTED BUT THE POLICE FAILED TO PERFORM THEIR DUTIES, IS SUFFICIENT COMPLIANCE. — Section 5(d) of the *Amparo* Rule requires that prior investigation of an alleged disappearance must have been made, specifying the manner and results of the investigation. Effectively, this requirement seeks to establish at the earliest opportunity the level of diligence the public authorities undertook in relation with the reported disappearance. We reject the petitioners' argument that the respondent's petition did not comply with the Section

5(d) requirements of the *Amparo* Rule, as the petition specifies in its paragraph 11 that Kunnong and his companions immediately reported Tagitis' disappearance to the police authorities in Jolo, Sulu *as soon as they were relatively certain that he indeed had disappeared*. The police, however, gave them the "ready answer" that Tagitis could have been abducted by the Abu Sayyaf group or other anti-government groups. The respondent also alleged in paragraphs 17 and 18 of her petition that she filed a "complaint" with the PNP Police Station in Cotobato and in Jolo, but she was told of "an intriguing tale" by the police that her husband was having "a good time with another woman." The disappearance was alleged to have been reported, too, to no less than the Governor of the ARMM, followed by the respondent's personal inquiries that yielded the factual bases for her petition. These allegations, to our mind, sufficiently specify that reports have been made to the police authorities, and that *investigations should have followed*. That the petition did not state the manner and results of the investigation that the *Amparo* Rule requires, but rather generally stated the inaction of the police, their failure to perform their duty to investigate, or at the very least, their reported failed efforts, should not be a reflection on the completeness of the petition. To require the respondent to elaborately specify the names, personal circumstances, and addresses of the investigating authority, as well the manner and conduct of the investigation is an overly strict interpretation of Section 5(d), given the respondent's frustrations in securing an investigation with meaningful results. Under these circumstances, we are more than satisfied that the allegations of the petition on the investigations undertaken are sufficiently complete for purposes of bringing the petition forward.

5. ID.; ID.; THAT THE *AMPARO* PETITIONER MUST ALLEGE THE ACTIONS AND RECOURCES TAKEN TO DETERMINE THE FATE OR WHEREABOUTS OF THE AGGRIEVED PARTY AND THE IDENTITY OF THE PERSON RESPONSIBLE FOR THE THREAT, ACT OR OMISSION; PETITION IN CASE AT BAR FOUND SUFFICIENT IN FORM AND SUBSTANCE. — Section 5(e) is in the *Amparo* Rule to prevent the use of a petition that otherwise is not supported by sufficient allegations to constitute a proper cause of action – as a means to "fish" for evidence. The petitioners contend that the respondent's petition

did not specify what "legally available efforts were taken by the respondent," and that there was an "undue haste" in the filing of the petition when, instead of cooperating with authorities, the respondent immediately invoked the Court's intervention. We do not see the respondent's petition as the petitioners view it. Section 5(e) merely requires that the *Amparo* petitioner (the respondent in the present case) allege "the actions and recourses taken to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission." The following allegations of the respondent's petition duly outlined the actions she had taken and the frustrations she encountered, thus compelling her to file her petition. x x x Based on these considerations, we rule that the respondent's petition for the Writ of *Amparo* is sufficient in form and substance and that the Court of Appeals had every reason to proceed with its consideration of the case.

6. ID.; ID.; EXTRAJUDICIAL KILLINGS AND ENFORCED DISAPPEARANCES; ROLE OF THE SUPREME COURT. — Even without the benefit of directly applicable substantive laws on extra-judicial killings and enforced disappearances, the Supreme Court is not powerless to act under its own constitutional mandate to promulgate "*rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts,"* since extrajudicial killings and enforced disappearances, by their nature and purpose, constitute State or private party violation of the constitutional rights of individuals to life, liberty and security. Although the Court's power is strictly procedural and as such does not diminish, increase or modify substantive rights, the legal protection that the Court can provide can be very meaningful through the procedures it sets in addressing extrajudicial killings and enforced disappearances. The Court, through its procedural rules, can set the *procedural standards* and thereby directly compel the public authorities to act on actual or threatened violations of constitutional rights. To state the obvious, judicial intervention can make a difference – even if only procedurally – in a situation when the very same investigating public authorities may have had a hand in the threatened or actual violations of constitutional rights. Lest this Court intervention be misunderstood, we clarify once again that we do not rule on any issue of *criminal culpability* for the extrajudicial killing

or enforced disappearance. This is an issue that requires criminal action before our criminal courts based on our existing penal laws. Our intervention is in determining whether an enforced disappearance has taken place and who is responsible or accountable for this disappearance, and to define and impose the appropriate remedies to address it. The burden for the public authorities to discharge in these situations, under the Rule on the Writ of *Amparo,* is twofold. The *first* is to ensure that all efforts at ***disclosure*** and ***investigation*** are undertaken under pain of indirect contempt from this Court when governmental efforts are less than what the individual situations require. The *second* is to address the disappearance, so that the life of the victim is preserved and his or her liberty and security restored. In these senses, our orders and directives relative to the writ are continuing efforts that are not truly terminated until the extrajudicial killing or enforced disappearance is fully addressed by the complete determination of the fate and the whereabouts of the victim, by the production of the disappeared person and the restoration of his or her liberty and security, and, in the proper case, by the commencement of criminal action against the guilty parties.

7. ID.; ID.; ENFORCED DISAPPEARANCES; BINDING EFFECT OF THE UNITED NATIONS ACTION ON THE PHILIPPINES. — The absence of a specific penal law is not a stumbling block for action from this Court, as heretofore mentioned; underlying every enforced disappearance is a violation of the constitutional rights to life, liberty and security that the Supreme Court is mandated by the Constitution to protect through its rule-making powers. Separately from the Constitution (but still pursuant to its terms), the Court is guided, in acting on *Amparo* cases, by the reality that the Philippines is a member of the UN, bound by its Charter and by the various conventions we signed and ratified, particularly the conventions touching on humans rights. Under the UN Charter, the Philippines pledged to "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion." Although no universal agreement has been reached on the precise extent of the "human rights and fundamental freedoms" guaranteed to all by the Charter, it was the UN itself that issued the Declaration on enforced disappearance, and this Declaration states: Any act of enforced

disappearance is an **offence to dignity**. It is condemned as a **denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights** and reaffirmed and developed in international instruments in this field. As a matter of human right and fundamental freedom and as a policy matter made in a UN Declaration, the ban on enforced disappearance cannot but have its effects on the country, given our own adherence to *"generally accepted principles of international law as part of the law of the land."*

8. ID.; ID.; ID.; ENFORCED DISAPPEARANCES AS STATE PRACTICE REPUDIATED BY THE INTERNATIONAL COMMUNITY, A GENERALLY ACCEPTED PRINCIPLE OF INTERNATIONAL LAW AND CONSIDERED PART OF THE LAW OF THE LAND; CIVIL OR POLITICAL RIGHTS UNDER VARIOUS INTERNATIONAL LAW THAT MAY BE INFRINGED IN THE COURSE OF DISAPPEARANCE. — While the Philippines is not yet *formally* bound by the terms of the Convention on enforced disappearance (or by the specific terms of the Rome Statute) and has not formally declared enforced disappearance as a specific crime, [it has been shown] that **enforced disappearance as a State practice has been repudiated by the international community, so that the ban on it is now a *generally accepted principle of international law,* which we should consider a part of the law of the land, and which we should act upon to the extent already allowed under our laws and the international conventions that bind us.** The following civil or political rights under the Universal Declaration of Human Rights, the ICCPR and the International Convention on Economic, Social and Cultural Rights (*ICESR*) may be infringed in the course of a disappearance: x x x **2) the right to liberty and security of the person; x x x 7) the right to an effective remedy,** including reparation and compensation; **8) the right to know the truth regarding the circumstances of a disappearance.** x x x Article 2 of the ICCPR, which binds the Philippines as a state party, provides: **Article 2** 3. Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated **shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official**

capacity; (b) To ensure that **any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities,** or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted. In General Comment No. 31, the UN Human Rights Committee opined that the right to an effective remedy under Article 2 of the ICCPR includes the obligation of the State to investigate ICCPR violations promptly, thoroughly, and effectively x x x The UN Human Rights Committee further stated in the same General Comment No. 31 that failure to investigate as well as failure to bring to justice the perpetrators of ICCPR violations could in and of itself give rise to a separate breach of the Covenant, thus: 18. Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, **States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law,** such as torture and similar cruel, inhuman and degrading treatment (Article 7), summary and arbitrary killing (Article 6) **and enforced disappearance (Articles 7 and 9 and, frequently, 6)** x x x

9. ID.; ID.; AMPLE GUIDANCE AND STANDARDS PRESENT ON HOW THROUGH THE *AMPARO* RULE THE COURT CAN PROVIDE REMEDIES AND PROTECT THE CONSTITUTIONAL RIGHT TO LIFE, LIBERTY AND SECURITY THAT UNDERLIE ENFORCED DISAPPEARANCES. — In *Secretary of National Defense v. Manalo*, this Court, in ruling that the right to security of persons is a guarantee of the protection of one's right by the government, held that: The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. *As the government is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford* ***protection*** *to these rights especially*

when they are under threat. **Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice.** The Inter-American Court of Human Rights stressed the importance of investigation in the **Velasquez Rodriguez Case,** *viz*: (The duty to investigate) **must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.** An investigation must have an objective and be **assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family** or upon their offer of proof, without an effective search for the truth by the government. *Manalo* significantly cited *Kurt v. Turkey*, where the ECHR interpreted the "right to security" not only as a prohibition on the State against arbitrary deprivation of liberty, but also as the imposition of a positive duty to afford protection to the right to liberty. The Court notably quoted the following ECHR ruling: [A]ny deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness... Having assumed control over that individual, it is incumbent on the authorities to account for his or her whereabouts. For this reason, **Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since**. These rulings effectively serve as the backdrop for the Rule on the Writ of *Amparo*, which the Court made effective on October 24, 2007. Although the *Amparo* Rule still has gaps waiting to be filled through substantive law, as evidenced primarily by the lack of a concrete definition of "enforced disappearance," **the materials cited above, among others, provide ample guidance and standards on how, through the medium of the *Amparo* Rule, the Court can provide remedies and protect the constitutional rights to life, liberty and security that underlie every enforced disappearance.**

10. ID.; ID.; EVIDENTIARY DIFFICULTIES POSED BY THE UNIQUE NATURE ON ENFORCED DISAPPEARANCE. — We shall

discuss briefly the unique evidentiary difficulties presented by enforced disappearance cases; these difficulties form part of the setting that the implementation of the *Amparo* Rule shall encounter. These difficulties largely arise because the State itself – the party whose involvement is alleged – investigates enforced disappearances. Past experiences in other jurisdictions show that the evidentiary difficulties are generally threefold. *First*, there may be a **deliberate concealment of the identities of the direct perpetrators.** Experts note that abductors are well organized, armed and usually members of the military or police forces x x x In addition, there are usually no witnesses to the crime; if there are, these witnesses are usually afraid to speak out publicly or to testify on the disappearance out of fear for their own lives. We have had occasion to note this difficulty in *Secretary of Defense v. Manalo* when we acknowledged that "where powerful military officers are implicated, the hesitation of witnesses to surface and testify against them comes as no surprise." *Second***, deliberate concealment of pertinent evidence of the disappearance** is a distinct possibility; the central piece of evidence in an enforced disappearance – *i.e.*, the *corpus delicti* or the victim's body – is usually concealed to effectively thwart the start of any investigation or the progress of one that may have begun. x x x *Third* is the **element of denial**; in many cases, the State authorities deliberately deny that the enforced disappearance ever occurred. "Deniability" is central to the policy of enforced disappearances, as the absence of any proven disappearance makes it easier to escape the application of legal standards ensuring the victim's human rights.

11. ID.; ID.; NATURE OF AN *AMPARO* PROCEEDING AND THE DEGREE AND BURDEN OF PROOF THE PARTIES TO THE CASE CARRY; ELUCIDATED. — Sections 13, 17 and 18 of the *Amparo* Rule define the nature of an *Amparo* proceeding and the degree and burden of proof the parties to the case carry, as follows: Section 13. *Summary Hearing*. The hearing on the petition shall be **summary.** However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties. x x x Section 17. *Burden of Proof and Standard of Diligence Required*. – The parties shall establish their claims by **substantial evidence**. The respondent

who is a private individual must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty. The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty. The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed or evade responsibility or liability. Section 18. *Judgment*. – … If the **allegations in the petition are proven by substantial evidence,** the court shall **grant** the privilege of the writ and such reliefs as may be proper and appropriate; **otherwise**, the privilege shall be **denied**. These characteristics – namely, of being summary and the use of substantial evidence as the required level of proof (in contrast to the usual preponderance of evidence or proof beyond reasonable doubt in court proceedings) – reveal the clear intent of the framers of the *Amparo* Rule to have the equivalent of an administrative proceeding, albeit judicially conducted, in addressing *Amparo* situations. The standard of diligence required – the duty of public officials and employees to observe extraordinary diligence – point, too, to the extraordinary measures expected in the protection of constitutional rights and in the consequent handling and investigation of extra-judicial killings and enforced disappearance cases. Thus, in these proceedings, the *Amparo* petitioner needs only to properly comply with the substance and form requirements of a Writ of *Amparo* petition, as discussed above, and prove the allegations by substantial evidence. Once a rebuttable case has been proven, the respondents must then respond and prove their defenses based on the standard of diligence required. The rebuttable case, of course, must show that an enforced disappearance took place under circumstances showing a violation of the victim's constitutional rights to life, liberty or security, and the failure on the part of the investigating authorities to appropriately respond.

12. ID.; ID.; SUBSTANTIAL EVIDENCE STANDARD REQUIREMENT DO NOT APPLY DUE TO THE SUMMARY NATURE OF THE *AMPARO* PROCEEDINGS. — In *Secretary of Defense v. Manalo*, which was the Court's first petition for a Writ of *Amparo*, we recognized that the full and exhaustive proceedings that the substantial evidence standard regularly

requires do not need to apply due to the summary nature of *Amparo* proceedings. We said: The remedy [of the writ of *amparo*] provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, **or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.** Not to be forgotten in considering the evidentiary aspects of *Amparo* petitions are the unique difficulties presented by the nature of enforced disappearances, heretofore discussed, which difficulties this Court must frontally meet if the *Amparo* Rule is to be given a chance to achieve its objectives. These evidentiary difficulties compel the Court to adopt standards appropriate and responsive to the circumstances, *without transgressing the due process requirements that underlie every proceeding.*

13. ID.; ID.; ID.; CASE OF *VELASQUEZ RODRIGUEZ*. — In the seminal case of *Velasquez Rodriguez*, the IACHR – faced with a lack of direct evidence that the government of Honduras was involved in Velasquez Rodriguez' disappearance – adopted a relaxed and informal evidentiary standard, and established the rule that presumes governmental responsibility for a disappearance if it can be proven that the government carries out a general practice of enforced disappearances and the specific case can be linked to that practice. *The IACHR took note of the realistic fact that enforced disappearances could be proven only through circumstantial or indirect evidence or by logical inference; otherwise, it was impossible to prove that an individual had been made to disappear.* It held: 130. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. **Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts. 131. Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.** x x x *Velasquez* stresses the lesson that flexibility is necessary under the unique

circumstances that enforced disappearance cases pose to the courts; to have an effective remedy, the standard of evidence must be responsive to the evidentiary difficulties faced. On the one hand, we cannot be arbitrary in the admission and appreciation of evidence, as arbitrariness entails violation of rights and cannot be used as an effective counter-measure; we only compound the problem if a wrong is addressed by the commission of another wrong. On the other hand, we cannot be very strict in our evidentiary rules and cannot consider evidence the way we do in the usual criminal and civil cases; precisely, the proceedings before us are administrative in nature where, as a rule, technical rules of evidence are not strictly observed. Thus, while we must follow the substantial evidence rule, we must observe flexibility in considering the evidence we shall take into account. The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, **we reduce our rules to the most basic test of reason – *i.e.*, to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.**

14. ID.; ID.; ENFORCED DISAPPEARANCE; ELUCIDATED. —The Convention defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." Under this definition, the elements that constitute enforced disappearance are essentially fourfold: **(a) arrest, detention, abduction or any form of deprivation of liberty; (b) carried out by agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State;** (c) followed by a refusal to acknowledge the detention, or a concealment of the fate of the disappeared person; and (d) placement of the disappeared person outside the protection of the law.

15. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES ON MINOR POINTS. —Upon deeper consideration of the inconsistencies [in case at bar], however, what appears clear to us is that the petitioners never really steadfastly disputed or presented evidence to refute the credibility of the respondent and her witness, Mrs. Talbin. The inconsistencies the petitioners point out relate, more than anything else, to details that should not affect the credibility of the respondent and Mrs. Talbin; the inconsistencies are not on material points. We note, for example, that these witnesses are lay people in so far as military and police matters are concerned, and confusion between the police and the military is not unusual. As a rule, minor inconsistencies such as these indicate truthfulness rather than prevarication and only tend to strengthen their probative value, in contrast to testimonies from various witnesses dovetailing on every detail; the latter cannot but generate suspicion that the material circumstances they testified to were integral parts of a well thought of and prefabricated story.

16. ID.; ID.; DISPUTABLE PRESUMPTIONS; THAT SUPPRESSED EVIDENCE, IF PRODUCED, WOULD BE PROOF OF CLAIM; CASE AT BAR. — Based on the unique evidentiary situation in enforced disappearance cases, we hold it duly established that Col. Kasim informed the respondent and her friends, based on the informant's letter, that Tagitis, reputedly a liaison for the JI and who had been under surveillance since January 2007, was "in good hands" and under custodial investigation for complicity with the JI after he was seen talking to one Omar Patik and a certain "Santos" of Bulacan, a "Balik Islam" charged with terrorism. The respondent's and Mrs. Talbin's testimonies cannot simply be defeated by Col. Kasim's plain denial and his claim that he had destroyed his informant's letter, the critical piece of evidence that supports or negates the parties' conflicting claims. Col. Kasim's admitted destruction of this letter – effectively, a suppression of this evidence – raises the presumption that the letter, if produced, would be proof of what the respondent claimed. For brevity, we shall call the evidence of what Col. Kasim reported to the respondent to be the "Kasim evidence."

17. ID.; ID.; HEARSAY EVIDENCE IN LIEU OF DIRECT EVIDENCE; APPRECIATION THEREOF ON ENFORCED

DISAPPEARANCES UNDER THE *AMPARO* RULE. — Strictly speaking, we are faced here with a classic case of hearsay evidence – *i.e.*, evidence whose probative value is not based on the personal knowledge of the witnesses (the respondent, Mrs. Talbin and Col. Kasim himself) but on the knowledge of some other person not on the witness stand (the informant). To say that this piece of evidence is incompetent and inadmissible evidence of what it substantively states is to acknowledge – as the petitioners effectively suggest – that in the absence of any direct evidence, we should simply dismiss the petition. To our mind, an immediate dismissal for this reason is no different from a statement that the *Amparo* Rule – despite its terms – is ineffective, as it cannot allow for the special evidentiary difficulties that are unavoidably present in *Amparo* situations, particularly in extrajudicial killings and enforced disappearances. The *Amparo* Rule was not promulgated with this intent or with the intent to make it a token gesture of concern for constitutional rights. It was promulgated to provide effective and timely remedies, *using and profiting from local and international experiences* in extrajudicial killings and enforced disappearances, as the situation may require. Consequently, we have no choice but to meet the evidentiary difficulties inherent in enforced disappearances with the flexibility that these difficulties demand. To give full meaning to our Constitution and the rights it protects, we hold that, as in *Velasquez*, we should at least take a close look at the available evidence to determine the correct import of every piece of evidence – even of those usually considered inadmissible under the general rules of evidence – taking into account the surrounding circumstances and the test of reason that we can use as basic minimum admissibility requirement. In the present case, we should at least determine whether the Kasim evidence before us is relevant and meaningful to the disappearance of Tagistis and reasonably consistent with other evidence in the case.

18. POLITICAL LAW; RULE ON THE *WRIT OF AMPARO*; ENFORCED DISAPPEARANCE; CASE AT BAR CONCRETELY ESTABLISHED AS SUCH. — Based on [material] considerations, we conclude that Col. Kasim's disclosure, made in an unguarded moment, unequivocally point to some government complicity in the disappearance. The consistent but unfounded denials and the haphazard

investigations cannot but point to this conclusion. For why would the government and its officials engage in their chorus of concealment if the intent had not been to deny what they already knew of the disappearance? Would not an in-depth and thorough investigation that at least credibly determined the fate of Tagitis be a feather in the government's cap under the circumstances of the disappearance? From this perspective, the evidence and developments, particularly the Kasim evidence, already establish a concrete case of enforced disappearance that the *Amparo* Rule covers. From the prism of the UN Declaration, heretofore cited and quoted, the evidence at hand and the developments in this case confirm the fact of the enforced disappearance and government complicity, under a background of consistent and unfounded government denials and haphazard handling. The disappearance as well effectively placed Tagitis outside the protection of the law – a situation that will subsist unless this Court acts.

19. ID.; ID. ID.; ID.; PHILIPPINE NATIONAL POLICE (PNP) AND CRIMINAL INVESTIGATION AND DETENTION GROUP (CIDG) MADE ACCOUNTABLE FOR BEING REMISS IN THEIR DUTIES. — The PNP and CIDG are accountable [in case at bar] because Section 24 of Republic Act No. 6975, otherwise known as the "PNP Law," specifies the PNP as the governmental office with the mandate "to investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution." The PNP-CIDG, as Col. Jose Volpane Pante (then Chief of CIDG Region 9) testified, is the "investigative arm" of the PNP and is mandated to "investigate and prosecute all cases involving violations of the Revised Penal Code, particularly those considered as heinous crimes." Under the PNP organizational structure, the PNP-CIDG is tasked to investigate all major crimes involving violations of the Revised Penal Code and operates against organized crime groups, unless the President assigns the case exclusively to the National Bureau of Investigation (*NBI*). No indication exists in this case showing that the President ever directly intervened by assigning the investigation of Tagitis' disappearance exclusively to the NBI. Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise the extraordinary diligence that the *Amparo* Rule requires. We hold these

organizations accountable through their incumbent Chiefs who, under this Decision, shall carry the personal responsibility of seeing to it that extraordinary diligence, in the manner the *Amparo* Rule requires, is applied in addressing the enforced disappearance of Tagitis.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Linzag Arcilla and Associates Law Office for respondent.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the decision dated March 7, 2008 of the Court of Appeals (*CA*) in C.A-G.R. *AMPARO* No. 00009.[2] This CA decision confirmed the enforced disappearance of Engineer Morced N. Tagitis (*Tagitis*) and granted the Writ of *Amparo* at the petition of his wife, Mary Jean B. Tagitis (*respondent*). The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, petition is hereby **GRANTED**. The Court hereby **FINDS** that this is an **"enforced disappearance"** within the meaning of the United Nations instruments, as used in the Amparo Rules. The **privileges** of the writ of *amparo* are hereby extended to Engr. Morced Tagitis.

Consequently: (1) respondent **GEN. EDGARDO M. DOROMAL**, Chief, Criminal Investigation and Detention Group (CIDG) who should order **COL. JOSE VOLPANE PANTE**, CIDG-9 Chief, Zamboanga City, to aid him; (2) respondent **GEN. AVELINO I. RAZON**, Chief, PNP, who should order his men, namely: (a) respondent **GEN. JOEL GOLTIAO**, Regional Director of ARMM PNP, (b) **COL. AHIRON AJIRIM**, both head of TASK FORCE TAGITIS, and (c) respondent

[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 826-919.

[2] Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justice Hakim S. Abdulwahid and Associate Justice Arturo G. Tayag; *rollo*, pp. 108-128.

SR. SUPERINTENDENT LEONARDO A. ESPINA, Chief, Police Anti-Crime and Emergency Response, to aid him as their superior- are hereby **DIRECTED** to exert **extraordinary diligence and efforts**, not only to protect the life, liberty and security of Engr. Morced Tagitis, but also to extend the **privileges** of the writ of *amparo t*o Engr. Morced Tagitis and his family, and to submit a monthly report of their actions to this Court, as a way of **PERIODIC REVIEW** to enable this Court to monitor the action of respondents.

This *amparo* case is hereby **DISMISSED** as to respondent **LT. GEN. ALEXANDER YANO**, Commanding General, Philippine Army, and as to respondent **GEN. RUBEN RAFAEL**, Chief Anti-Terror Task Force Comet, Zamboanga City, both being with the military, which is a separate and distinct organization from the police and the CIDG, in terms of operations, chain of command and budget.

This Decision reflects the nature of the Writ of *Amparo* – a protective remedy against violations or threats of violation against the rights to life, liberty and security.[3] *It embodies, as a remedy, the court's directive to police agencies to undertake specified courses of action to address the disappearance of an individual, in this case, Engr. Morced N. Tagitis.* It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines ***responsibility***, or at least ***accountability***, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to

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[3] Section 1 of the Rule on the Writ of *Amparo* states:

> SECTION 1. *Petition.* – The petition for a writ of *amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.
>
> The writ shall cover extralegal killings and enforced disappearances or threats thereof.

the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

We highlight this nature of a Writ of *Amparo* case at the outset to stress that the unique situations that call for the issuance of the writ, as well as the considerations and measures necessary to address these situations, may not at all be the same as the standard measures and procedures in ordinary court actions and proceedings. In this sense, the Rule on the Writ of *Amparo*[4] (*Amparo Rule*) issued by this Court is unique. The *Amparo* Rule should be read, too, as a work in progress, as its directions and finer points remain to evolve through time and jurisprudence and through the substantive laws that Congress may promulgate.

THE FACTUAL ANTECEDENTS

The background facts, based on the petition and the records of the case, are summarized below.

The established facts show that Tagitis, a consultant for the World Bank and the Senior Honorary Counselor for the Islamic Development Bank (*IDB*) Scholarship Programme, was last seen in Jolo, Sulu. Together with Arsimin Kunnong (*Kunnong*), an IDB scholar, Tagitis arrived in Jolo by boat in the early morning of October 31, 2007 from a seminar in Zamboanga City. They immediately checked-in at ASY Pension House. Tagitis asked Kunnong to buy him a boat ticket for his return trip the following day to Zamboanga. When Kunnong returned

[4] A.M. No. 07-9-12-SC, October 24, 2007.

from this errand, Tagitis was no longer around.[5] The receptionist related that Tagitis went out to buy food at around 12:30 in the afternoon and even left his room key with the desk.[6] Kunnong looked for Tagitis and even sent a text message to the latter's Manila-based secretary who did not know of Tagitis' whereabouts and activities either; she advised Kunnong to simply wait.[7]

On November 4, 2007, Kunnong and Muhammad Abdulnazeir N. Matli, a UP professor of Muslim studies and Tagitis' fellow student counselor at the IDB, reported Tagitis' disappearance to the Jolo Police Station.[8] On November 7, 2007, Kunnong executed a sworn affidavit attesting to what he knew of the circumstances surrounding Tagitis' disappearance.[9]

More than a month later (on December 28, 2007), the respondent filed a Petition for the Writ of *Amparo* (*petition*) with the CA through her Attorney-in-Fact, Atty. Felipe P. Arcilla.[10] The petition was directed against Lt. Gen. Alexander Yano, Commanding General, Philippine Army; Gen. Avelino I. Razon, Chief, Philippine National Police (*PNP*); Gen. Edgardo M. Doromal, Chief, Criminal Investigation and Detention Group (*CIDG*); Sr. Supt. Leonardo A. Espina, Chief, Police Anti-Crime and Emergency Response; Gen. Joel Goltiao, Regional Director, ARMM-PNP; and Gen. Ruben Rafael, Chief, Anti-Terror Task Force Comet [collectively referred to as *petitioners*]. After reciting Tagitis' personal circumstances and the facts outlined above, the petition went on to state:

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[5] Sworn Affidavit of Arsimin H. Kunnong dated November 7, 2007; *rollo*, p. 348.

[6] Sworn Affidavit of Rion Adam dated November 20, 2007; *rollo*, p. 349.

[7] *Supra* note 4.

[8] *Id*.

[9] *Id*.

[10] Annex "C"; *rollo*, pp. 135-143.

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7. Soon after the student left the room, Engr. Tagitis went out of the pension house to take his early lunch but while out on the street, **a couple of burly men believed to be police intelligence operatives, forcibly took him and boarded the latter on a motor vehicle then sped away** without the knowledge of his student, Arsimin Kunnong;

8. As instructed, in the late afternoon of the same day, Kunnong returned to the pension house, and was surprised to find out that subject Engr. Tagitis cannot [*sic*] be contacted by phone and was not also around and his room was closed and locked;

9. Kunnong requested for the key from the desk of the pension house who [*sic*] assisted him to open the room of Engr. Tagitis, where they discovered that the personal belongings of Engr. Tagitis, including cell phones, documents and other personal belongings were all intact inside the room;

10. When Kunnong could not locate Engr. Tagitis, the former sought the help of another IDB scholar and reported the matter to the local police agency;

11. Arsimin Kunnong including his friends and companions in Jolo, exerted efforts in trying to locate the whereabouts of Engr. Tagitis and when he reported the matter to the police authorities in Jolo, he was immediately given a ready answer that Engr. Tagitis could have been abducted by the Abu Sayyaf group and other groups known to be fighting against the government;

12. Being scared with [sic] these suggestions and insinuations of the police officers, Kunnong reported the matter to the [respondent, wife of Engr. Tagitis] by phone and other responsible officers and coordinators of the IDB Scholarship Programme in the Philippines, who alerted the office of the Governor of ARMM who was then preparing to attend the OIC meeting in Jeddah, Saudi Arabia;

13. [Respondent], on the other hand, approached some of her co-employees with the Land Bank in Digos branch, Digos City, Davao del Sur who likewise sought help from some of their friends in the military who could help them find/locate the whereabouts of her husband;

14. All of these efforts of the [respondent] did not produce any positive results except the information from persons in the military

who do not want to be identified that Engr. Tagitis is in the hands of the uniformed men;

15. According to reliable information received by the [respondent], **subject Engr. Tagitis is in the custody of police intelligence operatives, specifically with the CIDG, PNP Zamboanga City, being held against his will in an earnest attempt of the police to involve and connect Engr. Tagitis with the different terrorist groups**;

x x x x x x x x x

17. [Respondent] filed her complaint with the PNP Police Station in the ARMM in Cotobato and in Jolo, as suggested by her friends, seeking their help to find her husband, but [respondent's] request and pleadings failed to produce any positive results;

18. Instead of helping the [respondent], she [*sic*] was told of an intriguing tale by the police that her husband, subject of the petition, was not missing but was with another woman having good time somewhere, which is a clear indication of the [petitioners'] refusal to help and provide police assistance in locating her missing husband;

19. The continued failure and refusal of the [petitioners] to release and/or turn-over subject Engr. Tagitis to his family or even to provide truthful information to [the respondent] of the subject's whereabouts, and/or allow [the respondent] to visit her husband Engr. Morced Tagitis, caused so much sleepless nights and serious anxieties;

20. Lately, [the respondent] was again advised by one of the [petitioners] to go to the ARMM Police Headquarters again in Cotobato City and also to the different Police Headquarters including [those] in Davao City, in Zamboanga City, in Jolo, and in Camp Crame, Quezon City, and all these places have been visited by the [respondent] in search for her husband, which entailed expenses for her trips to these places thereby resorting her to borrowings and beggings [*sic*] for financial help from friends and relatives only to try complying [*sic*] to the different suggestions of these police officers, despite of which, her efforts produced no positive results up to the present time;

21. In fact at times, some police officers, who [sympathized with] the sufferings undergone by the [respondent], informed her that they are not the proper persons that she should approach, but assured her not to worry because her husband is [*sic*] in good hands;

22. The unexplained uncooperative behavior of the [petitioners] to the [respondent's] request for help and failure and refusal of the [petitioners] to extend the needed help, support and assistance in locating the whereabouts of Engr. Tagitis who had been declared missing since October 30, 2007 which is almost two (2) months now, clearly indicates that the [petitioners] are actually in physical possession and custody of [respondent's] husband, Engr. Tagitis;

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25. [The respondent] has exhausted all administrative avenues and remedies but to no avail, and under the circumstances, [the respondent] has no other plain, speedy and adequate remedy to protect and get the release of subject Engr. Morced Tagitis from the illegal clutches of the [petitioners], their intelligence operatives and the like which are in total violation of the subject's human and constitutional rights, except the issuance of a WRIT OF *AMPARO*. [Emphasis supplied]

On the same day the petition was filed, the CA immediately issued the Writ of *Amparo*, set the case for hearing on January 7, 2008, and directed the petitioners to file their verified return within seventy-two (72) hours from service of the writ.[11]

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[11] CA Resolution dated December 28, 2004, CA *rollo*, pp. 13-16. The CA required that the Return contain the following minimum information:

> (A) Respondent's [referring to herein petitioners] personal and lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission; (B) steps or actions taken by respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission; (C) all relevant information in the possession of each respondent pertaining to the threat, act or omission against the aggrieved party; and (D) since the respondents were all public officials, being either members of the Armed Forces of the Philippines or the Philippine National Police, the return should further state the actions that have been or would be taken: (i) To verify the identity of the aggrieved party; (ii) To recover and preserve evidence related to the disappearance of ENGINEER MORCED N. TAGITIS, the person identified in the petition, which may aid in the prosecution of the person or persons responsible; (iii) To identify witnesses and obtain statements from them concerning the disappearance; (iv) To determine the cause,

In their verified Return filed during the hearing of January 27, 2008, the petitioners denied any involvement in or knowledge of Tagitis' alleged abduction. They argued that the allegations of the petition were incomplete and did not constitute a cause of action against them; were baseless, or at best speculative; and were merely based on hearsay evidence.[12]

The affidavit of PNP Chief Gen. Avelino I. Razon, attached to the Return, stated that: he did not have any personal knowledge of, or any participation in, the alleged disappearance; that he had been designated by President Gloria Macapagal Arroyo as the head of a special body called TASK FORCE USIG, to address concerns about extralegal killings and enforced disappearances; the Task Force, *inter alia*, coordinated with the investigators and local police, held case conferences, rendered legal advice in connection to these cases; and gave the following summary:[13]

x x x x x x x x x

4.

a) On November 5, 2007, the Regional Director, Police Regional Office ARMM submitted a report on the alleged disappearance of one Engr. Morced Tagitis. According to the said report, the victim checked-in at ASY Pension House on October 30, 2007 at about 6:00 in the morning and then roamed around Jolo, Sulu with an unidentified companion. It was only after a few days when the said victim did not return that the matter was reported to Jolo MPS. Afterwards, elements of Sulu PPO conducted a thorough investigation to trace and locate the whereabouts of the said missing

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manner, location and time of disappearance as well as any pattern or practice that may have brought about the disappearance; (v) To identify and apprehend the person or persons involved in the disappearance of ENGINEER MORCED N. TAGITIS; and (vi) To bring the suspected offenders before a competent court. General denial of the allegations in the petition would not be allowed and all defenses not raised in the return would be considered as waived. *Id.*

[12] CA *rollo*, pp. 56-90.

[13] Annex "2"; *id.* at 91-96.

person, but to no avail. The said PPO is still conducting investigation that will lead to the immediate findings of the whereabouts of the person.

b) Likewise, the Regional Chief, 9RCIDU submitted a Progress Report to the Director, CIDG. The said report stated among others that: subject person attended an Education Development Seminar set on October 28, 2007 conducted at Ateneo de Zamboanga, Zamboanga City together with a Prof. Matli. On October 30, 2007, at around 5:00 o'clock in the morning, Engr. Tagitis reportedly arrived at Jolo Sulu wharf aboard M/V *Bounty Cruise*, he was then billeted at ASY Pension House. At about 6:15 o'clock in the morning of the same date, he instructed his student to purchase a fast craft ticket bound for Zamboanga City and will depart from Jolo, Sulu on October 31, 2007. That on or about 10:00 o'clock in the morning, Engr. Tagitis left the premises of ASY Pension House as stated by the cashier of the said pension house. Later in the afternoon, the student instructed to purchase the ticket arrived at the pension house and waited for Engr. Tagitis, but the latter did not return. On its part, the elements of 9RCIDU is now conducting a continuous case build up and information gathering to locate the whereabouts of Engr. Tagitis.

c) That the Director, CIDG directed the conduct of the search in all divisions of the CIDG to find Engr. Tagitis who was allegedly abducted or illegally detained by covert CIDG-PNP Intelligence Operatives since October 30, 2007, but after diligent and thorough search, records show that no such person is being detained in CIDG or any of its department or divisions.

5. On this particular case, the Philippine National Police exhausted all possible efforts, steps and actions available under the circumstances and continuously search and investigate [*sic*] the instant case. This immense mandate, however, necessitates the indispensable role of the citizenry, as the PNP cannot stand alone without the cooperation of the victims and witnesses to identify the perpetrators to bring them before the bar of justice and secure their conviction in court.

The petitioner PNP-CIDG Chief, Gen. Edgardo M. Doromal, submitted as well his affidavit, also attached to the Return of the Writ, attesting that upon receipt of the Writ of *Amparo*, he caused the following:[14]

[14] Annex "3"; *id.* at 97-98.

x x x x x x x x x

That immediately upon receipt on December 29, 2007 of the Resolution of the Honorable Special Fourth Division of the Court of Appeals, I immediately directed the Investigation Division of this Group [CIDG] to conduct urgent investigation on the alleged enforced disappearance of Engineer Morced Tagitis.

That based on record, Engr. Morced N. Tagitis attended an Education Development Seminar on October 28, 2007 at Ateneo de Zamboanga at Zamboanga City together with Prof. Abdulnasser Matli. On October 30, 2007, at around six o'clock in the morning he arrived at Jolo, Sulu. He was assisted by his student identified as Arsimin Kunnong of the Islamic Development Bank who was also one of the participants of the said seminar. He checked in at ASY pension house located [*sic*] Kakuyagan, Patikul, Sulu on October 30, 2007 with [*sic*] unidentified companion. At around six o'clock in the morning of even date, Engr. Tagitis instructed his student to purchase a fast craft ticket for Zamboanga City. In the afternoon of the same date, Kunnong arrived at the pension house carrying the ticket he purchased for Engr. Tagitis, but the latter was nowhere to be found anymore. Kunnong immediately informed Prof. Abdulnasser Matli who reported the incident to the police. The CIDG is not involved in the disappearance of Engr. Morced Tagitis to make out a case of an enforced disappearance which presupposes a direct or indirect involvement of the government.

That herein [petitioner] searched all divisions and departments for a person named Engr. Morced N. Tagitis, who was allegedly abducted or illegally detained by covert CIDG-PNP Intelligence Operatives since October 30, 2007 and after a diligent and thorough research records show that no such person is being detained in CIDG or any of its department or divisions.

That nevertheless, in order to determine the circumstances surrounding Engr. Morced Tagitis [*sic*] alleged enforced disappearance, the undersigned had undertaken immediate investigation and will pursue investigations up to its full completion in order to aid in the prosecution of the person or persons responsible therefore.

Likewise attached to the Return of the Writ was PNP-PACER[15] Chief PS Supt. Leonardo A. Espina's affidavit which alleged that:[16]

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That, I and our men and women in PACER vehemently deny any participation in the alleged abduction or illegally [*sic*] detention of ENGR. MORCED N. TAGITS (sic) on October 30, 2007. As a matter of fact, nowhere in the writ was mentioned that the ***alleged*** abduction was perpetrated by elements of PACER nor was there any indication that the alleged abduction or illegal detention of ENGR. TAGITIS was undertaken jointly by our men and by the ***alleged*** covert CIDG-PNP intelligence operatives ***alleged*** to have abducted or illegally detained ENGR. TAGITIS.

That I was shocked when I learned that I was implicated in the alleged disappearance of ENGR. MORCED in my capacity as the chief PACER [*sic*] considering that our office, the Police Anti-Crime and Emergency Response (PACER), a special task force created for the purpose of neutralizing or eradicating kidnap-for-ransom groups which until now continue to be one of the menace of our society is a respondent in kidnapping or illegal detention case. Simply put, our task is to go after kidnappers and charge them in court and to abduct or illegally detain or kidnap anyone is anathema to our mission.

That right after I learned of the receipt of the WRIT OF *AMPARO*, I directed the Chief of PACER Mindanao Oriental (PACER-MOR) to conduct pro-active measures to investigate, locate/search the subject, identify and apprehend the persons responsible, to recover and preserve evidence related to the disappearance of ENGR. MORCED TAGITIS, which may aid in the prosecution of the person or persons responsible, to identify witnesses and obtain statements from them concerning the disappearance and to determine the cause, manner, location and time of disappearance as well as any pattern or practice that may have brought about the disappearance.

That I further directed the chief of PACER-MOR, Police Superintendent JOSE ARNALDO BRIONES JR., to submit a written report regarding the disappearance of ENGR. MORCED.

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[15] Police Anti-Crime Emergency Response.

[16] Annex "4"; *id.* at 99-103.

That in compliance with my directive, the chief of PACER-MOR sent through fax his written report.

That the investigation and measures being undertaken to locate/search the subject in coordination with Police Regional Office, Autonomous Region of Muslim Mindanao (PRO-ARMM) and Jolo Police Provincial Office (PPO) and other AFP and PNP units/agencies in the area are ongoing with the instruction not to leave any stone unturned so to speak in the investigation until the perpetrators in the instant case are brought to the bar of justice.

That I have exercised EXTRAORDINARY DILIGENCE in dealing with the WRIT OF *AMPARO* just issued.

Finally, the PNP PRO ARMM Regional Director PC Supt. Joel R. Goltiao (*Gen. Goltiao*), also submitted his affidavit detailing the actions that he had taken upon receipt of the report on Tagitis' disappearance, *viz*:[17]

xxx xxx xxx

3) For the record:

1. I am the Regional Director of Police Regional Office ARMM now and during the time of the incident;

xxx xxx xxx

4. It is my duty to look into and take appropriate measures on any cases of reported enforced disappearances and when they are being alluded to my office;

5. On November 5, 2007, the Provincial Director of Sulu Police Provincial Office reported to me through Radio Message Cite No. SPNP3-1105-07-2007 that on November 4, 2007 at around 3:30 p.m., a certain Abdulnasser Matli, an employee of Islamic Development Bank, appeared before the Office of the Chief of Police, Jolo Police Station, and reported the disappearance of Engr. Morced Tagitis, scholarship coordinator of Islamic Development Bank, Manila;

6. There was no report that Engr. Tagibis (sic) was last seen in the company of or taken by any member of the Philippine

[17] Annex "5"; *id.* at 104-120.

National Police but rather he just disappeared from ASY Pension House situated at Kakuyagan Village, Village, Patikul, Sulu, on October 30, 2007, without any trace of forcible abduction or arrest;

7. The last known instance of communication with him was when Arsimin Kunnong, a student scholar, was requested by him to purchase a vessel ticket at the Office of Weezam Express, however, when the student returned back to ASY Pension House, he no longer found Engr. Tagitis there and when he immediately inquired at the information counter regarding his whereabouts [*sic*], the person in charge in the counter informed him that Engr. Tagitis had left the premises on October 30, 2007 around 1 o'clock p.m. and never returned back to his room;

8. Immediately after learning the incident, I called and directed the Provincial Director of Sulu Police Provincial Office and other units through phone call and text messages to conduct investigation [*sic*] to determine the whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission, to recover and preserve evidence related to the disappearance of Engr. Tagitis, to identify witnesses and obtain statements from them concerning his disappearance, to determine the cause and manner of his disappearance, to identify and apprehend the person or persons involved in the disappearance so that they shall be brought before a competent court;

9. Thereafter, through my Chief of the Regional Investigation and Detection Management Division, I have caused the following directives:

a) Radio Message Cite No. RIDMD-1122-07-358 dated November 22, 2007 directing PD Sulu PPO to conduct joint investigation with CIDG and CIDU ARMM on the matter;

b Radio Message Cite No. RIDMD-1128-07-361 dated November 28, 2007 directing PD Sulu PPO to expedite compliance to my previous directive;

c) Memorandum dated December 14, 2007 addressed to PD Sulu PPO reiterating our series of directives for investigation and directing him to undertake exhaustive coordination efforts with the owner of ASY Pension House and student scholars of IDB in order to secure corroborative statements regarding the disappearance and whereabouts of said personality;

d) Memorandum dated December 24, 2007 addressed to PD Sulu PPO directing him to maximize efforts to establish clues on the whereabouts of Engr. Tagitis by seeking the cooperation of Prof. Abdulnasser Matli and Arsimin Kunnong and/or whenever necessary, for them to voluntarily submit for polygraph examination with the NBI so as to expunge all clouds of doubt that they may somehow have knowledge or idea to his disappearance;

e) Memorandum dated December 27, 2007 addressed to the Regional Chief, Criminal Investigation and Detection Group, Police Regional Office 9, Zamboanga City, requesting assistance to investigate the cause and unknown disappearance of Engr. Tagitis considering that it is within their area of operational jurisdiction;

f) Memorandum from Chief, Intelligence Division, PRO ARMM dated December 30, 2007 addressed to PD Sulu PPO requiring them to submit complete investigation report regarding the case of Engr. Tagitis;

10. In compliance to our directives, PD Sulu PPO has exerted his [*sic*] efforts to conduct investigation [*sic*] on the matter to determine the whereabouts of Engr. Tagitis and the circumstances related to his disappearance and submitted the following:

a) Progress Report dated November 6, 2007 through Radio Message Cite No. SPNP3-1106-10-2007;

b) Radio Message Cite No. SPIDMS-1205-47-07 informing this office that they are still monitoring the whereabouts of Engr. Tagitis;

c) Investigation Report dated December 31, 2007 from the Chief of Police, Jolo Police Station, Sulu PPO;

11. This incident was properly reported to the PNP Higher Headquarters as shown in the following:

a) Memorandum dated November 6, 2007 addressed to the Chief, PNP informing him of the facts of the disappearance and the action being taken by our office;

b) Memorandum dated November 6, 2007 addressed to the Director, Directorate for Investigation and Detection Management, NHQ PNP;

c) Memorandum dated December 30, 2007 addressed to the Director, DIDM;

4) In spite of our exhaustive efforts, the whereabouts of Engr. Tagitis cannot be determined but our office is continuously intensifying the conduct of information gathering, monitoring and coordination for the immediate solution of the case.

Since the disappearance of Tagitis was practically admitted and taking note of favorable actions so far taken on the disappearance, the CA directed Gen. Goltiao – as the officer in command of the area of disappearance – to form TASK FORCE TAGITIS.[18]

Task Force Tagitis

On January 11, 2008, Gen. Goltiao designated PS Supt. Ahiron Ajirim (*PS Supt. Ajirim*) to head TASK FORCE TAGITIS.[19] The CA subsequently set three hearings to monitor whether TASK FORCE TAGITIS was exerting "extraordinary efforts" in handling the disappearance of Tagitis.[20] As planned, (1) the first hearing would be to mobilize the CIDG, Zamboanga City; (2) the second hearing would be to mobilize intelligence with Abu Sayyaf and ARMM; and (3) the third hearing would be to mobilize the Chief of Police of Jolo, Sulu and the Chief of Police of Zamboanga City and other police operatives.[21]

In the hearing on January 17, 2008, TASK FORCE TAGITIS submitted to the CA an intelligence report from PSL Usman S. Pingay, the Chief of Police of the Jolo Police Station, stating a possible motive for Tagitis' disappearance.[22] The intelligence

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[18] CA Resolution dated January 9, 2008; *rollo*, p. 275.

[19] TSN, January 11, 2008, p. 39; CA Resolution dated January 11, 2008, *rollo*, pp. 280-283.

[20] The hearings were conducted on January 17, 2008, January 28, 2008, and February 11, 2008 respectively.

[21] CA Resolution dated January 11, 2008, *rollo*, pp. 280-283.

[22] TSN, January 17, 2008, pp. 10-11; CA Resolution dated January 18, 2008, CA *rollo*, p. 283-286.

report was apparently based on the sworn affidavit dated January 4, 2008 of Muhammad Abdulnazeir N. Matli (*Prof. Matli),* Professor of Islamic Studies at the University of the Philippines and an Honorary Student Counselor of the IDB Scholarship Program in the Philippines, who told the Provincial Governor of Sulu that:[23]

> [Based] on reliable information from the Office of Muslim Affairs in Manila, Tagitis has reportedly taken and carried away… more or less Five Million Pesos (₱5,000,000.00) deposited and entrusted to his … [personal] bank accounts by the Central Office of IDB, Jeddah, Kingdom of Saudi Arabia, which [was] intended for the … IDB Scholarship Fund.

In the same hearing, PS Supt. Ajirim testified that since the CIDG was alleged to be responsible, he personally went to the CIDG office in Zamboanga City to conduct an ocular inspection/ investigation, particularly of their detention cells.[24] PS Supt. Ajirim stated that the CIDG, while helping TASK FORCE TAGITIS investigate the disappearance of Tagitis, persistently denied any knowledge or complicity in any abduction.[25] He further testified that prior to the hearing, he had already mobilized and given specific instructions to their supporting units to perform their respective tasks; that they even talked to, but failed to get any lead from the respondent in Jolo.[26] In his submitted investigation report dated January 16, 2008, PS Supt. Ajirim concluded:[27]

> 9. Gleaned from the undersigned inspection and observation at the Headquarters 9 RCIDU and the documents at hand, it is my own initial conclusion that the 9RCIDU and other PNP units in the area had no participation neither [*sic*] something to do with [*sic*] mysterious disappearance of Engr. Morced Tagitis last October 30,

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[23] Exhibit 6, CA *rollo*, p. 250.

[24] TSN, January 17, 2008, p. 77.

[25] *Id*.

[26] *Id.* at 80-81.

[27] Annex "L"; *rollo*, p. 347.

2007. Since doubt has been raised regarding the emolument on the Islamic Development Bank Scholar program of IDB that was reportedly deposited in the personal account of Engr. Tagitis by the IDB central office in Jeddah, Kingdom of Saudi Arabia. Secondly, it could might [*sic*] be done by resentment or sour grape among students who are applying for the scholar [*sic*] and were denied which was allegedly conducted/screened by the subject being the coordinator of said program.

20. It is also premature to conclude but it does or it may and [*sic*] presumed that the motive behind the disappearance of the subject might be due to the funds he maliciously spent for his personal interest and wanted to elude responsibilities from the institution where he belong as well as to the Islamic student scholars should the statement of Prof. Matli be true or there might be a professional jealousy among them.

x x x x x x x x x

It is recommended that the Writ of *Amparo* filed against the respondents be dropped and dismissed considering on [*sic*] the police and military actions in the area particularly the CIDG are exerting their efforts and religiously doing their tasked [*sic*] in the conduct of its intelligence monitoring and investigation for the early resolution of this instant case. But rest assured, our office, in coordination with other law-enforcement agencies in the area, are continuously and religiously conducting our investigation for the resolution of this case.

On February 4, 2008, the CA issued an ALARM WARNING that Task Force Tagitis did not appear to be exerting extraordinary efforts in resolving Tagitis' disappearance on the following grounds:[28]

(1) This Court FOUND that it was only as late as January 28, 2008, after the hearing, that GEN. JOEL GOLTIAO and COL. AHIRON AJIRIM had requested for clear photographs when it should have been standard operating procedure in kidnappings or disappearances that the first agenda was for the police to secure ***clear pictures*** of the missing person, Engr. Morced Tagitis, for dissemination to all parts of the country and to neighboring countries. It had been three

[28] CA *rollo*, pp. 311-313.

(3) months since GEN. JOEL GOLTIAO admitted having been ***informed*** on November 5, 2007 of the alleged abduction of Engr. Morced Tagitis by alleged bad elements of the CIDG. It had been more than one (1) month since the *Writ of Amparo* had been issued on December 28, 2007. It had been three (3) weeks when battle formation was ordered through *Task Force Tagitis*, on January 17, 2008. It was only on January 28, 2008 when the Task Force Tagitis requested for clear and recent photographs of the missing person, Engr. Morced Tagitis, despite the *Task Force Tagitis*' claim that they already had an "all points bulletin", since November 5, 2007, on the missing person, Engr. Morced Tagitis. How could the police look for someone who disappeared if no clear photograph had been disseminated?

(2) Furthermore, *Task Force Tagitis'* COL. AHIROM AJIRIM informed this Court that P/Supt KASIM was designated as Col. Ahirom Ajirim's replacement in the latter's official designated post. Yet, P/Supt KASIM's subpoena was returned to this Court unserved. Since this Court was made to understand that it was P/Supt KASIM who was the petitioner's unofficial source of the military intelligence information that Engr. Morced Tagitis was abducted by bad elements of the CIDG (par. 15 of the Petition), the close contact between P/Supt KASIM and Col. Ahirom Ajirim of TASK FORCE TAGITIS should have ensured the appearance of Col. KASIM in response to this court's subpoena and COL. KASIM could have confirmed the military intelligence information that bad elements of the CIDG had abducted Engr. Morced Tagitis.

Testimonies for the Respondent

On January 7, 2008, the respondent, Mary Jean B. Tagitis, testified on direct examination that she went to Jolo and Zamboanga in her efforts to locate her husband. She said that a friend from Zamboanga holding a high position in the military (whom she did not then identify) gave her information that allowed her to "specify" her allegations, "particularly paragraph 15 of the petition."[29] This friend also told her that her husband "[was] in good hands."[30] The respondent also testified that she sought the assistance of her former boss in Davao City, Land Bank Bajada Branch Manager Rudy Salvador, who told her that "PNP

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[29] TSN, January 7, 2008, p. 20.

[30] *Id.* at 21.

CIDG is holding [her husband], Engineer Morced Tagitis."[31] The respondent recounted that she went to Camp Katitipan in Davao City where she met Col. Julasirim Ahadin Kasim (*Col. Kasim/Sr. Supt Kasim*) who read to her and her friends (who were then with her) a "highly confidential report" that contained the "alleged activities of Engineer Tagitis" and informed her that her husband was abducted because "he is under custodial investigation" for being a liaison for "J.I. or Jema'ah Islamiah."[32]

On January 17, 2008, the respondent on cross-examination testified that she is Tagitis' second wife, and they have been married for thirteen years; Tagitis was divorced from his first wife.[33] She last communicated with her husband on October 29, 2007 at around 7:31 p.m. through text messaging; Tagitis was then on his way to Jolo, Sulu, from Zamboanga City.[34]

The respondent narrated that she learned of her husband's disappearance on October 30, 2007 when her stepdaughter, Zaynah Tagitis (*Zaynah*), informed her that she had not heard

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[31] *Id.* at 22. Mr. Rudy Salvador later executed an affidavit dated January 21, 2008 detailing the assistance he provided for the respondent in locating the whereabouts of her husband, *viz*:

> That on November 12, 2007, Ms. Mary Jean B. Tagitis, my former staff in Land Bank of the Philippines Digos Branch Digos City, came to my office at Land Bank Philippines, Bajada Branch, Bajada, Davao City asking for help regarding the abduction of her husband Engr. Morced Tagitis, a Senior Honorary Counselor of the Islamic Development Bank Scholarship Program and a World Bank Consultant who was presumed to be abducted in Jolo, Sulu on October 30, 2007;
>
> During our meeting, I immediately called up my friends in the military asking them a favor to help her to find the whereabouts(sic) her husband Engr. Morced Tagitis;
>
> After then, we faxed a letter to PCSUPT RODOLFO B. MENDOZA JR. of the PHILIPPINE NATIONAL POLICE, CAMP CRAME, QUEZON CITY appealing for assistance in locating/gathering information on the abduction of Engr. Morced N. Tagitis. Exhibit C, TSN, January 28, 2008, pp. 8-9.

[32] *Id.* at 23.

[33] TSN, January 17, 2008, pp. 18-20.

[34] *Id.* at 34-35.

from her father since the time they arranged to meet in Manila on October 31, 2007.[35] The respondent explained that it took her a few days (or on November 5, 2007) to personally ask Kunnong to report her husband's disappearance to the Jolo Police Station, since she had the impression that her husband could not communicate with her because his cellular phone's battery did not have enough power, and that he would call her when he had fully-charged his cellular phone's battery.[36]

The respondent also identified the high-ranking military friend, who gave her the information found in paragraph 15 of her petition, as Lt. Col. Pedro L. Ancanan, Jr (*Col. Ancanan*). She met him in Camp Karingal, Zamboanga through her boss.[37] She also testified that she was with three other people, namely,

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

[36] *Id.* at 33.

[37] *Id.* at 47-44; *rollo*, pp. 772-773. Col. Ancanan later executed an affidavit dated January 30, 2008 contradicting the respondent's allegations. The pertinent portions of the affidavit state:

> 3. That, mid of November 2007, Mrs. Tagitis of Davao City appeared before our office and asked for help/assistance in locating her husband allegedly missing since November 4, 2007 in Jolo, Sulu;
>
> 4. That, I told her that her problem was purely a police matter which does not fall under our mandate but that nonetheless I was willing to extend my help;
>
> 5. That during our conversation, I asked her to provide me with some documents/information for purposes of back tracking/tracing the possible personalities whom her husband supposedly met in Jolo before he was reported missing. However, this did not materialize because Mrs. Tagitis was hesitant to produce said documents/ information for an unknown reason;
>
> 6. That during the Joint Reward Valuation conference (JRVC) on January 29, 2008, I was astonished when PS SUPT JOSE VOLPANE PANTE, Regional Chief 9RCIDU, informed me that accordingly (sic) I was the one who told Mrs. Tagitis that her husband was in the custody of the 9RCIDU;
>
> 7. That in the course of my conversation with Mrs. Tagitis, I never told her or made mention of any word to that effect implicating the CIDG personnel particularly members of 9RCIDU as being responsible or involved in the disappearance of her husband, Engr. Morced Tagitis;

Mrs. Marydel Martin Talbin and her two friends from Mati City, Davao Oriental, when Col. Kasim read to them the contents of the "highly confidential report" at Camp Katitipan, Davao City. The respondent further narrated that the report indicated that her husband met with people belonging to a terrorist group and that he was under custodial investigation. She then told Col. Kasim that her husband was a diabetic taking maintenance medication, and asked that the Colonel relay to the persons holding him the need to give him his medication.[38]

On February 11, 2008, TASK FORCE TAGITIS submitted two narrative reports,[39] signed by the respondent, detailing her efforts to locate her husband which led to her meetings with Col. Ancanan of the Philippine Army and Col. Kasim of the PNP. In her narrative report concerning her meeting with Col. Ancanan, the respondent recounted, *viz*:[40]

> On November 11, 2007, we went to Zamboanga City with my friend Mrs. Marydel Talbin. Our flight from Davao City is 9:00 o'clock in the morning; we arrived at Zamboanga Airport at around 10:00 o'clock. We [were] fetched by the two staffs of Col. Ancanan. We immediately proceed [*sic*] to West Mindanao Command (WESTMINCOM).
>
> On that same day, we had private conversation with Col. Ancanan. He interviewed me and got information about the personal background of Engr. Morced N. Tagitis. After he gathered all information, he revealed to us the contents of text messages they got from the cellular phone of the subject Engr. Tagitis. One of the very important text messages of Engr. Tagitis sent to his daughter Zaynah Tagitis was that she was not allowed to answer any telephone calls in his condominium unit.
>
> While we were there he did not tell us any information of the whereabouts of Engr. Tagitis. After the said meeting with Col.

That I am executing this affidavit to contradict and dispute the allegation of Mrs. Tagitis that I told her that the CIDG personnel were involved in the disappearance of her husband.

[38] *Id.* at 48-52.

[39] TSN, February 11, 2008, p. 43.

[40] *Id.* at 44-47; *rollo*, pp. 808-809.

Ancanan, he treated us as guests to the city. His two staffs accompanied us to the mall to purchase our plane ticket going back to Davao City on November 12, 2007.

When we arrived in Davao City on November 12, 2007 at 9:00 in the morning, Col. Ancanan and I were discussing some points through phone calls. He assured me that my husband is alive and he's last looked [*sic*] in Talipapao, Jolo, Sulu. Yet I did not believe his given statements of the whereabouts of my husband, because I contacted some of my friends who have access to the groups of MILF, MNLF and ASG. I called up Col. Ancanan several times begging to tell me the exact location of my husband and who held him but he refused.

While I was in Jolo, Sulu on November 30, 2007, I called him up again because the PNP, Jolo did not give me any information of the whereabouts of my husband. Col. Ancanan told me that "*Sana ngayon alam mo na kung saan ang kinalalagyan ng asawa mo*." When I was in Zamboanga, I was thinking of dropping by the office of Col. Ancanan, but I was hesitant to pay him a visit for the reason that the Chief of Police of Jolo told me not to contact any AFP officials and he promised me that he can solve the case of my husband (Engr. Tagitis) within nine days.

I appreciate the effort of Col. Ancanan on trying to solve the case of my husband Engr. Morced Tagitis, yet failed to do so.

The respondent also narrated her encounter with Col. Kasim, as follows:[41]

On November 7, 2007, I went to Land Bank of the Philippines, Bajada Branch, Davao City to meet Mr. Rudy Salvador. I told him that my husband, Engineer Morced Tagitis was presumed to be abducted in Jolo, Sulu on October 30, 2007. I asked him a favor to contact his connections in the military in Jolo, Sulu where the abduction of Engr. Tagitis took place. Mr. Salvador immediately called up Camp Katitipan located in Davao City looking for high-ranking official who can help me gather reliable information behind the abduction of subject Engineer Tagitis.

On that same day, Mr. Salvador and my friend, Anna Mendoza, Executive Secretary, accompanied me to Camp Katitipan to meet Col. Kasim. Mr. Salvador introduced me to Col. Kasim and we had a short

[41] *Id.* at 810-811.

conversation. And he assured me that he'll do the best he can to help me find my husband.

After a few weeks, Mr. Salvador called me up informing me up informing me that I am to go to Camp Katitipan to meet Col. Kasim for he has an urgent, confidential information to reveal.

On November 24, 2007, we went back to Camp Katitipan with my three friends. That was the time that Col. Kasim read to us the confidential report that Engr. Tagitis was allegedly connected [with] different terrorist [groups], one of which he mentioned in the report was OMAR PATIK and a certain SANTOS - a Balik Islam.

It is also said that Engr. Tagitis is carrying boxes of medicines for the injured terrorists as a supplier. These are the two information that I can still remember. It was written in a long bond paper with PNP Letterhead. It was not shown to us, yet Col. Kasim was the one who read it for us.

He asked a favor to me that "Please don't quote my Name! Because this is a raw report." He assured me that my husband is alive and he is in the custody of the military for custodial investigation. I told him to please take care of my husband because he has aliments (sic) and he recently took insulin for he is a diabetic patient.

In my petition for writ of *amparo*, I emphasized the information that I got from Kasim.

On February 11, 2008, the respondent presented Mrs. Marydel Martin Talbin (*Mrs. Talbin*) to corroborate her testimony regarding her efforts to locate her husband, in relation particularly with the information she received from Col. Kasim. Mrs. Talbin testified that she was with the respondent when she went to Zamboanga to see Col. Ancanan, and to Davao City at Camp Katitipan to meet Col. Kasim.[42]

In Zamboanga, Mrs. Talbin recounted that they met with Col. Ancanan, who told them that there was a report and that he showed them a series of text messages from Tagitis' cellular phone, which showed that Tagitis and his daughter would meet in Manila on October 30, 2007.[43]

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[42] TSN, February 11, 2008, p. 29.

[43] *Id.* at 31-32.

She further narrated that sometime on November 24, 2007, she went with the respondent together with two other companions, namely, Salvacion Serrano and Mini Leong, to Camp Katitipan to talk to Col. Kasim.[44] The respondent asked Col. Kasim if he knew the exact location of Engr. Tagitis. Col. Kasim told them that Tagitis was in good hands, although he was not certain whether he was with the PNP or with the Armed Forces of the Philippines (*AFP*). She further recounted that based on the report Col. Kasim read in their presence, Tagitis was under custodial investigation because he was being charged with terrorism; Tagitis in fact had been under surveillance since January 2007 up to the time he was abducted when he was seen talking to Omar Patik and a certain Santos of Bulacan, a "Balik Islam" charged with terrorism. Col. Kasim also told them that he could not give a copy of the report because it was a "raw report."[45] She also related that the Col. Kasim did not tell them exactly where Tagitis was being kept, although he mentioned Talipapao, Sulu.[46]

On cross-examination, Mrs. Talbin clarified that the "raw report" read to them by Col. Kasim indicated that Tagitis was last seen in Talipapao, Sulu.[47]

Testimonies for the Petitioner

On January 28, 2008, on cross-examination by the Assistant Solicitor General, Prof. Matli submitted a new affidavit dated January 26, 2008 retracting the statements he made in his affidavit dated January 4, 2008. Prof. Matli testified that he reluctantly signed the January 4, 2008 affidavit which was prepared by PS Supt. Pingay of the Jolo Police Station; he didn't want Pingay "to be disappointed or to be told as not cooperating with the investigation" of Tagitis' disappearance.[48] Prof. Matli confirmed

[44] *Id.* at 32-33.

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

[46] *Id.* at 36.

[47] *Id.* at 41.

[48] TSN, January 28, 2008, pp. 45-46.

that he knew Tagitis personally, as both of them were Honorary Councilors in the IDB Scholarship program since the 1980s.[49] He recounted that after reporting Tagitis' disappearance to the Jolo Police Station (where he also executed the January 4, 2008 affidavit), a certain Nuraya Lackian who was working in the Office of Muslim Affairs in Manila called Cecille Chan, Tagitis' secretary, to inquire about Tagitis' whereabouts. Chan told him personally over the phone that "*Prof., lalabas din yan.*"[50] Prof. Matli also emphasized that despite what his January 4, 2008 affidavit indicated,[51] he never told PS Supt. Pingay, or made any accusation, that Tagitis took away money entrusted to him.[52] Prof. Matli confirmed, however, that that he had received an e-mail report[53] from Nuraya Lackian of the Office

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[49] *Id.* at 59.

[50] *Id.* at 61-63.

[51] *Id.* at 80-81. Paragraph 13 of Prof. Matli's January 26, 2008 affidavit states:

> 13. Contrary to the contents of the affidavit I signed on January 4, 2008, it was not I who said that Brother Eng'r.[*sic*] Morced "converted the money that were entrusted and deposited to be [*sic*] said institution he was working with, by means of deceitful performance, grave abuse of trust and confidence, misappropriate, misapply and convert the same to his own personal and [*sic*] benefits" (Paragraph 6 of January 4, 2008 Affidavit) and it was not also I who said: "That, I am appearing before the competent authority in order to reveal the truth of facts that Eng'r. [*sic*] Morced Tagitis, have reportedly taken and carried away the deposited above mentioned IDB Scholarship Fund who was [*sic*] entrusted to his own personal account."

[52] *Id.* at 81.

[53] *Id.* at 74-76. As read by Prof. Matli in his January 28, 2008 cross-examination, the e-mail stated:

> To: Nuraya Lackian
> CC: Abdulrahman R.T. Linzag
> Subject: Re: Financial Problem (Refund and Stipend)
> From: Salam@isdb.org
> Date: Tue, 27 November 2007

of Muslim Affairs in Manila that the IDB was seeking assistance of the office in locating the funds of IDB scholars deposited in Tagitis' personal account.[54]

On cross-examination by the respondent's counsel, Prof. Matli testified that his January 4, 2008 affidavit was already prepared when PS Supt. Pingay asked him to sign it.[55] Prof Matli clarified that although he read the affidavit before signing it, he "was not so much aware of… [its] contents."[56]

On February 11, 2008, the petitioners presented Col. Kasim to rebut material portions of the respondent's testimony, particularly the allegation that he had stated that Tagitis was in the custody of either the military or the PNP.[57] Col. Kasim

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Br. Tahirodin Benzar A. Ampatuan
GEN. COORDINATOR
IDB Scholarship Programme in Philippines

Assalamo Alaikum

Thanks for your below mail.

Could you please, in coordination and cooperation with Br. Hj. Abdul Raman R.T. Linzag, personally visit Br. Engr. Morced's office and try to find/locate documents related with the Scholarship Programme and, if found, please try to solve these problems, *i.e.*,

- Did or how may students get their monthly stipends and where are other bank drafts to be delivered to them (Br. Morced's account has no amount left in his concern)
- What about stipends for new students (26 new intake in 2007), which we also transferred to Br. Morced [*sic*] account.

Thanks for your kind cooperation and closely follow-up on this subject.

Regards,

Saeed Zafar

[54] *Id.* at 1-82.

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

[56] *Id.* at 98-99.

[57] TSN, February 11, 2008, p. 48.

categorically denied the statements made by the respondent in her narrative report, specifically: (1) that Tagitis was seen carrying boxes of medicines as supplier for the injured terrorists; (2) that Tagitis was under the custody of the military, **since he merely said to the respondent that "your husband is in good hands" and is "probably taken cared of by his armed abductors;"** and (3) that Tagitis was under custodial investigation by the military, the PNP or the CIDG Zamboanga City.[58] Col. Kasim emphasized that the "informal letter" he received from his informant in Sulu did not indicate that Tagitis was in the custody of the CIDG.[59] He also stressed that *the information he provided to the respondent was merely a "raw report" sourced from "barangay intelligence"* that still needed confirmation and "follow-up" as to its veracity.[60]

On cross-examination, Col. Kasim testified that the information he gave the respondent was given to him by his informant, who was a "civilian asset," through a letter which he considered as "unofficial."[61] Col. Kasim stressed that the letter was only meant for his "consumption" and not for reading by others.[62] *He testified further that he destroyed the letter right after he read it to the respondent and her companions because "it was not important to him" and also because the information it contained had no importance in relation with the abduction of Tagitis.*[63] He explained that he did not keep the letter because it did not contain any information regarding the whereabouts of Tagitis and the person(s) responsible for his abduction.[64]

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

[59] *Id.* at 56.

[60] *Id.* at 57-58.

[61] *Id.* at 61-62.

[62] *Id.* at 63.

[63] *Id.* at 68.

[64] *Id.* at 70.

In the same hearing on February 11, 2008, the petitioners also presented Police Senior Superintendent Jose Volpane Pante (*Col. Pante*), Chief of the CIDG-9, to disprove the respondent's allegation that Tagitis was in the custody of CIDG-Zamboanga City.[65] Col. Pante clarified that the CIDG was the "investigative arm" of the PNP, and that the CIDG "investigates and prosecutes all cases involving violations in the Revised Penal Code particularly those considered as heinous crimes."[66] Col. Pante further testified that the allegation that 9 RCIDU personnel were involved in the disappearance of Tagitis was baseless, since they did not conduct any operation in Jolo, Sulu before or after Tagitis' reported disappearance.[67] Col. Pante added that the four (4) personnel assigned to the Sulu CIDT had no capability to conduct any "operation," since they were only assigned to investigate matters and to monitor the terrorism situation.[68] He denied that his office conducted any surveillance on Tagitis prior to the latter's disappearance.[69] Col. Pante further testified that his investigation of Tagitis' disappearance was unsuccessful; the investigation was "still facing a blank wall" on the whereabouts of Tagitis.[70]

THE CA RULING

On March 7, 2008, the CA issued its decision[71] confirming that the disappearance of Tagitis was an "enforced disappearance" under the United Nations (*UN*) Declaration on the Protection of All Persons from Enforced Disappearances.[72]

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[65] *Id.* at 85.

[66] *Id.* at 88.

[67] Sworn Affidavit of Col. Pante dated February 6, 2008; *rollo*, p. 775.

[68] *Id*.

[69] TSN, February 11, 2008, p. 99.

[70] *Supra* note 66.

[71] *Supra* note 2.

[72] *Declaration on the Protection of all Persons from Enforced Disappearance*, G.A. Res 47/133 ¶ 3, U.N. Doc. A/RES/47/133 (December 18, 1992).

The CA ruled that when military intelligence pinpointed the investigative arm of the PNP (CIDG) to be involved in the abduction, the missing-person case qualified as an enforced disappearance. The conclusion that the CIDG was involved was based on the respondent's testimony, corroborated by her companion, Mrs. Talbin. The CA noted that the information that the CIDG, as the police intelligence arm, was involved in Tagitis' abduction came from no less than the military – an independent agency of government. The CA thus greatly relied on the "raw report" from Col. Kasim's asset, pointing to the CIDG's involvement in Tagitis' abduction. The CA held that "raw reports" from an "asset" carried "great weight" in the intelligence world. It also labeled as "suspect" Col. Kasim's subsequent and belated retraction of his statement that the military, the police, or the CIDG was involved in the abduction of Tagitis.

The CA characterized as "too farfetched and unbelievable" and "a bedlam of speculation" police theories painting the disappearance as "intentional" on the part of Tagitis. He had no previous brushes with the law or any record of overstepping the bounds of any trust regarding money entrusted to him; no student of the IDB scholarship program ever came forward to complain that he or she did not get his or her stipend. The CA also found no basis for the police theory that Tagitis was "trying to escape from the clutches of his second wife," on the basis of the respondent's testimony that Tagitis was a Muslim who could have many wives under the Muslim faith, and that there was "no issue" at all when the latter divorced his first wife in order to marry the second. Finally, the CA also ruled out kidnapping for ransom by the Abu Sayyaf or by the ARMM paramilitary as the cause for Tagitis' disappearance, since the respondent, the police and the military noted that there was no acknowledgement of Tagitis' abduction or demand for payment of ransom – the usual *modus operandi* of these terrorist groups.

Based on these considerations, the CA thus extended the privilege of the writ to Tagitis and his family, and directed the CIDG Chief, Col. Jose Volpane Pante, PNP Chief Avelino I. Razon, TASK FORCE TAGITIS heads Gen. Joel Goltiao and

Col. Ahiron Ajirim, and PACER Chief Sr. Supt. Leonardo A. Espina to exert extraordinary diligence and efforts to protect the life, liberty and security of Tagitis, with the obligation to provide monthly reports of their actions to the CA. At the same time, the CA dismissed the petition against the then respondents from the military, Lt. Gen Alexander Yano and Gen. Ruben Rafael, based on the finding that it was PNP-CIDG, not the military, that was involved.

On March 31, 2008, the petitioners moved to reconsider the CA decision, but the CA denied the motion in its Resolution of April 9, 2008.[73]

THE PETITION

In this Rule 45 appeal questioning the CA's March 7, 2008 decision, the petitioners mainly dispute the sufficiency in form and substance of the *Amparo* petition filed before the CA; the sufficiency of the legal remedies the respondent took before petitioning for the writ; the finding that the rights to life, liberty and security of Tagitis had been violated; the sufficiency of evidence supporting the conclusion that Tagitis was abducted; the conclusion that the CIDG Zamboanga was responsible for the abduction; and, generally, the ruling that the respondent discharged the burden of proving the allegations of the petition by substantial evidence.[74]

THE COURT'S RULING

We do not find the petition meritorious.

Sufficiency in Form and Substance

In questioning the sufficiency in form and substance of the respondent's *Amparo* petition, the petitioners contend that the petition violated Section 5(c), (d), and (e) of the *Amparo* Rule. Specifically, the petitioners allege that the respondent failed to:

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[73] *Rollo,* pp. 129-131.

[74] *Id.* at 13-105.

1) allege any act or omission the petitioners committed in violation of Tagitis' rights to life, liberty and security;

2) allege in a complete manner how Tagitis was abducted, the persons responsible for his disappearance, and the respondent's source of information;

3) allege that the abduction was committed at the petitioners' instructions or with their consent;

4) implead the members of CIDG regional office in Zamboanga alleged to have custody over her husband;

5) attach the affidavits of witnesses to support her accusations;

6) allege any action or inaction attributable to the petitioners in the performance of their duties in the investigation of Tagitis' disappearance; and

7) specify what legally available efforts she took to determine the fate or whereabouts of her husband.

A petition for the Writ of *Amparo* shall be signed and verified and shall allege, among others (in terms of the portions the petitioners cite):[75]

(c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;

(d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;

(e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and

The framers of the *Amparo* Rule never intended Section 5(c) to be complete in every detail in stating the threatened or

[75] Section 5, Rule on the Writ of *Amparo*.

actual violation of a victim's rights. As in any other initiatory pleading, the pleader must of course state the ultimate facts constituting the cause of action, omitting the evidentiary details.[76] In an *Amparo* petition, however, this requirement must be read in light of the nature and purpose of the proceeding, which addresses a situation of uncertainty; the petitioner may not be able to describe with certainty how the victim exactly disappeared, or who actually acted to kidnap, abduct or arrest him or her, or where the victim is detained, because these information may purposely be hidden or covered up by those who caused the disappearance. In this type of situation, to require the level of specificity, detail and precision that the petitioners apparently want to read into the *Amparo* Rule is to make this Rule a *token gesture* of judicial concern for violations of the constitutional rights to life, liberty and security.

To read the Rules of Court requirement on pleadings while addressing the unique *Amparo* situation, the test in reading the petition should be to determine whether it contains the details *available to the petitioner under the circumstances,* while presenting a cause of action showing a violation of the victim's rights to life, liberty and security through State or private party action. The petition should likewise be read in its totality, rather than in terms of its isolated component parts, to determine if the required elements – namely, of the disappearance, the State or private action, and the actual or threatened violations of the rights to life, liberty or security – are present.

In the present case, the petition amply recites in its paragraphs 4 to 11 the circumstances under which Tagitis suddenly dropped out of sight after engaging in normal activities, and thereafter was nowhere to be found despite efforts to locate him. The petition alleged, too, under its paragraph 7, in relation to paragraphs

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[76] Section 1, Rule 8 of the Rules of Court provides:

> Section 1. *In General.* – Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.

15 and 16, that according to reliable information, police operatives were the perpetrators of the abduction. It also clearly alleged how Tagitis' rights to life, liberty and security were violated when he was "forcibly taken and boarded on a motor vehicle by a couple of burly men believed to be police intelligence operatives," and then taken "into custody by the respondents' police intelligence operatives since October 30, 2007, specifically by the CIDG, PNP Zamboanga City, x x x held against his will in an earnest attempt of the police to involve and connect [him] with different terrorist groups."[77]

These allegations, in our view, properly pleaded ultimate facts within the pleader's knowledge about Tagitis' disappearance, the participation by agents of the State in this disappearance, the failure of the State to release Tagitis or to provide sufficient information about his whereabouts, as well as the actual violation of his right to liberty. Thus, the petition cannot be faulted for any failure in its statement of a cause of action.

If a defect can at all be attributed to the petition, this defect is its lack of supporting affidavit, as required by Section 5(c) of the *Amparo* Rule. Owing to the summary nature of the proceedings for the writ and to facilitate the resolution of the petition, the *Amparo* Rule incorporated the requirement for supporting affidavits, with the annotation that these can be used as the affiant's direct testimony.[78] This requirement, however, should not be read as an absolute one that necessarily leads to the dismissal of the petition if not strictly followed. Where, as in this case, the petitioner has substantially complied with the requirement by submitting a *verified* petition sufficiently detailing the facts relied upon, the strict need for the sworn statement that an affidavit represents is essentially fulfilled. We note that the failure to attach the required affidavits was fully cured when the respondent and her witness (Mrs. Talbin) personally testified in the CA hearings held on January 7 and 17 and February 18, 2008 to swear to and flesh out the allegations of the petition.

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[77] *Supra* note 9.

[78] The Rule on the Writ of *Amparo*: Annotation, p. 52.

Thus, even on this point, the petition cannot be faulted.

Section 5(d) of the *Amparo* Rule requires that prior investigation of an alleged disappearance must have been made, specifying the manner and results of the investigation. Effectively, this requirement seeks to establish at the earliest opportunity the level of diligence the public authorities undertook in relation with the reported disappearance.[79]

We reject the petitioners' argument that the respondent's petition did not comply with the Section 5(d) requirements of the *Amparo* Rule, as the petition specifies in its paragraph 11 that Kunnong and his companions immediately reported Tagitis' disappearance to the police authorities in Jolo, Sulu *as soon as they were relatively certain that he indeed had disappeared*. The police, however, gave them the "ready answer" that Tagitis could have been abducted by the Abu Sayyaf group or other anti-government groups. The respondent also alleged in paragraphs 17 and 18 of her petition that she filed a "complaint" with the PNP Police Station in Cotobato and in Jolo, but she was told of "an intriguing tale" by the police that her husband was having "a good time with another woman." The disappearance was alleged to have been reported, too, to no less than the Governor of the ARMM, followed by the respondent's personal inquiries that yielded the factual bases for her petition.[80]

These allegations, to our mind, sufficiently specify that reports have been made to the police authorities, and that *investigations should have followed*. That the petition did not state the manner and results of the investigation that the *Amparo* Rule requires, but rather generally stated the inaction of the police, their failure to perform their duty to investigate, or at the very least, their reported failed efforts, should not be a reflection on the

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[79] *Id.* Section 17 of the Rule on the Writ of *Amparo* pertinently states that "[t]he respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty."

[80] *Supra* note 9.

completeness of the petition. To require the respondent to elaborately specify the names, personal circumstances, and addresses of the investigating authority, as well the manner and conduct of the investigation is an overly strict interpretation of Section 5(d), given the respondent's frustrations in securing an investigation with meaningful results. Under these circumstances, we are more than satisfied that the allegations of the petition on the investigations undertaken are sufficiently complete for purposes of bringing the petition forward.

Section 5(e) is in the *Amparo* Rule to prevent the use of a petition – that otherwise is not supported by sufficient allegations to constitute a proper cause of action – as a means to "fish" for evidence.[81] The petitioners contend that the respondent's petition did not specify what "legally available efforts were taken by the respondent," and that there was an "undue haste" in the filing of the petition when, instead of cooperating with authorities, the respondent immediately invoked the Court's intervention.

We do not see the respondent's petition as the petitioners view it.

Section 5(e) merely requires that the *Amparo* petitioner (the respondent in the present case) allege "the actions and recourses taken to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission." The following allegations of the respondent's petition duly outlined the actions she had taken and the frustrations she encountered, thus compelling her to file her petition.

x x x x x x x x x

7. Soon after the student left the room, Engr. Tagitis went out of the pension house to take his early lunch but while out on the street, a couple of burly men believed to be police intelligence operatives, forcibly took him and boarded the latter on a motor vehicle then sped away without the knowledge of his student, Arsimin Kunnong;

[81] *Supra* note 78.

x x x x x x x x x

10. When Kunnong could not locate Engr. Tagitis, the former sought the help of another IDB scholar and reported the matter to the local police agency;

11. Arsimin Kunnong, including his friends and companions in Jolo, exerted efforts in trying to locate the whereabouts of Engr. Tagitis and when he reported the matter to the police authorities in Jolo, he was immediately given a ready answer that Engr. Tagitis could [have been] abducted by the Abu Sayyaf group and other groups known to be fighting against the government;

12. Being scared with these suggestions and insinuations of the police officers, Kunnong reported the matter to the [respondent](wife of Engr. Tagitis) by phone and other responsible officers and coordinators of the IDB Scholarship Programme in the Philippines who alerted the office of the Governor of ARMM who was then preparing to attend the OIC meeting in Jeddah, Saudi Arabia;

13. [The respondent], on the other hand, approached some of her co-employees with the Land Bank in Digos branch, Digos City, Davao del Sur, who likewise sought help from some of their friends in the military who could help them find/locate the whereabouts of her husband;

x x x x x x x x x

15. According to reliable information received by the [respondent], subject Engr. Tagitis is in the custody of police intelligence operatives, specifically with the CIDG, PNP Zamboanga City, being held against his will in an earnest attempt of the police to involve and connect Engr. Tagitis with the different terrorist groups;

x x x x x x x x x

17. [The respondent] filed her complaint with the PNP Police Station at the ARMM in Cotobato and in Jolo, as suggested by her friends, seeking their help to find her husband, but [the respondent's] request and pleadings failed to produce any positive results

x x x x x x x x x

20. Lately, [respondent] was again advised by one of the [petitioners] to go to the ARMM Police Headquarters again in Cotobato City and also to the different Police Headquarters including

(sic) the police headquarters in Davao City, in Zamboanga City, in Jolo, and in Camp Crame, Quezon City, and all these places have been visited by the [respondent] in search for her husband, which entailed expenses for her trips to these places thereby resorting her to borrowings and beggings [*sic*] for financial help from friends and relatives only to try complying to the different suggestions of these police officers, despite of which, her efforts produced no positive results up to the present time;

x x x x x x x x x

25. [The respondent] has exhausted all administrative avenues and remedies but to no avail, and under the circumstances, [respondent] has no other plain, speedy and adequate remedy to protect and get the release of subject Engr. Morced Tagitis from the illegal clutches of [the petitioners], their intelligence operatives and the like which are in total violation of the subject's human and constitutional rights, except the issuance of a WRIT OF *AMPARO*.

Based on these considerations, we rule that the respondent's petition for the Writ of *Amparo* is sufficient in form and substance and that the Court of Appeals had every reason to proceed with its consideration of the case.

The Desaparecidos

The present case is one of first impression in the use and application of the Rule on the Writ of *Amparo* in an enforced disappearance situation. For a deeper appreciation of the application of this Rule to an enforced disappearance situation, a brief look at the historical context of the writ and enforced disappearances would be very helpful.

The phenomenon of enforced disappearance arising from State action first attracted notice in Adolf Hitler's *Nact und Nebel Erlass* or Night and Fog Decree of December 7, 1941.[82] The Third Reich's Night and Fog Program, a State policy, was

[82] Brian Finucane, *Enforced Disappearance as a Crime under International Law: A Neglected Origins in the Laws of War,* 35 Yale Journal of International Law (June 28, 2009) 6, available at < http://ssrn.com/abstract=1427062> (last visited November 12, 2009).

directed at persons in occupied territories "endangering German security"; they were transported secretly to Germany where they disappeared without a trace. In order to maximize the desired intimidating effect, the policy prohibited government officials from providing information about the fate of these targeted persons.[83]

In the mid-1970s, the phenomenon of enforced disappearances resurfaced, shocking and outraging the world when individuals, numbering anywhere from 6,000 to 24,000, were reported to have "disappeared" during the military regime in Argentina. Enforced disappearances spread in Latin America, and the issue became an international concern when the world noted its widespread and systematic use by State security forces in that continent under Operation Condor[84] and during the

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[83] Christos Pourgourides, *Enforced Disappearances*, Council of Europe-Parliamentary Assembly, Doc. 10679, September 19, 2005, http://assembly.coe.int/Main.asp?link=/Documents/Working Docs/Doc05/EDOC10679.htm (last visited November 12, 2009). The aim of the secret arrest and detention prescribed by the Night and Fog Decree was twofold. First, an individual was to be removed from the protection of law. Second and more importantly, secret arrest and detention served as a form of general deterrence, achieved through the intimidation and anxiety caused by the persistent uncertainty of the missing person's family. By terrorizing the occupied populations of Western Europe through a program of enforced disappearance, Hitler hoped to suppress resistance. *Id.* at 8.

[84] *Operation Condor* was a campaign of political repressions involving assassination and intelligence operations officially implemented in 1975 by the governments of the Southern Cone of South America. The program aimed to eradicate alleged socialist/communist influence and ideas and to control active or potential opposition movements against the governments. Due to its clandestine nature, the precise number of deaths directly attributable to Operation Condor will likely never be known, but it is reported to have caused over sixty thousand victims, possibly even more. Condor's key members were the governments in Argentina, Chile, Uruguay, Paraguay, Bolivia and Brazil, with Ecuador and Peru joining later in more peripheral roles. Operation Condor, http://en.wikipedia.org/wiki/Operation_Condor (last visited November 12, 2009).

Dirty War[85] in the 1970s and 1980s. The escalation of the practice saw political activists secretly arrested, tortured, and killed as part of governments' counter-insurgency campaigns. As this form of political brutality became routine elsewhere in the continent, the Latin American media standardized the term "disappearance" to describe the phenomenon. The victims of enforced disappearances were called the "**desaparecidos,**"[86] which literally means the "disappeared ones."[87] In general, there are three different kinds of "disappearance" cases:

1) those of people arrested without witnesses or without positive identification of the arresting agents and are never found again;

2) those of prisoners who are usually arrested without an appropriate warrant and held in complete isolation for weeks or months while their families are unable to discover their whereabouts and the military authorities deny having them

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[85] *The Dirty War* refers to the state-sponsored violence against Argentine citizenry and left-wing guerrillas from roughly 1976 to 1983 carried out primarily by Jorge Rafael Videla's military government. The exact chronology of the repression is still debated, as trade unionists were targeted for assassination as early as 1973; Isabel Martínez de Perón's "annihilation decrees" of 1975, during Operativo Independencia, have also been suggested as the origin of The Dirty War. The Dirty War, http://en.wikepedia.org/wiki/Dirty_War (last visited November 12, 2009).

[86] Human rights organizations first coined the term "disappeared" ("desaparecido") in 1966, during secret government crackdowns on political opponents in Guatemala, with systematic documentation of disappearances developing through the mid 1970s. See Wasana Punyasena, *The Façade of Accountability: Disappearances in Sri Lanka,* 23 B.C. Third World L.J. 115,117 (Winter 2003) citing Amnesty International, *"Disappearances" and Political Killings: Human Rights Crisis of the 1990s, A Manual for Action,* 13 (1994).

[87] Cited in Diana Grace L. Uy, *The Problem of Enforced Disappearances: Examining the Writs of Habeas Corpus, Amparo and Habeas Data* (2009), p. 8 (unpublished J.D. thesis, Ateneo de Manila University, on file with the Professional Schools Library, Ateneo de Manila University) citing *Ibon Foundation, Inc., Stop the Killings, Abductions, and Involuntary or Enforced Disappearances in the Philippines,* 39 (2007).

in custody until they eventually reappear in one detention center or another; and

3) those of victims of "salvaging" who have disappeared until their lifeless bodies are later discovered.[88]

In the Philippines, enforced disappearances generally fall within the first two categories,[89] and 855 cases were recorded during the period of martial law from 1972 until 1986. Of this number, 595 remained missing, 132 surfaced alive and 127 were found dead. During former President Corazon C. Aquino's term, 820 people were reported to have disappeared and of these, 612 cases were documented. Of this number, 407 remain missing, 108 surfaced alive and 97 were found dead. The number of enforced disappearances dropped during former President Fidel V. Ramos' term when only 87 cases were reported, while the three-year term of former President Joseph E. Estrada yielded 58 reported cases. KARAPATAN, a local non-governmental organization, reports that as of March 31, 2008, the records show that there were a total of 193 victims of enforced disappearance under incumbent President Gloria M. Arroyo's administration. The Commission on Human Rights' records show a total of 636 verified cases of enforced disappearances from 1985 to 1993. Of this number, 406 remained missing, 92 surfaced alive, 62 were found dead, and 76 still have undetermined status.[90] Currently, the United Nations Working Group on Enforced or Involuntary Disappearance[91] reports 619

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[88] *Id.* at 14, citing Amnesty International USA, *Disappearances: A Workbook*, p. 91 (1981).

[89] *Id*.

[90] *Id.* at 14-15.

[91] Established by resolution 20 (XXXVI) of 29 February 1980 of the Commission on Human Rights, the Working Group on Enforced or Involuntary Disappearances was created with the basic mandate to assist relatives to ascertain the fate and whereabouts of their disappeared family members. The Working Group examines the reports of disappearances received from relatives of disappeared persons or human rights organizations acting on their behalf and transmits individual cases to the Governments

outstanding cases of enforced or involuntary disappearances covering the period December 1, 2007 to November 30, 2008.[92]

Enforced Disappearances Under Philippine Law

The *Amparo* Rule expressly provides that the "writ shall cover extralegal killings and enforced disappearances or threats thereof."[93] We note that although the writ specifically covers "enforced disappearances," this concept is neither defined nor penalized in this jurisdiction. The records of the Supreme Court Committee on the Revision of Rules (*Committee)* reveal that the drafters of the *Amparo* Rule initially considered providing an elemental definition of the concept of enforced disappearance:[94]

JUSTICE MARTINEZ: I believe that first and foremost we should come up or formulate a specific definition [for] extrajudicial killings and enforced disappearances. From that definition, then we can proceed to formulate the rules, definite rules concerning the same.

CHIEF JUSTICE PUNO: … **As things stand, there is no law penalizing extrajudicial killings and enforced disappearances… so initially also**

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concerned requesting them to carry out investigations and inform the Working Group of the results. See *Enforced or Involuntary Disappearances*, Office of the United Nations High Commissioner for Human Rights Fact Sheet No. 6/Rev.3, pp. 9-10 (2009), available at http://www.unhcr.org/refworld/category,REFERENCE,OHCHR,THEMREPORT,,4794774bd,0.html (last visited November 12, 2009).

[92] See *Report of the Working Group on Enforced or Involuntary Disappearance*, A/HRC/10/9, February 6, 2009, available at http://www.ohchr.org/english/issues/disappear/docs/A.HRC.10.9.pdf (last visited November 12, 2009).

[93] Section 1, Rule on the Writ of *Amparo*.

[94] Felipe Enrique M. Gozon, Jr. & Theoben Jerdan C. Orosa, *Watching the Watchers: A Look into Drafting of the Writ of Amparo,* 52 ATENEO L.J. 665,675 (2007). The Committee, in considering a definition for the concept of enforced disappearance, noted several international instruments such as the Declaration on the Protection of All Persons from Enforced Disappearance and the International Convention for the Protection of All Persons from Enforced Disappearance.

we have to [come up with] the nature of these extrajudicial killings and enforced disappearances [to be covered by the Rule] because our concept of killings and disappearances will define the jurisdiction of the courts. So we'll have to agree among ourselves about the nature of killings and disappearances for instance, in other jurisdictions, the rules only cover state actors. That is an element incorporated in their concept of extrajudicial killings and enforced disappearances. In other jurisdictions, the concept includes acts and omissions not only of state actors but also of non state actors. Well, more specifically in the case of the Philippines for instance, should these rules include the killings, the disappearances which may be authored by let us say, the NPAs or the leftist organizations and others. So, again we need to define the nature of the extrajudicial killings and enforced disappearances that will be covered by these rules. [Emphasis supplied] [95]

In the end, the Committee took cognizance of several bills filed in the House of Representatives[96] and in the Senate[97] on extrajudicial killings and enforced disappearances, and resolved to do away with a clear textual definition of these terms in the Rule. The Committee instead focused on the nature and scope of the concerns *within its power to address* and provided the appropriate remedy therefor, mindful that an elemental definition may intrude into the ongoing legislative efforts.[98]

As the law now stands, extra-judicial killings and enforced disappearances in this jurisdiction are not crimes penalized

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[95] *Id*.

[96] See House Bill No. 00326 entitled, *An Act Defining and Penalizing Enforced or Involuntary Disappearance and for Other Purposes*, filed by Representative Edcel Lagman on July 2, 2007 and House Bill 2263 entitled, *An Act Defining and Penalizing the Crime of Enforced or Involuntary Disappearance* filed by Representative Satur Ocampo *et al*.

[97] See Senate Bill No. 1307 entitled, *An Act Defining and Penalizing Enforced or Involuntary Disappearance and for Other Purposes*, filed by Senator Francis Escudero on July 24, 2007 and Senate Bill No. 2107 entitled, *Enforced or Involuntary Disappearance Act of 2008,* filed by Senator Miriam Defensor Santiago on March 4, 2008.

[98] *Supra* note 94, at 681.

separately from the component criminal acts undertaken to carry out these killings and enforced disappearances and are now penalized under the Revised Penal Code and special laws.[99] The simple reason is that the Legislature has not spoken on the matter; the determination of what acts are criminal and what the corresponding penalty these criminal acts should carry are matters of substantive law that only the Legislature has the power to enact under the country's constitutional scheme and power structure.

Even without the benefit of directly applicable substantive laws on extra-judicial killings and enforced disappearances, however, the Supreme Court is not powerless to act under its own constitutional mandate to promulgate "*rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts,*"[100] since extrajudicial killings and enforced disappearances, by their nature and purpose, constitute State or private party violation of the constitutional rights of individuals to life, liberty and security. Although the Court's power is strictly procedural and as such does not diminish, increase or modify substantive rights, the legal protection that the Court can provide can be very meaningful through the procedures it sets in addressing extrajudicial killings and enforced disappearances. The Court, through its procedural rules, can set the *procedural standards* and thereby directly compel the public authorities to act on actual or threatened violations of constitutional rights. To state the obvious, judicial intervention can make a difference – even if only procedurally – in a situation when the very same investigating public authorities may have had a hand in the threatened or actual violations of constitutional rights.

Lest this Court intervention be misunderstood, we clarify once again that we do not rule on any issue of *criminal*

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[99] Perpetrators of enforced disappearances may be penalized for the crime of *arbitrary detention* under Article 124 of the Revised Penal Code or *kidnapping and serious illegal detention* under Article 267 of the Revised Penal Code. See *supra* note 87, at 16.

[100] CONSTITUTION, Article VIII, Section 5.

culpability for the extrajudicial killing or enforced disappearance. This is an issue that requires criminal action before our criminal courts based on our existing penal laws. Our intervention is in determining whether an enforced disappearance has taken place and who is responsible or accountable for this disappearance, and to define and impose the appropriate remedies to address it. The burden for the public authorities to discharge in these situations, under the Rule on the Writ of *Amparo,* is twofold. The *first* is to ensure that all efforts at ***disclosure*** and ***investigation*** are undertaken under pain of indirect contempt from this Court when governmental efforts are less than what the individual situations require. The *second* is to address the disappearance, so that the life of the victim is preserved and his or her liberty and security restored. In these senses, our orders and directives relative to the writ are continuing efforts that are not truly terminated until the extrajudicial killing or enforced disappearance is fully addressed by the complete determination of the fate and the whereabouts of the victim, by the production of the disappeared person and the restoration of his or her liberty and security, and, in the proper case, by the commencement of criminal action against the guilty parties.

Enforced Disappearance Under International Law

From the International Law perspective, involuntary or enforced disappearance is considered a flagrant violation of human rights.[101] It does not only violate the right to life, liberty and security of the *desaparecido*; it affects their families as well through the denial of their right to information regarding the circumstances of the disappeared family member. Thus, enforced disappearances have been said to be "a double form of torture," with "doubly paralyzing impact for the victims," as they "are kept ignorant of their own fates, while family members are deprived of knowing the whereabouts of their detained loved ones" and suffer as well the serious economic hardship and

[101] *Supra* note 91, at 1.

poverty that in most cases follow the disappearance of the household breadwinner.[102]

The UN General Assembly first considered the issue of "Disappeared Persons" in December 1978 under Resolution 33/173. The Resolution expressed the General Assembly's deep concern arising from "reports from various parts of the world relating to enforced or involuntary disappearances," and requested the "UN Commission on Human Rights to consider the issue of enforced disappearances with a view to making appropriate recommendations."[103]

In 1992, in response to the reality that the insidious practice of enforced disappearance had become a global phenomenon, the UN General Assembly adopted the **Declaration on the Protection of All Persons from Enforced Disappearance** (*Declaration*).[104] This Declaration, for the first time, provided in its third preambular clause a working description of enforced disappearance, as follows:

> **Deeply concerned** that in many countries, often in a persistent manner, enforced disappearances occur, **in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty**, which places such persons outside the protection of the law. [Emphasis supplied]

Fourteen years after (or on December 20, 2006), the UN General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance (*Convention*).[105] The Convention was opened for signature in Paris, France on

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[102] *Supra* note 86.

[103] A/RES/133, 20 December 1997, available at http://www.un.org./documents/ga/res/33/ares335173.pdf (last visited November 12, 2009).

[104] *Supra* note 72.

[105] G.A. Res. 61/177, UN Doc. A/RES/61/177 (December 20, 2006).

February 6, 2007.[106] Article 2 of the Convention defined enforced disappearance as follows:

> For the purposes of this Convention, **"enforced disappearance"** is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. [Emphasis supplied]

The Convention is the first universal human rights instrument to assert that there is a right not to be subject to enforced disappearance[107] and that this right is non-derogable.[108] It provides that no one shall be subjected to enforced disappearance under any circumstances, be it a state of war, internal political instability, or any other public emergency. It obliges State Parties to codify enforced disappearance as an offense punishable with appropriate

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[106] See Susan McCrory, *The International Convention for the Protection of All Persons from Enforced Disappearances*, 7 Hum. Rts. L. Rev. 545,547 (2007). Unlike the Declaration, the Convention is a legally binding instrument for the states to ratify it. The Convention shall enter into force after ratification by 20 state parties. As of this writing, there are already eighty-one (81) state signatories and only sixteen (16) of those states have ratified the Convention. Currently, the state parties to the Convention are only Albania, Argentina, Bolivia, Cuba, Ecuador, France, Germany, Honduras, Japan, Kazakhstan, Mali, Mexico, Nigeria, Senegal, Spain and Uruguay. See Status of the International Convention for the Protection of All Persons from Enforced Disappearance at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg-ho=iv-168&chapter=4&lang=en (last visited November 12, 2009). At present, the Philippines is neither a signatory nor a state party to the Convention.

[107] Article 1, ¶ 1 of the Convention states that "[n]o one shall be subjected to enforced disappearance."

[108] A non-derogable right is a right that may not be restricted or suspended, even in times of war or other public emergency (*i.e.*, the right to life and the right to be free from torture); *supra* note 91.

penalties under their criminal law.[109] It also recognizes the right of relatives of the disappeared persons and of the society as a whole to know the truth on the fate and whereabouts of the disappeared and on the progress and results of the investigation.[110] Lastly, it classifies enforced disappearance as a continuing offense, such that statutes of limitations shall not apply until the fate and whereabouts of the victim are established.[111]

Binding Effect of UN Action on the Philippines

To date, the Philippines has *neither signed nor ratified* the Convention, so that the country is not yet committed to enact any law penalizing enforced disappearance as a crime. The absence of a specific penal law, however, is not a stumbling block for action from this Court, as heretofore mentioned; underlying every enforced disappearance is a violation of the constitutional rights to life, liberty and security that the Supreme Court is mandated by the Constitution to protect through its rule-making powers.

Separately from the Constitution (but still pursuant to its terms), the Court is guided, in acting on *Amparo* cases, by the reality that the Philippines is a member of the UN, bound by its Charter and by the various conventions we signed and ratified, particularly

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[109] Article 4 of the Convention states that "[e]ach State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law."

[110] See Preamble, ¶8 of the Convention that affirms "the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to freedom to seek, receive and impart information to this end."

[111] *Supra* note 87, at 13. Article 8 of the Convention states that "[a] State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings: (a) Is of long duration and is proportionate to the extreme seriousness of this offence; (b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.

the conventions touching on humans rights. Under the UN Charter, the Philippines pledged to "promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion."[112] Although no universal agreement has been reached on the precise extent of the "human rights and fundamental freedoms" guaranteed to all by the Charter,[113] it was the UN itself that issued the Declaration on enforced disappearance, and this Declaration states:[114]

> Any act of enforced disappearance is an **offence to dignity**. It is condemned as a **denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights** and reaffirmed and developed in international instruments in this field. [Emphasis supplied]

As a matter of human right and fundamental freedom and as a policy matter made in a UN Declaration, the ban on enforced disappearance cannot but have its effects on the country, given our own adherence to "*generally accepted principles of international law as part of the law of the land.*"[115]

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[112] Article 55 of the UN Charter states that: "[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations… the United Nations shall promote… universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion." Article 55 states further: "[a]ll members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

[113] See *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

[114] Article 1, ¶ 1, Declaration on the Protection of All Persons from Enforced Disappearance; *supra* note 72.

[115] CONSTITUTION, Article II, Section 2 states:

> Section. 2. The Philippines renounces war as an instrument of national policy, **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. [Emphasis supplied]

In the recent case of *Pharmaceutical and Health Care Association of the Philippines v. Duque III*,[116] we held that:

> Under the 1987 Constitution, international law can become part of the sphere of domestic law either by **transformation** or **incorporation**. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation. **The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.** [Emphasis supplied]

We characterized "generally accepted principles of international law" as norms of general or customary international law that are binding on all states. We held further:[117]

> [G]enerally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. The **classical formulation in international law sees those customary rules accepted as binding result from the combination [of] two elements**: the established, widespread, and consistent **practice on the part of States**; and a **psychological element known as the *opinion juris sive necessitates*** (opinion as to law or necessity). Implicit in the latter element is a **belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.** [Emphasis in the original]

The most widely accepted statement of sources of internationallaw today is Article 38(1) of the Statute of the International Court of Justice, which provides that the Court shall apply "international custom, as evidence of a general practice accepted as law."[118] The material sources of custom include State practice, State legislation, international and national judicial decisions, recitals in treaties and other international instruments, a pattern of treaties in the same form, the practice of international

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[116] G.R. No. 173034, October 9, 2007, 535 SCRA 265, 289.

[117] *Id.* at 290 citing *Mijares v. Ranada*, G.R. No. 139325, April 12, 2005, 455 SCRA 397.

[118] Ian Brownlie, *Principles of Public International Law*, 6th ed., p. 5.

organs, and resolutions relating to legal questions in the UN General Assembly.[119] Sometimes referred to as "evidence" of international law,[120] these sources identify the substance and content of the obligations of States and are indicative of the "State practice" and "*opinio juris*" requirements of international law.[121] We note the following in these respects:

First, barely two years from the adoption of the Declaration, the Organization of American States (*OAS*) General Assembly adopted the Inter-American Convention on Enforced Disappearance of Persons in June 1994.[122] State parties undertook under this Convention "not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees."[123] One of the key provisions includes the States' obligation to enact the crime of forced disappearance in their respective national criminal laws and to establish jurisdiction over such cases when the crime was committed within their jurisdiction, when the victim is a national of that State, and "when the alleged criminal is within its territory and it does not proceed to extradite him," which can be interpreted as establishing universal jurisdiction among

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[119] *Id.* at 6.

[120] Joaquin G. Bernas, SJ, *An Introduction to Public International Law*, 1st ed., p. 8.

[121] Aloysius P. Llamzon, *The Generally Accepted Principles of International Law as Philippine Law: Towards a Structurally Consistent Use of Customary International Law in Philippine Courts*, 47 ATENEO L.J. 243, 370 (2002).

[122] *Supra* note 83.

[123] Article 1, ¶ 1 of the Inter-American Convention on Enforced Disappearances. Article II of the Inter-American Convention defined enforced disappearance as "the act of depriving a person or persons of his or her freedom, in whatever way, perpetrated by agents of the state or by persons or groups persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom, or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable remedies and procedural guarantees."

the parties to the Inter-American Convention.[124] At present, Colombia, Guatemala, Paraguay, Peru and Venezuela have enacted separate laws in accordance with the Inter-American Convention and have defined activities involving enforced disappearance to be criminal.[125]

Second, in Europe, the European Convention on Human Rights has no explicit provision dealing with the protection against enforced disappearance. The European Court of Human Rights (*ECHR*), however, has applied the Convention in a way that provides ample protection for the underlying rights affected by enforced disappearance through the Convention's Article 2 on the right to life; Article 3 on the prohibition of torture; Article 5 on the right to liberty and security; Article 6, paragraph 1 on the right to a fair trial; and Article 13 on the right to an effective remedy. A leading example demonstrating the protection afforded by the European Convention is *Kurt v. Turkey*,[126] where the ECHR found a violation of the right to liberty and security of the disappeared person when the applicant's son disappeared after being taken into custody by Turkish forces in the Kurdish village of Agilli in November 1993. It further found the applicant (the disappeared person's mother) to be a victim of a violation of Article 3, as a result of the silence of the authorities and the inadequate character of the investigations undertaken. The ECHR also saw the lack of any meaningful investigation by the State as a violation of Article 13.[127]

Third, in the United States, the status of the prohibition on enforced disappearance as part of customary international law is recognized in the most recent edition of *Restatement of the Law: The Third*,[128] which provides that "[a] State violates

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[124] *Supra* note 83.

[125] See Judgment of the Supreme Court of Nepal in Writ No. 3575, 100, 104, 323, 500, 45, 41, 155, 162, 164, 167, 97, 110, 111, 142, 211, 250, 223, 262, 378, 418, 485, 617, 632, 635, 54(0002) 0004, 2588/0038, June 1, 2007.

[126] 27 Eur. H.R. Rep. 373 (1998).

[127] *Supra* note 83.

[128] The Foreign Relations Law of the United States.

international law if, as a matter of State policy, it practices, encourages, or condones… (3) the murder or causing the disappearance of individuals."[129] We significantly note that in a related matter that finds close identification with enforced disappearance – the matter of torture – the United States Court of Appeals for the Second Circuit Court held in *Filartiga v. Pena-Irala*[130] that the prohibition on torture had attained the status of customary international law. The court further elaborated on the significance of UN declarations, as follows:

> These U.N. declarations are significant because they specify with great precision the obligations of member nations under the Charter. Since their adoption, "(m)embers can no longer contend that they do not know what human rights they promised in the Charter to promote." Moreover, a U.N. Declaration is, according to one authoritative definition, "a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated." Accordingly, it has been observed that the Universal Declaration of Human Rights "no longer fits into the dichotomy of 'binding treaty' against 'non-binding pronouncement,' but is rather an authoritative statement of the international community." Thus, a Declaration creates an expectation of adherence, and "insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon the States." Indeed, several commentators have concluded that the Universal Declaration has become, *in toto*, a part of binding, customary international law. [Citations omitted]

Fourth, in interpreting Article 2 (right to an effective domestic remedy) of the International Convention on Civil and Political Rights (*ICCPR*), to which the Philippines is both a signatory and a State Party, the UN Human Rights Committee, under the Office of the High Commissioner for Human Rights, has stated that the act of enforced disappearance violates Articles 6 (right to life), 7 (prohibition on torture, cruel, inhuman

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[129] American Law Institute, *Restatement of the Law, the Third, the Foreign Relations Law of the United States*, 1987, Vol. 2, ¶702.

[130] 630 F.2d 876 (2d Cir. 1980).

or degrading treatment or punishment) and 9 (right to liberty and security of the person) of the ICCPR, and the act may also amount to a crime against humanity.[131]

Fifth, Article 7, paragraph 1 of the 1998 Rome Statute establishing the International Criminal Court (*ICC*) also covers enforced disappearances insofar as they are defined as crimes against humanity,[132] *i.e.*, crimes "committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack." While more than 100 countries have ratified the Rome Statute,[133] the Philippines is still merely a signatory and has not yet ratified it. We note that Article 7(1) of the Rome Statute has been incorporated in the statutes of other international and hybrid tribunals, including Sierra Leone Special Court, the Special Panels for Serious Crimes in Timor-Leste, and the Extraordinary Chambers in the Courts of Cambodia.[134] In addition, the implementing legislation of State Parties to the Rome Statute of the ICC has given rise to a number of national criminal provisions also covering enforced disappearance.[135]

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[131] General Comment No. 31 [80], ¶18, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13., adopted on March 29, 2004.

[132] Under Article 7 (1) of the Rome Statute, enforced disappearance, the systematic practice of which can be a crime against humanity, is the "arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time." See Joan Lou P. Gamboa, *Creative Rule-Making In Response To Deficiencies of Existing Remedies*, Vol. LII, U.S.T. LAW REV, at 57 (2007-2008).

[133] Working Group on Enforced or Involuntary Disappearance General Comment, *Enforced Disappearance as a Crime Against Humanity*, ¶ 12, p. 2.

[134] *Id*.

[135] *Supra* note 83. See Article 7 (i) of the UK International Criminal Court Act 2001 which states that "[f]or the purpose of this Statute 'crime

While the Philippines is not yet *formally* bound by the terms of the Convention on enforced disappearance (or by the specific terms of the Rome Statute) and has not formally declared enforced disappearance as a specific crime, the above recital shows that **enforced disappearance as a State practice has been repudiated by the international community, so that the ban on it is now a *generally accepted principle of international law,* which we should consider a part of the law of the land, and which we should act upon to the extent already allowed under our laws and the international conventions that bind us.**

The following civil or political rights under the Universal Declaration of Human Rights, the ICCPR and the International Convention on Economic, Social and Cultural Rights (*ICESR*) may be infringed in the course of a disappearance:[136]

1) the right to recognition as a person before the law;
2) the right to liberty and security of the person;
3) the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment;
4) the right to life, when the disappeared person is killed;
5) the right to an identity;
6) the right to a fair trial and to judicial guarantees;
7) **the right to an effective remedy**, including reparation and compensation;
8) **the right to know the truth regarding the circumstances of a disappearance**.
9) the right to protection and assistance to the family;
10) the right to an adequate standard of living;

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against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: .xxx(i) Enforced disappearance of persons."

[136] *Supra* note 91, at 3. Enforced disappearances can also involve serious breaches of international instruments that are not conventions such as:

1) The Body of Principals for the Protection of All Persons under Any Form of Detention or Imprisonment;

2) The Code of Conduct for Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners;

11) the right to health; and
12) the right to education [Emphasis supplied]

Article 2 of the ICCPR, which binds the Philippines as a state party, provides:

Article 2

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated **shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity**;

(b) To ensure that **any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities**, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted. [Emphasis supplied]

In General Comment No. 31, the UN Human Rights Committee opined that the right to an effective remedy under Article 2 of the ICCPR includes the obligation of the State to investigate ICCPR violations promptly, thoroughly, and effectively, *viz*:[137]

15. Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights, **States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights**… The Committee attaches importance to States Parties' establishing appropriate judicial and **administrative mechanisms** for addressing claims of rights violations under domestic law… **Administrative mechanisms are particularly required to give effect**

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3) The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and

4) The Declaration on the Protection of All Persons from Enforced Disappearances. *Id.*

[137] *Supra* note 131.

to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy. [Emphasis supplied]

The UN Human Rights Committee further stated in the same General Comment No. 31 that failure to investigate as well as failure to bring to justice the perpetrators of ICCPR violations could in and of itself give rise to a separate breach of the Covenant, thus:[138]

18. Where the investigations referred to in paragraph 15 reveal violations of certain Covenant rights, **States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant**. **These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law**, such as torture and similar cruel, inhuman and degrading treatment (Article 7), summary and arbitrary killing (Article 6) **and enforced disappearance (Articles 7 and 9 and, frequently, 6).** Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, Article 7). [Emphasis supplied]

In *Secretary of National Defense v. Manalo*,[139] this Court, in ruling that the right to security of persons is a guarantee of the protection of one's right by the government, held that:

The right to security of person in this third sense is a corollary of the policy that the State "guarantees full respect for human rights" under Article II, Section 11 of the 1987 Constitution. *As the government*

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[138] *Id*.

[139] G.R. No. 180906, October 7, 2008, 568 SCRA 1, 57-58.

is the chief guarantor of order and security, the Constitutional guarantee of the rights to life, liberty and security of person is rendered ineffective if government does not afford ***protection*** *to these rights especially when they are under threat.* **Protection includes conducting effective investigations, organization of the government apparatus to extend protection to victims of extralegal killings or enforced disappearances (or threats thereof) and/or their families, and bringing offenders to the bar of justice**. The Inter-American Court of Human Rights stressed the importance of investigation in the **Velasquez Rodriguez Case**, *viz*:

> (The duty to investigate) **must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.** An investigation must have an objective and be **assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family** or upon their offer of proof, without an effective search for the truth by the government. [Emphasis supplied]

Manalo significantly cited *Kurt v. Turkey*,[140] where the ECHR interpreted the "right to security" not only as a prohibition on the State against arbitrary deprivation of liberty, but also as the imposition of a positive duty to afford protection to the right to liberty. The Court notably quoted the following ECHR ruling:

> [A]ny deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness... Having assumed control over that individual, it is incumbent on the authorities to account for his or her whereabouts. For this reason, **Article 5 must be seen as requiring the authorities to take effective measures to safeguard against the risk of disappearance and to conduct a prompt effective investigation into an arguable claim that a person has been taken into custody and has not been seen since**. [Emphasis supplied]

These rulings effectively serve as the backdrop for the Rule on the Writ of *Amparo*, which the Court made effective on

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[140] *Kurt v. Turkey* (1999) 27 E.H.R.R. 373.

October 24, 2007. Although the *Amparo* Rule still has gaps waiting to be filled through substantive law, as evidenced primarily by the lack of a concrete definition of "enforced disappearance," **the materials cited above, among others, provide ample guidance and standards on how, through the medium of the *Amparo* Rule, the Court can provide remedies and protect the constitutional rights to life, liberty and security that underlie every enforced disappearance.**

Evidentiary Difficulties Posed by the Unique Nature of an Enforced Disappearance

Before going into the issue of whether the respondent has discharged the burden of proving the allegations of the petition for the Writ of *Amparo* by the degree of proof required by the *Amparo* Rule, we shall discuss briefly the unique evidentiary difficulties presented by enforced disappearance cases; these difficulties form part of the setting that the implementation of the *Amparo* Rule shall encounter.

These difficulties largely arise because the State itself – the party whose involvement is alleged – investigates enforced disappearances. Past experiences in other jurisdictions show that the evidentiary difficulties are generally threefold.

First, there may be a **deliberate concealment of the identities of the direct perpetrators.**[141] Experts note that abductors are well organized, armed and usually members of the military or police forces, thus:

> The victim is generally arrested by the security forces or by persons acting under some form of governmental authority. In many countries the units that plan, implement and execute the program are generally specialized, highly-secret bodies within the armed or security forces. They are generally directed through a separate, clandestine chain of command, but they have the necessary credentials to avoid or

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[141] Irum Taqi, *Adjudicating Disappearance Cases in Turkey, An Argument for Adopting the Inter-American Court of Human Rights Approach*, 24 Fordham Int'l L.J. 940, 945-946 (2001).

prevent any interference by the "legal" police forces. These authorities take their victims to secret detention centers where they subject them to interrogation and torture without fear of judicial or other controls.[142]

In addition, there are usually no witnesses to the crime; if there are, these witnesses are usually afraid to speak out publicly or to testify on the disappearance out of fear for their own lives.[143] We have had occasion to note this difficulty in *Secretary of Defense v. Manalo*[144] when we acknowledged that "where powerful military officers are implicated, the hesitation of witnesses to surface and testify against them comes as no surprise."

Second, **deliberate concealment of pertinent evidence of the disappearance** is a distinct possibility; the central piece of evidence in an enforced disappearance – *i.e.*, the *corpus delicti* or the victim's body – is usually concealed to effectively thwart the start of any investigation or the progress of one that may have begun.[145] *The problem for the victim's family is the State's virtual monopoly of access to pertinent evidence*. The Inter-American Court of Human Rights (*IACHR*) observed in the landmark case of *Velasquez Rodriguez*[146] that inherent to the practice of enforced disappearance is the deliberate use of the State's power to destroy the pertinent evidence. The IACHR described the concealment as a clear attempt by the State to commit the perfect crime.[147]

Third is the **element of denial**; in many cases, the State authorities deliberately deny that the enforced disappearance

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[142] Juan E. Mendez & Jose Miguel Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 Hamline L. Rev. 507 (1990).

[143] *Supra* note 141.

[144] *Supra* note 139.

[145] *Supra* note 141.

[146] I/A Court H.R. Velasquez Rodriguez Case, Judgment of July 29, 1988, Series C No. 4.

[147] *Supra* note 142, at 557.

ever occurred.[148] "Deniability" is central to the policy of enforced disappearances, as the absence of any proven disappearance makes it easier to escape the application of legal standards ensuring the victim's human rights.[149] Experience shows that government officials typically respond to requests for information about *desaparecidos* by saying that they are not aware of any disappearance, that the missing people may have fled the country, or that their names have merely been invented.[150]

These considerations are alive in our minds, as these are the difficulties we confront, in one form or another, in our consideration of this case.

Evidence and Burden of Proof in Enforced Disappearances Cases

Sections 13, 17 and 18 of the *Amparo* Rule define the nature of an *Amparo* proceeding and the degree and burden of proof the parties to the case carry, as follows:

> Section 13. *Summary Hearing*. The hearing on the petition shall be **summary**. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.
>
> x x x x x x x x x
>
> Section 17. *Burden of Proof and Standard of Diligence Required*. – The parties shall establish their claims by **substantial evidence.**
>
> The respondent who is a private individual must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.
>
> The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

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[148] *Supra* note 141.

[149] *Supra* note 142, at 509.

[150] *Id*.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed or evade responsibility or liability.

Section 18. *Judgment.* – … If the **allegations in the petition are proven by substantial evidence**, the court shall **grant** the privilege of the writ and such reliefs as may be proper and appropriate; **otherwise**, the privilege shall be **denied**. [Emphasis supplied]

These characteristics – namely, of being summary and the use of substantial evidence as the required level of proof (in contrast to the usual preponderance of evidence or proof beyond reasonable doubt in court proceedings) – reveal the clear intent of the framers of the *Amparo* Rule to have the equivalent of an administrative proceeding, albeit judicially conducted, in addressing *Amparo* situations. The standard of diligence required – the duty of public officials and employees to observe extraordinary diligence – point, too, to the extraordinary measures expected in the protection of constitutional rights and in the consequent handling and investigation of extra-judicial killings and enforced disappearance cases.

Thus, in these proceedings, the *Amparo* petitioner needs only to properly comply with the substance and form requirements of a Writ of *Amparo* petition, as discussed above, and prove the allegations by substantial evidence. Once a rebuttable case has been proven, the respondents must then respond and prove their defenses based on the standard of diligence required. The rebuttable case, of course, must show that an enforced disappearance took place under circumstances showing a violation of the victim's constitutional rights to life, liberty or security, and the failure on the part of the investigating authorities to appropriately respond.

The landmark case of *Ang Tibay v. Court of Industrial Relations*[151] provided the Court its first opportunity to define the substantial evidence required to arrive at a valid decision in administrative proceedings. To directly quote *Ang Tibay*:

[151] 69 Phil. 635, 643 (1940), citing *Consolidated Edison Co. v. National Labor Relations Board*, 59 S. Ct. 206, 83 Law. Ed. No. 4, Adv. Op., p. 131.

Substantial evidence is more than a mere scintilla. **It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion**. [citations omitted] The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. [citations omitted] But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. [Emphasis supplied]

In *Secretary of Defense v. Manalo,*[152] which was the Court's first petition for a Writ of *Amparo*, we recognized that the full and exhaustive proceedings that the substantial evidence standard regularly requires do not need to apply due to the summary nature of *Amparo* proceedings. We said:

The remedy [of the writ of amparo] provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, **or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.** [Emphasis supplied]

Not to be forgotten in considering the evidentiary aspects of *Amparo* petitions are the unique difficulties presented by the nature of enforced disappearances, heretofore discussed, which difficulties this Court must frontally meet if the *Amparo* Rule is to be given a chance to achieve its objectives. These evidentiary difficulties compel the Court to adopt standards appropriate and responsive to the circumstances, *without transgressing the due process requirements that underlie every proceeding.*

In the seminal case of *Velasquez Rodriguez,*[153] the IACHR – faced with a lack of direct evidence that the government of

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[152] *Supra* note 139.

[153] *Supra* note 146.

Honduras was involved in Velasquez Rodriguez' disappearance – adopted a relaxed and informal evidentiary standard, and established the rule that presumes governmental responsibility for a disappearance if it can be proven that the government carries out a general practice of enforced disappearances and the specific case can be linked to that practice.[154] *The IACHR took note of the realistic fact that enforced disappearances could be proven only through circumstantial or indirect evidence or by logical inference; otherwise, it was impossible to prove that an individual had been made to disappear*. It held:

> 130. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. **Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts.**
>
> 131. **Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.** [Emphasis supplied]

In concluding that the disappearance of Manfredo Velásquez (*Manfredo*) was carried out by agents who acted under cover of public authority, **the IACHR relied on circumstantial evidence including the hearsay testimony o**f Zenaida Velásquez, the victim's sister, who described Manfredo's

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[154] The novel, two-step process involves: First, a complainant must prove that the government engaged in a systemic practice of disappearances. Second, the complainant must establish a link between that practice and the individual case. Once the complainant has satisfied both prongs to the requisite standard of proof, the burden of proof shifts to the government to refute the allegations. If the government fails to disprove the allegations, the IACHR could presume government liability for the disappearance. See Irum Taqi, *Adjudicating Disappearance Cases in Turkey, An Argument for Adopting the Inter-American Court of Human Rights Approach*, 24 Fordham Int'l L.J. 940 (2001).

kidnapping on the basis of conversations she had with witnesses who saw Manfredo kidnapped by men in civilian clothes in broad daylight. She also told the Court that a former Honduran military official had announced that Manfredo was kidnapped by a special military squadron acting under orders of the Chief of the Armed Forces.[155] The IACHR likewise considered the hearsay testimony of a second witness who asserted that he had been told by a Honduran military officer about the disappearance, and a third witness who testified that he had spoken in prison to a man who identified himself as Manfredo.[156]

Velasquez stresses the lesson that flexibility is necessary under the unique circumstances that enforced disappearance cases pose to the courts; to have an effective remedy, the standard of evidence must be responsive to the evidentiary difficulties faced. On the one hand, we cannot be arbitrary in the admission and appreciation of evidence, as arbitrariness entails violation of rights and cannot be used as an effective counter-measure; we only compound the problem if a wrong is addressed by the commission of another wrong. On the other hand, we cannot be very strict in our evidentiary rules

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[155] The substance of Zenaida's testimony as found by the IACHR:

> [107]. According to the testimony of his sister, eyewitnesses to the kidnapping of Manfredo Velásquez told her that he was detained on September 12, 1981, between 4:30 and 5:00 p.m., in a parking lot in downtown Tegucigalpa by seven heavily-armed men dressed in civilian clothes (one of them being First Sgt. José Isaías Vilorio), who used a white Ford without license plates (testimony of Zenaida Velásquez. See also testimony of Ramón Custodio López).
>
> [108]. This witness informed the Court that Col. Leonidas Torres Arias, who had been head of Honduran military intelligence, announced in a press conference in Mexico City that Manfredo Velásquez was kidnapped by a special squadron commanded by Capt. Alexander Hernández, who was carrying out the direct orders of General Gustavo Alvarez Martínez (testimony of Zenaida Velásquez).

[156] Gobind Singh Sethi, *The European Court of Human Rights Jurisprudence on Issues of Enforced Disappearances*, 8 NO. 3 Hum. Rts. Brief 29 (2001).

and cannot consider evidence the way we do in the usual criminal and civil cases; precisely, the proceedings before us are administrative in nature where, as a rule, technical rules of evidence are not strictly observed. Thus, while we must follow the substantial evidence rule, we must observe flexibility in considering the evidence we shall take into account.

The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, **we reduce our rules to the most basic test of reason – *i.e.*, to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.**

We note in this regard that the use of flexibility in the consideration of evidence is not at all novel in the Philippine legal system. In child abuse cases, Section 28 of the Rule on Examination of a Child Witness[157] is expressly recognized as an exception to the hearsay rule. This Rule allows the admission of the hearsay testimony of a child describing any act or attempted act of sexual abuse in any criminal or non-criminal proceeding, subject to certain prerequisites and the right of cross-examination by the adverse party. The admission of the statement is determined by the court in light of specified subjective and objective considerations that provide sufficient indicia of reliability of the child witness.[158] These requisites for admission find their

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[157] A.M. No. 00-4-07-SC, December 15, 2000.

[158] Section 28 of the Rule on Examination of a Child Witness states:

> SEC. 28. *Hearsay exception in child abuse cases*. – A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:
>
> (a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention

counterpart in the present case under the above-described conditions for the exercise of flexibility in the consideration of evidence, including hearsay evidence, in extrajudicial killings and enforced disappearance cases.

Assessment of the Evidence

The threshold question for our resolution is: was there an enforced disappearance within the meaning of this term under the UN Declaration we have cited?

The Convention defines enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State,

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to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such circumstance must be proved by the proponent.

(b) In ruling on the admissibility of such hearsay statement, the court shall consider the time, content, and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:

(1) Whether there is a motive to lie;

(2) The general character of the declarant child;

(3) Whether more than one person heard the statement;

(4) Whether the statement was spontaneous;

(5) The timing of the statement and the relationship between the declarant child and witness;

(6) Cross-examination could not show the lack of knowledge of the declarant child;

(7) The possibility of faulty recollection of the declarant child is remote; and

(8) The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused. [Emphasis supplied]

followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."[159] Under this definition, the elements that constitute enforced disappearance are essentially fourfold:[160]

> **(a) arrest, detention, abduction or any form of deprivation of liberty**;
>
> **(b) carried out by agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State;**
>
> (c) followed by a refusal to acknowledge the detention, or a concealment of the fate of the disappeared person; and
>
> (d) placement of the disappeared person outside the protection of the law. [Emphasis supplied]

We find no *direct evidence* indicating how the victim actually disappeared. The *direct evidence* at hand only shows that Tagitis went out of the ASY Pension House after depositing his room key with the hotel desk and was never seen nor heard of again. The undisputed conclusion, however, from all concerned – the petitioner, Tagitis' colleagues and even the police authorities – is that Tagitis disappeared under mysterious circumstances and was never seen again. The respondent injected the causal element in her petition and testimony, as we shall discuss below.

We likewise find no *direct evidence* showing that operatives of PNP CIDG Zamboanga abducted or arrested Tagitis. If at all, only the respondent's allegation that Tagitis was under CIDG Zamboanga custody stands on record, but it is not supported by any other evidence, direct or circumstantial.

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[159] Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

[160] Susan McCrory, *The International Convention For the Protection of All Persons from Enforced Disappearances*, 7 Hum. Rts. L. Rev. 545 (2007).

In her direct testimony, the respondent pointed to two sources of information as her bases for her allegation that Tagitis had been placed under government custody (in contrast with CIDG Zamboanga custody). The first was an unnamed friend in Zamboanga (later identified as Col. Ancanan), who occupied a high position in the military and who allegedly mentioned that Tagitis was in good hands. Nothing came out of this claim, as both the respondent herself and her witness, Mrs. Talbin, failed to establish that Col. Ancanan gave them any information that Tagitis was in government custody. Col. Ancanan, for his part, admitted the meeting with the respondent but denied giving her any information about the disappearance.

The more specific and productive source of information was Col. Kasim, whom the respondent, together with her witness Mrs. Talbin, met in Camp Katitipan in Davao City. To quote the relevant portions of the respondent's testimony:

Q: Were you able to speak to other military officials regarding the whereabouts of your husband particularly those in charge of any records or investigation?

A: I went to Camp Katitipan in Davao City. Then one military officer, Col. Casim, **told me that my husband is being abducted [*sic*] because he is under custodial investigation because he is allegedly "*parang* liason *ng* J.I.", sir.**

Q: What is J.I.?

A: Jema'ah Islamiah, sir.

Q: Was there any information that was read to you during one of those visits of yours in that Camp?

A: **Col. Casim did not furnish me a copy of his report because he said those reports are highly confidential, sir.**

Q: **Was it read to you then even though you were not furnished a copy?**

A: **Yes, sir. In front of us, my friends.**

Q: And what was the content of that highly confidential report?

A: Those alleged activities of Engineer Tagitis, sir.[161] [Emphasis supplied]

She confirmed this testimony in her cross-examination:

Q: You also mentioned that you went to Camp Katitipan in Davao City?

A: Yes, ma'am.

Q: **And a certain Col. Kasim told you that your husband was abducted and under custodial investigation?**

A: **Yes, ma'am.**

Q: **And you mentioned that he showed you a report?**

A: **Yes, ma'am.**

Q: **Were you able to read the contents of that report?**

A: **He did not furnish me a copy of those [*sic*] report because those [*sic*] were highly confidential. That is a military report, ma'am.**

Q: **But you were able to read the contents?**

A: **No. But he read it in front of us, my friends, ma'am.**

Q: **How many were you when you went to see Col. Kasim?**

A: **There were three of us, ma'am.**

Q: Who were your companions?

A: Mrs. Talbin, *tapos yung dalawang* friends *nya* from Mati City, Davao Oriental, ma'am.[162]

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Q: When you were told that your husband is in good hands, what was your reaction and what did you do?

A: ***May binasa kasi sya that* my husband has a *parang* meeting with other people *na parang mga terorista na mga tao*.** *Tapos* at the end of the report is [*sic*] **under custodial**

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[161] TSN, January 7, 2008, pp. 23-24.

[162] TSN, January 17, 2008, pp. 48-50.

investigation. So I told him "Colonel, my husband is sick. He is diabetic *at nagmemaintain yun ng gamot. Pakisabi lang sa naghohold sa asawa ko na bigyan siya ng gamot, ma'am."*[163]

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Q: You mentioned that you received information that Engineer Tagitis is being held by the CIDG in Zamboanga, did you go to CIDG Zamboanga to verify that information?

A: I did not go to CIDG Zamboanga. I went to Camp Karingal instead. Enough *na yun na* effort *ko* because I know that they would deny it, ma'am.[164]

On February 11, 2008, the respondent presented Mrs. Talbin to corroborate her testimony that her husband was abducted and held under custodial investigation by the PNP-CIDG Zamboanga City, *viz:*

Q: You said that you went to Camp Katitipan in Davao City sometime November 24, 2007, who was with you when you went there?

A: Mary Jean Tagitis, sir.

Q: Only the two of you?

A: No. We have some other companions. We were four at that time, sir.

Q: Who were they?

A: Salvacion Serrano, Mini Leong, Mrs. Tagitis and me, sir.

Q: Were you able to talk, see some other officials at Camp Katitipan during that time?

A: Col. Kasim (PS Supt. Julasirim Ahadin Kasim) only, sir.

Q: Were you able to talk to him?

A: Yes, sir.

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163 *Id.* at 52.

164 *Id.* at 66.

Q: The four of you?

A: Yes, sir.

Q: What information did you get from Col. Kasim during that time?

A: The first time we met with [him] I asked him if he knew of the exact location, if he can furnish us the location of Engr. Tagitis. And he was reading this report. **He told us that Engr. Tagitis is in good hands. He is with the military, but he is not certain whether he is with the AFP or PNP. He has this serious case. He was charged of terrorism because he was under surveillance from January 2007 up to the time that he was abducted. He told us that he was under custodial investigation. As I've said earlier, he was seen under surveillance from January. He was seen talking to Omar Patik, a certain Santos of Bulacan who is also a Balik Islam and charged with terrorism. He was seen carrying boxes of medicines.** Then we asked him how long will he be in custodial investigation. He said until we can get some information. But he also told us that he cannot give us that report because it was a raw report. It was not official, sir.

Q: You said that he was reading a report, was that report in document form, in a piece of paper or was it in the computer or what?

A: As far as I can see it, sir, it is written in white bond paper. I don't know if it was computerized but I'm certain that it was typewritten. I'm not sure if it used computer, fax or what, sir.

Q: When he was reading it to you, was he reading it line by line or he was reading in a summary form?

A: Sometimes he was glancing to the report and talking to us, sir.[165]

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[165] TSN, February 11, 2008, pp. 32-35.

Q: Were you informed as to the place where he was being kept during that time?

A: **He did not tell us where he [Tagitis] was being kept. But he mentioned this Talipapao, Sulu, sir.**

Q: After that incident, what did you do if any?

A: We just left and as I've mentioned, we just waited because that raw information that he was reading to us [*sic*] after the custodial investigation, Engineer Tagitis will be released. [Emphasis supplied][166]

Col. Kasim never denied that he met with the respondent and her friends, and that he provided them information based on the input of an unnamed asset. He simply claimed in his testimony that the "informal letter" he received from his informant in Sulu did not indicate that Tagitis was in the custody of the CIDG. He also stressed that the information he provided the respondent was merely a "raw report" from "*barangay* intelligence" that still needed confirmation and "follow up" as to its veracity.[167]

To be sure, the respondent's and Mrs. Talbin's testimonies were far from perfect, as the petitioners pointed out. The respondent mistakenly characterized Col. Kasim as a "military officer" who told her that "her husband is being abducted because he is under custodial investigation because he is allegedly '*parang liason ng J.I.*'" The petitioners also noted that "Mrs. Talbin's testimony imputing certain statements to Sr. Supt. Kasim that Engr. Tagitis is with the military, but he is not certain whether it is the PNP or AFP is not worthy of belief, since Sr. Supt. Kasim is a high ranking police officer who would certainly know that the PNP is not part of the military."

Upon deeper consideration of these inconsistencies, however, what appears clear to us is that the petitioners never really steadfastly disputed or presented evidence to refute the credibility

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[166] *Id.* at 36.

[167] *Supra* note 60.

of the respondent and her witness, Mrs. Talbin. The inconsistencies the petitioners point out relate, more than anything else, to details that should not affect the credibility of the respondent and Mrs. Talbin; the inconsistencies are not on material points.[168] We note, for example, that these witnesses are lay people in so far as military and police matters are concerned, and confusion between the police and the military is not unusual. As a rule, minor inconsistencies such as these indicate truthfulness rather than prevarication[169]and only tend to strengthen their probative value, in contrast to testimonies from various witnesses dovetailing on every detail; the latter cannot but generate suspicion that the material circumstances they testified to were integral parts of a well thought of and prefabricated story.[170]

Based on these considerations and the unique evidentiary situation in enforced disappearance cases, we hold it duly established that Col. Kasim informed the respondent and her friends, based on the informant's letter, that Tagitis, reputedly a liaison for the JI and who had been under surveillance since January 2007, was "in good hands" and under custodial investigation for complicity with the JI after he was seen talking to one Omar Patik and a certain "Santos" of Bulacan, a "Balik Islam" charged with terrorism. The respondent's and Mrs. Talbin's testimonies cannot simply be defeated by Col. Kasim's plain denial and his claim that he had destroyed his informant's letter, the critical piece of evidence that supports or negates the parties' conflicting claims. Col. Kasim's admitted destruction of this letter – effectively, a suppression of this evidence – raises the presumption that the letter, if produced, would be proof of what the respondent

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168 *People v. Modelo*, L- 29144, October 30, 1970, 35 SCRA 639, 643.

169 *People v. Vinas*, L-21756, October 28, 1968, 25 SCRA 682, 686.

170 *People v. Alviar*, L-32276, September 12, 1974, 59 SCRA 136, 153-154.

claimed.[171] For brevity, we shall call the evidence of what Col. Kasim reported to the respondent to be the "Kasim evidence."

Given this evidence, our next step is to decide whether we can accept this evidence, in lieu of direct evidence, as *proof that the disappearance of Tagitis was due to action with government participation, knowledge or consent and that he was held for custodial investigation*. We note in this regard that Col. Kasim was never quoted to have said that the custodial investigation was by the CIDG Zamboanga. The Kasim evidence only implies government intervention through the use of the term "custodial investigation," and does not at all point to CIDG Zamboanga as Tagitis' custodian.

Strictly speaking, we are faced here with a classic case of hearsay evidence – *i.e.*, evidence whose probative value is not based on the personal knowledge of the witnesses (the respondent, Mrs. Talbin and Col. Kasim himself) but on the knowledge of some other person not on the witness stand (the informant).[172]

To say that this piece of evidence is incompetent and inadmissible evidence of what it substantively states is to acknowledge – as the petitioners effectively suggest – that in the absence of any direct evidence, we should simply dismiss the petition. To our mind, an immediate dismissal for this reason is no different from a statement that the *Amparo* Rule – despite

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[171] Section 3 of Rule 131 of the RULES OF COURT provides:

The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

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(e) That evidence willfully suppressed would be adversed if produced.

See *Metrobank & Trust Company v. Court of Appeals*, G.R. No. 122899, June 8, 2000, 333 SCRA 212, 219-220; *Manila Bay Club Corporation v. Court of Appeals*, 249 SCRA 303, 306 (1995).

[172] See RULES OF COURT, Rule 130, Section 36.

its terms – is ineffective, as it cannot allow for the special evidentiary difficulties that are unavoidably present in *Amparo* situations, particularly in extrajudicial killings and enforced disappearances. The *Amparo* Rule was not promulgated with this intent or with the intent to make it a token gesture of concern for constitutional rights. It was promulgated to provide effective and timely remedies, *using and profiting from local and international experiences* in extrajudicial killings and enforced disappearances, as the situation may require. Consequently, we have no choice but to meet the evidentiary difficulties inherent in enforced disappearances with the flexibility that these difficulties demand.

To give full meaning to our Constitution and the rights it protects, we hold that, as in *Velasquez*, we should at least take a close look at the available evidence to determine the correct import of every piece of evidence – even of those usually considered inadmissible under the general rules of evidence – taking into account the surrounding circumstances and the test of reason that we can use as basic minimum admissibility requirement. In the present case, we should at least determine whether the Kasim evidence before us is relevant and meaningful to the disappearance of Tagitis and reasonably consistent with other evidence in the case.

The evidence about Tagitis' personal circumstances surrounded him with an air of mystery. He was reputedly a consultant of the World Bank and a Senior Honorary Counselor for the IDB who attended a seminar in Zamboanga and thereafter proceeded to Jolo for an overnight stay, indicated by his request to Kunnong for the purchase of a return ticket to Zamboanga the day after he arrived in Jolo. *Nothing in the records indicates the purpose of his overnight sojourn in Jolo*. A colleague in the IDB, Prof. Matli, early on informed the Jolo police that Tagitis may have taken funds given to him in trust for IDB scholars. Prof Matli later on stated that he never accused Tagitis of taking away money held in trust, although he confirmed that the IDB was seeking assistance in locating funds of IDB scholars deposited in Tagitis' personal account. Other than

these pieces of evidence, no other information exists in the records relating to the personal circumstances of Tagitis.

The actual disappearance of Tagitis is as murky as his personal circumstances. While the *Amparo* petition recited that he was taken away by "burly men believed to be police intelligence operatives," no evidence whatsoever was introduced to support this allegation. Thus, the available direct evidence is that Tagitis was last seen at 12.30 p.m. of October 30, 2007 – the day he arrived in Jolo – and was never seen again.

The Kasim evidence assumes critical materiality given the dearth of direct evidence on the above aspects of the case, as it supplies the gaps *that were never looked into and clarified* by police investigation. It is the evidence, too, that colors a simple missing person report into an enforced disappearance case, as it injects the element of participation by agents of the State and thus brings into question how the State reacted to the disappearance.

Denials on the part of the police authorities, and frustration on the part of the respondent, characterize the attempts to locate Tagitis. Initially in Jolo, the police informed Kunnong that Tagitis could have been taken by the Abu Sayyaf or other groups fighting the government. *No evidence was ever offered on whether there was active Jolo police investigation and how and why the Jolo police arrived at this conclusion.* The respondent's own inquiry in Jolo yielded the answer that he was not missing but was with another woman somewhere. *Again, no evidence exists that this explanation was arrived at based on an investigation.* As already related above, the inquiry with Col. Ancanan in Zamboanga yielded ambivalent results not useful for evidentiary purposes. Thus, it was only the inquiry from Col. Kasim that yielded positive results. Col. Kasim's story, however, confirmed only the fact of his custodial investigation (and, impliedly, his arrest or abduction), without identifying his abductor/s or the party holding him in custody. The more significant part of Col. Kasim's story is that the abduction came after Tagitis was seen talking with Omar Patik and a certain Santos of Bulacan, a "Balik Islam" charged with terrorism.

Mrs. Talbin mentioned, too, that Tagitis was being held at Talipapao, Sulu. *None of the police agencies participating in the investigation ever pursued these leads.* Notably, TASK FORCE TAGITIS to which this information was relayed did not appear to have lifted a finger to pursue these aspects of the case.

More denials were manifested in the Returns on the writ to the CA made by the petitioners. Then PNP Chief Gen. Avelino I. Razon merely reported the directives he sent to the ARMM Regional Director and the Regional Chief of the CIDG on Tagitis, and these reports merely reiterated the open-ended initial report of the disappearance. The CIDG directed a search in all of its divisions with negative results. These, to the PNP Chief, constituted the exhaustion "of all possible efforts." PNP-CIDG Chief General Edgardo M. Doromal, for his part, also reported negative results after searching "all divisions and departments [of the CIDG] for a person named Engr. Morced N. Tagitis . . . and after a diligent and thorough research, records show that no such person is being detained in the CIDG or any of its department or divisions." PNP-PACER Chief PS Supt. Leonardo A. Espina and PNP PRO ARMM Regional Director PC Superintendent Joel R. Goltiao did no better in their affidavits-returns, as they essentially reported the results of their directives to their units to search for Tagitis.

The extent to which the police authorities acted was fully tested when the CA constituted TASK FORCE TAGITIS, with specific directives on what to do. The negative results reflected in the Returns on the writ were again replicated during the three hearings the CA scheduled. Aside from the previously mentioned "retraction" that Prof. Matli made to correct his accusation that Tagitis took money held in trust for students, PS Supt. Ajirim reiterated in his testimony that the CIDG consistently denied any knowledge or complicity in any abduction and said that there was no basis to conclude that the CIDG or any police unit had anything to do with the disappearance of Tagitis; he likewise considered it premature to conclude that Tagitis simply ran away with the money in his custody. As

already noted above, the TASK FORCE notably did not pursue any investigation about the personal circumstances of Tagitis, his background in relation to the IDB and the background and activities of this Bank itself, and the reported sighting of Tagitis with terrorists and his alleged custody in Talipapao, Sulu. No attempt appears to have ever been made to look into the alleged IDB funds that Tagitis held in trust, or to tap any of the "assets" who are indispensable in investigations of this nature. These omissions and negative results were aggravated by the CA findings that it was only as late as January 28, 2008 or three months after the disappearance that the police authorities requested for clear pictures of Tagitis. Col. Kasim could not attend the trial because his subpoena was not served, despite the fact that he was designated as Ajirim's replacement in the latter's last post. Thus, Col. Kasim was not then questioned. No investigation – even an internal one – appeared to have been made to inquire into the identity of Col. Kasim's "asset" and what he indeed wrote.

We glean from all these pieces of evidence and developments a consistency in the government's denial of any complicity in the disappearance of Tagitis, disrupted only by the report made by Col. Kasim to the respondent at Camp Katitipan. Even Col. Kasim, however, eventually denied that he ever made the disclosure that Tagitis was under custodial investigation for complicity in terrorism. **Another distinctive trait that runs through these developments is the government's dismissive approach to the disappearance,** starting from the initial response by the Jolo police to Kunnong's initial reports of the disappearance, to the responses made to the respondent when she herself reported and inquired about her husband's disappearance, and even at TASK FORCE TAGITIS itself.

As the CA found through TASK FORCE TAGITIS, the investigation was at best haphazard since the authorities were looking for a man whose picture they initially did not even secure. The returns and reports made to the CA fared no better, as the CIDG efforts themselves were confined to searching for custodial

records of Tagitis *in their various departments and divisions*. To point out the obvious, if the abduction of Tagitis was a "black" operation because it was unrecorded or officially unauthorized, no record of custody would ever appear in the CIDG records; Tagitis, too, would not be detained in the usual police or CIDG detention places**. In sum, none of the reports on record contains any meaningful results or details on the depth and extent of the investigation made.** To be sure, reports of top police officials indicating the personnel and units they directed to investigate can never constitute exhaustive and meaningful investigation, or equal detailed investigative reports of the activities undertaken to search for Tagitis. Indisputably, the police authorities from the very beginning failed to come up to the extraordinary diligence that the *Amparo* Rule requires.

CONCLUSIONS AND THE AMPARO REMEDY

Based on these considerations, we conclude that Col. Kasim's disclosure, made in an unguarded moment, unequivocally point to some government complicity in the disappearance. The consistent but unfounded denials and the haphazard investigations cannot but point to this conclusion. For why would the government and its officials engage in their chorus of concealment if the intent had not been to deny what they already knew of the disappearance? Would not an in-depth and thorough investigation that at least credibly determined the fate of Tagitis be a feather in the government's cap under the circumstances of the disappearance? From this perspective, the evidence and developments, particularly the Kasim evidence, already establish a concrete case of enforced disappearance that the *Amparo* Rule covers. From the prism of the UN Declaration, heretofore cited and quoted,[173] the evidence at hand and the developments in this case confirm the fact of the enforced disappearance and government complicity, under a background of consistent and unfounded government denials and haphazard handling. The disappearance as well effectively placed Tagitis outside

[173] *Supra* note 104.

the protection of the law – a situation that will subsist unless this Court acts.

This kind of fact situation and the conclusion reached are not without precedent in international enforced disappearance rulings. While the facts are not exactly the same, the facts of this case run very close to those of *Timurtas v. Turkey*,[174] a case decided by ECHR. The European tribunal in that case acted on the basis of the photocopy of a "post-operation report" in finding that Abdulvahap Timurtas (*Abdulvahap*) was abducted and later detained by agents (*gendarmes*) of the government of Turkey. The victim's father in this case brought a claim against Turkey for numerous violations of the European Convention, including the right to life (Article 2) and the rights to liberty and security of a person (Article 5). The applicant contended that on August 14, 1993, *gendarmes* apprehended his son, Abdulvahap for being a leader of the Kurdish Workers' Party (*PKK*) in the Silopi region. The petition was filed in southeast Turkey nearly six and one half years after the apprehension. According to the father, *gendarmes* first detained Abdulvahap and then transferred him to another detainment facility. **Although there was no eyewitness evidence of the apprehension or subsequent detainment**, **the applicant presented evidence corroborating his version of events, including a photocopy of a post-operation report signed by the commander of gendarme operations in Silopi, Turkey.** The report included a description of Abdulvahap's arrest and the result of a subsequent interrogation during detention where he was accused of being a leader of the PKK in the Silopi region. On this basis, Turkey was held responsible for Abdulvahap's enforced disappearance.

Following the lead of this Turkish experience - adjusted to the Philippine legal setting and the Amparo remedy this Court has established, as applied to the unique facts and developments of this case – we believe and so hold that the government in general, through the PNP and

[174] (23531/94) [2000] ECHR 221 (13 June 2000).

the PNP-CIDG, and in particular, the Chiefs of these organizations together with Col. Kasim, should be held fully accountable for the enforced disappearance of Tagitis.

The PNP and CIDG are accountable because Section 24 of Republic Act No. 6975, otherwise known as the "PNP Law,"[175] specifies the PNP as the governmental office with the mandate "to investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution." The PNP-CIDG, as Col. Jose Volpane Pante (then Chief of CIDG Region 9) testified, is the "investigative arm" of the PNP and is mandated to "investigate and prosecute all cases involving violations of the Revised Penal Code, particularly those considered as heinous crimes."[176] Under the PNP organizational structure, the PNP-CIDG is tasked to investigate all major crimes involving violations of the Revised Penal Code and operates against organized crime groups, unless the President assigns the case exclusively to the National Bureau of Investigation (*NBI*).[177] No indication exists in this case showing that the President ever directly intervened by assigning the investigation of Tagitis' disappearance exclusively to the NBI.

Given their mandates, the PNP and PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise the extraordinary diligence that the *Amparo* Rule requires. We hold these organizations accountable through their incumbent Chiefs who, under this Decision, shall carry the personal responsibility of seeing to it that extraordinary diligence, in the manner the *Amparo* Rule requires, is applied in addressing the enforced disappearance of Tagitis.

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[175] An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government and for Other Purposes.

[176] *Supra* note 66.

[177] See *CIDG Profile*, available at: http://www.pnp.gov.ph/about/content/offices/central/cidg/content/cidg.html (last visited November 12, 2009).

We hold Col. Kasim accountable for his failure to disclose under oath information relating to the enforced disappearance. For the purpose of this accountability, we order that Col. Kasim be impleaded as a party to this case. The PNP is similarly held accountable for the suppression of vital information that Col. Kasim could and did not provide, and, as the entity with direct authority over Col. Kasim, is held with the same obligation of disclosure that Col. Kasim carries. We shall deal with Col. Kasim's suppression of evidence under oath when we finally close this case under the process outlined below.

To fully enforce the *Amparo* remedy, we refer this case back to the CA for appropriate proceedings directed at the monitoring of the PNP and the PNP-CIDG investigations and actions, and the validation of their results through hearings the CA may deem appropriate to conduct. For purposes of these investigations, the PNP/ PNP-CIDG shall initially present to the CA a plan of action for further investigation, periodically reporting the detailed results of its investigation to the CA for its consideration and action. On behalf of this Court, the CA shall pass upon: the need for the PNP and the PNP-CIDG to make disclosures of matters known to them as indicated in this Decision and as further CA hearings may indicate; the petitioners' submissions; the sufficiency of their investigative efforts; and submit to this Court a **quarterly report** containing its actions and recommendations, copy furnished the petitioners and the respondent, with the **first report** due at the end of the first quarter counted from the finality of this Decision. The PNP and the PNP-CIDG shall have one (1) full year to undertake their investigation. The CA shall submit its **full report** for the consideration of this Court at the end of the 4th quarter counted from the finality of this Decision.

WHEREFORE, premises considered, we *DENY* the petitioners' petition for review on *certiorari* for lack of merit, and *AFFIRM* the decision of the Court of Appeals dated March 7, 2008 under the following terms:

a. Recognition that the disappearance of Engineer Morced N. Tagitis is an enforced disappearance covered by the Rule on the Writ of *Amparo*;

b. Without any specific pronouncement on exact authorship and responsibility, declaring the government (through the PNP and the PNP-CIDG) and Colonel Julasirim Ahadin Kasim accountable for the enforced disappearance of Engineer Morced N. Tagitis;

c. Confirmation of the validity of the Writ of *Amparo* the Court of Appeals issued;

d. Holding the PNP, through the PNP Chief, and the PNP-CIDG, through its Chief, directly responsible for the disclosure of material facts known to the government and to their offices regarding the disappearance of Engineer Morced N. Tagitis, and for the conduct of proper investigations using extraordinary diligence, with the obligation to show investigation results acceptable to this Court;

e. Ordering Colonel Julasirim Ahadin Kasim impleaded in this case and holding him accountable with the obligation to disclose information known to him and to his "assets" in relation with the enforced disappearance of Engineer Morced N. Tagitis;

f. Referring this case back to the Court of Appeals for appropriate proceedings directed at the monitoring of the PNP and PNP-CIDG investigations, actions and the validation of their results; the PNP and the PNP-CIDG shall initially present to the Court of Appeals a plan of action for further investigation, periodically reporting their results to the Court of Appeals for consideration and action;

g. Requiring the Court of Appeals to submit to this Court a quarterly report with its recommendations, copy furnished the incumbent PNP and PNP-CIDG Chiefs as petitioners and the respondent, with the first report

due at the end of the first quarter counted from the finality of this Decision;

h. The PNP and the PNP-CIDG shall have one (1) full year to undertake their investigations; the Court of Appeals shall submit its full report for the consideration of this Court at the end of the 4th quarter counted from the finality of this Decision;

These directives and those of the Court of Appeals' made pursuant to this Decision shall be given to, and shall be directly enforceable against, whoever may be the incumbent Chiefs of the Philippine National Police and its Criminal Investigation and Detection Group, under pain of contempt from this Court when the initiatives and efforts at disclosure and investigation constitute less than the extraordinary diligence that the Rule on the Writ of *Amparo* and the circumstances of this case demand. Given the unique nature of *Amparo* cases and their varying attendant circumstances, these directives – particularly, the referral back to and monitoring by the CA – are specific to this case and are not standard remedies that can be applied to every *Amparo* situation.

The dismissal of the *Amparo* petition with respect to General Alexander Yano, Commanding General, Philippine Army, and General Ruben Rafael, Chief, Anti-Terrorism Task Force Comet, Zamboanga City, is hereby *AFFIRMED*.

SO ORDERED.

Puno, C.J., Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, and *Villarama, Jr., JJ.,* concur.

INDEX

INDEX

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

Page

Page

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

D. BOOKS

(Local)

Page

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS